



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 17 July 2008**

**11905/08**

**COSDP 638  
PESC 942  
COAFR 247  
CONUN 76  
CHAD 37**

**"I/A" ITEM NOTE**

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From : Secretariat  
To : Permanent Representatives Committee / Council  
Subject : Draft Declaration by the Member States of the European Union concerning claims against the United Nations arising out of or in connection with the implementation of the Arrangement between the European Union and the United Nations on co-operation between EUFOR TCHAD/RCA and the United Nations Mission in the Central African Republic and Chad (MINURCAT)  
- Approval

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1. On 24 March 2008, an Arrangement between the European Union and the United Nations governing co-operation between EUFOR Tchad/RCA and the United Nations Mission in the Central African Republic and Tchad (MINURCAT) in the context of Security Council resolution 1778 (2007) was concluded through an exchange of letters between the HR/SG and the UNSG.
2. Section VII of the above mentioned Arrangement refers to the issue of claims stipulating that both parties "*will make a reciprocal declaration related to claims arising out of or in connection with the provisions of this arrangement and the subsequent implementing arrangements...*".

3. Subsequently the Foreign Relations Counsellors Working Party (RELEX) discussed a draft declaration by the Member States of the European Union concerning the renunciation of claims vis-à-vis the United Nations comprising three elements: (a) a waiver of claims clause; (b) a 'hold harmless' clause; (c) an indemnification clause.
4. Delegations raised the issues of whether this declaration only concerned Member States, as well as the liability of staff seconded by the EU institutions, and burden-sharing in the event of a possible adverse judgment by a court.
5. RELEX noted the opinion of the Council Legal Service (doc. 10532/08) according to which the declaration only concerns the Member States of the European Union, but not the European Union itself since the latter does not have the legal or financial means to subscribe to the undertakings being given. With regard to the liability of staff seconded by the EU institutions to EU military crisis management operations, the Council Legal Service explained that this aspect was covered by the Treaty (Article 288 (2) EC).
6. RELEX concluded by agreeing to revert in the draft declaration to the same wording as was used in the case of EUFOR RD Congo, with the addition of a paragraph covering the settling by the EU Member States and the United Nations of claims brought by their own personnel.
7. On 14 July 2008 RELEX reached agreement on the text of a draft **Declaration by the Member States of the European Union concerning claims against the United Nations arising out of or in connection with the implementation of the Arrangement between the European Union and the United Nations on co-operation between EUFOR TCHAD/RCA and the United Nations Mission in the Central African Republic and Chad (MINURCAT).**
8. RELEX noted that delegations' agreement on the above declaration by the Member States of the European Union concerning the renunciation of claims is without prejudice to the issue of liability of staff seconded by Member States either to a civilian ESDP mission or to the team of an EUSR (the latter remains an issue which still has to be addressed on a horizontal basis).

9. The GSC will inform the UN Secretariat General on the approval of this declaration, with a view to enabling the UN to adopt a reciprocal declaration.
10. Accordingly, the Permanent Representatives Committee is invited to suggest that the Council approve the Declaration by the Member States of the European Union as set out in the Annex to this document and enter it into the Council minutes.

## DRAFT DECLARATION TO BE ENTERED INTO THE COUNCIL MINUTES

**Declaration by the Member States of the European Union  
concerning claims against the United Nations arising out  
of or in connection with the implementation of the Arrangement  
between the European Union and the United Nations  
on co-operation between EUFOR TCHAD/RCA  
and the United Nations Mission in the Central African Republic and Chad (MINURCAT)**

The Member States of the European Union will, in so far as their internal legal systems so permit and on a reciprocal basis, renounce any and all claims they may be able to make against the United Nations, including MINURCAT, or its personnel or agents arising out of or related to the death, injury, illness, or property loss or damage, sustained by the Member States of the European Union participating in EUFOR Tchad/RCA or by their personnel, as a result of the acts or omissions of the United Nations, including MINURCAT, or its personnel or agents, except in so far as such death, injury illness, or property loss or damage results from the gross negligence or wilful misconduct of the United Nations, including MINURCAT, or its personnel or agents.

Equally, the Member States of the European Union will be responsible, in so far as their internal legal systems so permit and on a reciprocal basis, for settling claims brought by their own personnel, arising out of or related to the death, injury, illness, or property loss or damage, sustained by such personnel, as a result of acts or omissions of the United Nations, including MINURCAT, or its personnel or agents, except in so far as such death, injury, illness, property loss or damage results from the gross negligence or wilful misconduct of the United Nations, including MINURCAT, or its personnel or agents.