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**Letter to the Minister Counsellor of a Permanent Mission of a Member State
to the United Nations, concerning criminal charges filed against a staff member of the
Organization**

WAIVER OF IMMUNITY FROM LEGAL PROCESS—ARTICLE 105 OF THE CHARTER OF THE UNITED NATIONS—CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, 1946—UNITED NATIONS OFFICIALS ARE IMMUNE FROM LEGAL PROCESS WITH RESPECT TO WORDS SPOKEN OR WRITTEN AND ALL ACTS PERFORMED IN THEIR OFFICIAL CAPACITY—PRIVILEGES AND IMMUNITIES ARE GRANTED TO OFFICIALS IN THE INTERESTS OF THE ORGANIZATION AND NOT FOR THE PERSONAL BENEFIT OF ANY INDIVIDUAL—IMMUNITY MAY BE WAIVED WHEN IT WOULD OTHERWISE IMPEDE THE COURSE OF JUSTICE AND CAN BE DONE WITHOUT PREJUDICE TO THE INTERESTS OF THE ORGANIZATION—THE UNITED NATIONS IS OBLIGED TO COOPERATE WITH APPROPRIATE MEMBER STATE AUTHORITIES TO FACILITATE THE ADMINISTRATION OF JUSTICE, SECURE OBSERVANCE OF POLICE REGULATIONS AND PREVENT ABUSES OF PRIVILEGES AND IMMUNITIES GRANTED BY THE CONVENTION

I refer to your letter dated 26 July 2007, to which was attached a letter of the same date from [a Member State Attorney]. Both letters relate to [Name], a current United Nations staff member, and are in response to the request of the United Nations, in a letter of 25 July 2007, that [Member State] authorities provide “with greater specificity, information on the charges against [Name], including information on the alleged proscribed acts”, so that the Organization would be in a position to respond to the 16 July 2007 request of the [Member State Attorney], forwarded to us by a letter of 17 July 2007 from the [Member State] Mission, seeking the waiver of [Name]’s immunity.

In his letter of 26 July 2007, the [Member State Attorney] states that his Office “is prepared to bring multiple charges against [Name] pursuant to *inter alia*, [domestic law 1], related to his participation in an ongoing scheme to commit visa fraud, and [domestic law 2], related to his participation in a conspiracy with others to perpetrate the visa fraud scheme”. In particular, the [Member State Attorney] states that evidence available to his Office “demonstrates, among other things, that [Name] used his office at the United Nations Headquarters in [City] to send, or cause to be sent, at least ten fraudulent letters to another person, in support of, among other things, various aliens’ applications for entry visas to enter [Member State] for a United Nations conference”.

Pursuant to Article 105, paragraph 1, of the Charter of the United Nations, “[t]he Organization shall enjoy in the territory of each of its Members such privileges and immunities that are necessary for the fulfillment of its purposes.” In order to give effect to Article 105 of the Charter, the General Assembly of the United Nations adopted the Convention on the Privileges and Immunities of the United Nations* (hereinafter, the “Convention”), on 13 February 1946, to which [Member State] has acceded without relevant reservations.

Pursuant to article V, section 18(a) of the Convention, officials of the United Nations shall be “immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity”.

However, in accordance with article V, section 20 of the Convention, “[p]rivileges and immunities are granted to officials in the interests of the United Nations and not for the

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

personal benefit of the individual themselves. The Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations”.

Moreover, article V, section 21 of the Convention requires that “[t]he United Nations shall cooperate at all times with the appropriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities” provided for in the Convention.

The Secretary-General has no objection to the waiver of [Name]’s immunity from legal process for the purposes stated in the 16 July 2007 letter of the [Member State Attorney], as described in further specificity in its letter of 26 July 2007. I therefore wish to confirm that the Secretary-General has waived, under article V, section 20 of the Convention, the immunity from legal process of [Name] for such purposes.

27 July 2007

**Inter-office memorandum to the Officer-in-Charge of the Office of Legal Support,
Bureau of Management, United Nations Development Programme (UNDP),
concerning UNDP's legal obligations regarding export control licensing requirements
of a Member State**

