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**Note to the Executive Office of the Secretary-General concerning
the issuance of an arrest warrant**

INTERNATIONAL ARREST WARRANT HAS NO STATUS AS SUCH OUTSIDE THE ISSUING COUNTRY—INTERNATIONAL ARREST WARRANT MAY SERVE AS BASIS FOR THE ISSUANCE OF A RED NOTICE BY INTERPOL OR FOR AN EXTRADITION REQUEST TO A GOVERNMENT—PRIVILEGES AND IMMUNITIES OF UNITED NATIONS OFFICIALS—CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, 1946—UNITED NATIONS OFFICIALS GENERALLY DO NOT ENJOY IMMUNITY FROM LEGAL PROCESS FOR ACTS PERFORMED PRIOR TO THEIR APPOINTMENT—OFFICIALS OF THE RANK OF ASSISTANT SECRETARY-GENERAL ENJOY, IN ADDITION TO THE PRIVILEGES AND IMMUNITIES UNDER THE 1946 CONVENTION, THE PRIVILEGES AND IMMUNITIES ACCORDED TO DIPLOMATIC ENVOYS IN ACCORDANCE WITH INTERNATIONAL LAW—VIENNA CONVENTION ON DIPLOMATIC RELATIONS, 1961—OFFICIALS THE RANK OF ASSISTANT SECRETARY-GENERAL ENJOY IMMUNITY ALSO FOR ACTS THAT PRE-DATE THEIR APPOINTMENT—OFFICIALS OF THE RANK OF ASSISTANT SECRETARY-GENERAL ARE INVIOLEABLE AND ENJOY IMMUNITY FROM CRIMINAL AND ADMINISTRATIVE JURISDICTION, INCLUDING IMMIGRATION PROCEEDINGS FOR DEPORTATION—IMMUNITIES OF SUCH OFFICIALS PRECLUDE ARREST OR DETENTION—IMMUNITY MAY BE WAIVED BY THE SECRETARY-GENERAL WHEN IT WOULD OTHERWISE IMPEDE THE COURSE OF JUSTICE AND CAN BE DONE WITHOUT PREJUDICE TO THE INTERESTS OF THE ORGANIZATION—VERIFICATION OF THE EXISTENCE OF PLAUSIBLE GROUNDS FOR THE CHARGES OR SUIT CONCERNED AND THAT THE PROCEEDINGS WOULD SATISFY FUNDAMENTAL ELEMENTS OF DUE PROCESS OF LAW—IMPLICATIONS OF A RESERVATION TO THE 1946 CONVENTION BY THE STATE CONCERNED—PROCEDURE TO REQUIRE UNITED NATIONS OFFICIALS ENJOYING IMMUNITIES ACCORDED TO DIPLOMATIC ENVOYS TO LEAVE THE RECEIVING STATE AS SET OUT IN THE VIENNA CONVENTION—ISSUANCE OF THE ARREST WARRANT DOES NOT BY ITSELF REPRESENT A SUFFICIENT GROUND TO TERMINATE EMPLOYMENT—FAILURE TO COOPERATE WITH NATIONAL AUTHORITIES MAY CONSTITUTE GROUND FOR DISMISSAL

I refer to your note dated 3 March 2006, forwarding a copy of a letter dated 3 March 2006 from the Permanent Representative of [Member State A] addressed to the Chef de Cabinet of the Secretary-General, for the Secretary-General's attention. Under cover of that letter, the Permanent Representative of [Member State A] transmits a copy of an "international arrest warrant" ("*mandat d'arrêt international*") dated [date], issued by the *Juge d'instruction au Tribunal de première instance* of the *Cour d'appel de [City]*, [Member State A]. The warrant is for the arrest of [Name 1] in respect of his alleged involvement in the sale of another's land, said to have taken place in New York during 2004, in violation of the criminal code of [Member State A]. [Name 1]'s last known address is given as New York. You seek our urgent advice.

[Name 1] is currently the Deputy Special Representative of the Secretary-General (DSRSG) for [...]. We understand that the Secretary-General appointed him to that position in [year].

Prior to his appointment as DSRSG, [Name 1] was Permanent Representative of [Member State A] to the United Nations in New York. We understand that, during the time that [Name 1] held that post, a portion of the land on which the Permanent Representative's residence is located was sold off. We further understand that questions have been raised by the [Member State A] authorities regarding the regularity of that transaction and of the role that [Name 1] may have played in it. It now appears that the [Member State A] authorities suspect that sale to have involved the commission of a criminal offence contrary to the laws of [Member State A]. It further appears that they suspect [Name 1] to have been involved in the commission of that crime.

