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**Inter-office memorandum to the Chief of Legal Affairs Section, HRS, United Nations
High Commissioner for Refugees, concerning customs clearance of the shipment
of an expert on mission**

PRIVILEGES AND IMMUNITIES OF EXPERTS ON MISSION—CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, 1946—EXPERTS ON MISSION ARE ENTITLED IMMUNITY FROM SEIZURE OF THEIR PERSONAL BAGGAGE AND INVIOABILITY FOR PAPERS AND DOCUMENTS—EXPERTS ON MISSION ARE ACCORDED THE SAME IMMUNITIES AND FACILITIES IN RESPECT OF THEIR PERSONAL BAGGAGE AS DIPLOMATIC ENVOYS—THE TERM “SHIPMENT” IS SYNONYMOUS WITH “PERSONAL BAGGAGE” AS USED IN THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS IF THE SHIPMENT CONTAINS ARTICLES FOR THE OFFICIAL USE OF THE MISSION OR FOR THE PERSONAL USE OF THE EXPERT ON MISSION—SHIPMENT OF AN EXPERT ON MISSION IS ONLY SUBJECT TO INSPECTION IF THERE ARE STRONG GROUNDS FOR PRESUMING THAT IT CONTAINS PROHIBITED OR CONTROLLED SUBSTANCES—ANY SUCH SEARCH MUST OCCUR IN THE PRESENCE OF THE EXPERT ON MISSION OR HER AUTHORIZED REPRESENTATIVE

1. I refer to your letter dated 26 March 2001 seeking guidance on whether States who are parties to the Convention on the Privileges and Immunities of the United Nations* (“the Convention”) have the right to conduct searches of a shipment of an expert on mission holding a United Nations Certificate. You advise that a [Member State A] expert, who was sent to [City], encountered problems with the [Member State B] authorities with regard to the customs clearance of her shipment. You state that the authorities insisted on searching the shipment, sent part of it to a censorship bureau, and damaged some of her computer equipment.

2. The privileges and immunities enjoyed by experts on mission for the United Nations are set out in article VI of the Convention. Under section 22, subsections (a) and (c), experts on mission are entitled to immunity from seizure of their personal baggage, and inviolability for all papers and documents. In addition, pursuant to section 22(f), experts on mission are to be accorded “the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys”.

3. The Vienna Convention on Diplomatic Relations** governs the immunities and facilities accorded to diplomatic envoys in respect of their personal baggage. Article 36(2) of the Vienna Convention provides:

“The personal baggage of a diplomatic agent shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State. Such inspection shall be conducted only in the presence of the diplomatic agent or of his authorized representative”.

The exemptions in paragraph 1 of article 36 refer to: “(a) articles for the official use of the mission, [and] (b) articles for the personal use of a diplomatic agent or members of his family forming part of his household, including articles intended for his establishment”.

4. In light of the above, it is our view that the term “shipment” is synonymous with the expression “personal baggage” as used in the Vienna Convention, if the shipment

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

** United Nations, *Treaty Series*, vol. 500, p. 95.

contains articles for the official use of the mission, or articles for the personal use of the expert on mission and her household.

5. As such, it is our view that the shipment of an expert on mission is not subject to inspection unless there are strong grounds for presuming that the shipment contained prohibited or controlled substances. If there were strong grounds for presuming that the shipment in the case at hand contained such substances, the shipment should only have been inspected in the presence of the expert on mission, or in the presence of her authorized representative.

27 March 2001

Letter to the First Secretary of the Permanent Mission of a Member State to the United Nations, concerning the “duty free” provision of the Convention on the Privileges and Immunities of the United Nations

CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, 1946—DEFINITION OF ARTICLE 5, SECTION 18(G) OF THE CONVENTION—RIGHT OF UNITED NATIONS OFFICIALS TO IMPORT FREE OF DUTY FURNITURE AND EFFECTS AT THE TIME OF FIRST TAKING UP THEIR POST—MEANING OF THE EXPRESSION “FREE OF DUTY”

I refer to your request sent by facsimile on 16 May 2001 for assistance in defining article V, section 18(g) of the 1946 Convention on the Privileges and Immunities of the United Nations (“the Convention”),* and in particular, the definition of the “duty free” provision. You also inquire whether that provision includes an exemption from taxation.

