



JOINT INSPECTION UNIT
of the United Nations System

CORPS COMMUN d'INSPECTION
du Système des Nations Unies

Management Letter of 4 December 2007

Headquarters agreements and other host country agreements: Compliance issues

Background

1. Compliance with the headquarters agreements and other host country agreements concluded between United Nations system organizations and their host countries have been a concern for some United Nations system organizations, their staff and officials. Differing interpretations and views concerning the implementation of, and compliance with, the agreements have remained despite consultations and efforts to ensure consistent practice and full implementation of the agreements.

2. These efforts led to recommendations for the possible review of the headquarters agreements, including from the Secretary-General of the United Nations. In his report "Strengthening of the United Nations: an agenda for further change", the Secretary-General stated that the Organization would approach Governments to explore possibilities for the renegotiation of certain aspects of the host country agreements.¹

3. In the light of these concerns, the Joint Inspection Unit (JIU) issued two reports aimed at facilitating consistent practice in the implementation of the headquarters agreements. The first of these reports was issued in 2004, entitled "Review of headquarters agreements concluded by organizations of the United Nations system: Human resources issues affecting staff".² The second was issued in 2006, entitled "A second review of the headquarters agreements concluded by organizations of the United Nations system: Provision of headquarters premises and other facilities".³

4. While these two reports of the Unit cover various aspects of the headquarters agreements, JIU considered that there were additional areas that may need to be further reviewed to facilitate full compliance with, and consistent practice in, the implementation of the agreements. In this context, JIU decided to include, in its Programme of Work for 2007, a third review of the implementation of the United Nations headquarters agreements, focusing specifically on issues of compliance and possible cases of discrimination against staff and officials of certain nationalities in relation to the privileges and immunities they enjoy.

Objective and scope envisaged

5. Since the first two reports were issued, JIU has received information on alleged measures by some countries and/or institutions contractually linked to the United Nations indicating possible non-compliance with the headquarters agreements. The third review on the implementation of headquarters agreements⁴ therefore aimed to assess the degree to which

¹ A/57/387.

² JIU/REP/2004/2.

³ JIU/REP/2006/4.

⁴ A/62/34.

United Nations system organizations and their host countries comply with the agreements. Moreover, the intention was to ascertain whether the privileges, immunities and facilities provided under the agreements are applied without discrimination to all staff members and officials for whom they were intended. The review also aimed to consider the type and relevance of the mechanisms established by the United Nations system organizations to guarantee the privileges and immunities of their officials. Finally, it was intended that individual cases of non-compliance would be assessed with the view to determining the extent to which the non-compliance resulted in financial losses to, or other serious consequences for, the organizations, their staff and officials.

Methodology and elements leading to the decision to write a management letter

6. After an initial review of the basic documents, including headquarters agreements and the relevant international conventions, a questionnaire was sent out to 28 United Nations system organizations highlighting the following three main clusters of concern, which were considered priority areas:

- i. Procedures for waiving privileges and immunities of staff and officials;
- ii. Payment of value added and other taxes by the organizations and staff and officials; and
- iii. Banking issues of staff and officials, and other issues of non-compliance with headquarters agreements.

7. There were 25 responses to the questionnaire, which revealed only a few isolated cases of non-compliance with the United Nations headquarters agreements. It was noted from the responses that these isolated concerns have either already been addressed, or are currently being addressed/ resolved by the organizations themselves. Moreover, the questionnaire responses did not reveal any instance of systematic non-compliance with the headquarters agreements.

8. As a result of the analysis of the responses to the questionnaire, the decision was taken not to pursue all the issues that had originally been envisaged. However, there are three issues that the Inspectors felt could be explored further to address possible non-compliance with the headquarters agreements, and these issues are therefore discussed in this Management Letter, rather than in a report. The first issue is the matter of delays in the issuance of Swiss residency permits or *cartes de légitimation*; the second concerns the payment of value added taxes (VAT) and other taxes by United Nations organizations; and the third addresses banking restrictions faced by some staff and officials of the organizations of the United Nations system, particularly those based in Geneva. As a result of this decision, a second questionnaire was sent concerning banking issues.

I. *Cartes de légitimation*

9. The World Health Organization (WHO) expressed concern about delays in the issuance of *cartes de légitimation*. The Inspectors met with WHO on this matter, and learned that the delays were partially attributed to the Organization's own internal contractual concerns, in particular, the high number of short-term contracts issued to staff in the past which required frequent requests for the issuance and/or renewal of *cartes de légitimation*. WHO informed the Inspectors that measures were underway to issue more fixed-term rather than short-term contracts. It was hoped that this would result in fewer requests for the issuance and/or renewal of *cartes de légitimation*. The Inspectors were further informed that WHO was also seeking to address the matter in cooperation with the United Nations Office at Geneva (UNOG) and the

World Meteorological Organization (WMO), which apparently also faced concerns in this regard. The Inspectors subsequently requested a meeting with the Swiss authorities to discuss this issue.