It is our understanding that [Name 1] is currently present in [Member State B].

It is also our understanding that, as a DSRSG, [Name 1] holds an appointment as an official of the United Nations of the rank of Assistant Secretary-General.

The following advice is given on these bases.

(1) *The status of the “international arrest warrant”*

The so-called “international arrest warrant” is a warrant issued by the [Member State A] authorities. It has no status as such outside [Member State A].

If communicated to INTERPOL, it may serve as the basis for the issuance by INTERPOL of a “Red Notice”. A “Red Notice” is a request for the arrest or detention of a wanted person, which contains an assurance that a request for extradition will follow. (“Red Notices” are issued by INTERPOL at the request of national authorities to alert other INTERPOL participants of a wanted person’s location. When a member country of INTERPOL requests INTERPOL to issue and circulate a “Red Notice”, it must specify that extradition will be pursued by the requesting country immediately upon being notified that the wanted person has been located. It is up to the State which has located a wanted person to decide whether it will arrest or detain a person as requested under the notice. Many of INTERPOL’s member countries consider a Red Notice a valid request for provisional arrest, especially when the requested country is linked to the requesting country via a bilateral extradition treaty or an extradition convention.) We are unaware as to whether an INTERPOL “Red Notice” has been issued in respect of [Name 1].

The warrant may also serve as the basis of a request by the Government of [Member State A] to the Government of [Member State B] to extradite [Name 1] to [Member State A] to stand trial before the [Member State A] courts for the crime alleged. We are not aware whether any such request has been submitted. In any event, such a request would serve as a basis for extradition proceedings in the [Member State B] only if there were an extradition treaty between the two countries. We have not been able to locate any such treaty.

(2) *[Name 1]’s privileges and immunities*

The allegations in the present case concern conduct by [Name 1] at the time that he was the Permanent Representative of [Member State A] to the United Nations. As a former Permanent Representative he continues to enjoy immunity with regard to acts performed in the exercise of his functions as a member of the Mission. The immunity is subject to waiver by [Member State A].

In accordance with section 18(a) of the Convention on the Privileges and Immunities of the United Nations* (the “General Convention”), [Name 1], as an official of the United Nations, enjoys immunity from legal process in respect of words spoken or written and all acts performed by him in his official capacity. The criminal acts that [Name 1] is alleged to have performed pre-date his appointments as an official of the United Nations. He therefore does not enjoy either in [Member State B], or elsewhere, any immunity from legal process in respect of them pursuant to section 18(a) of the General Convention.

(i) Extradition from [Member State B]

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

In accordance with section 19 of the General Convention, [Name 1], as an official of the rank of Assistant Secretary-General, enjoys, in addition to the immunities and privileges specified in section 18(a) of the General Convention, “the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law”.

In accordance with article 29 of the 1961 Vienna Convention on Diplomatic Relations,** the person of a diplomatic agent is inviolable. He or she shall not be liable to any form of arrest or detention. Further, in accordance with article 31(1) of that same Convention, diplomatic agents shall enjoy immunity from criminal jurisdiction, as well as from administrative jurisdiction.

Accordingly, [Name 1] may not be arrested or detained by the authorities of [Member State B] in respect of the alleged crime, even though it pre-dates his appointment as an official of the United Nations. Likewise, he may not be subjected by those authorities to any form of criminal jurisdiction in respect of that crime, even though, again, it pre-dates his appointment as DSRSG. Together, these immunities which he enjoys, as an official of the United Nations of the rank of Assistant Secretary-General, would serve to preclude his being subjected before the courts of the [Member State B] for possible extradition to [Member State A].

This having been said, section 20 of the General Convention stipulates that privileges and immunities are granted to officials of the United Nations in the interests of the Organization and not for the personal benefit of the individuals themselves. The Secretary-General accordingly “shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations”.

Pursuant to this section, it has been the practice of the Secretary-General routinely to waive the immunities enjoyed by its officials of the rank of Assistant Secretary-General and above where the acts performed by those officials and in respect of which they are being prosecuted or sued were performed by them otherwise than in their capacity as officials of the United Nations.

