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Supreme Court, U.S.

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OCT 3 1995

Case No.

UNITED STATES SUPREME COURT  
OCTOBER TERM 1995

MARK STEVEN CORRINET  
Plaintiff

vs

THE HON. BOUTROS BOUTROS GHALI,  
SECRETARY-GENERAL OF THE  
UNITED NATIONS

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MOTION FOR LEAVE TO PROCEED AS AN  
ORIGINAL PROCEEDING AND BRIEF IN  
SUPPORT THEREOF

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## TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
MOTION FOR LEAVE TO PERMIT ORIGINAL PROCEEDING	1
BRIEF IN SUPPORT OF MOTION FOR LEAVE TO PERMIT ORIGINAL PROCEEDING	2
I. INTRODUCTION	2
II. FACTUAL SETTING	5
III. ATTEMPTS TO OBTAIN WAIVER OF IMMUNITIES	8
IV. ARGUMENT	9
A. The Proposed Complaint Satisfies the Requirements for an Original Proceedings	9
B. The Plaintiff Has a Valid Claim Before the Supreme Court	10
C. The Secretary-General Abused His Discretion	10
D. The Court Has Jurisdiction To Enforce the Duty Imposed by Section 20.	12
E. Corrinet Will Suffer Irreparable Harm Unless the Court Enforces the Duty.	14
V. CONCLUSION	15

## TABLE OF AUTHORITIES

### Federal Cases

<u>States v. Fitzpatrick</u> , 214 F. Supp. 425 (S.D.N.Y. 1963)	9
--	---

### State Cases

<u>Friedberg v. Santa Cruz</u> , 274 App. Div., 1072, 86 N.Y.S.2d 369 (1949)	9
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### United States Constitution

Article III, Section 2, Clause 2	9
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### United States Statutes

28 U.S.C. Section 1251	2, 9
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### United States Treaties

The 1945 Convention on the Privileges and Immunities of the United Nations 1 UNTS 15 (1946); 21 UST 1418 (1970); TIAS No. 6900	passim
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### Federal Rules of Civil Procedure

F.R.C.P. Rule 65	14
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### United Supreme Court Rules

Rule 17.3	2
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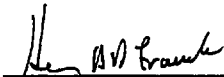
Other Authorities:

D. Bowett, The Law of International  
Organizations (3d ed 1975) 14

PLAINTIFF MARK STEVEN CORRINET (Corrinet) hereby moves the Court pursuant to Rule 17.3 of the Rules of the Supreme Court, for leave to file an original proceeding against a public minister, The Hon. Boutros Boutros Ghali, Secretary-General of the United Nations, pursuant to 28 U.S.C. Section 1251(b)(1). The Complaint and Original Proceeding are served herewith. The Motion is made on the basis that the action qualifies as an original proceeding under 28 U.S.C. Section 1251(b)(1), in that it involves a claim by a United States Citizen against a public minister.

This Motion is based on this motion, the accompanying memorandum of points and authorities, the complaint and original proceedings, and all appendices thereto, and on such other matters as the court may permit during any oral argument.

FRANCK & FRANCK

By:  Dated: September 22 1995  
Herman A.D. Franck V  
Attorney for Plaintiff Mark Steven  
Corrinet

BRIEF IN SUPPORT OF MOTION FOR LEAVE  
TO PROCEED AS AN ORIGINAL PROCEEDING

Plaintiff Mark Steven Corrinet (Corrinet) herewith submits this Brief in support of Motion to Proceed as an Original Proceeding, pursuant to Rule 17.3 of the Rules of the Supreme Court.

I.

INTRODUCTION

Corrinet seeks leave of Court to proceed as an original proceeding before the United States Supreme Court, pursuant to 28 U.S.C. Section 1251(b)(1), which provides:

The Supreme Court shall have original but not exclusive jurisdiction of:

- (1) All actions or proceedings to which ambassadors, other public ministers, consuls, or vice consuls of foreign states are parties.

This action is brought by Mark Steven Corrinet, a citizen and private person, who resides in Benicia, Solano County, California, against The Hon. Boutros Boutros Ghali, Secretary-General of the United Nations. As Secretary-General of the United Nations, The Hon. Boutros Boutros Ghali is a Public Minister, and the equivalent of the Head of State and highest representative of the United Nations.

The proposed original proceeding involves a claim for relief to enforce duties arising from the 1945 Convention on the Privileges and Immunities of the United Nations, 1 UNTS 15(1946); 21 UST 1418(1970), TIAS No. 6900. Specifically, Corrinet is seeking an

order from the United States Supreme Court requiring The Hon. Boutros Boutros Ghali to waive the privileges and immunities afforded to Ron Irwin Ginns, aka Arleigh Gaines, so that Corrinet's pending defamation lawsuit may go forward and be tried before the United States District Court, Northern District of California, or such other appropriate Court as is designated.

