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Assignee In Container 'S-0042-0001-061 (Souleymane Soukouna)' since 21/12/2006 at

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Notes

Record has no document attached.

Print Name of Person Submit Image

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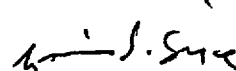
Note to the Secretary-General

Adverse findings by IIC

1. Mr. Malloch Brown requested that I transmit the attached note prepared by OLA regarding the consequences of potential adverse findings against staff members by the IIC. He confirms that the OLA note outlines in very clear terms the sanctions to be taken against staff members in the event of adverse findings by the IIC. These steps conform with the position you have taken publicly on actions to be taken by the Organization against staff members in the event of adverse findings by the ICC.
2. Mr. Malloch Brown has transmitted a copy of the note to DM and OHRM and requested that the latter identify a focal point who would follow-up on these matters, as necessary, after the issuance of the IIC report.

Thank you.



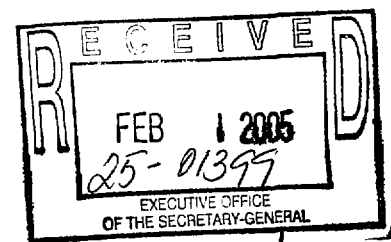

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1 February 2005

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Note to Mr. Malloch-Brown

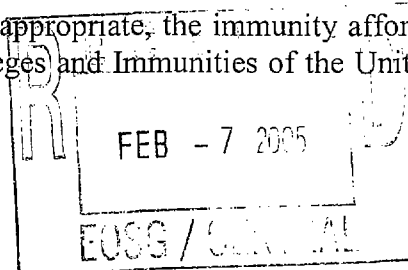
Consequences of potential adverse findings against staff members by the IIC

1. I refer to your request that OLA prepare a contingency paper on steps to be taken if individual UN staff members are the targets of adverse findings in the Volcker Report. Initially, I would note that the IIC will make findings of fact. Such facts may indicate that a staff member has either not performed his or her duties satisfactorily, or that he or she has violated the Staff Regulations and Rules. This paper will focus on the latter.

2. If the IIC makes a finding that a UN staff member is in breach of the UN Staff Regulations and Rules amounting to unsatisfactory conduct, disciplinary proceedings could be commenced against the staff member pursuant to the Staff Regulations and Rules. A brief outline of the process is as follows:

- a. The staff member could be suspended pending completion of the proceedings, usually with pay although the Secretary-General has the power to suspend without pay in exceptional circumstances.
- b. Disciplinary measures which can be taken against a staff member for misconduct range from written censure to summary dismissal. The Secretary-General usually refers disciplinary matters to the Joint Disciplinary Committee (JDC), for a recommendation as to which disciplinary measure is appropriate in the circumstances, if any.
- c. Alternatively, where the seriousness of the misconduct warrants immediate separation, the Secretary-General may summarily dismiss the staff member immediately, without referral to the JDC. In this case, the staff member may ask for a review of the matter by a JDC, but this will not suspend the immediate separation.
- d. A staff member has the right to appeal to the Administrative Tribunal the decision of the Secretary-General to impose disciplinary measure on that staff member.
- e. The disciplinary process safeguards the due process rights of the staff member, so that he or she has the right to examine the charges made against him or her, and to respond to these. The Staff Member also has a right to retain counsel during the disciplinary proceedings before the JDC or the Administrative Tribunal.

3. If the IIC finds that a staff member has also engaged in conduct which may constitute a crime, the United Nations could refer the matter to the competent national authorities for possible prosecution, with which the United Nations would cooperate. Such cooperation would include waiving, as appropriate, the immunity afforded to staff members under the Convention on the Privileges and Immunities of the United Nations.



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The United Nations could also waive, as appropriate, the immunity of staff members, or former staff members, for the purposes of giving evidence in prosecutions by the competent national authorities arising from the IIC findings.

4. If the IIC findings indicate that a former staff member has engaged in conduct which is in breach of the Staff Regulations and Rules and/or conduct which may constitute a crime, the United Nations could refer the matter to the competent national authorities for possible prosecution, with which the United Nations would cooperate as detailed in paragraph 2 above. The Secretary-General is, of course, not in a position to impose internal disciplinary measures on former staff members.

5. I would also note that the fact that a staff member is under criminal investigation, or that a prosecution has been commenced against him or her is not, in itself, a sufficient ground to terminate his or her appointment. A parallel disciplinary process would have to be initiated against that staff member in order to apply any of the disciplinary measures set out in paragraph 2 above. Once the process has been commenced, and in accordance with the Staff Regulations and Rules, the staff member can be suspended or summarily dismissed, as appropriate. Further, a finding of innocence in any criminal prosecution, or a national authority's decision not to pursue charges against a staff member, will also not necessarily mean that disciplinary proceedings against such a staff member will not be continued or pursued.

6. Finally, if the findings of the IIC indicate that a staff member has failed to perform his or her duties satisfactorily, such findings can be dealt with in accordance with the policies and practices of the Organization regarding such matters, in the context of the staff member's performance appraisal.

A handwritten signature in black ink, appearing to read 'N. Michel', with a stylized, cursive script.

Nicolas Michel
1 February 2005