This having been said, the criteria laid down in section 20 apply not only to the immunity that officials enjoy, pursuant to section 18(a), in respect of acts performed by them in their official capacity. They also equally apply to any immunity that those officials may enjoy, pursuant to section 19, in respect of acts performed by them otherwise than in their official capacity. Accordingly, the Secretary-General may and should waive the immunities enjoyed in the latter case, just as much as in the former, only where, in his opinion, (i) those immunities would impede the course of justice and (ii) they can be waived without prejudice to the interests of the United Nations.

With respect to the application of the first of these two criteria, the Secretary-General, in such a case, would need to confirm that the criminal charge or civil suit brought against the official was not a spurious one. He would therefore need to verify that some plausible grounds existed for the charge or suit concerned. The Secretary-General would also need to confirm that the proceedings to which the official would be subjected, if the immunities concerned were waived, would satisfy the fundamental elements of due process of law. Otherwise there would be no “justice” to impede. Where the question in hand is the potential

** United Nations, *Treaty Series*, vol. 500, p. 95.

subjection of an official to extradition proceedings (or deportation proceedings, where the deportation would have an effect equivalent to extradition), this would necessitate verification of the potential fairness of both of those extradition proceedings and of the criminal proceedings to which the official would be subjected in the State requesting his or her extradition, were the extradition sought to go ahead.

Turning to the application of these criteria in the present case, the information at our disposal indicates that the criminal charges are by no means implausible. Further, any extradition proceedings before [Member State B] courts would satisfy minimum standards of due process. However, we are not in a position to judge whether any criminal proceedings against [Name 1] in [Member State A] would do so. The Department of Political Affairs' advice would need to be sought in this regard.

As for the second criterion, we are not aware of any interest of the United Nations that would be prejudiced by [Name 1]'s being subjected to the jurisdiction of the [Member State B] or [Member State A] courts.

(ii) Deportation from the [Member State B]

As noted above, [Name 1], as an official of the United Nations of the rank of Assistant Secretary-General, is not liable to arrest or detention, and his person is inviolable. He is also immune from both criminal and administrative jurisdiction. Together, these immunities would serve to preclude his being subjected to immigration proceedings for possible deportation to [Member State A], unless they were to be waived by the Secretary-General.

This having been said, it is necessary to recall that [Member State B], when it acceded to the General Convention in [year], formulated a reservation to the effect that nothing in article V of the Convention should be construed to grant exemption from the laws and regulations of [Member State B] regarding the continued residence of aliens "to any person who has abused his privileges of residence by activities in [Member State B] outside his official capacity". This reservation is clearly directed principally at activities in which officials of the United Nations may engage during the period of their employment with the Organization. However, it may be construed also to encompass activities in which they engaged beforehand. We believe that it would be difficult to convince [Member State B] authorities to read it otherwise.

The reservation of [Member State B] goes on to provide that proceedings may not be instituted under the laws and regulations of [Member State B] regarding the residence of aliens in order to require an official of the United Nations to leave [Member State B] unless and until the Secretary of State of [Member State B] has given his or her approval which she may only do after having consulted with the Secretary-General. Assuming that she gives her approval, a representative of the Secretary-General will then have the right to appear on behalf of the official concerned in any ensuing proceedings.

In the event that those proceedings result in a decision requiring the official to leave [Member State B], then the reservation stipulates that, if the official concerned is entitled to diplomatic privileges and immunities, then he or she shall not be required to leave the [Member State B] otherwise than in accordance with the customary procedure applicable to members of diplomatic missions accredited to [Member State B]. That procedure is set out in article 9 of the Vienna Convention on Diplomatic Relations. In accordance with that procedure, [Member State B] would notify the Organization that the official concerned was

not acceptable. It would then be for the United Nations to post that official elsewhere or to terminate his or her appointment. If the Organization failed within a reasonable period of time to take either of these courses of action, then [the Member State B] would become free to refuse to recognize that individual as an official of the United Nations and so to accord him other any of the privileges and immunities accorded by the General Convention. The practical result of this would be that, if the individual was not assigned elsewhere or did not depart [Member State B] in a reasonable period of time, then he or she could be forcibly deported.

These procedures would potentially apply in respect of [Name 1], if [Member State B] decides to take steps to require him to leave the country on the grounds of having abused his privileges of residence in the country while he was Permanent Representative of [Member State A].

