

**Inter-office memorandum to the Director of the Supply Division of UNICEF,
concerning the disclosure of documentation in connection with legal proceedings**

EXTERNAL REQUESTS FOR DOCUMENTS THAT ARE NOT IN THE UNITED NATIONS' EXCLUSIVE POSSESSION—THE ORGANIZATION SHOULD AVOID BECOMING INVOLVED IN OUTSIDE LEGAL MATTERS—CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, 1946—INVIOABILITY OF UNITED NATIONS ARCHIVES—IMMUNITY FROM LEGAL PROCESS

1. This is in response to your facsimile of 12 January 1996 requesting the advice of this Office on whether UNICEF could make available to a party in legal proceedings before a [Member State A] court, certain documents in its possession.

2. From your facsimile and its attachments, we understand that UNICEF concluded a contract with [Company 1], a [Member State A] company, for the supply of winter clothing to [Member State B] and that the delivery of the clothing was made by a [Member State C] company, [Company 2]. It appears that a dispute subsequently arose between [Company 1] and [Company 2] concerning payment. You have forwarded to us copies of the relevant correspondence, together with copies of a letter sent from UNICEF to [Company 2], dated 25 March 1994, and the latter's response, dated 5 April 1994, which, you indicated, appeared to settle the matter at that time. It appears, however, that legal proceedings between [Company 2] and [Company 1] were subsequently brought before a [Member State A] court. UNICEF has now been requested by the lawyer representing [Company 1] to provide copies of the aforementioned two letters.

3. We first note that UNICEF is not a party to the legal proceedings between [Company 1] and [Company 2] and that the two letters in question are not in UNICEF's *exclusive* possession but can also be obtained from [Company 2]. We would further note that there is no court order directing UNICEF to produce the two letters but simply a request from one of the parties to the proceedings. At this stage, we recommend that UNICEF avoid becoming entangled in the controversy and, accordingly, to urge the lawyer of [Company 1] to seek the documents in question from [Company 2].

4. In the event that [Company 1] is somehow prevented from obtaining the documents from [Company 2] or the [Member State A] court orders UNICEF to produce the documents in question, we will consider then whether and, if so, under what circumstances they can be made available for use in these proceedings on a voluntary basis in view of the inviolability of UNICEF's archives and UNICEF's immunity from legal process under the Convention on the Privileges and Immunities of the United Nations,^{*} of which UNICEF is an integral part.

29 January 1996

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