



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

November 29, 2016

Via ECF

Honorable Alison J. Nathan
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *Koumoin v. Ban Ki-Moon*, 16 Civ. 2111 (AJN)

Dear Judge Nathan:

The United States of America, by and through its attorney, Preet Bharara, United States Attorney for the Southern District of New York, respectfully submits this Statement of Interest pursuant to 28 U.S.C. § 517, concerning the immunity of defendant Ban Ki-Moon, the Secretary-General of the United Nations (the “UN”), and of the UN itself, from legal process and suit.

Both Secretary-General Ban and the UN are immune from legal process and suit absent an express waiver, pursuant to the Charter of the United Nations (“UN Charter”), June 26, 1945, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153; and the Convention on the Privileges and Immunities of the United Nations (“CPIUN”), adopted Feb. 13, 1946, 21 U.S.T. 1418, 1 U.N.T.S. 16. In this case, there has been no waiver of immunity from legal process and suit; instead, the UN has expressly asserted Ban’s immunity and its own.

In light of the immunity of Secretary-General Ban and the UN, the Court lacks subject matter jurisdiction over this matter, and it should accordingly be dismissed. *See Georges v. United Nations*, 834 F.3d 88, 98 (2d Cir. 2016) (affirming dismissal of suit against the UN, Secretary-General Ban, and others); *Brzak v. United Nations*, 551 F. Supp. 2d 313, 318 (S.D.N.Y. 2008), *aff’d*, 597 F.3d 107 (2d Cir. 2010); *see also* Fed. R. Civ. P. 12(h)(3). Furthermore, Plaintiff’s attempted service on Secretary-General Ban was ineffective.

The United States makes this submission pursuant to 28 U.S.C. § 517,¹ consistent with the United States’ obligations as host nation to the UN and as a party to treaties governing the privileges and immunities of the UN. These obligations arise pursuant to the UN Charter and the CPIUN, both treaties to which the United States is a party.

¹ 28 U.S.C. § 517 provides that “[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.”

BACKGROUND

A. The Complaint

Plaintiff Mathieu Credo Koumoin (“Plaintiff”), proceeding *pro se*, brings this employment-related suit against Secretary-General Ban, alleging that Plaintiff was the subject of unlawful retaliation regarding the non-renewal of his contract with the United Nations Development Program (“UNDP”) in 2006. *See* Dkt. No. 1 (“Compl.”) ¶¶ 16-19. Plaintiff apparently alleges that Secretary-General Ban is responsible for retaliation against him for whistleblowing and also for the failure to implement either an internal UN dispute resolution tribunal’s judgment in his favor or a “Mediation Settlement Agreement.” *See id.* ¶¶ 9-10, 20-21.

Plaintiff alleges that, while he was working as the UNDP Global Environmental Facility (“GEF”) Regional Coordinator for Climate Change in Africa, he was pressured by UNDP and GEF officials “to re-direct funds raised for the African Micro-hydroelectricity access in rural Areas project” to other organizations. *Id.* ¶ 17. Plaintiff allegedly refused to do so on the ground that such action would conflict, *inter alia*, with UNDP procurement rules. *Id.* Plaintiff also asserts that he “took sizable steps to alert other officials including the UNDP Administrator directly about the illegality of the operations” *Id.* Plaintiff alleges that, as a result of his whistleblowing, he was fired for “alleged poor performance” despite having had “years of ‘exceeds expectations’ performance ratings” and the support of a number of environmental and energy ministers. *Id.* ¶ 19. Plaintiff claims that, since his firing, he “has since not been able to get work because of the recurrent and continued damaging professional references/blacklisting of those who . . . retaliated against him.” *Id.*

Plaintiff asserts that a UN Dispute Tribunal judge rendered a final decision in his favor in 2009 and that the decision was “accepted by all parties to the dispute,” *id.* ¶ 10, but that the UN failed to enforce the judgment or a “Mediation Settlement Agreement” in his favor, *id.* ¶¶ 9, 20-21.² As a result, Plaintiff seeks monetary and injunctive relief against the UN Dispute Tribunal and the UNDP as well as other components of the UN and World Bank. *Id.* ¶ 30.