(iii) Prosecution in [Member State A]

In accordance with article 38 of the Vienna Convention on Diplomatic Relations, a diplomatic agent who is a national or a permanent resident of the receiving State shall enjoy only immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of his/her functions. Accordingly, as a national of [Member State A], in respect of the acts which are the subject of the current arrest warrant, since those acts would not have been performed by him in the exercise of his functions as an official of the United Nations.

(3) *[Name 1]'s continued employment with the United Nations*

In accordance with the jurisprudence of the Administrative Tribunal, the issuance of the present arrest warrant does not, by itself, constitute sufficient grounds to terminate [Name 1]'s appointment with the United Nations. Any action taken to terminate his employment on this ground alone would potentially give rise to substantial liabilities for the Organization.

This having been said, any failure on the part of [Name 1] to cooperate with the efforts of the [Member State A] authorities to investigate the transaction which is the subject of the present warrant would certainly potentially constitute grounds for his dismissal. We would draw your attention in this regard to the attached note^{***} which we recently sent to [Name 2] on this very subject.

6 March 2006

*** Not reproduced herein.

**Note to the Secretariat of the United Nations Convention to Combat Desertification
("UNCCD"), concerning a request by a Member State Embassy for
budget and staff data**

CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, 1946, REQUIRING THE SECRETARY-GENERAL TO SUBMIT CATEGORIES OF OFFICIALS TO THE GENERAL ASSEMBLY FOR PURPOSES OF PRIVILEGES AND IMMUNITIES—ISSUANCE OF ANNUAL LIST OF UNITED NATIONS SECRETARIAT OF STAFF HOLDING APPOINTMENTS OF ONE YEAR OR LONGER—RESPONSIBILITY OF SEPARATELY ADMINISTERED OFFICES, FUNDS AND PROGRAMMES TO COMMUNICATE THE NAMES OF OFFICIALS TO THEIR RESPECTIVE GOVERNING BODIES OR HOST GOVERNMENTS—NO LEGAL IMPEDIMENT FOR A UNITED NATIONS OFFICE TO COMMUNICATE ITS LIST OF STAFF TO A MEMBER STATE

1. I refer to your e-mail of 4 April 2006 to The Legal Counsel, seeking this Office's views on a request by the [Member State] Embassy in Berlin to provide UNCCD budget and staff data.

2. As you are aware, the United Nations Secretariat issues every year a document entitled "List of staff of the United Nations Secretariat", the latest being ST/ADM/R.60, which lists all the staff of the Secretariat who, as of the date of reference – in this case 1 July 2005 – held an appointment of one year or longer. This document does not include the staff of separately administered United Nations Offices, Funds and Programmes.

3. Under section 17 of the Convention on the Privileges and Immunities of the United Nations,^{*} the Secretary-General shall submit categories of officials to the General Assembly. ST/ADM/R.xx serves this purpose. Separately administered United Nations Offices, Funds and Programmes are themselves responsible for communicating to their respective governing bodies or to their host Governments the names of officials in the duty station for privileges and immunities related purposes.

4. Salaries and emoluments of Secretariat officials are established by the General Assembly and can be found on the United Nations website and the Official Document System of the United Nations. The base salary scale for staff in the Professional and higher categories, for example, was last published in ST/IC/2006/4 of 1 January 2006.

5. We assume that the UNCCD secretariat communicates regularly its list of staff to Germany, as the Host State, as well as to the Conference of the States Parties to the Convention. We see no legal impediment to communicating this information to the [Member State] Embassy in Berlin, depending on whatever arrangements are in place governing the appropriate means of communication between the UNCCD secretariat and the State party concerned, in this case the [Member State].

22 May 2006

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

Inter-office memorandum to the Principal Advisor of the Office of Legal and Procurement Support, Bureau of Management, United Nations Development Programme (UNDP), concerning a Member State's police survey

CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, 1946, GRANTING UNITED NATIONS OFFICIALS, THEIR SPOUSES AND DEPENDENTS IMMUNITY FROM IMMIGRATION RESTRICTIONS AND ALIEN REGISTRATION—REGISTRATION OF INTERNATIONALLY RECRUITED UNITED NATIONS OFFICIALS WOULD CONTRAVENE THE PROVISIONS OF THE CONVENTION

1. This is in response to your memorandum of 24 August 2006 in which you seek our advice as to whether national and international staff in [Member State] should comply with a detailed survey (“A Survey to Ensure Civil Security and Welfare of the Community”) which has been distributed door-to-door in [Member State] by the local police.