EXPORT LICENSES REQUIRED BY THE LAWS OF MEMBER STATES FOR CERTAIN PURCHASES AND EXPORTATIONS MADE BY THE ORGANIZATION—CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, 1946—UNITED NATIONS PROPERTY AND ASSETS ARE IMMUNE FROM ANY FORM OF INTERFERENCE, WHETHER BY EXECUTIVE, ADMINISTRATIVE, JUDICIAL OR LEGISLATIVE ACTION—UNITED NATIONS IS EXEMPT FROM PROHIBITIONS AND RESTRICTIONS ON IMPORTS AND EXPORTS IN RESPECT OF ARTICLES IMPORTED OR EXPORTED BY THE ORGANIZATION FOR ITS OFFICIAL USE, INCLUDING THE OBTAINING OF LICENSES—SUBSEQUENT DISPOSAL OF EQUIPMENT BY THE ORGANIZATION THROUGH THE SALE TO A THIRD PARTY WOULD NEED TO BE UNDERTAKEN IN ACCORDANCE WITH APPLICABLE LAW, INCLUDING REGULATIONS ON EXPORT LICENCES

1. This is with reference to your memorandum dated 23 July 2007, addressed to The Legal Counsel, seeking this Office's advice as to whether UNDP has any obligation to obtain export control licenses, as required under [Member State A] law. I also refer to your ongoing discussions with members of this Office regarding the matter.

2. You informed us that the [Member State A] Mission to the United Nations has requested clarification regarding the purchase of a Geographic Information System (GIS) in 1999 from a [Member State B] company, as well as a Global Positioning System (GPS) and high end spectrometer procured in 2006 from a [Member State C] company. Both purchases were carried out for UNDP's programme in [Member State D]. The [Member State A] Government considers the GIS and GPS equipments to be so-called "dual-use equipment", i.e., equipment that can be used both for commercial and military purposes. You also informed us that under [Member State A] law, the purchase of GIS and GPS for UNDP's programme in [Member State D] requires an export clearance license from the [Member State A] Government, as [Member State A] law prohibits the export of such goods of [Member State A] origin to countries that are subject to [Member State A] sanctions, unless such exports have been authorized pursuant to a license issued by the [Member State A] Government. You seek this Office's advice as to whether UNDP would be required to obtain export licenses from the [Member State A] Government.

3. In the context of the preceding discussions, we provided you with several legal opinions issued by this Office on the export licensing requirements, including Office of Legal Affairs' advice to the United Nations Industrial Development Organization published in the *United Nations Juridical Yearbook, 1983*.^{*} As stated in that advice, the Organization has been seeking to avoid the exceedingly difficult legal issues involved in establishing a general rule with regard to these matters, instead the Organization's practice is based on the particularities of each case.

4. In response to your query, we refer to the following provisions of article II of the Convention on the Privileges and Immunities of the United Nations (the General Convention),^{**} to which [Member State A] is a party:

“Section 3: The property and assets of the United Nations, wherever located and by

^{*} *United Nations Juridical Yearbook, 1983* (United Nations Sales Publication), p. 180.

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

whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.” (Emphasis added.)

“Section 7: *The United Nations*, its assets, income and other property shall be... (b) *exempt from... 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 articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed with the Government of that country.” (Emphasis added.)

Upon acceding to the General Convention in [year], the [Member State A] Government did not make a reservation in respect of these sections.

5. Against this background, we consider two types of cases in connection with your query. The first case is where the export is by a United Nations contractor supplying goods to the Organization. In such a case, since the exporter would be the contractor, any obligation to obtain an export license would apply to the contractor and not to the United Nations. In this connection, we note that the standard United Nations Conditions of Contract for the purchase of goods contain provisions whereby the contractor must comply with all laws, ordinances, rules and regulations bearing upon the performance of its obligations under the terms of the contract, and which would require the contractor to obtain any necessary export license. Strictly speaking, in such cases, the question as to whether the United Nations (or UNDP) would have to obtain an export license as required under [Member State A] law, does not arise.

6. In this regard, however, the practice has evolved in the Organization’s procurement activities that contractors and suppliers that are required to obtain any required export licenses (and to bear the costs thereof) obtain assistance from the United Nations. For example, in the event that the Government issuing such export license delays the processing of such a request for a license or otherwise denies a license, the Organization would work through the appropriate Mission to the United Nations in order to resolve the problem. Also, such cooperation would ensure that the United Nations’ rights under section 7 of the General Convention are observed by the Member State concerned.

7. Please also note that given concerns raised by contractors and suppliers more recently over their potential liability for violating export laws and regulations, this Office usually includes a provision along the following lines in United Nations contracts to address the question of export laws and regulations:

“The United Nations and the Contractor acknowledge that the goods, products, or technologies, including software, sold, delivered, licensed or otherwise provided to the United Nations under this Contract, or components thereof, may be subject to the export control laws and regulations of one or more nations. Pursuant to article II, section 7(b) of the Convention on the Privileges and Immunities of the United Nations (1 U.N.T.S. 15 (1946)), the United Nations, including its subsidiary organs, is exempt from customs duties and prohibitions and restrictions on exports in respect of articles imported or exported by the United Nations, including its subsidiary organs, for its official use. Accordingly, in light of the exemptions from export restrictions to which the United Nations is entitled pursuant to the Convention on the Privileges and