Plaintiff acknowledges that the UN is generally immune from suit. *Id.* ¶ 8. Despite this fact, Plaintiff claims that “the United Nations System can no longer claim immunity from service of process and from execution of UN-Tribunal final judgments where the Secretary-General ha[s] failed to execute or enforce binding decisions issued by the UN’s own Tribunals.” *Id.* ¶ 9.

² The UN has stated that Plaintiff’s claims were in fact considered and rejected by the United Nations Dispute Tribunal in a judgment dated June 7, 2010, and that the Dispute Tribunal’s judgment was subsequently upheld by the United Nations Appeals Tribunal in a judgment dated March 11, 2011. *See* Letter dated June 20, 2016, from Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, to Samantha Power, Permanent Representative of the United States to the United Nations, annexed hereto as Exhibit A. The relevant decisions are available at <http://www.un.org/en/oaj/files/undt/judgments/undt-2010-105.pdf> (UN Dispute Tribunal) and <http://www.un.org/en/oaj/files/unat/judgments/2011-unat-119.pdf> (UN Appeals Tribunal).

B. Procedural History

Plaintiff filed his complaint in this action on March 22, 2016.³ On the same date, he filed a motion requesting that the Court order the U.S. Marshals Service to serve process upon Secretary-General Ban in his capacity as United Nations Secretary-General. Dkt. No. 3.

On April 5, 2016, this Court ordered Plaintiff to show cause by April 22, 2016, why the case should not be dismissed for lack of subject matter jurisdiction. Dkt. No. 5. In the Order to Show Cause, the Court recognized that “[c]ourts in this circuit have held that UN officials enjoy immunity from suit” under the CPIUN and the Vienna Convention on Diplomatic Relations (“Vienna Convention”). *Id.* at 2 (citing *Georges v. United Nations*, 84 F. Supp. 3d 246, 248 (S.D.N.Y. 2015), *aff’d*, 834 F.3d 88 (2d Cir. 2016); *Brzak*, 597 F.3d at 112-13). The Court also denied Plaintiff’s motion seeking to have the Marshals Service effect service of process. *Id.* at 3.

Plaintiff responded to the Court’s order to show cause with a pleading styled as a “request for the Court to exercise jurisdiction.” Dkt. No. 7. Since then, Plaintiff has filed several other motions, including a motion for preliminary injunctive relief, Dkt. No. 9, and a motion seeking an order that Secretary-General Ban has effectively been served process or, in the alternative, requesting the Court’s assistance in serving Secretary-General Ban, Dkt. No. 10.

In a letter dated June 20, 2016, the United Nations expressly asserted its immunity with respect to this lawsuit and requested that the United States “take appropriate action to ensure full respect for the privileges and immunities of the United Nations and its officials in accordance with the obligations of the United States both under international and United States law.” Letter dated June 20, 2016, from Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, to Samantha Power, Permanent Representative of the United States to the United Nations, annexed hereto as Exhibit A.

DISCUSSION

A. Secretary-General Ban Enjoys Immunity

The UN Charter, the CPIUN, and the Vienna Convention provide immunity from legal process and suit for UN officials, including Secretary-General Ban.

The UN Charter provides that “officials of the Organization shall . . . enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion [sic] with the Organization.” UN Charter art. 105, § 2. The UN Charter also provides that the UN General Assembly “may propose conventions to the Members of the United Nations” for the purpose of determining the “details” of the immunities enjoyed by the UN, representatives of member states to the UN, and UN officials. *Id.* art. 105, § 3. The CPIUN, which the UN adopted shortly after the UN Charter, specifically provides that “the Secretary-

³ Plaintiff originally filed a similar complaint in the U.S. District Court for the District of Colorado on October 30, 2015, asserting claims under Title VII of the Civil Rights Act of 1964. *See Koumoin v. United Nations Sec’y Gen.*, No. 15 Civ. 2415 (D. Colo. filed Oct. 30, 2015). Plaintiff withdrew that case in June 2016, after filing suit in this Court.

General and all Assistant Secretaries-General shall be accorded . . . the privileges and immunities . . . accorded to diplomatic envoys, in accordance with international law.” CPIUN art. V, § 19. Because the CPIUN “is a self-executing treaty,” its provisions are “binding on American courts.” *Brzak*, 597 F.3d at 113.

