

Contents

Note verbale to the Permanent Representative of a Member State to the United Nations, concerning exemptions from immigration restrictions for an official of the United Nations High Commissioner for Refugees (UNHCR) in a Member State	1
Letter regarding a request to access United Nations documents for use in proceedings before the International Criminal Tribunal for the former Yugoslavia	3

**Note verbale to the Permanent Representative of a Member State to the United Nations,
concerning exemptions from immigration restrictions for an official of the United
Nations High Commissioner for Refugees (UNHCR) in a Member State**

PRIVILEGES AND IMMUNITIES OF UNITED NATIONS OFFICIALS—ARTICLE 105 OF THE CHARTER OF THE UNITED NATIONS—CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, 1946—UNITED NATIONS OFFICIALS, TOGETHER WITH THEIR SPOUSES AND DEPENDENT RELATIVES, ARE EXEMPT FROM IMMIGRATION RESTRICTIONS AND ALIEN REGISTRATION—A REQUIREMENT TO TRAVEL ABROAD TO OBTAIN A VISA IS EQUIVALENT TO AN IMMIGRATION RESTRICTION AND IMPOSES A FINANCIAL AND ADMINISTRATIVE BURDEN ON THE ORGANIZATION—APPLICATION OF THE 1946 CONVENTION TO THE UNHCR AND ITS OFFICIALS—OBLIGATION TO GIVE EFFECT TO THE TERMS OF THE 1946 CONVENTION—MEASURES INCREASING THE UNITED NATIONS FINANCIAL BURDENS ARE INCONSISTENT WITH THE SPIRIT OF ARTICLE 105 OF THE CHARTER

The Legal Counsel of the United Nations presents her compliments to the Permanent Representative of [Member State] to the United Nations and has the honour to refer to the issuance of a visa for an official of the United Nations High Commissioner for Refugees (UNHCR).

The Legal Counsel is informed that [Name], the UNHCR Representative in [Member State], has been requested to travel abroad to obtain a “D” type visa for his long-term stay in [Member State]. The Legal Counsel notes with appreciation that the Government has exempted United Nations officials from a requirement to obtain transit visas and short-term stay visas. On this basis, [Name] entered [Member State] using his United Nations *laissez-passer*. It is understood that the relevant authorities have now requested [Name] to travel abroad to visit a [Member State] Consulate in order to be issued the “D” type visa. This procedure places an administrative and financial burden on the Organization. The Legal Counsel understands that staff assigned to the UNHCR Office in [Member State] are not able to obtain the appropriate visa prior to their entry into the country. Only after their information has been notified to the appropriate authorities following entry into the country solely on the strength of their United Nations *laissez-passer* are they provided with the requisite authorization and then advised to travel abroad to a [Member State] Consulate for the issuance of a visa in their travel document.

The Legal Counsel respectfully requests the Government to facilitate the processing of a visa for [Name] without requiring him to travel abroad, as such a requirement is equivalent to an immigration restriction from which [Name] is exempt.

In this connection, the Legal Counsel wishes to recall the applicable legal provisions, as follows.

Article 105, paragraph 1 of the Charter of the United Nations provides that, “[t]he Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes”. Pursuant to paragraph 2 of the same Article “officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization”. These privileges and immunities are specified in the Convention on the Privileges and Immunities of the United Nations,^{*} adopted by the General Assembly on 13

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

February 1946 (hereinafter the “General Convention”), to which [Member State] acceded on [date], without any relevant reservation.

With respect to the issuance of visas, it should be noted that in accordance with article V, section 18(d) of the General Convention, officials of the United Nations, together with their spouses and dependent relatives, are immune “from immigration restrictions and alien registration”. Furthermore, article VII, section 25 stipulates that “[a]pplications for visas (where required) from the holders of United Nations *laissez-passer*, when accompanied by a certificate that they are traveling on the business of the United Nations, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel”.

Under article VII of the Agreement between the United Nations High Commissioner for Refugees and the Government of [Member State] (hereinafter referred to as the “Agreement”), the Government agreed to apply to UNHCR, including its officials, the relevant provisions of the General Convention. Article X, paragraph 2(d) of the Agreement further provides that “UNHCR officials, while in the country, shall enjoy [...] exemption with respect to themselves, their spouses, their relatives dependent on them and other members of their households from immigration restriction and alien registration.”

The Legal Counsel notes that immunity from immigration restrictions and alien registration does not mean exemption from documentary requirements of the Government, including the issuance of visas and entry permits. However, Member States are not permitted to interpose their visa requirements in such a manner as to interfere with the privileges and immunities accorded to exempted categories of persons. Furthermore, a requirement to travel abroad for the issuance of a visa would be a financial and administrative burden for the Organization. Such a requirement would also affect the ability of UNHCR and its officials to effectively discharge its mandate.