10. At that meeting, the Permanent Mission of Switzerland to the United Nations informed the Inspectors that the delays in the delivery of *cartes de légitimation* were due to staff changes in the mission during the summer of 2007, and had only been temporary. The Swiss Mission informed the Inspectors that the matter had subsequently been addressed, and that the time frame for the issuance of *cartes de légitimation* is now two to three weeks from the receipt of the request. Additional measures are underway to further streamline the processing of *cartes de légitimation*. The significant volume of work undertaken by the Swiss Mission in the issuance of *cartes de légitimation* is noted. The section deals with approximately 40,000 *cartes de légitimation* per year, for some 200 permanent missions and more than 25 international organizations. It also processes 10,000 renewals annually.

II. Payment of VAT and other taxes

11. United Nations Headquarters has advised that the outstanding reimbursement of taxes on official procurement purchases, and customs duties for locally procured goods, for the Economic Commission for Africa (ECA) amounts to some US\$ 300,000 annually. While no detailed explanation was provided, the Inspectors are of the opinion that the Office of Legal Affairs (OLA) should look into this, with a view to encouraging the host country to improve the policies and procedures for the reimbursement of taxes in accordance with the headquarters agreement.

12. While peacekeeping was not part of the intended scope of the review leading to this Management Letter, the United Nations Headquarters has reported that, between 2005 and 2007, four peacekeeping operations had approximately US\$ 1.4 million in outstanding reimbursements of VAT and other taxes. The Inspectors believe that the reimbursement of taxes paid on officially procured goods should be monitored to ensure the efficiency of the reimbursement process and compliance with the agreements concluded with host countries.

III. Banking restrictions

13. Banking retail service is the only remaining issue of concern in the context of this review, and the focus of this Management Letter, therefore, relates to the banking restrictions faced by some United Nations system staff and officials of certain nationalities. The concern specifically relates to two banking institutions, UBS⁵ and the United Nations Federal Credit Union (UNFCU).

UBS matters

14. UBS has an agreement to provide commercial banking services to UNOG. This agreement allows UNOG to hold a bank account in order to receive funds and contributions, and to make payments (including payroll for staff) in Swiss francs. Included in the commercial banking service agreement is the obligation to provide an on-site service, intended to service the cash needs of meeting participants. Many UNOG staff use the bank's on-site retail service, as it is convenient.

⁵ UBS is a Swiss bank which came into existence in June of 1998, when the Union Bank of Switzerland, founded in 1862, and the Swiss Bank Corporation, founded in 1872, merged. Headquartered in Zürich and Basel, it is Switzerland's largest bank. It maintains seven main offices around the world and branches on all five continents <<http://www.ubs.com/>>.

15. In 2006, the bank informed its customers of Cuban nationality, or who make banking transactions with Cuba, that the following restrictions would apply: a) incoming and outgoing payments in US dollars, Swiss francs and Euros would no longer be accepted; b) US dollar accounts would have to be closed; and c) investments in US dollars could no longer be held. UBS indicated that this was a decision of its head office, and was due to the bank's obligations to comply with international banking regulations, and specifically, the sanctions imposed on Cuba by the United States of America (discussed below).

16. The Inspectors met with a number of officials in UNOG, some of whom were not aware of the situation, but who undertook to take up with UBS the specific issue of incoming and outgoing payments in Swiss francs and Euros, which had been stopped by the bank. The Inspectors consider this to be interpretative on the part of UBS, and exceeded the bank's obligations to comply with international banking regulations. The Inspectors are very satisfied to note that the Financial Resources Management Service of UNOG has now solved this problem. In a letter from UBS, dated 8 June 2007, UNOG was informed that henceforth, all staff and officials of the United Nations system organizations would be able to make payments to the country in question for personal, non-commercial purposes in currencies other than US dollars. UBS stressed that its previous approach was in no way intended to discriminate between staff and officials of different nationalities having accounts with UBS.

17. The issue of banking restrictions appears not to be a concern for staff and officials in New York, as indicated by OLA in its response to the questionnaire issued in the context of this review.

18. The Chief of Legal Services at UNOG indicated that his office was not informed of the issue of banking restrictions with UBS. However, he noted that a separate issue had come to his attention in 2007 concerning UBS restrictions placed on experts of the International Law Commission (ILC).

