AGREEMENT

in the form of an Exchange of Letters between the European Union and the Government of the
Swiss Confederation on the participation of the Swiss Confederation in the European Union
military operation in support of the United Nations Organisation Mission in the Democratic
Republic of the Congo (MONUC) during the election process (Operation EUFOR RD Congo)

A. Letter from the European Union to the Government of the Swiss Confederation

Brussels, 10 August 2006

Dear Sir,

I would like to thank you for your country's offer for a contribution to the European Union military
operation in support of the United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC) during the election process (Operation EUFOR RD Congo). The offer shall constitute an important contribution to the Operation and I have the pleasure to inform you that the Council of the European Union has decided to accept Switzerland's offer for a contribution to Operation EUFOR RD Congo and to invite your country to be represented in the Committee of Contributors.

As already indicated in my letter of 28 July 2006, Switzerland should conclude an agreement with the European Union on its participation in Operation EUFOR RD Congo. Pending the conclusion of the Draft Agreement between the European Union and the Swiss Confederation establishing a framework for the participation of the Swiss Confederation in the European Union crisis management operations, I would propose that the participation of Switzerland in the operation be governed by the provisions set out in Annex I to this letter.

Should these provisions be agreeable to you, I would suggest that this letter, including Annex I to this letter, and your reply constitute the agreement between the European Union and Switzerland for Switzerland's participation in Operation EUFOR RD Congo, which shall enter into force on the date of signature of your reply.

Accordingly, I also attach in Annex II, on behalf of the European Union Member States, a declaration on the waiver of claims by the European Union Member States. I kindly request that Switzerland make a parallel declaration according to the model set out in that Annex.

Yours faithfully,

For the European Union
ANNEX I

Provisions on the participation of the Swiss Confederation in the European Union military operation in support of the United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC) during the election process (Operation EUFOR RD Congo)

1. The Swiss Confederation shall associate itself with Council Joint Action 2006/319/CFSP of 27 April 2006 on the European Union military operation in support of the United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC) during the election process (1) and with any Joint Action or Decision by which the Council of the European Union decides to extend the EU military operation, in accordance with these arrangements and any required implementing arrangements.

2. The contribution of the Swiss Confederation to the EU military operation is without prejudice to the decision-making autonomy of the European Union.

3. The Swiss Confederation shall ensure that its forces and personnel participating in the EU military operation undertake their mission in accordance with:
   — Joint Action 2006/319/CFSP and possible subsequent amendments,
   — the Operation Plan,
   — implementing measures.

4. Forces and personnel seconded to the operation by the Swiss Confederation shall carry out their duties and conduct themselves solely with the interest of the EU military operation in mind.

5. The Swiss Confederation shall inform the EU Operation Commander in due time of any change to its participation in the operation, including of the withdrawal of its contribution.

6. The status of the forces and personnel contributed to the EU military operation by the Swiss Confederation shall be governed by the provisions on the status of forces applicable to EUFOR RD Congo.

7. The status of the forces and personnel contributed to headquarters or command elements located outside the Democratic Republic of the Congo and Gabon shall be governed by arrangements between the headquarters and command elements concerned and the Swiss Confederation.

8. Without prejudice to the provisions on the status of forces referred to in paragraph 6, the Swiss Confederation shall exercise jurisdiction over its forces and personnel participating in the EU military operation.

9. The Swiss Confederation shall be responsible for answering any claims linked to participation in the EU military operation, from or concerning any of its forces and personnel. The Swiss Confederation shall be responsible for bringing any action, in particular legal or disciplinary, against any of its forces and personnel, in accordance with its laws and regulations.

10. The Swiss Confederation undertakes to make a declaration as regards the waiver of claims against any State participating in the EU military operation, and to do so when signing this agreement.

11. The European Union undertakes to ensure that its Member States make a declaration as regards the waiver of claims, for the participation of the Swiss Confederation in the EU military operation, and to transmit this declaration when signing this agreement.

12. The Swiss Confederation shall take appropriate measures to ensure that EU classified information is protected in accordance with the Council of the European Union's security regulations, contained in Council Decision 2001/264/EC of 19 March 2001 (1), and in accordance with further guidance issued by competent authorities, including the EU Operation Commander.

Where the EU and the Swiss Confederation have concluded an agreement on security procedures for the exchange of classified information, the provisions of such an agreement shall apply in the context of the EU military operation.

13. All personnel participating in the EU military operation shall remain under the full command of their national authorities.

National authorities shall transfer the operational and tactical command and/or control of their personnel to the EU Operation Commander. The EU Operation Commander is entitled to delegate his authority.

14. The Swiss Confederation shall have the same rights and obligations in terms of the day-to-day management of the operation as participating European Union Member States.

15. The EU Operation Commander may, following consultations with the Swiss Confederation, at any time request the withdrawal of the Swiss Confederation's contribution.