Section 18(g) of the Convention provides that officials of the United Nations “have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question”. From a legal point of view, the expression “free of duty” is fairly self-explanatory. In order to assist the Permanent Mission of [Member State] to the United Nations, we would elaborate that such duties would include any and all direct and indirect taxes, value added taxes, customs, excise and import duties, as well as any prohibitions and restrictions on imports.

We hope that the above is of assistance to you. We further attach for your information a copy of section 29 of the study prepared by the Secretariat entitled “The practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities”, of May 1967 (documents A/CN.4/L.118 and Add.1 and 2) regarding section 18(g) of the Convention.**

18 May 2001

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

** Not reproduced herein.

Inter-office memorandum to the Assistant Secretary-General for Human Resources Management, concerning access to the files of the United Nations Visa Committee

NO LEGAL OBLIGATION FOR THE UNITED NATIONS TO MAKE INTERNAL DOCUMENTS AVAILABLE TO OUTSIDE PARTIES—CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, 1946—INVOLABILITY OF UNITED NATIONS ARCHIVES AND DOCUMENTS—IMMUNITY FROM LEGAL PROCESS—THE ORGANIZATION MAY GRANT ACCESS TO DOCUMENTS AND FILES ON A VOLUNTARY BASIS—OBLIGATION OF THE ORGANIZATION TO COOPERATE WITH MEMBER STATES TO FACILITATE THE PROPER ADMINISTRATION OF JUSTICE

1. I refer to [Name]’s memorandum of 21 August 2001 requesting our advice on the issue of access to files of the United Nations Visa Committee by “non-United Nations lawyers representing domestic employees of the United Nations staff in New York.” [Name] indicates that the administrative issuances dealing with the Visa Committee (ST/AI/2000/19 and ST/IC/2001/27) do not dwell on the issue of access to the files of the Visa Committee by non-United Nations representatives. He also explains that this request for advice has been prompted by a recent informal request to have access to the Visa Committee’s files by a lawyer representing a former domestic employee in a suit brought against a staff member for alleged underpayment of wages and breach of employment contract.

2. In principle, the United Nations has no legal obligation to make its internal documents or files available to any outside person or organization. As you know, the general rule regarding access by national authorities to archives and documents held by the United Nations, is provided by article II, section 4, of the Convention on the Privileges and Immunities of the United Nations (“General Convention”),* which states that “[t]he archives of the United Nations, and in general all documents belonging to it or held by it, shall be inviolable wherever located.” In addition, pursuant to article II, section 2 of the General Convention, the Organization, including its property, is immune from legal process.

3. Nevertheless, the Organization does usually agree, without prejudice to its privileges and immunities, to voluntarily produce documents that are requested by the competent national authorities, including courts of law, in order to facilitate the proper administration of justice. This practice is in compliance with article 21 of the General Convention, which provides that the United Nations has an obligation to cooperate at all times with the appropriate authorities of Member States in order to facilitate the proper administration of justice.

4. Regarding requests for documents emanating from outside persons or organizations other than national authorities, the United Nations has no obligation to provide access to or copies of said documents, and, as a general rule, is not inclined to do so. However, this does not mean that, as a matter of policy, the Organization may not decide to accede to such a request voluntarily, on a case-by-case basis, if it deems it appropriate in view of the circumstances.

5. It appears, from the information provided by [Name], that the above request for access to United Nations files, addressed to the Visa Committee, by a lawyer representing a former domestic employee of a United Nations staff member is, at this stage, in connection with a private dispute that does not involve the Organization. Therefore, the Organization has no obligation to release the documentation requested. The lawyer should be informed that the

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

files of the United Nations Visa Committee are internal files for the exclusive use of the Organization.

6. If, however, you believe that, in the interest of the Organization, there are special circumstances in the present case warranting the release of such documentation, I would advise that you provide us with the documentation in question so that the Office of Legal Affairs can make a determination on the appropriateness of its release.

