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**Note verbale to the Permanent Representative of a Member State to the United Nations,
concerning taxation of locally recruited officials**

PRIVILEGES AND IMMUNITIES OF LOCALLY RECRUITED UNITED NATIONS OFFICIALS—CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, 1946—EXEMPTION OF UNITED NATIONS OFFICIALS FROM TAXATION ON SALARIES AND EMOLUMENTS PAID TO THEM BY THE ORGANIZATION—GENERAL ASSEMBLY RESOLUTION 76(I) OF 7 DECEMBER 1946, DEFINING “OFFICIALS” FOR THE PURPOSES OF THE CONVENTION—LOCALLY RECRUITED OFFICIALS NOT ASSIGNED HOURLY RATES ARE EXEMPT FROM TAXATION ON THEIR UNITED NATIONS SALARIES—GENERAL ASSEMBLY RESOLUTION 78(I) OF 7 DECEMBER 1946, PROVIDING RATIONALE FOR EXEMPTION AS TO ACHIEVE EQUITY AMONG MEMBERS AND AMONG OFFICIALS IRRESPECTIVE OF NATIONALITY—NO OBLIGATION TO PROVIDE MEMBER STATES ADDITIONAL INFORMATION ABOUT LOCALLY RECRUITED OFFICIALS THAN WHAT IS SUBMITTED PURSUANT TO THE CONVENTION

The Legal Counsel of the United Nations presents his compliments to the Permanent Representative of [Member State] to the United Nations and has the honour to refer to the exemption from taxation on the salaries and emoluments paid by [United Nations Mission] to its locally recruited officials. The Legal Counsel has been informed that this matter has been the subject of lengthy consultations and correspondence between [United Nations Mission] and the Government of [Member State] but that the latter insists that locally recruited officials of [United Nations Mission] be subject to taxes on their salaries and emoluments paid to them by [United Nations Mission]. In this connection, the Government of [Member State] also insists to be provided with information on such locally recruited officials additional to that usually provided to Governments.

The Legal Counsel takes this opportunity to reiterate the legal basis for the privileges and immunities of locally recruited officials of [United Nations Mission] and the obligations of the Government of [Member State] in regard thereto.

The status of officials of the United Nations is provided for in article V, section 18, of the 1946 Convention on the Privileges and Immunities of the United Nations* (the Convention), to which [Member State] succeeded on [date] without any declaration or reservation. The Convention is also applicable to [United Nations Mission] (a subsidiary organ of the United Nations) by virtue of the Agreement concluded by Exchange of Letters dated [date] between the United Nations and the Government of [Member State] (the Agreement). Article V, section 18(b) of the Convention stipulates that officials of the United Nations shall be exempt “from taxation on the salaries and emoluments paid to them by the United Nations”.

For the purpose of section 18(b) of the Convention, a definition of the term “officials” was established by the General Assembly in resolution 76(I) of 7 December 1946. By that resolution, the General Assembly approved the granting of the privileges and immunities referred to in articles V and VII of the Convention (which include the provision on exemption from taxation) “to all members of the staff of the United Nations, with the exception of those who are recruited locally *and* are assigned to hourly rates” (emphasis added). Consequently, under this definition, locally recruited personnel of the United Nations, including those of [United Nations Mission], who are not assigned to hourly rates, are entitled, irrespective of their nationality, to exemption from taxation on the salaries paid to them by [United Nations Mission].

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

The rationale for the immunity from taxation of salaries and emoluments paid by the United Nations is to achieve equality of treatment for all officials independently of nationality and to ensure that funds contributed by all Members to the budget of the Organization are not channelled into the treasury of a particular State that levies taxes on staff members' salaries. These principles were clearly enunciated by the General Assembly in resolution 78(I) of 7 December 1946, as follows: "In order to achieve full application of the principle of equity among Members and equality among personnel of the United Nations, Members which have not yet completely exempted from taxation, salaries and allowances paid out of the budget of the Organization are requested to take early action in this matter." For ease of reference, the texts of both of the above-mentioned resolutions are attached.**

Consistent with the above, the Agreement specifically provides that "Locally recruited members of [United Nations Mission] shall enjoy the immunities concerning official acts and exemption from taxation and national service obligations provided for in sections 18(a), (b) and (c) of the Convention".