In the United States, the privileges and immunities enjoyed by diplomats are governed by the Vienna Convention on Diplomatic Relations, which entered into force with respect to the United States in 1972. 23 U.S.T. 3227, T.I.A.S. No. 7502, 500 U.N.T.S. 95. Article 31 of the Vienna Convention provides that diplomatic agents “enjoy immunity from [the] civil and administrative jurisdiction” of the receiving State—here, the United States—except with respect to: (a) privately owned real estate; (b) performance in a private capacity as an executor, administrator, heir, or legatee; and (c) professional or commercial activities outside of official functions. *See id.* art. 31, § 1. The purpose of diplomatic immunity under the Vienna Convention is “to protect the interests of comity and diplomacy among nations.” *Devi v. Silva*, 861 F. Supp. 2d 135, 143 (S.D.N.Y. 2012). Federal courts repeatedly have recognized the immunity of United Nations officials pursuant to the CPIUN and the Vienna Convention. *See, e.g., Brzak*, 597 F.3d at 113 (noting that, under the Vienna Convention, “current diplomatic envoys enjoy absolute immunity from civil and criminal process”); *Georges*, 84 F. Supp. 3d at 250 (dismissing suit against Secretary-General Ban because he “currently hold[s] [a] diplomatic position[.]” and is thus “immune from Plaintiffs’ suit”); *see also* 22 U.S.C. § 254d (“Any action or proceeding brought against an individual who is entitled to immunity with respect to such action or proceeding under the Vienna Convention on Diplomatic Relations, . . . or under any other laws extending diplomatic privileges and immunities, shall be dismissed.”).

Furthermore, Article V, Section 18(a) of the CPIUN provides that UN officials are “immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity.” CPIUN art. V, § 18(a). Under this provision, both current and former UN officials, regardless of rank, enjoy immunity from suit for all acts performed in their official capacities. *See Van Aggelen v. United Nations*, 311 F. App’x 407, 409 (2d Cir. 2009) (summary order) (applying this “functional immunity” to a UN official who did not “enjoy full diplomatic immunity”); *McGehee v. Albright*, 210 F. Supp. 2d 210, 218 (S.D.N.Y. 1999) (applying this immunity to then-Secretary-General Kofi Annan), *aff’d*, 208 F.3d 203 (2d Cir. 2000) (summary order); *see also De Luca v. United Nations Org.*, 841 F. Supp. 531, 534 (S.D.N.Y. 1994) (recognizing that UN officials were entitled to immunity), *aff’d mem.*, 41 F.3d 1502 (2d Cir. 1994); *Askir v. Boutros-Ghali*, 933 F. Supp. 368, 371-73 (S.D.N.Y. 1996) (dismissing complaint against UN official for lack of subject matter jurisdiction because he was immune from suit under Article V of the CPIUN).⁴

Because none of the three exceptions outlined in the Vienna Convention is relevant in the instant case, and because the UN has not waived the immunity of Secretary-General Ban in this

⁴ In addition, under Section 7(b) of the International Organizations Immunities Act, 22 U.S.C. § 288 *et seq.* (“IOIA”), UN officials are immune from suit and legal process “relating to acts performed by them in their official capacity and falling within their functions as . . . officers[,] or employees[,] except insofar as such immunity may be waived” by the United Nations. 22 U.S.C. § 288d(b); *see McGehee*, 210 F. Supp. 2d at 218; *De Luca*, 841 F. Supp. at 534-35.

matter, as discussed below, but has expressly asserted it, Secretary-General Ban enjoys immunity from suit, and this action should be dismissed for lack of subject matter jurisdiction.

B. The UN Enjoys Absolute Immunity

Plaintiff's suit is also barred by absolute immunity if it is construed to be brought against the UN itself.⁵ The UN Charter provides that the UN "shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes." UN Charter art. 105, § 1. The CPIUN defines the UN's privileges and immunities, and specifically provides that "[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." CPIUN art. II, § 2.

