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Aide-mémoire concerning court cases pending against the United Nations Development Programme (UNDP) in a Member State

PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS—EMPLOYMENT-RELATED GRIEVANCES—CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, 1946—UNDP IS ENTITLED TO THE PRIVILEGES AND IMMUNITIES PROVIDED FOR IN THE 1946 CONVENTION—APPLICATION OF THE 1946 CONVENTION TO THE UNITED NATIONS, ITS PROPERTY, FUNDS AND ASSETS, AS WELL AS ITS OFFICIALS, INCLUDING TECHNICAL ASSISTANCE EXPERTS—IMMUNITY FROM EVERY FORM OF LEGAL PROCESS UNLESS IMMUNITY HAS BEEN WAIVED—PROPERTY AND ASSETS OF THE UNITED NATIONS ARE IMMUNE FROM SEARCH, REQUISITION, CONFISCATION, EXPROPRIATION AND ANY FORM OF INTERFERENCE—INTERPRETATION OF THE 1946 CONVENTION IN LIGHT OF THE UNDERLYING PRINCIPLES OF THE CHARTER OF THE UNITED NATIONS—UNITED NATIONS OFFERS ALTERNATIVE DISPUTE SETTLEMENT MECHANISMS FOR EMPLOYMENT-RELATED GRIEVANCES—OBLIGATION TO GIVE EFFECT TO THE TERMS OF THE CONVENTION—OBLIGATION OF GOVERNMENTS TO CONVEY THE SECRETARY-GENERAL'S FINDINGS CONCERNING IMMUNITY TO THEIR COURTS

It has been brought to the attention of the Legal Counsel that over 330 employment-related proceedings are currently pending in the [Member State] courts against the United Nations Development Programme (UNDP). The Legal Counsel would like to clarify the obligations of the Government of [Member State] under the applicable international legal instruments as follows.

The Legal Counsel requests the Government to take appropriate steps to ensure respect for the privileges and immunities of the United Nations in accordance with the obligations of the Government of [Member State] under the Convention on the Privileges and Immunities of the United Nations,^{*} adopted by the General Assembly of the United Nations on 13 February 1946 (hereinafter “the General Convention”) to which [Member State] has been a party since [date], without reservation.

Moreover, in accordance with article V of the Basic Technical Assistance Agreement between the United Nations and the Government of [Member State] (the “Agreement”), concluded on [date], the Government of [Member State] assumed the obligation to apply the General Convention to the United Nations, its property, funds and assets, as well as to its officials, including technical assistance experts.

As an integral part of the United Nations, UNDP is entitled to the privileges and immunities provided for in the General Convention. Pursuant to article II, section 2, of the General Convention, “[t]he United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case, it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution”.

In addition, article II, section 3, of the General Convention stipulates, in relevant part, that “[t]he property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.”

Pursuant to Final Article, section 34 of the General Convention, the Government of [Member State] is under an obligation to be “in a position under its own law to give effect to

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

the terms of this Convention". Furthermore, 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 thereof, which provides that the Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.

The Legal Counsel notes with deep concern that over 330 employment-related proceedings are still pending in [Member State] courts against UNDP. The Legal Counsel notes also that the nationals of [Member State] who instituted legal proceedings against UNDP are not devoid of a remedy to address their employment-related grievances. The Organization's position in these types of employment cases is for it to maintain its immunity while offering alternative means of dispute settlement in accordance with article VIII, section 29 of the General Convention. For these individuals, the terms and conditions of their contracts set out the means of dispute settlement.

The Legal Counsel notes that the Government has intervened in most of the above-referenced cases. This notwithstanding and in view of the serious implications that these cases could eventually have on the operations of the Organization on the ground, a United Nations mission will be dispatched to [Member State] for the purpose of determining the status of these cases.

For the foregoing reasons, the Legal Counsel respectfully requests the Government of [Member State] to take all necessary steps to ensure full cooperation of the relevant authorities as well as access to relevant officials in order to ensure the maximum efficiency of the mission and the achievement of positive results.

In addition, the Legal Counsel reiterates his request to the Government of [Member State] to take all necessary steps to ensure that the United Nations' immunity from legal process regarding the court proceedings in question is respected, in accordance with the obligations of [Member State] under the Agreement, the General Convention and the Charter of the United Nations. In this connection, the Legal Counsel recalls that in its Advisory Opinion of 29 April 1999,** the International Court of Justice confirmed the obligation of government authorities of a party to the Convention to convey the findings of the Secretary-General concerning immunity to the concerned national courts.

The Legal Counsel would be grateful if the requested action be taken as a matter of urgency.