Immunities of the United Nations, and without otherwise limiting or derogating from the privileges and immunities and exemptions of the United Nations, including its subsidiary organs, pursuant to the Convention on the Privileges and Immunities of the United Nations:

- “The United Nations shall comply with all export control laws and regulations to the extent that such export control laws and regulations are applicable to the United Nations;
- “The United Nations shall not directly or indirectly export or transmit any goods, products, or technologies, including software, sold, delivered, licensed or otherwise provided to the United Nations under the Contract, or components thereof, to any country, at any time and in any manner which would violate any applicable export control laws and regulations;
- “The United Nations shall not export or re-export any goods, products, or technologies, including software, sold, delivered, licensed or otherwise provided to the United Nations under the Contract, or components thereof, other than for its official use; and,
- “The United Nations shall cooperate with the Contractor to determine a mutually acceptable solution should any Governmental authority fail to recognize the United Nations or any such United Nations Entity’s exemption from export restrictions under the above Convention.”

8. The second case is where the United Nations itself is the exporter. In such cases, provided that the exports are for the official use of the United Nations (or UNDP), we take the position that, pursuant to the above provisions of the General Convention, the Organization is not legally required to obtain an export license. However, it should be noted that any subsequent disposal of such equipment would need to be undertaken in accordance with the applicable law, which may include export control laws and regulations, for example, in the event that the United Nations would dispose of such equipment through a sale to third parties.

2 August 2007

**Note to the Legal Adviser of the Office of the High Commissioner for Human Rights,
concerning a request for advice on possible immunity issues involving the submission
of third-party written comments to the European Court of Human Rights by a
Special Rapporteur**

CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, 1946—SPECIAL RAPPORTEURS ARE ACCORDED PRIVILEGES AND IMMUNITIES NECESSARY FOR THE INDEPENDENT EXERCISE OF THEIR FUNCTIONS—IMMUNITY FROM LEGAL PROCESS WITH RESPECT TO WORDS SPOKEN OR WRITTEN AND ACTS PERFORMED IN AN OFFICIAL CAPACITY—WAIVER OF PRIVILEGES AND IMMUNITIES ACCORDED TO UNITED NATIONS OFFICIALS IS NECESSARY IN ORDER TO SUBMIT TO A LEGAL PROCESS—SUBMITTING WRITTEN COMMENTS TO A JUDICIAL PROCEEDING DOES NOT NECESSARILY AMOUNT TO SUBMISSION TO A LEGAL PROCESS—SUBMISSION SHOULD INCLUDE EXPLICIT INDICATION THAT IT IS GIVEN WITHOUT PREJUDICE TO THE PRIVILEGES AND IMMUNITIES OF THE ORGANIZATION, ITS OFFICIALS AND EXPERTS ON MISSION

1. This is with reference to your note of 8 August 2007, whereby you inform us that [Name], Special Rapporteur for the Human Rights Council on [...], intends to submit a third-party intervention in the form of written comments in [case name](Application No. [...]), before the European Court of Human Rights (ECHR). We note that leave to submit such written comments have been sought under article 36 of the European Convention of Human Rights* and rule 44 of the Rules of ECHR but have yet to be granted by the President of the Court.

2. You have requested our views on whether the submission of written comments by the Special Rapporteur to the ECHR raises any issue of functional immunity under the 1946 Convention on the Privileges and Immunities of the United Nations** (hereinafter “the General Convention”). We note in this regard your preliminary view that the submission of written comments in this case does not involve a submission to legal process by the Special Rapporteur, thus not requiring a waiver of immunity.

3. We note that article 36 of the European Convention on Human Rights relates to “Third party intervention” and article 36(2) stipulates that, “[t]he President of the Court may, in the interest [of the proper administration] of justice, invite [...] any person concerned who is not the applicant to submit written comments or take part in hearings”. We also note that under rule 44(5) of the Rules of ECHR, once the President grants leave to submit written comments, “[t]hey shall be forwarded by the Registrar to the parties to the case, who shall be entitled, subject to any conditions [...] to file written observations in reply or, where appropriate, to reply at the hearing”.

4. It is our understanding that the case at hand relates to “the legal right to abortion” and that the plaintiffs are alleging violations under several articles of the European Convention on Human Rights, including articles 3, 8, 13 and 14, which relate to the right to be free from inhuman and degrading treatment, private and family life, access to justice, and non-discrimination.

5. We note that pursuant to article VI, section 22 of the General Convention, Special Rapporteurs shall be “accorded such privileges and immunities as are necessary for the independent exercise of their functions... [i]n particular they shall be accorded:... in respect

* United Nations, *Treaty Series*, vol. 213, p. 221.