As to the information requested by the Government of [Member State] on locally recruited officials of [United Nations Mission], the Legal Counsel wishes to point out the following. A list of all officials, indicating information including their names, nationality, gender, duty station and grade is submitted annually to all Member States pursuant to section 17 of the Convention. Accordingly, the Government of [Member State] is entitled to receive similar information from [United Nations Mission] concerning the locally recruited officials of the Mission. However, [United Nations Mission] is under no obligation to provide the Government with additional information such as telephone numbers and addresses of such officials or any other matter of personal nature.

Finally, the Legal Counsel wishes to draw to the attention of the Permanent Representative, the obligation of a State party to the Convention set out in section 34, to "be in a position under its own law to give effect to the terms of this Convention."

In light of the foregoing clarifications, the Legal Counsel trusts that the competent authorities of [Member State] will review their position on the status of locally recruited officials of [United Nations Mission] and that appropriate measures will be taken in a manner consistent with the obligations of the Government of [Member State] under the Convention and the Agreement.

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

9 February 1999

** Not reproduced herein.

Note concerning the transportation of documentation to and from a Member State

CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, 1946—THE USE OF A UNITED NATIONS POUCH TO TRANSPORT A MEMBER STATE’S DIPLOMATIC BAG IS IMPROPER AND UNLAWFUL—VIENNA CONVENTION ON DIPLOMATIC RELATIONS, 1961, RESTRICTING THE USE OF A STATE’S DIPLOMATIC BAG TO THE CARRIAGE OF DOCUMENTS AND ARTICLES INTENDED FOR OFFICIAL USE AND NOT THE DIPLOMATIC BAG OF ANOTHER STATE—DELIVERY OF A MEMBER STATE’S DIPLOMATIC BAG BY OFFICERS OF THE ORGANIZATION WOULD BE INCONSISTENT WITH ARTICLE 100 OF THE CHARTER OF THE UNITED NATIONS—THE USE OF A UNITED NATIONS POUCH TO TRANSPORT A GOVERNMENT’S OFFICIAL COMMUNICATION TO ITS DIPLOMATIC MISSION IS AN ABUSE OF THE ORGANIZATION’S PRIVILEGES OF COMMUNICATION—UNITED NATIONS POUCH MAY BE USED IF THE GOVERNMENT’S COMMUNICATIONS WERE ADDRESSED TO A UNITED NATIONS ENTITY AND DELIVERED TO THAT ENTITY, THUS CONSTITUTING OFFICIAL DOCUMENTS OF THE ORGANIZATION

1. I refer to your note of 9 June 1999, addressed to [Name 1] of this Office, in which you seek our views on a proposal which has been made by the Chief Administrative Officer of the [United Nations Office], [Name 2], for a procedure by which documentation which is generated further to the operations of the United Nations [Commission] might be transported from the Ministry of Foreign Affairs of [Member State A] to Geneva.

2. As it appears from your note and its attachments, the documentation in question consists of written submissions of the Government of [Member State A] in respect of claims which are being considered by panels of Commissioners of the [Commission].

3. [Name 2]’s proposal for the transportation of these materials, as it is contained in his email message of 8 June 1999 to [Name 3] of your Office, is that the Government of [Member State A] would place such documents in a sealed diplomatic bag. That bag would be collected by [United Nations Office] from the Ministry of Foreign Affairs in [Member State A]. [The United Nations Office] would place that bag inside [United Nations Office]’s bag for Geneva. [United Nations Office]’s bag would then, as per current arrangements, be transported overland in a United Nations vehicle to the United Nations Development Programme (UNDP) office in [Member State B], where it would be placed in a UNDP pouch to Geneva. While [Name 2] imagines that the final destination in Geneva might be either the Permanent Mission of [Member State A] or the [Commission], it would be our assumption that, since the documents would be in a sealed diplomatic bag of the Government of [Member State A], that bag would, in the normal course of events, be delivered, unopened, to the Permanent Mission of [Member State A] in Geneva. Indeed, the rules of international law which regulate diplomatic relations would require that it be delivered there and not to any other address.

