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BY FAX & REGISTERED MAIL
The Honorable John R. Bolton
US Permanent Representative to the US
Mission to the UN
140 East 45th Street
New York, N.Y. 10017
USA

Genève, le 3 juillet 2006

Concerne: Brzak & Ishak v. Annan et al. (US Supreme Court N° 2200136 ORG)

Dear Mr. Ambassador:

As you may be aware, I am the attorney representing two current UNHCR staff members who in May 2006 filed a motion with the US Supreme Court¹ seeking leave to file a complaint in an original action² against the UN, its Secretary General, its former High Commissioner for Refugees, Ruud Lubbers and several other senior UN officials. The complaint arises out of the alleged sexual assault of my client Ms. Brzak by Mr. Lubbers in his UNHCR office, and the subsequent retaliation against both my clients by the Defendants as a result of my clients' reporting of the assault, such retaliation being in gross violation of Title VII of the Civil Rights Act of 1964. The complaint also alleges violations of the so-called Racketeering Influenced Corrupt Organisation statute (civil RICO) on the part of Messrs. Annan, Lubbers and others.

I am writing to you in response to a letter from the UN's Legal Advisor Mr. Nicolas Michel, which letter, dated 15 May 2006 and addressed to your Deputy Ambassador Wolff, asks you to request "the competent United States authorities to take appropriate action to ensure respect for the privileges and immunities of the Organisation and its current and former officials, in accordance with the obligations of the United States and under both international and United States law." I

¹ The complaint filed in the US District Court for the Southern District of New York is a mirror of the complaint attached to the Supreme Court pleadings, and was filed solely to preserve the Plaintiff's Title VII claims in the event the Supreme Court rejects the motion for leave to file an original action. If the Supreme Court accepts said motion, then the NY District Court action will be promptly dismissed.

² Although I have previously provided your office with a copy of the subject pleadings, they may be viewed in their entirety at www.iowatch.org.

apologize for my delay in sending this reply to you, but the letter was curiously not copied to me by Mr. Michel even though he was presumably fully aware of my identity and role as lead counsel; I was only able to obtain a copy from the Clerk of the Supreme Court once I noticed from a review of the public docket that the letter had been copied to the Court.

Let me first note that Mr. Michel's letter does not address the underlying claim of the subject motion that the statute (22 USC 288 *et seq.*) and the treaty (23 UST 3227), from which the UN asserts its privileges and immunities, violate several provisions of the US Constitution³ and therefore, such privileges and immunities (which are significantly different from diplomatic immunity afforded to envoys of sovereign states under the Vienna Convention) are unlawful. The cases cited in Mr. Michel's letter provide a historic record of where the UN's privileges and immunities have been used to preclude litigation against the UN and its officials in US courts, but to my knowledge and belief, none of the cited cases ever addressed or adjudicated the constitutional validity of the above mentioned treaty and statute which the UN now asserts as a shield in the present case.

I trust you and the US government will agree with me that it is in the interests of not only my clients, one of whom is an American national, but also the US and all UN member states to have a full and open debate in the US Supreme Court or such other court of competent jurisdiction about the constitutionality of the UN's asserted immunities. I sincerely doubt that you or any branch of the US government would wish to blindly enforce an unconstitutional law or laws with the egregious consequences that such enforcement has had not only on my clients, but also many others⁴. Indeed, whether our arguments prevail or not before the Supreme Court is a secondary principle in the present case; what matters most is that the issues are openly considered and adjudicated. I am afraid that the UN's request in its letter of 15 May, if acceded to by the US government, will add gross insult to my clients' already significant injuries. Such a course of action would also seem to be against the rule of law and the democratic principles⁵ on which the United States was founded, and to which the United Nations by its charter and other applicable international law is supposed to adhere and in fact champion around the world.

³ I will not repeat my argument which is set out at length in my motion pending before the Supreme Court; suffice it to say that UN's privileges and immunities deny my clients one of the most fundamental rights guaranteed by the US constitutional—their right to a day in court pursuant to due process of law.

⁴ It is my firm belief, had the UN's privileges and immunities, as currently interpreted by most US courts, been struck down or otherwise modified to pass constitutional muster, that the so-called Oil for Food and Procurement scandals (among others) would never have grown to the obscene levels that we are now learning about in hindsight. I also believe that the on-going sexual abuse by UN and other so-called humanitarian aid workers of refugee girls as young as 8 years old in UN camps in Africa would have been stopped long ago had those UN officials responsible for the operation of such camps faced the prospect of civil or criminal litigation in US courts or elsewhere on account of their actions in committing or aiding and abetting such repugnant sexual abuse.