As courts in this district have long recognized, the United States is a party to both the UN Charter and the CPIUN. *See, e.g., Brzak*, 597 F.3d at 111; *Sadikoğlu v. United Nations Dev. Programme*, No. 11 Civ. 0294 (PKC), 2011 WL 4953994, at *3 (S.D.N.Y. Oct. 14, 2011) ("The scope of immunity for the UN and its subsidiary bodies derives primarily from two multilateral agreements to which the United States is a party: the Charter of the United Nations . . . and the Convention on Privileges and Immunities of the United Nations . . ."); *Askir*, 933 F. Supp. at 371. The United States understands Article II of the CPIUN to mean what it unambiguously says: the UN enjoys absolute immunity from this or any suit unless the UN itself expressly waives its immunity.

To the extent there could be any alternative reading of the CPIUN's text, the Court should defer to the Executive Branch's interpretation. *See Abbott v. Abbott*, 560 U.S. 1, 15 (2010) ("It is well settled that the Executive Branch's interpretation of a treaty is entitled to great weight." (internal quotation marks omitted)); *Kolovrat v. Oregon*, 366 U.S. 187, 194 (1961) ("While courts interpret treaties for themselves, the meaning given them by the departments of government particularly charged with their negotiation and enforcement is given great weight."); *Tachiona v. United States*, 386 F.3d 205, 216 (2d Cir. 2004) (interpreting the CPIUN and noting that, "in construing treaty language, 'respect is ordinarily due the reasonable views of the Executive Branch'" (quoting *El Al Israel Airlines, Ltd. v. Tsui Yuan Tseng*, 525 U.S. 155, 168 (1999)) (brackets omitted)).

Here, the Executive Branch, and specifically the Department of State, is charged with maintaining relations with the United Nations, so its views are entitled to deference. Consistent with the applicable treaty language and the Executive Branch's views, courts repeatedly have recognized that "the UN is immune from suit unless it expressly waives its immunity." *Georges*, 84 F. Supp. 3d at 249; *see also, e.g., Boimah v. United Nations Gen. Assembly*, 664 F. Supp. 69, 71 (E.D.N.Y. 1987) ("Under the [CPIUN] the United Nations' immunity is absolute, subject only to the organization's express waiver thereof in particular cases."); *Askir*, 933 F. Supp. at 371. Controlling Second Circuit authority recognizes the UN's absolute immunity. *See Brzak*, 597

⁵ Plaintiff may intend his suit to be brought against Secretary-General Ban only in an official capacity, given that he does not allege any actions taken by Ban personally, as well as because the relief that plaintiff seeks would run against the UN rather than against Ban personally. *See* Compl. ¶ 30.

F.3d at 112 (“[T]he United Nations enjoys absolute immunity from suit unless ‘it has expressly waived its immunity.’” (quoting CPIUN art. II, § 2)).

Therefore, because there was no waiver in this case (as discussed below), the UN enjoys absolute immunity from suit, and this action should be dismissed as against the UN for lack of subject matter jurisdiction. *See Brzak*, 551 F. Supp. 2d at 318 (“[W]here, as here, the United Nations has not waived its immunity, the [CPIUN] mandates dismissal of Plaintiffs’ claims against the United Nations for lack of subject matter jurisdiction.”).⁶

C. Neither Secretary-General Ban Nor the UN Has Waived Immunity

The CPIUN provides that the “Secretary-General 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 courts of justice and can be waived without prejudice to the interests of the United Nations.” CPIUN art. V, § 20. Far from waiving Secretary-General Ban’s immunity, the UN has expressly asserted that immunity this matter. Accordingly, Secretary-General Ban is entitled to immunity. *See, e.g., McGehee*, 210 F. Supp. 2d at 218 & n.7 (noting that the Under-Secretary-General for Legal Affairs for the UN “informed the Court that the United Nations is not waiving its immunity in this action as to defendant [then-Secretary-General Kofi] Annan” and dismissing lawsuit against him on immunity grounds pursuant to the CPIUN and the IOIA).

Plaintiff argues that the UN, including Secretary-General Ban, has waived its immunity in this case because Plaintiff’s claims were allegedly accepted in a UN Dispute Tribunal and, allegedly, that final judgment is binding upon all parties. *See, e.g., Compl.* ¶¶ 8-9 (asserting that, “in light of the binding character of the decisions rendered by the United Nations Dispute Tribunal . . . , the United Nations System can no longer claim immunity from service of process and from execution of UN-Tribunal final judgments”). This argument should be rejected.