2. Pursuant to section 18(d) of article V of the Convention on the Privileges and Immunities of the United Nations* (“the Convention”), “officials of the United Nations are immune, together with their spouses and relatives dependent on them, from immigration restriction and alien registration”. In our view, the registration of internationally recruited United Nations officials as required by the survey would contravene the provisions of section 18(d) of the Convention. As such, we advise that all international UNDP staff should not participate in the survey.

3. We attach for review a draft note verbale which UNDP may wish to send to the Ministry of Foreign Affairs in [Member State] in relation to this matter. The draft note verbale states that United Nations officials are immune from “alien registration”, and that requiring international United Nations staff to complete the above-mentioned survey would contravene section 18(d) of article V of the Convention. In addition, the draft note verbale would provide the Government a list of UNDP officials pursuant to section 17, article V of the Convention. Such a list would need to be attached by UNDP.

5 September 2006

Enclosure

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

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The United Nations Development Programme (“UNDP”) presents its compliments to the Ministry of Foreign Affairs of [Member State] and has the honour to refer to [survey] (copy attached) ** distributed through a door-to-door operation by the local police in [Member State] (hereinafter “the police survey”).

UNDP wishes to note that in accordance with section 18(d) of article V of the Convention on the Privileges and Immunities of the United Nations (“the Convention”), to which [Member State] became a party on [date] without reservation, “officials of the United Nations are immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration”. Similarly, pursuant to article IX of the Agreement between the Government of [Member State] and UNDP of [date] (“the Agreement”), the Government shall apply the provisions of the Convention to the United Nations and its officials. The registration of international officials of the United Nations and its subsidiary organs, including UNDP, as required by the police survey would contravene the provisions of section 18(d) of the Convention.

UNDP has the honour to recall, however, that the Organization, in accordance with section 17 of article V of the Convention, has an obligation to provide the names of its officials to the Governments of Member States from time to time. Thus, while individual international staff members should not be called upon to complete the police survey, the Organization will regularly submit a list of all locally and internationally recruited staff to the Ministry of Foreign Affairs.

UNDP kindly requests the Ministry of Foreign Affairs of the Government of [Member State] to ensure respect for the foregoing privileges and immunities of the United Nations and its officials in accordance with its obligations under the Convention, the Agreement, and the Charter of the United Nations.

UNDP avails itself of this opportunity to renew to the Ministry of Foreign Affairs of [Member State] the assurances of its highest consideration.

[date]

** Not reproduced herein.

**Note to the Under-Secretary-General for the Department of Peacekeeping Operations,
concerning recruitment of local staff for a United Nations Mission**

ARTICLE 101 OF THE CHARTER OF THE UNITED NATIONS—SECRETARY-GENERAL IS RESPONSIBLE FOR APPOINTING LOCALLY AND INTERNATIONALLY-RECRUITED STAFF UNDER REGULATIONS PROMULGATED BY THE GENERAL ASSEMBLY—TERMS AND CONDITIONS OF SERVICE OF UNITED NATIONS STAFF MEMBERS AS WELL AS THEIR RECRUITMENT ARE EXCLUSIVELY SET OUT IN THE CHARTER AND THE UNITED NATIONS STAFF REGULATIONS AND RULES—A MEMBER STATE'S LABOUR LAWS AND REGULATIONS DO NOT APPLY TO UNITED NATIONS STAFF RECRUITED AND APPOINTED LOCALLY WITHIN THAT STATE—LOCALLY RECRUITED STAFF OF ARE STAFF MEMBERS OF THE ORGANIZATION—CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, 1946, IS APPLICABLE TO UNITED NATIONS MISSION BY MEANS OF THE MODEL STATUS-OF-FORCES-AGREEMENT—GENERAL ASSEMBLY RESOLUTION 76(I) OF 7 DECEMBER 1946 GRANTS PRIVILEGES AND IMMUNITIES OF THE 1946 CONVENTION TO ALL STAFF MEMBERS EXCEPT THOSE RECRUITED LOCALLY AND ASSIGNED TO HOURLY RATES—LIST OF SECRETARIAT STAFF WHO HOLD APPOINTMENTS OF ONE YEAR OR LONGER TRANSMITTED ANNUALLY TO MEMBER STATES—A MEMBER STATE HOSTING A PEACEKEEPING OPERATION MAY REQUEST A LIST OF ALL LOCALLY RECRUITED OFFICIALS SERVING WITH THE MISSION

