

United Nations  Nations Unies

HEADQUARTERS • SIEGE NEW YORK, NY 10017
TEL.: 1 (212) 963.1234 • FAX: 1 (212) 963.4879

18 June 2008

Excellency,

Request for the waiver of Ms. [REDACTED] Immunity from legal process

I write to inform you that the Secretary-General has received the attached letter from Mr. [REDACTED], a representative of a Law Firm representing Mr. [REDACTED], a former intern of the Liaison Office of the World Health Organization in New York and of the Financing for Development Office of the United Nations Department for Economics and Social Affairs. We understand that Mr. [REDACTED] has submitted to the Office of the Attorney-General of Italy, Court of [REDACTED], a claim against Ms. [REDACTED] a United Nations Official on 25 March 2008. In this regard, Mr. [REDACTED] has requested the Secretary-General to waive Ms. [REDACTED]'s immunity from legal process, and of "any other officials who may have concurred in the alleged wrongful acts in connection with the communication signed by the [REDACTED] on 26 December 2007".

As you are aware, the United Nations is an international inter-governmental organization established pursuant to the Charter of the United Nations (hereinafter referred to as "the UN Charter"), a multilateral treaty signed on 26 June 1945. As an international organization, the United Nations has been accorded certain privileges and immunities which are necessary for the fulfillment of the purposes of the Organization. Pursuant to Article 105, paragraph 1 of the UN Charter, "[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."

Ms. [REDACTED], as a United Nations official, enjoys pursuant to Article V, Section 18 (a) of the Convention on the Privileges and Immunities of the United Nations (hereinafter referred to as the "General Convention") adopted by the General Assembly on 13 February 1946, to which Italy acceded without any reservation on 3 February 1958,

His Excellency
Mr. Marcello Spatafora
Permanent Representative of Italy
to the United Nations
New York



immunity "from legal process in respect of words spoken or written, and all acts performed by [her] in [her] official capacity". In the present case, the Secretary-General of the United Nations has determined that the acts in question were carried out by Ms. [REDACTED] in her official capacity. Therefore, Ms. [REDACTED] enjoys immunity from legal process in the present case.

While under Article V, Section 20 of the General Convention, the Secretary-General of the United Nations 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, in the present case, the Secretary-General has not and is expressly asserting Ms. [REDACTED]'s immunity from legal process as it cannot be waived without prejudice to the interests of the United Nations.

In this regard, I wish to recall that the International Court of Justice confirmed 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") that:

"the Secretary-General, as the chief administrative officer of the Organization, has the primary responsibility to safeguard the interests of the Organization; to that end, it is up to him to assess whether its agents acted within the scope of their functions and, where he so concludes, to protect these agents, including experts on mission, by asserting their immunity. This means that the Secretary-General has the authority and responsibility to inform the Government of a member State of his finding and, where appropriate, to request it to act accordingly and, in particular, to request it to bring his finding to the knowledge of the local courts if acts of an agent have given or may give rise to court proceedings."

The Court further opined that:

"[w]hen national courts are seized of a case in which the immunity of a United Nations agent is in issue, they should immediately be notified of any finding by the Secretary-General concerning that finding".

Under Article VIII, Section 29 (b) of the General Convention "[t]he United Nations shall make provisions for appropriate modes of settlement of [...] disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General". Thus, Mr. [REDACTED], though not a staff member but rather a former intern, must be provided an "appropriate mode of settlement" of his dispute. Accordingly, consistent with the established practice of the Organization to address disputes involving interns on an informal basis, informal conflict resolution mechanisms existing within the Secretariat could be employed, in the first instance, as the mode of settlement for this



matter, including, *inter alia*, the possibility of its reference to the Office of the Ombudsman.

I respectfully request the Government of Italy to take all necessary steps to ensure full respect for the privileges and immunities of the United Nations and its officials, in particular, the immunity from legal process enjoyed by Ms. [REDACTED] in accordance with its obligations under international law as outlined above.

Please accept, Excellency, the assurances of my highest consideration.

A handwritten signature in dark ink, appearing to read "N. Michel", is positioned above the typed name.

Nicolas Michel
Under-Secretary-General for Legal Affairs
The Legal Counsel

cc: Avvocato [REDACTED]

Italy

Enclosure