4. For the Organization to make use of its pouch to transport a State’s diplomatic bag would constitute an improper and unlawful use of that pouch. As indicated by section 10 of the Convention on the Privileges and Immunities of the United Nations,^{*} to which [Member State B] acceded in [year], and section 8 of the Arrangement on Privileges and Immunities of the United Nations concluded between the Secretary-General of the United Nations and the Swiss Federal Council,^{**} the right to make use of a bag for the purposes of communication is accorded to the Organization in order to enable it “to despatch and receive *its* correspondence” (emphasis added). Moreover, in so far as those provisions provided that a

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

^{**} United Nations, *Treaty Series*, vol. 1, p. 165.

bag of the Organization is to enjoy the same privileges and immunities as are enjoyed by a diplomatic bag, it is pertinent to note that article 27(4) of the 1961 Vienna Convention on Diplomatic Relations^{***} restricts the use of a diplomatic bag to the carriage of “diplomatic documents and articles intended for official use”. As these terms are commonly understood, they would certainly not encompass the diplomatic bag of another State. Draft Optional Protocol Two on the Status of the Courier and the Bag of International Organizations of a Universal Character, which was adopted by the International Law Commission as part of its Draft Articles on the Status of the Diplomatic Courier and the Diplomatic Bag Not Accompanied by Diplomatic Courier,^{****} also indicates that an international organization – the United Nations included – would be barred from using its bags for such a purpose.

5. That being so, it would be our advice that the procedure suggested by [Name 2] not be employed. It would only be otherwise if it were possible to secure the specific, informed consent both of [Member State B] and Switzerland to the employment of such a procedure. (It should be added that, if it were possible to obtain such consent, it would also be highly advisable to secure from those States explicit recognition that the Organization would not be in a position to vouch for the contents of [Member State A]’s diplomatic bag and so could not be taken to have assumed responsibility for the propriety of those contents.)

6. Turning to possible variations on [Name 2]’s proposal, one possibility which might be envisaged would be for the [Member State A] diplomatic bag not to be placed inside the Organization’s bag, but to be carried separately from, though together with, it.

7. Our advice would be against such a procedure. Were the Organization to take receipt of, and undertake to deliver to the Permanent Mission of [Member State A] in Geneva, a diplomatic bag of the Government of [Member State A], the officers of the Organization involved in that operation might be perceived thereby to have assumed the status of diplomatic couriers *ad hoc* for the Government of [Member State A]. For staff members to discharge such an office would not be consistent with the responsibilities of the Secretariat pursuant to Article 100 of the Charter.

8. Another possibility which might be envisaged would be to follow [Name 2]’s proposal, but without employing a diplomatic bag that is, the Government of [Member State A] would place its written responses in envelopes addressed to its Permanent Mission in Geneva; these would be handed over to [United Nations Office]; who would then place them in [United Nations Office]’s bag for Geneva.

9. Our advice would, once more, be against such a procedure. For reasons similar to those outlined in paragraph 5 above, to make use of the Organization’s bag to transport official communications of a State between its central Government and its diplomatic missions would arguably constitute an improper use of that bag and an abuse of one of the Organization’s privileges of communication – at least in the circumstances which currently prevail in respect of [Member State A]. Again, it would only be otherwise if it were possible to secure the specific, informed consent of [Member State B] and Switzerland to such a procedure.

^{***} United Nations, *Treaty Series*, vol. 500, p. 95.

^{****} *Yearbook of the International Law Commission*, 1989, vol. II (Part Two).