Reference is made to the Appendix to the proposed Complaint, which sets forth as Appendix A a true and correct copy of a pending complaint filed February 6, 1995 before the United States District Court, For the Northern District of California, entitled Mark Steven Corrinet vs. United Nations, et al, Action No. C 95 0426. The allegations of that complaint provide the factual setting and circumstances of the present proceedings.

Corrinet emphasizes at the outset that the only proceedings at issue before the United States Supreme Court concerns the enforcement of The Hon. Boutros Boutros Ghali's duties to waive immunities under Section 20 of the Convention on The Privileges and Immunities, which provides:

Privileges and immunities are granted to officials in the interest of the United Nations and not for the personal benefit of the individuals themselves. 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 course of justice and can be waived without prejudice to the interests of the United Nations.



In the case of the Secretary-General, the Security Council shall have the right to waive immunity. (Emphasis added)

The Hon. Boutros Boutros Ghali declined Corrinet's August 6, 1994 written request (Appendix B and C) to waive the immunity as to Mr. Ginns. Corrinet was seeking a waiver of the immunity to permit a defamation action and other common law tort claims, arising out of statements made by Mr. Ginns to members of the Associated Press and other members of the rare documents dealer and collector community, to the effect that Corrinet was a fraud, that the documents he was trying to sell were either not authentic or were valueless, and that his proposed transaction was an illegal tax scheme. (See the factual details of his defamation claim, set forth in the Appendix A, Complaint, pages 7-10.)

The proposed original proceeding seeks Court enforcement of Section 20 of the Convention, to order The Hon. Boutros Boutros Ghali to waive the immunities as to Ginns, so that Corrinet's complaint can go forward without the impediment of any privileges and immunities. By no means is Corrinet intending to try any aspect of his common law tort claims before the United States Supreme Court. Instead, these proceedings are limited to obtaining an order requiring a waiver of the privileges and immunities, whereupon Corrinet's defamation and other related claims for relief would then go forward and be tried before the United States District Court, Northern District of California, or other appropriate court.

## II.

### FACTUAL SETTING

As can be seen from the complaint (Appendix A), Corrinet is a dealer and collector of rare documents and other historically significant items. He is presently the legal owner and possessor of the original signature pages of the United Nations Interim Agreement signed in San Francisco on June 26, 1945 (Interim Agreement). The Interim Agreement was one of two documents signed at San Francisco to create the United Nations, and was signed simultaneous with the Charter of the United Nations.

The Interim Agreement was the operating document of the fledgling United Nations until the formal ratification of the United Nations Charter, which occurred October 24, 1945 ("UN Day"). The Interim Agreement authorized the establishment of the Preparatory Commission of the United Nations, which met in London during 1945 to set up the present day United Nations. The preparatory commission then took on the task of taking the concepts of the Charter and implementing a workable structure for the United Nations. Among its members included Sir David Owen, K.C.M.G., who became the first member of the United Nations Secretariat, a renowned Statesman.

Corrinet has been heading up a project to sell these signature pages, and other additional rare United Nations founding documents, for an asking price in the neighborhood of \$3.0 million. The concept behind the proposed transaction is to find a buyer willing to purchase the collection, including the original signature pages of

the United Nations Interim Agreement, and to then donate the documents to an appropriate charitable organization duly qualified under the United States Tax Code, Section 501(c)(3).

The concept was to have the United Nations designate an appropriate charitable institution, such as the United Nations Association, a sister group to the United Nations, as the recipient of the documents. The United Nations Association is a grass roots group which has a goal of bringing local citizens together to become involved in the affairs of the United Nations. The United Nations Association has subsidiary chapters throughout the World, including a San Francisco based chapter known as United Nations Association - San Francisco (UNA-SF).

Under the proposed transaction, Corrinet would find a buyer for the documents, who would agree to pay Corrinet the asking price of \$3.0 million. The purchaser would then donate the documents to UNA-SF. UNA-SF would then create a public display and public relations presentation of the documents, giving due credit to the purchaser. This display was to occur in connection with the 50th Anniversary Celebrations of the formation of the United Nations, which occurred during 1995, including the June 1995 celebration ceremonies held in San Francisco, after which the documents would be placed on permanent loan to the United Nations for public display at the United Nations headquarters in New York.

The Complaint (Appendix A) further details the personal vendetta which Ginns has against Corrinet, which creates a factual

basis requiring a waiver of immunity (Appendix A, page 7-8, paragraphs 30-32). This feud erupted between Ginns and Corrinet as a result of certain statements of opinion made by Corrinet concerning the method by which Ginns had placed particular values on stamps in the United Nations Philately, which is a United Nations stamp catalog, and lists the retail prices for materials in the stamp world. Ginns was the publisher of this stamp catalog, and became enraged at Corrinet's statements.

