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Note to Mr. Michel

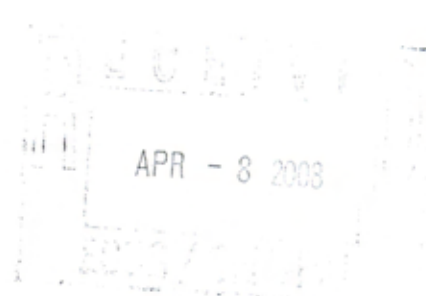
**Re: Acceptance by the Secretary-General of depositary
duties for the Convention on Cluster Munitions**

With reference to your note of 28 February 2008 on the above mentioned subject, the Secretary-General has approved your recommendation to become the Depositary for the upcoming Oslo treaty on cluster munitions.



Vijay Nambiar
8 April 2008

Cc: Mr. Guéhenno
Mr. Duarte
Mr. Kim





To: Mr. Nambiar,

In the attached memo, Mr. Michel recommends that the Secretary-General accept the responsibility of Depositary for the upcoming Oslo treaty on cluster munitions. The original request comes from the member states leading the negotiations on this treaty via the UN Mine Action Service in DPKO.

We have consulted Mr. Duarte, who also supports this recommendation. I understand that the Secretary-General has told Mr. Duarte that he will deliver a video message to the upcoming Dublin negotiating conference. The Secretary-General has been supportive of the Oslo process, despite some of the criticism to which he has been exposed as a result.

We would be grateful if you could seek the Secretary-General's acceptance to become the Depositary of the Oslo treaty.

Nicholas Haysom
2 April 2008

CdC		SG	
For SG's approval	<input checked="" type="checkbox"/> <i>61</i>	Approved	<input checked="" type="checkbox"/> <i>[Signature]</i>
For SG's attention	<input type="checkbox"/>	Noted	<input type="checkbox"/>
For SG's information	<input type="checkbox"/>	Seen	<input type="checkbox"/>
For SG's signature	<input type="checkbox"/>	Signed	<input type="checkbox"/>
Date	<i>06.04.2008</i>	Date	
Comment (if applicable):			
<i>This is likely to be objected to by Russia and USA but I agree</i>			

28-02355 with OLA's suggestion
601

United Nations



Nations Unies

Executive Office of the Secretary-General
Cabinet du Secrétaire général

To: Mr. Nambiar,

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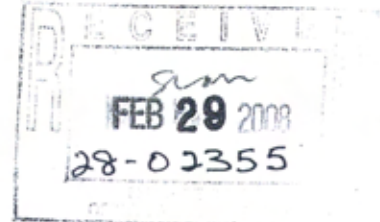
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Nicholas Haysom
2 April 2008

CdC	SG
For SG's approval <input checked="" type="checkbox"/> <i>6/1</i>	Approved <input checked="" type="checkbox"/> <i>[initials]</i>
For SG's attention <input type="checkbox"/>	Noted <input type="checkbox"/>
For SG's information <input type="checkbox"/>	Seen <input type="checkbox"/>
For SG's signature <input type="checkbox"/>	Signed <input type="checkbox"/>
Date <i>06.04.2008</i>	Date _____
Comment (if applicable): <i>This is likely to be objected to by Russia and USA but I agree</i> <i>28-02355 with OLA's suggestion</i> <i>6/1</i>	

✓ ACTION NH
COPY ✓



Note to Mr. Nambiar

Re: Acceptance by the Secretary-General of depositary duties for the Convention on Cluster Munitions

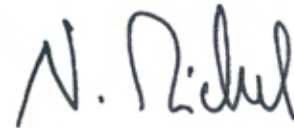
Introduction

1. The United Nations Mine Action Service (UNMAS), DPKO, has brought to our attention that the group of States which subscribe to the "Oslo Declaration" (the Oslo process) are currently in the final stages of drafting a Convention on Cluster Munitions. In this process, they are seeking advice on the possibility of the Secretary-General accepting the role of Depositary of the Convention on Cluster Munitions and whether he would be willing to carry out certain other functions with respect to the Convention.
2. Efforts toward limiting or prohibiting the use of cluster munitions are currently taking place in two multilateral fora: one is the *United Nations Convention on Certain Conventional Weapons, 1980* (the CCW), and the other is the Oslo process.
3. Many States involved in the Oslo process believe that their efforts will come to fruition more quickly than within the larger CCW context where decisions are traditionally taken by consensus by the 103 States parties. States engaged in the Oslo process aim to conclude a legally-binding treaty during 2008. On the other hand, several CCW States parties consider that the humanitarian impact of cluster munitions would be best addressed within the CCW context, which comprises all major military powers including the main producers of cluster munitions.
4. Statements made by the Secretary-General (Annex I) stress the importance for a new legal instrument on cluster munitions and he has supported the Oslo process as well as the efforts made within the CCW context.
5. I understand from UNMAS that the United States and Russian Federation have made demarches to the Secretary-General in opposition to his involvement in the Oslo process and in support of keeping the discussion of cluster munitions within the CCW.

Depositary practice in the acceptance of depositary duties

6. The acceptance of the depositary functions by the Secretary-General is not automatic. The established practice of the Secretary-General has been to restrict the assumption of depositary functions to treaties of global concern, usually adopted by the General Assembly or concluded by plenipotentiary conferences convened by the appropriate organs of the United Nations and to regional treaties that are drawn up within the framework of the United Nations regional commissions and are open for participation to their entire membership.

7. The Secretary-General always reserves the possibility of making exceptions to this policy. Indeed, it remains within the discretion of the Secretary-General to accept depositary functions for any multilateral treaty he deems appropriate. Thus, for example, the Secretary-General accepted depositary functions for the *Agreement establishing the Caribbean Development Bank, 1969*; the *Articles of Association for the Establishment of an Economic Community of West Africa, 1967*; and the *Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas, 1992*; which were not concluded under United Nations auspices and were open only to sub-regional participation.
8. Similar to the Oslo process and the Convention on Cluster Munitions, the "Ottawa process" of negotiating the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997* (the Mine-Ban Convention) was also not strictly speaking a United Nations activity and the Secretary-General accepted the Mine-Ban Convention in deposit.
9. Given the Statements made by the Secretary-General with respect to the importance of a new legal instrument on cluster munitions, I think that the process could be facilitated if the Secretary-General were to become the Depositary of the Convention on Cluster Munitions. I am therefore seeking the acceptance of the Secretary-General to become the Depositary.



Nicolas Michel
28 February 2008