There has been no express waiver of immunity in this matter. To the contrary, the UN has expressly asserted its absolute immunity and the immunity of Secretary-General Ban. In a letter dated June 20, 2016, Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, asserted with respect to this lawsuit: “Please be advised that the immunity of the Secretary-General has not been waived in respect of [this] case in the United States District Court for the Southern District of New York.” Exhibit A at 2; *see also id.* at 1

⁶ In addition, the IOIA provides that “[i]nternational organizations . . . shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign governments, except to the extent that such organizations may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract.” 22 U.S.C. § 288a(b). In *Brzak*, which (like this case) involved employment claims, the Second Circuit held that the UN is immune under the IOIA as well as under the CPIUN. 597 F.3d at 112-13. Although it is unclear whether the UN’s immunity under the IOIA is absolute or subject to the exceptions to immunity provided for in the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq.* (“FSIA”), that dispute is irrelevant where, as here, there is no relevant FSIA exception, *see Brzak*, 597 F.3d at 112-13.

(requesting “the competent United States authorities to take appropriate action to ensure full respect for the privileges and immunities of the United Nations and its officials”).⁷

Plaintiff fails to identify any applicable waiver of immunity. While Plaintiff contends that he participated in an internal UN dispute-resolution process that purportedly resolved in his favor, this allegation is irrelevant to the question of waiver. As established by the CPIUN, any waiver of the UN’s absolute immunity from suit or legal process must be “express[.]” CPIUN art. II, § 2. Even if Plaintiff’s allegation that the UN Dispute Tribunal entered a decision in his favor were accurate, *but see supra* note 2, the UN has not expressly waived its immunity with respect to the enforcement of such decisions.

Thus, Plaintiff’s claim that the UN Dispute Tribunal’s judgment was not properly implemented, or that internal UN dispute resolution mechanisms failed to effectively address his grievances, has no bearing on the question of the immunity of the UN and Secretary-General Ban or a waiver of that immunity. *See Brzak*, 597 F.3d at 112 (“Although the plaintiffs argue that purported inadequacies with the United Nations’ internal dispute resolution mechanism indicate a waiver of immunity, crediting this argument would read the word ‘expressly’ out of the CPIUN.”); *see also Georges*, 84 F. Supp. 3d at 249 (holding that allegations of inadequacies with a UN dispute resolution program could not subject the UN to plaintiff’s suit, because doing so “would read the strict express waiver requirement out of the CPIUN”); *McGehee*, 210 F. Supp. 2d at 212 n.1, 218 (dismissing claim against immune then-Secretary-General Kofi Annan, notwithstanding the plaintiff’s allegations that the UN’s administrative tribunal “abused its discretion, violated its own rules, and denied her due process in rendering its decision” regarding her reinstatement).

The UN has not waived its immunity or that of Secretary-General Ban in this case. Thus, the UN and Secretary-General Ban enjoy immunity from suit, and this action should be dismissed for lack of subject matter jurisdiction.

D. Because Secretary-General Ban and the UN Are Immune, Plaintiff’s Attempted Service Was Ineffective

Consistent with its absolute immunity, the UN is also immune from service of legal process. *See* CPIUN art. II, § 2 (providing that the UN “shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity”). In addition, the CPIUN specifically provides that the “premises of the United Nations shall be inviolable.” *Id.* art. II, § 3. Moreover, the Agreement Between the United Nations and the United States Respecting the Headquarters of the United Nations (“Headquarters Agreement”), June 26, 1947, 61 Stat. 3416, T.I.A.S. No. 1676, 11 U.N.T.S. 11 (entered into force Nov. 21,

⁷ The UN also expressly asserted the immunity of Secretary-General Ban in connection with Plaintiff’s first lawsuit, which was filed in the District of Colorado and later voluntarily withdrawn. *See* Letter dated December 1, 2015, from Stephen Mathias, Assistant Secretary-General in charge of the Office of Legal Affairs of the United Nations, to Samantha Power, Permanent Representative of the United States to the United Nations, annexed hereto as Exhibit B, at 2 (“Please be advised that the immunity of the Secretary-General has not been waived in respect of the above-referenced case . . .”).