Ginns was a member of the 50th Anniversary Celebration Commission of the United Nations, which was chaired by Gillian Sorenson, Under-Secretary-General of the United Nations. When Ginns found out about Corrinet's proposed project to sell the Original Signature pages of the Interim Agreement, he took steps to defame Corrinet, by stating to the Associated Press and members of the rare documents collectors and dealers communities, that Corrinet was a fraud, that the documents were not authentic, that the project was a tax fraud, that neither the UNA-SF nor the United Nations wanted anything to do with the documents, that the documents were near valueless, and that Ginns had to protect the United Nations from "people like Mr. Corrinet." (See Complaint, Appendix A, page 8-9.)

As the complaint (Appendix A, page 9) further details, Ginns knew the remarks to be false when made.

The February 1994 remarks proximately caused Corrinet damages by interrupting a potential transaction in the documents, by destroying a potential press release, and by injuring Corrinet's process of marketing and

promoting his project. (Complaint, Appendix A, page 10, paragraphs 39 and 40).

### III.

#### ATTEMPTS TO OBTAIN WAIVER OF IMMUNITIES

Corrinet's present counsel then began the process of contacting the United Nations, to seek a waiver under Section 20 of the Convention of Privileges and Immunities, to permit a defamation claim and other claims. There were a series of letters, phone calls, and other correspondence between present counsel and counsel for the United Nations, through the office of Hans Corell, Under-Secretary-General for Legal Affairs to the United Nations, and Mr. Jay Pozenal, Esq., of that office. (Complaint, Appendix A, pages 10-13.)

A copy of the August 6, 1994 letter sent to Mr. Jay Pozenal, Esq. by present counsel is set forth in Appendix B, and requests a waiver of the immunity, under Section 20 of the Convention on Privileges and Immunities.

A copy of the October 11, 1994 response from Ms. Sinha S. Basnayake, Director General Legal Division, is set forth as Appendix C. Through that letter, the Secretary-General of the United Nations declined to waive the immunities, by the express statement, "Accordingly, the Secretary-General has decided to maintain the privileges and immunities accorded to Mr. Ginns, as a United Nations official, in respect of Mr. Corrinet's claims." (Appendix C)

#### IV.

##### ARGUMENT

A. The Proposed Complaint Satisfies the Requirements for an Original Proceeding.

Article III, Section 2, clause 2 of the United States Constitution provides:

"In all cases affecting Ambassadors, other public Ministers and Consuls,...the Supreme Court shall have original jurisdiction."

Under 28 U.S.C. Section 1251(b)(1), the Supreme Court has original but not exclusive jurisdiction over "All actions or proceedings to which ambassadors, other public ministers, consuls, or vice consuls of foreign states are parties."

"The constitutional provision and the statute are designed to apply to diplomatic representatives of foreign governments accredited to the United States." United States v Fitzpatrick, 214 F. Supp. 425, 441 (S.D.N.Y. 1963, holding that a member of a United Nations Mission is not entitled to public minister status). Under the holding of Friedberg v. Santa Cruz, 274 App. Div. 1072, 86 N.Y.S.2d 369(1949), "a permanent representative to the United Nations with the rank of ambassador or minister plenipotentiary is entitled to the same privileges and immunities in the territory of the United States as it accords to diplomatic envoys accredited to it." 86 N.Y.S.2d at 370.

Based on the foregoing, the Secretary-General, who is the equivalent of a head of

state, would be entitled to "public minister" status, thus invoking the original jurisdiction of the United States Supreme Court.

B. Plaintiff Has A Valid Claim Before the Supreme Court.

Plaintiff predicts that The Hon. Boutros Boutros Ghali will raise as a defense to the present proceedings a motion under Rule 12(b)(6) of the Federal Rules of Civil Procedure, that the claim fails to state facts sufficient to state a valid claim for relief. In this respect, Defendant are expected to argue that under no circumstances would the Supreme Court have jurisdiction to enforce the duty to waive immunities found in Section 20 of the Convention on Privileges and Immunities. Further, even if the Court did have such jurisdiction, Defendants are expected to argue that under the facts of this case, that the Secretary-General's decision to decline Corrinet's claim was within his discretionary powers, and cannot be set aside by the Court.

C. The Secretary-General Abused His Discretion

As quoted above, Section 20 of the Convention on privileges and immunities sets for a duty to waive "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." There is no caselaw on point, which presents a case of first impression to the Court.

In the present case, the waiver should have been granted, because of the following:

A. The conduct of Ginns has nothing to do with the operations or functions of the United Nations, and instead concerns defamatory remarks made to non-United Nations individuals.