Accordingly, the Legal Counsel respectfully requests the Government to exempt United Nations officials from the requirement to travel abroad in order to obtain their visas. More specifically, the Legal Counsel requests the Government to promptly take all necessary measures to facilitate the issuance of a visa for [Name] without requiring him to travel.

Under section 34 of the General Convention, [Member State] has an obligation to be “in a position under its own law to give effect to the terms of [the General] Convention.” Moreover, any interpretation of the provisions of the General Convention must be carried out within the spirit of the underlying principles of the Charter of the United Nations, and, in particular, Article 105. Measures which might increase the financial or other burdens of the Organization are to be viewed as being inconsistent with this provision. In this regard, the Report of the Committee on the San Francisco Conference responsible for the drafting of Article 105 of the Charter of the United Nations unequivocally pointed out that “if there is one principle certain it is that no Member State may hinder in any way the working of the Organization or take any measure the effect of which might be to increase its burdens, financial or otherwise”.

The Legal Counsel of the United Nations avails herself of this opportunity to renew to the Permanent Representative of [Member State] to the United Nations the assurances of her highest consideration.

23 October 2009

**Letter regarding a request to access United Nations documents for use in proceedings
before the International Criminal Tribunal for the former Yugoslavia**

DISCLOSURE OF UNITED NATIONS DOCUMENTS FOR USE IN INTERNATIONAL CRIMINAL LAW PROCEEDINGS—DOCUMENTS RELEASED MUST NOT CONTAIN INFORMATION THE DISCLOSURE OF WHICH WOULD PLACE ANYONE IN DANGER, VIOLATE A DUTY OF CONFIDENTIALITY WHICH THE ORGANIZATION OWES TO A THIRD PARTY, COMPROMISE THE CONFIDENTIALITY OF THE ORGANIZATION'S INTERNAL DECISION-MAKING PROCESSES, OR IMPEDE THE EFFECTIVE FUNCTIONING OF MISSIONS OR OPERATIONS OF THE ORGANIZATION—CONFIDENTIALITY OF DOCUMENTS PROVIDED BY MEMBER STATES OR THIRD PARTIES TO THE ORGANIZATION—PROVISION OF DOCUMENTS IS WITHOUT PREJUDICE TO THE IMMUNITY FROM LEGAL PROCESS OF THE UNITED NATIONS AND ITS OFFICIALS AND TO THE INVIOLABILITY OF ITS ARCHIVES

*Request for United Nations Documents
The Prosecutor v. [Name A] (Case No. [...])*

I refer to your letters of 11 May 2009 and 2 June 2009, in which you requested that the Secretary-General provides you with documents considered relevant for the preparation of your preliminary motion to dismiss the indictment and for the preparation of your defence in the case against you before the International Criminal Tribunal for the former Yugoslavia.

During his second visit to inspect the United Nations archives in New York, in August 2009, [Name B] [title] identified [...] documents in the archives of the Department of Peacekeeping Operations (DPKO) and in the archives of the former Secretary-General Boutros Boutros-Ghali that, in his view, fall within the scope of your requests.

The Office of Legal Affairs, DPKO and the Department of Political Affairs have reviewed the documents identified by [Name B] to ensure that the information contained therein would not: (i) endanger the personal safety or security of current or former staff members of the United Nations or other individuals who might be identified from them; (ii) violate a duty of confidentiality which the United Nations owes to a third party; or (iii) compromise the confidentiality that is necessary for the effective operation of the internal decision-making processes of the Organization, including its political organs, such as the Security Council.

After reviewing those documents, the United Nations is pleased to confirm that it is prepared to make available to you copies of [...] documents in un-redacted form. Annex I* lists these documents.

The two documents listed in annex II* are in draft form, or unsigned. Normally, the United Nations does not authorize the disclosure of such documents. However, in keeping with our policy of maximum cooperation with the *ad hoc* International Tribunals, the United Nations is prepared to disclose these documents in their present form. This entails, however, that the documents should not be presented or relied upon as official United Nations documents. Furthermore, permission is granted on the condition that if the complete or signed versions of these documents become available, you will seek the authorization of the United Nations before using them in trial.

* Not reproduced herein.

The United Nations is not in a position to make available to you the 25 documents listed in annex III,^{**} for the reasons outlined in that annex. According to our standard practice, documents provided to the United Nations on a confidential basis by a Member State or another third party, or United Nations documents containing the views of a Member State or a third party made with the expectation of confidentiality, are whenever possible disclosed in redacted form. In the present case, redaction was not feasible and therefore the United Nations could not release those documents.

[...]

Finally, the United Nations' preparedness to make available to you the documents enclosed with this letter should not be understood as constituting recognition of any obligation to make those documents available to you; nor is it to be understood as involving the assumption of any obligation to that effect. The United Nations' preparedness to provide documents to you is without prejudice to the immunity from legal process of the United Nations and its officials and to the inviolability of its archives.

18 December 2009

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