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

of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind...”. Accordingly, if providing written comments in the present case amounts to a submission to legal process, a waiver would become necessary in order to do so.

6. In this regard, we are of the view that a distinction should be drawn, with regard to making a third-party intervention under article 36 of the European Convention on Human Rights, between the submission of written comments and taking part in hearings. The latter would certainly amount to submission to legal process and would require a waiver. This should be similar to an expert testimony in a court case. However, we are of the view that the submission of written comments is similar to an *amicus curiae* brief. While it cannot be excluded that this could, in certain legal jurisdictions, amount to a submission to legal process, in the current case which is before the ECHR, it would appear that it would not amount to a submission to legal process. We note that the United Nations has made written submissions under rule 44(2) to the ECHR without a waiver of its privileges and immunities. In doing so, however, it has included a clause in its written submissions to the effect that they are being provided to the Court without prejudice to the privileges and immunities of the United Nations and its officials, as provided for in the 1946 Convention on the Privileges and Immunities of the United Nations.

7. Accordingly, we suggest that [Name] include in his written submission to ECHR, a clause stating that his written submission is being given without prejudice to the privileges and immunities of the United Nations, its officials and experts on mission, as provided for in the 1946 Convention on the Privileges and Immunities of the United Nations.

12 September 2007

Note concerning the granting of refuge to third parties on United Nations premises in a Member State

POSITION OF THE ORGANIZATION REGARDING INDIVIDUALS SEEKING REFUGE ON UNITED NATIONS PREMISES—NO OBLIGATION FOR THE UNITED NATIONS TO PROVIDE REFUGE UNDER INTERNATIONAL LAW—TEMPORARY REFUGE MAY BE GIVEN ON HUMANITARIAN GROUNDS IF THERE IS IMMINENT DANGER TO INDIVIDUAL'S LIFE—DEFINITION OF IMMINENT DANGER—CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, 1946—INVIOABILITY OF THE UNITED NATIONS PREMISES—OBLIGATION NOT TO ALLOW UNITED NATIONS PREMISES TO BE USED AS A REFUGE FOR PERSONS EVADING JUSTICE—OCCUPATION OF PREMISES OF "ASYLUM SEEKERS"—IN THE CASE OF INDIVIDUALS CLAIMING TO BE REFUGEES OR ASYLUM SEEKERS, SITUATION SHOULD BE REFERRED TO NEAREST OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

1. This is with reference to your note of 25 September 2007, by which you forwarded an urgent request for guidance from [Name], United Nations Humanitarian and Resident Coordinator and United Nations Development Programme (UNDP) Resident Representative in [Member State], concerning "the position that the United Nations country office should take in case people seek sanctuary on United Nations premises" in [Member State].

2. This issue has legal as well as humanitarian aspects. Legally, the right to seek refuge on premises and the corresponding obligation for the United Nations to provide for such refuge are not recognized as part of either codified or customary international law. On a humanitarian basis, however, refuge may be given if there is an imminent danger to that person's life and for the duration of such danger. The notion of "imminent danger" should be understood to mean that if a person is faced with an immediate and credible threat of violence, the person in question may, on humanitarian grounds, be given temporary refuge on United Nations premises.

3. The question of access to United Nations premises is governed by the principle of inviolability of our premises and our obligation not to allow such premises to be used as a refuge for persons evading justice.

4. Under article II, section 3, of the 1946 Convention on the Privileges and Immunities of the United Nations (hereinafter the "General Convention"),* to which [Member State] acceded on [date] without any reservation, the premises of the United Nations are inviolable. Article IX, paragraph 1, of the [year] Standard Basic Assistance Agreement between the United Nations (United Nations Development Programme) and [Member State], confirms the obligation of the Government to apply the General Convention to "the United Nations and its organs, including the UNDP and United Nations subsidiary organs acting as UNDP Executing Agencies, their property funds and assets". Accordingly, the United Nations alone exercises the control and authority over such premises and third parties, including governmental authorities (administrative, judicial, military or police), can enter the United Nations premises only with the express consent of and under the conditions agreed to by the United Nations. The purpose behind such inviolability is to enable the United Nations and its offices as well as peacekeeping operations and political missions to fulfil their mandates free from interference of any kind. However, it is important that members of an office / mission / operation do not act in a manner that is inconsistent with the impartial and international nature of their duties, actions and functions.

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

5. [...]

6. We will be prepared to propose further advice, in coordination with all concerned, with regard to any specific instance of individuals seeking sanctuary on United Nations premises in [Member State].

26 September 2007