1 May 2008

** *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I. C. J. Reports 1999, p. 62.*

**Note verbale to the Permanent Mission of a Member State to the United Nations,
concerning requisition orders issued against funds of the
United Nations Development Programme (UNDP)**

PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS—REQUISITION ORDERS AGAINST AND SEIZURE OF UNDP FUNDS—CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, 1946—UNDP IS ENTITLED TO THE PRIVILEGES AND IMMUNITIES PROVIDED FOR IN THE 1946 CONVENTION—APPLICATION OF THE 1946 CONVENTION TO THE UNITED NATIONS, ITS PROPERTY, FUNDS AND ASSETS, AS WELL AS ITS OFFICIALS, INCLUDING TECHNICAL ASSISTANCE EXPERTS—IMMUNITY OF THE ORGANIZATION FROM EVERY FORM OF LEGAL PROCESS UNLESS OTHERWISE WAIVED—ABSOLUTE IMMUNITY OF THE UNITED NATIONS FROM MEASURE OF EXECUTION—PROPERTY AND ASSETS OF THE UNITED NATIONS ARE IMMUNE FROM SEARCH, REQUISITION, CONFISCATION, EXPROPRIATION AND ANY FORM OF INTERFERENCE—THE CONDUCT OF ANY STATE’S ORGANS MUST BE REGARDED AS AN ACT OF THE STATE—OBLIGATION TO GIVE EFFECT TO THE TERMS OF THE 1946 CONVENTION—INTERPRETATION OF THE 1946 CONVENTION IN LIGHT OF THE UNDERLYING PRINCIPLES OF THE CHARTER OF THE UNITED NATIONS

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 note verbale from the Legal Counsel dated 16 July 2008 (copy attached)* regarding requisition orders issued by the Labour Courts of [Member State] against UNDP funds in [Member State] which, on 15 July 2008, amounted to 805,088.37 [local currency] (approximately 506,000 US Dollars). The Legal Counsel is informed that another requisition order was issued on 2 September 2008 by Judge [Name 1], Labour Court of [City], in relation to a case instituted by [Name 2] (case number[...]). The requisition order was in the amount of 76,819.59 [local currency] (approximately 49,000 US Dollars) and, pursuant to the order, UNDP’s bank account in [Bank] was frozen.

The Legal Counsel respectfully requests the Government to take all necessary steps to ensure the unequivocal respect for the privileges and immunities of the United Nations, including its funds and assets. More specifically, the Legal Counsel requests the Government to ensure that all requisition orders are annulled and the release of all UNDP funds which are “seized” in accordance with the requisition orders referred to in this note verbale and the note verbale of 16 July 2008. The Legal Counsel wishes, once again, to clarify the applicable legal provisions as follows.

As an integral part of the United Nations, UNDP is to be accorded the privileges and immunities provided for in the 1946 Convention on the Privileges and Immunities of the United Nations** (hereinafter the “General Convention”) to which [Member State] has been a party since [date] without any reservation. In addition, under article V of the Basic Technical Assistance Agreement between the United Nations and the Government concluded on [date] (hereinafter the “Agreement”), the Government assumed the obligation to apply the General Convention to the United Nations, its property, funds and assets, as well as to its officials and technical assistance experts.

Pursuant to article II, section 2, of the General Convention, “[t]he United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its

* Not reproduced herein.

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

immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution”.

Furthermore, pursuant to article II, section 3, of the General Convention, “[t]he property and assets of the United Nations, wherever located and by 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).

The United Nations has not waived its immunity from legal process in respect of any legal proceedings against UNDP in the courts of [Member State]. Moreover, the United Nations enjoys an absolute immunity from “any measure of execution” to which no waiver can be extended under the General Convention and the Agreement.

The Legal Counsel notes with appreciation that the Government has been intervening in the employment-related proceedings instituted against UNDP before the [Member State] courts. Nevertheless the courts in some of these proceedings have rejected the immunity of UNDP and ruled in favour of the plaintiffs, awarding damages against UNDP.

In this connection, the Legal Counsel recalls that the International Court of Justice in its Advisory Opinion on the Difference relating to immunity from legal process of a Special Rapporteur on Human Rights of 29 April 1999 (the so-called “Cumaraswamy case”), confirmed that “[a]ccording to a well-established rule of international law, the conduct of any organ of a State [whether that organ belongs to the constituent, legislative, executive, judicial or other power, whether its functions are of an international or an internal character, and whether it holds a superior or a subordinated position in the organization of a State] must be regarded as an act of that State”.^{***}

Pursuant to section 34 of the General Convention, the Government of [Member State] undertook 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 should be carried out within the spirit of the underlying principles of the Charter of the United Nations, and in particular Article 105 (1) thereof, which 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”.

For the foregoing reasons, the Legal Counsel respectfully requests the Government of [Member State] to promptly take all necessary steps to ensure full respect for the privileges and immunities of the United Nations, in particular, UNDP in [Member State], in accordance with its obligations under international law. The Legal Counsel trusts that the Government of [Member State] will expeditiously take the relevant measures with a view to ensuring that the requisition orders against UNDP funds in [Member State] are annulled as soon as possible.

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 assurances of her highest consideration.

19 September 2008

^{***} *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I. C. J. Reports 1999, p. 62, at para. 62.*