1947), Article III, Section 9(a), provides that the “service of legal process . . . may take place within the headquarters district only with the consent of and under conditions approved by the [UN] Secretary-General.”

Secretary-General Ban has not consented to Plaintiff’s service of legal process within the headquarters district. Accordingly, Plaintiff’s attempts to serve the UN or Secretary-General Ban in New York, *see* Dkt. No. 10 ¶¶ 9-14, were ineffective, and any attempt to employ an alternative method of service would likewise be ineffectual.⁸ Plaintiff has thus failed to effect service on either the UN or Secretary-General Ban in light of their immunity, the inviolability of the premises of the UN, and the inviolability of the UN headquarters district.

Thank you for your consideration of this matter.

Respectfully submitted,

PREET BHARARA
United States Attorney for the
Southern District of New York

By: /s/ Samuel Dolinger
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cc: Plaintiff Mathieu Koumoin (via ECF and U.S. mail)

⁸ To the extent Plaintiff contends that service was accepted at UN headquarters, *see* Dkt. No. 10 ¶¶ 13-14 (asserting that Plaintiff served his complaint on the UN via Federal Express, facsimile, and e-mail), such a claim should be rejected. As explained above, only the Secretary-General may establish a method of service on UN headquarters, and the Secretary-General has not done so.

Exhibit A

United Nations  Nations Unies

HEADQUARTERS • SIEGE NEW YORK, NY 10017

TEL.: 1 (212) 963.1234 • FAX: 1 (212) 963.4879

REFERENCE: 2015-GLD-000469

20 June 2016

Excellency,

In the Matter of Mathieu C. Koumoin v. The Secretary-General of the
United Nations (Case 1:16-CV-02111) in the United States District Court for the
Southern District of New York

We write to inform you that, on 10 June 2016, the United Nations Secretariat in New York received a Summons and a Complaint in the above-referenced case commenced before the United States District Court for the Southern District of New York. We recall that the claimant, Mr. Mathieu Koumoin, has previously sought to initiate legal proceedings against the United Nations and its officials before the United States District Court for the District of Colorado arising out of the same alleged complaint. Through our letter of 1 December 2015, we returned documents received in that case and respectfully requested the competent United States authorities to take appropriate action to ensure full respect for the privileges and immunities of the United Nations and its officials in accordance with the obligations of the United States both under international and United States law.

With the present letter, we hereby return the documents received in connection with the proceedings before the United States District Court for the Southern District of New York and once again respectfully request the competent United States authorities to take the aforementioned appropriate action.

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. The UN Charter was ratified by the Government of the United States of America on 8 August 1945 and came into force in the United States on 28 October 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

Her Excellency
Ms. Samantha Power
Permanent Representative of the United States
to the United Nations
New York

immunities as are necessary for the fulfilment of its purposes". Article 105, paragraph 2 provides that "officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization". Article 105, paragraph 3 stipulates that "[t]he General Assembly may make recommendations with a view to determining the details of the application of paragraph[] 1 ... of this Article or may propose conventions to the Members of the United Nations for this purpose."

In order to give effect to Article 105 of the UN Charter, the General Assembly of the United Nations adopted the Convention on the Privileges and Immunities of the United Nations (hereinafter referred to as "the General Convention") on 13 February 1946. The United States of America acceded to the General Convention on 29 April 1970.

With respect to the claim against the Secretary-General, I wish to note that pursuant to Article V, Section 19 of the General Convention, Mr. Ban Ki-Moon enjoys "the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law". Pursuant to Article 31 of the Vienna Convention on Diplomatic Relations (hereinafter, "the Vienna Convention"), which entered into force with respect to the United States on 13 December 1972, diplomatic envoys enjoy immunity from criminal, civil and administrative jurisdiction of the host country.

Section 20 of the General Convention provides that the Security Council shall have the right to waive the immunity of the Secretary-General. Please be advised that the immunity of the Secretary-General has not been waived in respect of the above-referenced case in the United States District Court for the Southern District of New York.