19. Some members of the ILC had complained that UBS had refused to allow them to open an account, to facilitate the payment of their per diem allowances during their stay in Geneva. The reason given was concern about possible money laundering.

20. This concern was raised in a letter from the Director-General of UNOG to the Swiss authorities, who responded in a letter dated 31 July 2007 that the matter has now been satisfactorily resolved.

21. Although these matters have been resolved, the Inspectors consider it appropriate to make the following recommendations to prevent similar problems arising in the future.

Recommendation 1

The Secretary-General should ensure that commercial entities offering on-site services to United Nations staff and officials guarantee full and equal service to all without discrimination.

Recommendation 2

The Secretary-General should ensure, through appropriate contractual arrangements, that commercial entities offering on-site services to United Nations staff and officials consult the

relevant Department before changing or stopping services to any category of staff or officials who have previously been in receipt of those services.

Matters relating to the United Nations Federal Credit Union

22. It has come to the notice of the Inspectors that the United Nations Federal Credit Union (UNFCU) has recently blocked the accounts held by active and retired United Nations staff or officials of Cuban nationality working in duty stations away from United Nations Headquarters in New York.

23. UNFCU is a federal credit union headquartered in Long Island City, New York, chartered in 1947 pursuant to the Federal Credit Union Act of the United States, and regulated under the authority of the National Credit Union Administration (NCUA).⁶ As such, it is similar to any other financial service provider in the United States of America, and is governed by, and subject to, the laws of that country.

24. A credit union is a cooperative financial institution that is owned and operated by its members. While it provides banking services, UNFCU is a not-for-profit organization, and was set up by and for active and retired staff and officials of the United Nations, its affiliated organizations and associations. It currently has more than 75,000 members located in 210 locations around the world. UNFCU is governed by a volunteer board of directors comprised of current and former United Nations staff and it has representative offices in Geneva, Nairobi, Rome and Vienna. All of its accounts are denominated in US dollars. Unlike UBS, UNFCU has no specific service agreement with the United Nations.

25. The Inspectors met with representatives of UNFCU, both in Geneva and New York. During those meetings, the Inspectors were informed that, in its efforts to serve all its members equally around the world, UNFCU routinely encounters challenges in complying with applicable laws, violations of which carry particularly severe civil and criminal penalties. According to UNFCU, the main challenge is complying with the various sanctions programmes administered by the Office of Foreign Assets Control (OFAC), a division of the United States Treasury Department. Among the sanctions of particular concern is the Cuban Assets Control Regulations, 31 CFR Part 515 (the “Regulations”), which were issued by the United States Government in 1963 and are still in force today. The Regulations place a total freeze on Cuban assets, both governmental and private, and on financial dealings with Cuba.

26. As a result of a data clean-up exercise in 2006, UNFCU proceeded to block the accounts held by Cuban nationals no longer resident in New York, in accordance with the OFAC sanctions. UNFCU has actively pursued this matter with the United States Treasury Department, the United States Department of State, and the United States Permanent Mission to the United Nations, in an effort to find a solution for its non-resident Cuban members. As a result of these initiatives, United States Government agencies have so far agreed to un-freeze these accounts. This enables affected members to move their funds on a one-time lump sum basis, and to transfer the money to non-US financial institutions. The Inspectors commend UNFCU for its efforts to see that all its members are treated equally.

⁶ The National Credit Union Administration (NCUA) is the United States federal agency that supervises and charters federal credit unions and insures savings in federal and most state-chartered credit unions across the country through the National Credit Union Share Insurance Fund (NCUSIF), a federal fund backed by the full faith and credit of the United States government <http://ncua.gov/>.

27. OFAC sanctions also apply to some countries, rather than nationalities, for example, Iran and Myanmar. However, UNFCU has recently been able to secure a license for retirees in Myanmar to do business with UNFCU.

28. UNFCU reiterated its concern about these restrictions on its members to the Inspectors, and highlighted its efforts to promote equal treatment for all its members. UNFCU stressed that it does not discriminate against any nationality. However, it must follow the laws of the United States, under which it is established and is fully subject, including, but not limited to, laws and regulations governing United States economic sanctions.

29. The Inspectors note with appreciation the efforts of OLA to address with the authorities of the United States the banking restrictions faced by some staff and officials of the United Nations. However, the Inspectors believe that negotiations should continue in this regard.

Recommendation 3

The Secretary-General is encouraged to continue to work in close cooperation with the United States Permanent Mission to the United Nations and the United Nations Federal Credit Union with the view to ensuring that all staff and officials of the United Nations are treated equally with regard to banking facilities.