1. I refer to your note of 19 July 2006 to the Legal Counsel, forwarding a copy of [United Nations Mission] Code Cable [...] of 13 July 2006 regarding the local recruitment of personnel by [the United Nations Mission] in [Member State A]. It appears from that Code Cable and its attachment – namely, a letter dated 21 June 2006 from [Member State A]'s Commissioner for Coordination with [the United Nations Mission] – that the [Member State A] authorities maintain that [United Nations Mission]'s procedures for the local recruitment of personnel are not consistent with the national laws of [Member State A]. They further maintain that, consistently with those laws, [the United Nations Mission] should (i) publicly advertise vacancies for all positions in [United Nations Mission] and (ii) regularly provide the Government with a list of [United Nations Mission]'s locally recruited personnel, including their names, their parents' names, the date and place of their birth, their home address and the number of their identity card. You seek our advice whether compliance by [United Nations Mission] with these requirements would be consistent with applicable legal instruments, including, *inter alia*, the Model SOFA.

2. As far as concerns the position of principle adopted by the Commissioner – namely, that the national laws of [Member State A] that govern procedures for recruitment and appointment within the national labour market apply equally to the recruitment and appointment of staff members of the Organization recruited [by] [United Nations Mission] locally in [Member State A] – this is inconsistent with the Charter and the United Nations Staff Regulations and Rules.

3. In accordance with Article 101, paragraph 1, of the Charter, the staff of the United Nations are appointed by the Secretary-General under regulations established by the General Assembly. This applies equally to the staff of the Organization's subsidiary organs, such as [United Nations Mission]. It also applies equally whether those staff are recruited internationally or locally. The appointment of the Organization's staff is accordingly governed by the rules laid down in the Charter, in the Staff Regulations promulgated by the General Assembly under the Charter and the Staff Rules issued by the Secretary-General to implement the Staff Regulations, and not by any national system of law. In this regard, staff regulation 4.1 promulgated by the General Assembly pursuant to Article 101 of the Charter

provides that: “[a]s stated in Article 101 of the Charter, the power of appointment of staff members rests with the Secretary-General. Upon appointment, each staff member... shall receive a letter of appointment in accordance with the provision of annex II to the present Regulations...” That annex provides, *inter alia*, that the appointment of staff is subject to the provisions of the Staff Regulations and the Staff Rules applicable to the category of appointment in question.

4. Moreover, paragraph 22 of the model SOFA, which pursuant to paragraph 6 of Security Council resolution [...], applies between the United Nations and [Member State A] in respect of [United Nations Mission] (see below), provides that:

“The United Nations peacekeeping operation may recruit locally such personnel as it requires. Upon the request of the Special Representative/Commander, the Government undertakes to facilitate the recruitment of qualified local staff by the United Nations peacekeeping operation and to accelerate the process of such recruitment.”

Locally recruited staff of [United Nations Mission] holding the United Nations Letters of Appointment are United Nations staff members and, therefore, their appointment is subject to the provisions of the Staff Regulations and Rules.

5. In view of this fundamental principle of the Charter and the Staff Regulations and Rules, the Organization has consistently maintained, and the national authorities, including the courts, of Member States have recognized, that the terms and conditions of service of United Nations staff members, including those who are recruited locally at any duty station, are exclusively set out in the United Nations Staff Regulations and Rules. (See, in this regard, a note verbale dated 26 May 1999 from the Legal Counsel to the Permanent Representative of the [Member State B] to the United Nations concerning the recruitment of local staff members in [Member State B], copy attached^{*}). Consequently, the terms and conditions of service of the Organization’s staff members, including its locally recruited staff, are not, and cannot be, subject to local labour laws.

6. Moreover, this fundamental principle applies just as much to the process for the appointment of staff – that is, the procedures and processes for their selection and hiring – as for the substance of the employment relations which are established between the Organization and successful applicants. In this regard, Article 101, paragraph 3 of the Charter, which is also reflected in the Staff Regulations and Rules, provides that “[t]he paramount consideration in the employment of the staff...shall be the necessity of securing the highest standard of efficiency, competence, and integrity.” The Organization has accordingly rejected attempts, to invoke national legislation regulating the processes of recruitment, selection and appointment of employees. Likewise, the Organization has resisted initiatives that would have involved national ombudspersons and other non-judicial mechanisms investigating the Organization’s recruitment, selection and appointment processes with a view to confirming compliance with national labour legislation.