10. These objections might be avoided, though, if, rather than being addressed to the Permanent Mission of [Member State A] in Geneva, the envelopes concerned were to be addressed to the [Commission] itself, such that they would be delivered directly to the Commission upon the arrival of the UNDP pouch in Geneva. Once [United Nations Office] took delivery of those envelopes, they and their contents might then be understood to constitute official correspondence or documents of the Organization and so be properly transported in the Organization's bag. That this is so might be made clearer still if the envelopes were to be addressed to the [Commission] "care of [United Nations Office]".

11. However, before initiating such a procedure, it would be highly advisable to make clear to the Government of [Member State A] that transmittal of such envelopes to [United Nations Office] would not suffice to constitute filing with the [Commission] of the responses that they contain.

12. It would also be highly advisable to make clear to the Government of [Member State A] that, if it chose to avail itself of the proposed procedure, it would so at its own risk, in so far as concerns the timing of the delivery to the [Commission] of the communications which were entrusted to [United Nations Office]'s care.

13. It would, furthermore, be advisable to make clear to the Government that it would bear the normal risks which are incidental to the operation of any document-transmission service, that the communications in question may be accidentally lost, destroyed or damaged in the course of their journey to their final destination.

14. With regard to paragraph 6 of your note, it would be advisable, in order to safeguard the Organization from unfounded allegations, to institute a system whereby [United Nations Office] would record, and give the Government of [Member State A] a receipt for, each envelope of which it took delivery. It would also be advisable that any such system involve the affixture to each envelope of markings to indicate the specific [...] proceedings before the Commission to which its contents relate and that the records kept and receipts given by [United Nations Office] contain a note of those markings.

15. While you do not specifically seek our advice on the point in your note, we would observe that, in his email message to [Name 3], [Name 2] envisages that the cost of the procedure which he proposes might be met out of the existing [United Nations Office] budget for [Member State A], and, therefore, out of monies drawn from the so-called 53 per cent sub-account.

16. We would point out in this regard that, in view of the specific terms of paragraph 8(a) of Security Council resolution [...], it would not be proper to make use of monies in that sub-account for such a purpose. We would accordingly advise that the costs incurred by [United Nations Office] be recouped from the [Commission].

17. It might be observed in this connection that the procedure envisaged would, if adopted, be instituted at the specific request of that body. Moreover, it is specifically envisaged in paragraph 8 of [Name 4]'s memorandum of 19 May 1999 to [Name 5] that the costs of such a service would ultimately be met out of the [Commission]'s budget.

18. We would add that, subject to the point made in paragraph 16 above, the transportation of documentation from the [Commission] to the Ministry of Foreign Affairs of [Member State A] does not pose any legal problems.

14 June 1999

Note concerning compulsory AIDS-testing of staff members of a Member State in a United Nations Mission

REGULATIONS DENYING ENTRY TO, OR RESIDENCE IN, A COUNTRY TO THOSE WHO ARE SEROPOSITIVE ARE INCONSISTENT WITH BASIC PRINCIPLES OF THE LAW ON HUMAN RIGHTS, INTERNATIONAL HEALTH REGULATIONS, AND THE PRIVILEGES AND IMMUNITIES ENJOYED BY UNITED NATIONS OFFICIALS—CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, 1946—STAFF MEMBERS ENJOY IMMUNITY FROM IMMIGRATION RESTRICTIONS—EXEMPTIONS FOR OFFICIALS OF THE UNITED NATIONS FROM THE SCOPE OF NATIONAL LAWS REQUIRING HIV/AIDS SCREENING—DECISION 1991/10 OF THE ADMINISTRATIVE COMMITTEE ON COORDINATION—PRINCIPLES TO BE OBSERVED WITHIN THE ORGANIZATION WITH REGARD TO HIV/AIDS—ANY REQUIREMENT FOR HIV/AIDS TESTING FOR RESIDENCE IN CONNECTION WITH AN ASSIGNMENT MUST APPEAR IN VACANCY NOTICE—TESTING IS VOLUNTARY FOR EXISTING EMPLOYEES—NO DUTY FOR STAFF MEMBERS TO INFORM THE ADMINISTRATION OF THEIR HIV/AIDS STATUS—INFORMATION ON HIV/AIDS STATUS OF STAFF REMAINS CONFIDENTIAL—NO DISCRIMINATION AGAINST THOSE STAFF AFFECTED OR PERCEIVED TO BE AFFECTED BY HIV/AIDS—VOLUNTARY COMPLIANCE WITH HIV/AIDS TESTING REQUIREMENT IS WITHOUT PREJUDICE TO THE ORGANIZATION'S POSITION OF PRINCIPLE THAT SUCH REQUIREMENT IS INCONSISTENT WITH INTERNATIONAL LAW

