

**Inter-office memorandum to the Acting Director of the Field Operations Division,  
Department for Peacekeeping Operations, concerning customs issues regarding a  
United Nations Entity**

CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, 1946—EXEMPTION FROM CUSTOMS DUTIES AND PROHIBITIONS AND RESTRICTIONS IN RESPECT OF ARTICLES IMPORTED OR EXPORTED BY THE ORGANIZATION FOR ITS OFFICIAL USE—MEANING OF THE TERM “FOR ITS OFFICIAL USE”—ABSENCE OF WRITTEN AGREEMENT BETWEEN THE UNITED NATIONS AND THE MEMBER STATE—ARTICLE 105 OF THE CHARTER OF THE UNITED NATIONS—MEMBER STATES’ OBLIGATION TO AFFORD THE UNITED NATIONS SUCH PRIVILEGES AND IMMUNITIES AS ARE NECESSARY TO PERMIT THE ORGANIZATION TO FULFIL ITS PURPOSE

1. Reference is made to your 6 September 1994 memorandum, and the attachments thereto, concerning difficulties the [United Nations Entity] located in [City A] is experiencing with [Member State] customs authorities who have assessed [United Nations Entity] duties and fines amounting to approximately US\$1.9 million for customs violations. Our advice is sought on what the United Nations’ legal position ought to be on the matter and how the situation might be handled.

*A. Background*

2. A review of our files reflects that there is no formal agreement between the United Nations and the Government of [Member State] regarding the [United Nations Entity], which was first established in [City B] in [year] and thereafter relocated to the [City A] Air Force base. Since [year], the [United Nations Entity] has been operating at the [City A] airbase with the consent of the competent Air Force authorities under a tacit agreement. On 10 March 1966 a [...] Delivery Note was issued by the competent Air Force Command of the [City A] airbase but it was limited to a basic description of the flight hangar used by the UNEF operation.

*B. Law*

3. [Member State] became a Member State of the United Nations on [date]. Upon membership, [Member State], *inter alia*, undertook to accept the obligations contained in the United Nations Charter (see Charter, Article 4, para.1), including the obligation set forth in Article 105, paragraph 1, which provides as follows:

“1. The Organization shall enjoy in the territory of each of its Members *such privileges and immunities as are necessary for the fulfilment of its purposes*” (emphasis supplied).

4. Privileges and immunities with regard to the Organization’s property, funds and assets are provided for in article II of the Convention on the Privileges and Immunities of the United Nations (“Convention”)\* to which [Member State] became a party on [date]. Section 7(b) of article II provides as follows:

“Section 7. The United Nations, its assets, income and other property shall be:

(a) ...

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

(b) *exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the United Nations for its official use*. It is understood, however, that the articles imported under such exemptions will not be sold in the country into which they were imported except under conditions agreed with the Government of that country” (emphasis supplied).

### C. *Relevant facts*

5. Judging from [Name A]’s 31 August 1994 facsimile to you, it would appear that the problem currently being encountered by the [United Nations Entity] has to do with the interpretation by [Member State] authorities of the words “for its official use” as found in section 7(b) of article II. The views of both the General Director of Customs and the Minister of Finance,<sup>1</sup> which [Name A] reports the current [Member State] Customs position is based upon (see para. 2 of his facsimile), are set forth, respectively, in the English-language translations of their 30 October 1964 and 31 December 1964 letters attached to [Name A]’s facsimile (copies enclosed for easy reference<sup>\*\*</sup>). In sum, the view of the General Director of Customs in 1964 was that, with regard to the duty-free importation by the United Nations into [Member State] of 567 boxes of supplies from the Congo for export to various United Nations contingents located in other Member States, article II, section 7(b)’s scope should be “*strictly limited* to the import and export of goods and other services dependent upon the functioning of the United Nations, for example, office materials, furniture, etc.” (see fourth full paragraph, 30 October 1964 letter of the General Director, [Member State] Customs). In other words, the imported items should be intended for use by the [United Nations Entity] for official purposes *in [Member State]*.

6. The “strictly limited” interpretation of article II, section 7(b)’s scope by the General Director was viewed by the Minister of Finance in his 31 December 1964 letter as “not subject to modification”. The Minister proposed, however, that the matter of the United Nations’ importing and then exporting the items could be resolved by the establishment of a “private Customs Warehouse”; it was mentioned further in that same communication that if imported items required alteration, repairs, repainting or other types of maintenance to take place outside of the proposed “private Customs Warehouse”, a temporary importation of the items would be required (see paras. 4, 5 and 6 of the Minister’s 31 December 1964 letter).