It should also be recalled that, as a former staff member of the Organization, Mr. Koumoin has not been without recourse to pursue his employment-related claims against the United Nations. Mr. Koumoin's claims were in fact considered and rejected by the United Nations Dispute Tribunal in its judgment of 7 June 2010 (UNDT/2010/105). The judgment of the United Nations Dispute Tribunal was subsequently upheld by the United Nations Appeals Tribunal in its judgment of 11 March 2011 (2011/UNAT/119).

Pursuant to Section 34 of the General Convention, the Government of the United States undertook an obligation to be "in a position under its own law to give effect to the terms of this Convention". Accordingly, I wish to respectfully request the

Government of the United States to take the appropriate steps with a view to ensuring that the privileges and immunities of the Secretary-General are maintained in respect of this legal action.

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



Miguel de Serpa Soares
Under-Secretary-General for Legal Affairs
and United Nations Legal Counsel

Exhibit B

UNITED NATIONS  NATIONS UNIES

POSTAL ADDRESS-ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
TELEPHONE NO: (212)-963-1234; FAX NO. (212)-963-3155

1 December 2015

Excellency,

In the Matter of Mathieu C. Koumoin v. The Secretary-General of the
United Nations (Case 15-CV-02415) in the United States District
Court for the District of Colorado

We write to inform you that, on 16 November 2015, the United Nations Secretariat in New York received a Summons and a Complaint in the above-referenced case commenced before the United States District Court for the District of Colorado.

With the present letter, we hereby return the above-referenced documents and respectfully request the competent United States authorities to take appropriate action to ensure full respect for the privileges and immunities of the United Nations in accordance with the obligations of the United States both under international and United States law.

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. The UN Charter was ratified by the Government of the United States of America on 8 August 1945 and came into force in the United States on 28 October 1945.

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the fulfilment of its purposes". Article 105, paragraph 2 provides that "officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization". Article 105, paragraph 3 stipulates that "[t]he General Assembly may make recommendations with a view to determining the details of the application of paragraph[] 1 ... of this Article or may propose conventions to the Members of the United Nations for this purpose."

In order to give effect to Article 105 of the UN Charter, the General Assembly of the United Nations adopted the Convention on the Privileges and Immunities of the United Nations (hereinafter referred to as "the General Convention") on 13 February 1946. The United States of America acceded to the General Convention on 29 April 1970.

With respect to the claim against the Secretary-General, I wish to note that pursuant to Article V, Section 19 of the General Convention, Mr. Ban Ki-Moon enjoys "the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law". Pursuant to Article 31 of the Vienna Convention on Diplomatic Relations (hereinafter, "the Vienna Convention"), which entered into force with respect to the United States on 13 December 1972, diplomatic envoys enjoy immunity from criminal, civil and administrative jurisdiction of the host country.

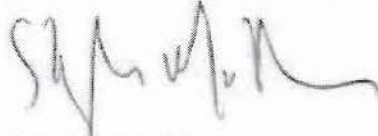
Section 20 of the General Convention provides that the Security Council shall have the right to waive the immunity of the Secretary-General. Please be advised that the immunity of the Secretary-General has not been waived in respect of the above-referenced case in the United States District Court for the District of Columbia.

It should also be recalled that, as a former staff member of the Organization, Mr. Koumoin has not been without recourse to pursue his employment-related claims against the United Nations. Mr. Koumoin's claims were in fact considered and rejected by the United Nations Dispute Tribunal in its judgment of 7 June 2010 (UNDT/2010/105). The judgment of the United Nations Dispute Tribunal was subsequently upheld by the United Nations Appeals Tribunal in its judgment of 11 March 2011 (2011/UNAT/119).

Pursuant to Section 34 of the General Convention, the Government of the United States undertook an obligation to be "in a position under its own law to give effect to the terms of this Convention". Accordingly, I wish to respectfully request the Government of the United States to take the

appropriate steps with a view to ensuring that the privileges and immunities of the Secretary-General are maintained in respect of this legal action.

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

A handwritten signature in dark ink, appearing to read 'S. Mathias', with a stylized flourish at the end.

Stephen Mathias
Assistant Secretary-General
in charge of the Office of Legal Affairs