1. I refer to your note of 21 December 1999 to [Name 1], by which you forwarded to this Office certain correspondence indicating that the Government of [Member State A] has adopted regulations the effect of which is to require of individuals who are of [Member State B] nationality that, in order to obtain residence permits or entry visas for [Member State A], they must be screened for HIV/AIDS and must, in doing so, test seronegative. As indicated in that correspondence – specifically, in the letter which was sent on 16 December 1999 by the Permanent Representative of [Member State A] to [Name 2] the Government of [Member State A] has declined to exempt staff members who are assigned to serve with [United Nations Mission] from the application of that requirement. You seek our guidance how to proceed.

2. We would note, at the outset, that it is not entirely clear from the correspondence attached to your note whether the regulations adopted by the Government of [Member State A] relate to the grant of rights of residence alone or whether they also extend to the grant of rights of entry to the country more generally. The letter from the Permanent Representative of [Member State A] would appear to indicate that the latter is the case. Our advice is given on that basis.

The legality of the regulations

3. The regulations which have apparently been adopted by the Government of [Member State A] are inconsistent with basic principles of the law of human rights, with the obligations of [Member State A] under international health regulations and with its obligations to the United Nations regarding the privileges and immunities of staff members, including, specifically, staff members assigned to serve with [the United Nations Mission].

4. Laws or regulations which deny entry to, or residence in, a country to those who are seropositive are contrary to basic principles of the law of human rights, involving unlawful discrimination against the individuals concerned on the basis of their health status. That this is so has been affirmed by the Commission on Human Rights, by the General Assembly and by the World Health Assembly.

5. Likewise, laws or regulations that require the mandatory screening for HIV/AIDS of those entering, or seeking to reside in, a country also involve such unlawful discrimination. They are also inconsistent with the rights to privacy and to freedom and security of person, both of persons who are seropositive and of those who are not.

6. Laws or regulations that require such screening only of persons who bear a particular nationality also entail unlawful discrimination on the basis of national origin.

7. Laws that require those entering a country to bear a certificate that they are seronegative are, moreover, inconsistent with the World Health Organization's International Health Regulations. Those Regulations, to which [Member State A] did not formulate any reservation, bind States members of the World Health Organization not to require any health documents of international travellers other than those that are provided for in those Regulations. Since the Regulations were modified, the only disease for which such a document may be required is yellow fever.

8. For the Government of [Member State A] to deny entry or residence, in the event that they are seropositive, to staff members who are assigned to serve with [the United Nations Mission], or for it to require of such staff members that they be screened for HIV/AIDS in order that they might enter or reside in the country, would also involve a violation of the right of unimpeded entry into [Member State A] to which such staff members are entitled pursuant to the exchange of letters dated [date] and [date] between the Secretary-General and the Deputy Prime Minister of [Member State A] and Minister for Foreign Affairs.

9. For the Government of [Member State A] to take such steps would also involve a violation of the 1946 Convention on the Privileges and Immunities of the United Nations,^{*} to which [Member State A] acceded in [year] without formulating any reservation. In accordance with section 18(d) of that Convention, staff members must be accorded immunity from immigration restrictions. The regulations which have apparently been adopted by the Government of [Member State A] would undoubtedly constitute a restriction of that type, whether they concern residence alone or whether they extend also to entry to that country.