26 September 2001

**Inter-office memorandum to the Chief of the Archives and Records Management
Service of the Office of Central Support Services, Department of Management,
concerning an external request for the authentication of documents**

EXTERNAL REQUESTS FOR PROVISION AND AUTHENTICATION OF UNITED NATIONS DOCUMENTS—ADMINISTRATIVE INSTRUCTION ST/AI/326—UNITED NATIONS DOCUMENTS NOT SUBJECT TO CONFIDENTIALITY RESTRICTIONS MAY BE MADE ACCESSIBLE TO THE GENERAL PUBLIC—AUTHENTICATION OF DOCUMENTS IN THE FORM OF A STATEMENT OR DECLARATION RATHER THAN BY AFFIDAVIT—RAMIFICATIONS OF NOTARISING A DOCUMENT ON THE PRIVILEGES AND IMMUNITIES OF THE ORGANIZATION—WRITTEN STATEMENT BY THE EXECUTIVE OFFICE AS A FORM OF CONFIRMATION OF TITLE OF STAFF MEMBER PROVIDING THE AUTHENTICATION

1. This refers to your electronic inquiry, dated 4 and 6 December 2001, addressed to this Office, concerning the request from the Department of Justice of [Member State], addressed to you by electronic mail on 3 December 2001, to provide and authenticate certain documents held in the custody of the United Nations Archives. This also refers to your memorandum dated 11 December 2001 regarding the matter.

2. We understand from your inquiry and our discussions that the Department of Justice of [Member State] has submitted the request in connection with a future court litigation and has asked you to certify as to the authenticity of certain documents in the form of an affidavit prepared by the Government of [Member State] (annex 1).^{*} We also understand that the documents requested by the Government of [Member State] are documents that, in accordance with ST/AI/326 of 28 December 1984, are not subject to any confidentiality restrictions and are accessible to members of the general public pursuant to article I.4.(b) of that ST/AI/326. We note that it is the consistent practice of the United Nations Archives to routinely provide regular copies of documents that are accessible to the general public, for example, to researchers and other interested members of the public in response to their requests.

3. Given that the documents requested are not subject to any confidentiality restrictions, we have no objection to submitting copies of the documents in question to the Government of [Member State]. However, as to the specific form of the authentication requested by the Government of [Member State], we note that the Government of [Member State] is asking you to provide the authentication in the form of an affidavit. We would like to point out that witnesses usually provide an affidavit during court proceedings or other forms of litigation, and we, therefore, suggest that you provide a statement or a declaration rather than becoming a potential witness in the up-coming litigation. Under the circumstances, we modified the draft submitted by the Government of [Member State] to reflect the above consideration. The revised version is attached hereto as annex 2. You will note that the revised version is based on the version that your Office usually uses for certifications.

4. Furthermore, the Government of [Member State] requests that the affidavit be notarised by a public notary of the City of New York. In our view, this request may have some ramifications on the privileges and immunities of the Organization including its staff acting to perform their official duties of the Organization. We would like to point out that the matter in question is not in any way related to the City of New York and that the documents are not subject to New York State law. Therefore, your certification regarding the authenticity of a copy provided to the Department of Justice of [Member State] should not be

^{*} Not reproduced herein.

subject to a notarisation by a public notary of the City of New York. However, since the Government of [Member State] is obviously seeking an official confirmation of the person signing the authentication, we suggest that your Executive Office provide a short written statement confirming that you are the Chief of the Archives and Records Management Service. We understand that Executive Offices routinely prepare such written confirmations.

5. We trust that the version attached hereto as annex 2, once it is provided to the Government of [Member State] on official United Nations letterhead, together with the confirmation from your Executive Office, will suffice for the intended purposes of the Government of [Member State]. Please do not hesitate to contact us if you have any questions in this matter. If necessary, we would be available to explain the proposed changes to the draft affidavit to a representative of the Department of Justice from the Government of [Member State].

20 December 2001

Annex 2**DECLARATION OF CERTIFICATION**

1. I, _____ (name/title of person), the Archivist of the United Nations, New York, declare the following.

2. By virtue of the authority vested in me as the Archivist of the United Nations, I hereby certify that [the documents attached to this declaration as Exhibits 1 to __] are authentic and true copies of the original records kept in the custody of the United Nations Archives in New York. I have initiated the back page of the true copy to so certify.

3. Under the United Nations rules and procedures governing all documents held in the custody of the United Nations Archives, it is not possible to release any of the original records.

This ____ day of December 2001