16. A Senior Military Representative (SMR) shall be appointed by the Swiss Confederation to represent its national contingent in the EU military operation. The SMR shall consult with the EU Force Commander on all matters affecting the operation and shall be responsible for day to day contingent discipline.

17. The Swiss Confederation shall assume all the costs associated with its participation in the operation unless the costs are subject to common funding as provided for in the legal instruments referred to in paragraph 1 of these arrangements, as well as in Council Decision 2004/197/CFSP of 23 February 2004 establishing a mechanism to administer the financing of the common costs of EU operations having military or defence implications (2).

The Swiss Confederation shall not contribute to the common funding of the EU military operation.

18. In case of death, injury, loss or damage to natural or legal persons from the State(s) in which the operation is conducted, the Swiss Confederation shall, when its liability has been established, pay compensation under the conditions foreseen in the provisions on the status of forces, as referred to in paragraph 6.

19. Any necessary technical and administrative arrangements in pursuance of the implementation of these provisions shall be concluded between the Secretary-General of the Council of the European Union/High Representative for the Common Foreign and Security Policy and the appropriate authority of the Swiss Confederation.

20. Should one of the Parties fail to comply with its obligations laid down in the previous provisions, the other Party shall have the right to terminate this agreement by serving a notice of one month.

21. Disputes concerning the interpretation or application of these provisions shall be settled by diplomatic means between the Parties.

22. These provisions shall apply for the duration of the Swiss Confederation’s contribution to the operation.

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ANNEX II

Declaration by the European Union Member States

The EU Member States applying Council Joint Action 2006/319/CFSP of 27 April 2006 on the European Union military operation in support of the United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC) during the election process will endeavour, insofar as their internal legal systems so permit, to waive as far as possible claims against the Swiss Confederation for injury, death of its personnel, or damage to, or loss of, any assets owned by themselves and used by the EU military operation if such injury, death, damage or loss:

— was caused by personnel from the Swiss Confederation in the execution of their duties in connection with the EU military operation, except in case of gross negligence or wilful misconduct, or

— arose from the use of any assets owned by the Swiss Confederation, provided that the assets were used in connection with the operation and except in case of gross negligence or wilful misconduct of EU military operation personnel from the Swiss Confederation using those assets.

Declaration by the Government of the Swiss Confederation

The Government of the Swiss Confederation associating itself with Council Joint Action 2006/319/CFSP of 27 April 2006 on the European Union military operation in support of the United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC) during the election process will endeavour, insofar as its internal legal system so permits, to waive as far as possible claims against any other State participating in the EU military operation for injury, death of its personnel, or damage to, or loss of, any assets owned by itself and used by the EU military operation if such injury, death, damage or loss:

— was caused by personnel in the execution of their duties in connection with the EU military operation, except in case of gross negligence or wilful misconduct, or

— arose from the use of any assets owned by States participating in the EU military operation, provided that the assets were used in connection with the operation and except in case of gross negligence or wilful misconduct of EU military operation personnel using those assets.
B. Letter from the Government of the Swiss Confederation to the European Union

Brussels, 10 August 2006

Sir,

I have the honour to acknowledge receipt of your letter of 10 August 2006 and the Annexes thereto regarding the provisions on the participation of the Swiss Confederation in the European Union military operation in support of the United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC) during the election process (Operation EUFOR RD Congo) which reads as follows:

'I would like to thank you for your country's offer for a contribution to the European Union military operation in support of the United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC) during the election process (Operation EUFOR RD Congo). The offer shall constitute an important contribution to the Operation and I have the pleasure to inform you that the Council of the European Union has decided to accept Switzerland's offer for a contribution to Operation EUFOR RD Congo and to invite your country to be represented in the Committee of Contributors.

As already indicated in my letter of 28 July 2006, Switzerland should conclude an agreement with the European Union on its participation in Operation EUFOR RD Congo. Pending the conclusion of the Draft Agreement between the European Union and the Swiss Confederation establishing a framework for the participation of the Swiss Confederation in the European Union crisis management operations, I would propose that the participation of Switzerland in the operation be governed by the provisions set out in Annex I to this letter.

Should these provisions be agreeable to you, I would suggest that this letter, including Annex I to this letter, and your reply constitute the agreement between the European Union and Switzerland for Switzerland's participation in Operation EUFOR RD Congo, which shall enter into force on the date of signature of your reply.

Accordingly, I also attach in Annex II, on behalf of the European Union Member States, a declaration on the waiver of claims by the European Union Member States. I kindly request that Switzerland make a parallel declaration according to the model set out in that Annex.

I have the honour to confirm, on behalf of the Government of the Swiss Confederation, that the contents of your letter and of its Annexes are acceptable to the Government of the Swiss Confederation and that your letter and its Annexes, together with this reply, shall constitute the agreement between the European Union and Switzerland for Switzerland's participation in Operation EUFOR RD Congo, which shall enter into force on the date of signature of this reply.

I attach a declaration on the waiver of claims by the Government of the Swiss Confederation.

Yours faithfully,

For the Government of the Swiss Confederation