I am also of the strong opinion, in view of the General Assembly's recent actions taken to frustrate any semblance of real and meaningful reform of the United Nations and its Secretariat, that the only avenue left to facilitate such reform, absent the withholding of dues by member states, is through litigation addressed at corrupt or incompetent UN managers. In this regard, I also hope that the US Congress, in addition to requiring a UN Freedom of Information Act, will also create a UN Fraud Claims Act (similar to the existing US Federal Fraud Claims Act) which would allow UN whistleblowers to report UN fraud and corruption which embezzled funds could be reclaimed directly from the subsequent amounts allocated for UN dues by Congress.

⁵ It might be useful to recall the sage words of President Theodore Roosevelt and Justice Brandeis in this regard:

"No man is above the law and no man is below it, nor do we ask any man's permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor." Theodore Roosevelt

"If the government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy. Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of its own existence." Justice Louis D. Brandeis, 1928 (Olmstead v. United States)

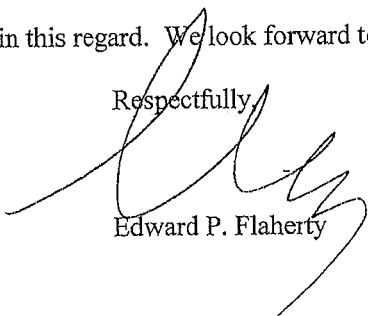
I therefore respectfully request that you urge the US government to press for the Supreme Court's consideration of the constitutional validity of the statute and treaty relied upon by the UN to defeat suits against it in US courts, as demanded in my motion for leave currently pending before said court.

On another note, I see that Mr. Michel has asserted in his letter that my clients have access to the UN's so-called internal justice system, so therefore, he argues, intervention before the US courts is not needed. As it was reported recently that you met with the President of the UN's Headquarters Staff Association to discuss a report commissioned by the Staff Association and lead authored by Judge Geoffrey Robertson, QC, I trust there is no need for me to write at length about the shocking substantive and procedural deficiencies of the UN's internal system which are highlighted in detail in said report (a copy of which is enclosed for your ease of reference). As asserted in my motion, I will simply state that the US Constitution does not allow workers to bargain away their basic right to a day in court when it is replaced by a system that makes the Star Chamber appear fair and reasonable⁶. It is on account of the fatal flaws detailed by Judge Robertson in his report that Ms. Brzak withdrew (without prejudice) her internal appeal, and that Mr. Ishak has been frustrated in his attempts to seek protection through the internal UN processes⁷—it is axiomatic that no one is required in law to exhaust an internal remedy that is a legal nullity before seeking external redress—such is the case with my clients.

Once again, I hope the foregoing will convince you to urge the US government to advocate for the subject case to be addressed before the Supreme Court at its earliest convenience so that the serious and substantial question of the constitutional validity under American law of the UN's privileges and immunities can be definitively adjudicated.

Thank you for your attention to and courtesy in this regard. We look forward to hearing from you soon in this regard.

Respectfully,



Edward P. Flaherty

Enclosure

Cc: clients

Office of the White House Counsel
Ambassador Warren Tichenor
Senator Tom Coburn
Senator Norm Coleman
Rep. Henry Hyde
Nicolas Michel, UN Legal Advisor
Clerk, US Supreme Court
Clerk, US Federal District Court for Southern Manhattan

⁶ See *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 30-33 (1991).

⁷ Mr. Ishak has in fact availed himself of every possible internal mechanism, either to have the wrongdoing against him stopped or to seek protection from the illegal retaliation. For over 13 months now, no action whatsoever has been taken in response to Mr. Ishak's numerous reports of misconduct by senior UNHCR officials against him and others. He has not failed to file appeals under Chapter 11 of the UN Staff Rules (two related internal appeals are currently ongoing) but he is rather facing flagrant violations of his due process rights (as highlighted in the attached Robertson report). Mr. Ishak even attempted to engage in formal conciliation with the Administration but was told that UNHCR was ready to conciliate in any case except his own. One can only conclude from the foregoing that the UN's internal justice system exists not to bring about justice but rather to frustrate it, while at the same time allowing the UN's senior officials to act with impunity and to treat their subordinates with absolute contempt.