7. Evidently, as indicated in the 17 August 1994 facsimile of [Name B], [United Nations Entity], to you, the Minister’s proposal for the establishment of a private Customs Warehouse [...] was implemented. Apparently, for more than 20 years, the establishment of a private Customs Warehouse, which involved, *inter alia*, the completion by the [United Nations Entity] of an “A22 form” which was utilized for the importation of items that were “received, repacked and [thereafter] redistributed outside of [Member State]”, did not unduly burden the [United Nations Entity]. However, following a change of management of the Customs Office in [City A] in 1993, coupled with the [United Nations Entity]’s increased activity in 1994 and the increasingly technical nature of items shipped to and received by the [United Nations Entity], [Member State] Customs authorities began requiring that an “IM7 form” be completed by the [United Nations Entity] for all imported items which were not to be used in

<sup>1</sup> The translation of the letter in question merely indicates the signatory as “Minister”, without indicating his area of responsibility. We assume the Minister to be the Minister of Finance.

<sup>\*\*</sup> Not reproduced herein.

[Member State] by the [United Nations Entity]. The use of IM7 form, and enforcement by [Member State] Customs authorities of the procedures and restrictions relating thereto, are reported by the [United Nations Entity] to be so burdensome as to render the [United Nations Entity] unable to effectively operate (see document entitled “Customs Issues in [City A]” which was attached to [Name B]’s 17 August 1994 facsimile).

#### *D. Legal opinion*

8. Pursuant to the Charter, the Organization is to enjoy in [Member State] “such privileges and immunities as are necessary for the fulfilment of its purposes”. As we understand it, the United Nations purpose in establishing the [United Nations Entity] was to have, generally speaking, a warehouse facility to where surplus items from one or more closing peacekeeping operations could be shipped for storage, perhaps refurbished at said facility, and thereafter exported from [Member State] for official use in another peacekeeping operation. While the absence of a written agreement between the United Nations and the Government of [Member State] regarding the [United Nations Entity] complicates matters and is, probably, the cause of the present problem, there is no doubt that, *de facto*, the Government of [Member State] was aware of the [United Nations Entity]’s establishment and purpose (see, e.g., second full paragraph of the Minister of Finance’s 31 December 1964 letter which refers to the United Nations importing goods “destined to be warehoused and subsequently reshipped to other active United Nations missions”).

9. Taking the foregoing into account, and that the Convention seeks to implement the Charter, it is our view that the interpretation of the [Member State] authorities of article II, section 7(b)’s scope is too narrow in that it fails to take into account [Member State]’s legal obligation to afford the Organization such privileges and immunities as are *necessary* to permit the [United Nations Entity] to fulfil its purpose. *A fortiori*, an interpretation which in its implementation will require the Organization to, *inter alia*, permit [a Member State] Government “Finance Guard” to be present at the [United Nations Entity] during working hours, establish “registers” for goods received, abide by European Economic Community-established guidelines for private customs warehouses, prohibits [United Nations Entity] staff from opening, repairing, and/or repacking imported items without the authorization of [Member State] Customs authorities, and pay duties and fines for violations of customs regulations and procedures (see [Name B]’s 17 August 1994 facsimile to you), does not, in our view, meet the Article 105 obligation of the Government of [Member State] under the Charter.

#### *E. Recommendation*

10. We note that on 1 September 1994 [Name C] wrote to the Permanent Representative of [Member State] to the United Nations regarding this problem and specifically requested that he assist in opening a channel of communications between representatives of the Organization and the appropriate [Member State] authorities. We fully concur with that approach and, upon request, are prepared to provide any legal assistance that might be required in attempting to resolve the problem. Any discussions that take place with [Member State] authorities regarding the present problem the [United Nations Entity] is experiencing should take into account the legal position set forth above at paragraphs 8 and 9, as well as the fact that the [United Nations Entity]’s status in [Member State] is uncertain from a legal

viewpoint and that it has been functioning all of these years essentially at the sufferance of the Government of [Member State].

11. Lastly, we suggest that at the appropriate time (perhaps following the conclusion of any agreement with [Member State] on the proposed United Nations [...] in [City C]) your Department consider taking action with a view to formalizing with [Member State] authorities the legal status of the [United Nations Entity] in [Member State]. Again, upon request, this Office is prepared to provide any legal assistance that might be required in that regard.

21 September 1994