7. There can, therefore, be no question of [United Nations Mission]’s adopting the specific measures outlined in the Commissioner’s letter on the ground that they are required by [Member State A] law.

^{*} Not reproduced herein.

8. As for whether implementation of the specific measures requested by the [Member State A] authorities would be consistent with the legal instruments that do govern the recruitment, appointment and service of [United Nations Mission]'s locally recruited staff, we would note the following.

9. With regard to the request by [Member State A] authorities concerning public advertisement of [United Nations Mission] vacancies, this request seems non-objectionable from a legal point of view, subject to administrative and operational considerations (see paragraph 10 below). In this regard, it appears to us that in practice, [United Nations Mission] vacancies are already publicly advertised electronically, as the [United Nations Mission] website at [...] has a section on "vacancies" which, in turn, refers to the viewer to the United Nations website at jobs.un.org, stating that [United Nations Mission] vacancies are posted on that site.

10. With regard to the public advertisement of [United Nations Mission] vacancies in hard copy, we suggest that the arrangement therefor, including the location for posting the vacancies and its frequency, be discussed between the representatives of [the United Nations Mission] and the [Member State A] authorities, with a view to ensuring that the arrangement would not incur undue administrative, operational or practical difficulties on [the United Nations Mission].

11. Turning to notification of the names and details of locally recruited staff, [Member State A] is not party to the Convention on the Privileges and Immunities of the United Nations (the "General Convention").** Nevertheless, in operative paragraph [#] of its resolution [...] of [date], the Security Council affirmed that, pending the conclusion of a status-of-forces agreement between the Organization and [Member State A] with respect to [the United Nations Mission], the model SOFA should apply provisionally. In view of that affirmation, the Secretary-General has taken the view that the Model SOFA applies between the Organization and [Member State A] with respect to [the United Nations Mission]. Paragraph 3 of the Model SOFA provides that the General Convention shall apply to [the United Nations Mission], subject to the other provisions of the Model SOFA. Further, in accordance with the Agreement between the United Nations and the Government of [Member State A] relating to the establishment in [Member State A] of a United Nations office, concluded on [date], the Government has assumed an obligation to apply the Convention under article IV with respect to the United Nations and its officials and experts on mission in [Member State A].

12. In accordance with article V, section 17, of the General Convention, the Secretary-General is to specify the categories of officials to which the provisions of that article and article VII apply. The General Assembly, by its resolution 76(I) of 7 December 1946, approved the granting of privileges and immunities referred to in articles V and VII "to all members of the staff of United Nations, with the exception of those recruited locally and assigned to hourly rates". With the exception of those assigned to hourly rates of pay, staff members who are recruited locally therefore fall within the categories of officials to which the provisions of articles V and VII apply.

13. Article V, section 17, of the General Convention goes on to provide that "[t]he

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

names of the officials included in these categories shall from time to time be made known to the Governments of Members”. Further to that stipulation, the Secretary-General transmits each year the *List of the Staff of the United Nations Secretariat* to the Governments of Member States, through their Permanent Missions in New York. However, that document includes only staff members who hold appointments of one year or more. It therefore does not include the names of many staff members who fall within categories to which articles V and VII of the General Convention apply, in particular those who are recruited locally by the Organization’s peacekeeping operations.

14. This being so, a State hosting a peacekeeping operation may properly request that it be provided from time to time with a full list of the names and all officials of the United Nations, within the meaning of articles V and VII of the General Convention, who are serving with that operation; and, in view of the clear stipulation in the concluding sentence of article V, section 17, of the General Convention, the Secretary-General is duty-bound to provide it. *A fortiori*, that State can request a list of all officials serving with the operation who are recruited locally. It would fall to the Secretary-General, in the light of administrative considerations, to determine how frequently such a list is to be provided. In our view, every six months would be reasonable.

15. As for the contents of that list, it should certainly include the names of the officials concerned. Further, it should also include such other information as might be required to make it possible for the host country authorities to identify those officials. The practice of the Organization in this regard shows that it has accordingly provided information on the nationalities of such officials, the date of their recruitment and their social security numbers, if any.

16. This being so, we would propose that [the United Nations Mission] indicate that it is agreeable to provide to the [Member State A] authorities, every six months, the names of all locally recruited officials within the meaning of articles V and VII of the General Convention currently serving with [United Nations Mission], together with their nationality, their identity-card number and their date of recruitment.

19 September 2006