The advisability of the regulations

10. While they may not be strictly legal in nature, the following points might also be noted.

11. The [Member State A] regulations referred to in the correspondence attached to your note would appear to be inconsistent with the basic approach to dealing with the HIV/AIDS epidemic that has been taken by the United Nations, as well as by the World Health Organization and by UNAIDS: namely, that there is no public health rationale for laws and practices that would involve barring entry to, or residence in, a country to those who are seropositive or that would subject such persons to mandatory screening for HIV/AIDS.

12. Indeed, the approach that has been taken by both the General Assembly and the World Health Assembly is that such laws or practices are actually counterproductive to attempts to combat the epidemic, creating an atmosphere of stigmatization and discrimination

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

that drives the disease underground and makes it more difficult to reach, counsel, educate and treat those who are affected by it.

Recommendations

13. We would suggest that you meet with the Permanent Representative of [Member State A] in order to bring the preceding points to his attention, in particular those made in paragraphs 8, 9 and 12. We would be pleased to send a legal officer to such a meeting.

14. In view of what is said in the final paragraph of [Name 3]'s code cable of 19 December 1999 to [Name 2], it might also be useful at such a meeting to bring it to the attention of the Permanent Representative of [Member State A] that, in recognition of its international obligations, the Government of [Member State C] has specifically exempted officials of the United Nations from the scope of its national law that requires persons entering [Member State C] to be screened for HIV/AIDS.

15. As a more general matter, it would also be advisable to contact the agencies and programmes that are operationally concerned in the fight against AIDS, specifically, the World Health Organization and UNAIDS, in order to inform them of the [Member State A] regulations and to secure their assistance in persuading the Government of [Member State A] to repeal them *in toto* or at least to refrain from their enforcement.

If the Government of [Member State A] cannot be persuaded to exempt to the [United Nations Mission] staff

16. It may not prove possible to persuade the Government [Member State A] to refrain from applying its regulations to the two staff members mentioned in the correspondence attached to your note. In the event, the question may arise whether those staff members should, nonetheless, continue to be assigned to serve with [the United Nations Mission] in [Member State A].

17. In this connection, we would draw your attention to the principles that are to be observed within the United Nations with regard to HIV/AIDS, pursuant to decision 1991/10 of the Administrative Committee on Coordination. These principles are usefully summarised in the booklet *Information for UN Employees and Their Families* (UNAIDS/99.31E), which is available on the UNAIDS website (<http://www.unaids.org>) and which the Secretary-General has announced will soon be distributed to all staff members (ST/SGB/1999/17).

18. Among these principles, the following are of particular relevance in the present regard: for any assignment which requires HIV testing for residence, this requirement must appear in the vacancy notice, for existing employees, testing is voluntary only and may not be required; staff members are not under any duty to inform the management of their HIV/AIDS status; all information on HIV/AIDS status is to be kept confidential, and there is to be no discrimination against those who are affected, or who are perceived to be affected, by HIV/AIDS.

19. The Organization may accordingly not require of staff members concerned that they undergo screening for HIV/AIDS, nor may any steps be taken by the Administration which would place them under any form of practical compulsion or pressure to do so.

20. If and in so far as the two staff members, may, nonetheless, be willing voluntarily to undergo such a test, and if in so far as it may be desirable that they continue to be assigned to serve with [the United Nations Mission] in [Member State A], [the United Nations Mission] should advise the Government of [Member State A] in writing that its compliance with the [Member State A] regulations in respect of the two staff members is without prejudice to the Organization's position of principle that such requirements are inconsistent with international law and, in particular, that they are inconsistent with [Member State A]'s undertakings in the [year] exchange of letters and its obligations under section 18(d) of the 1946 Convention.

23 December 1999