B. The conduct of Ginns was intentional, malicious, and done with the specific intent of causing harm and humiliation to Corrinet. Under Section 20 of the Convention, a waiver should be granted in the interest of justice. The facts of the Complaint (Appendix A) cry out for justice.

C. Ginns was motivated by his personal vendetta against Corrinet, arising long ago from disputes relating to a United Nations stamp catalog. Section 20 emphasizes that "Privileges and Immunities are granted to officials in the interest of the United Nations and not for the personal benefit of the individuals themselves." Ginns' personal vendetta against Corrinet, and Ginns' conduct arising therefrom, should not be the subject of immunity, since it has nothing to do with the interests of the United Nations.

D. Corrinet at all times has been willing to waive any claims against the United Nations, such that any claim against Ginns would not be to the prejudice of the United Nations. Section 20 emphasizes that immunity should be waived if it will not cause "prejudice to the interests of the United Nations." Though the present complaint (Appendix A) names the United Nations as defendant, Corrinet is willing to waive all such claims, and proceed after Ginns alone, as an individual.



Based on the foregoing, Corrinet has made a colorable claim that the refusal to waive the immunities violated the duty imposed under Section 20 of the Convention on Privileges and Immunities. Accordingly, the present motion for leave to proceed as an Original Proceeding should be granted.

D. The Court Has Jurisdiction To Enforce the Duty Imposed by Section 20.

This is the first case to challenge the enforcement of Section 20 of the Convention in Court. Though there is no caselaw on point, the discussions before the United States Senate Committee on Foreign Relations, relative to the 1970 consent to the Convention, are instructive. See Senate Executive Report No. 91-17 (91st Congress, 2d Session March 17, 1970).

During the discussions before the Committee, the Senate heard from Ambassador Charles W. Yost, the then U.S. Permanent Representative to the United Nations. Ambassador Yost described his views of the Convention, and his position that the Convention should be ratified. With respect to Section 14 of the Convention, which sets forth a similar duty to waive by members of the United Nations, and is thus analogous, Ambassador Yost stated (Ex. Report 91-17, page 9):

"I would wish to point out that the Convention contains in article 14 an express provision which states in relevant part: 'Privileges and immunities are accorded to the representatives not for . . . personal benefit . . . but in order to safeguard the independent exercise of their functions. . . . Consequently a member not only has the right but is under a duty to waive the immunity of its representative in any case

where in the opinion of the member the immunity would impede the course of justice.  
... ' *This represents a greater obligation on sending states that exists with regard to diplomats in Washington and is in my view an improvement over existing law and a significant safeguard against any abuse.*"  
(emphasis added)

The safeguard referenced in Section 14 must have some means of being enforced, or else it is not a safeguard at all. Similarly on point are statements made by Mr. John R. Stevenson, Legal Advisor to the Department of State, which were made to the Senate Committee on Foreign Affairs, and are found at Sen. Ex. Rep. 91-17 (91st Con. March 9, 1970) at page 15:

"Article VI grants experts on mission for the United Nations immunities only to the extent necessary for the exercise of their functions during the period of their mission. There would be few people covered by these provisions. The convention stresses the Secretary-General's duty to waive these immunities where failure to do so would impede the course of justice and waiver would be compatible with the work of the United Nations."

The duty expressed in Section 20 of the Convention on Privileges and Immunities must be enforceable in the Courts of the United States. Otherwise, it would merely be a duty without any obligation or check by outside powers. To have an unenforceable duty is similar to the concept of an illusory contract, involving a promise made subject to a condition where the promisor controls the condition (eg, "I'll pay you \$100 on the condition that I wear a red tie"). A duty without the opportunity of

enforcement is no duty at all, which would make a mockery out of the Convention on Privileges and Immunities.

The Court should further consider the trend in modern international law jurisprudence to limit the application of immunities. "The scope of immunity of international organizations is now almost always limited to such privileges and immunities as are necessary for the fulfillment of its purposes and its officers enjoy only those privileges and immunities necessary for the independent exercise of their function." D. Bowett, *The Law of International Organizations* 308 (3d ed 1975).

Accordingly, the United States Courts can enforce the terms of the duty set forth in Section 20 of the Convention, and should do so in this case.

E. Corrinet Will Suffer Irreparable Harm Unless the Court Enforces the Duty.

Unless the Court agrees to enforce the duty, Corrinet will suffer irreparable harm, for which he will have no adequate legal remedy. If the Court does not enforce the duty, Corrinet will have no legal remedy, and his case may never be heard directly on the merits.

Injunctive relief, in the form of a preliminary and permanent injunction, and pursuant to Federal Rules of Civil Procedure Rule 65, is requested, ordering The Hon. Boutros Boutros Ghali to waive the privileges and immunities afforded to Ginns and Sorenson, and to permit the pending defamation and other claims (Appendix A) to go forward without the impediment of such privileges and immunities.

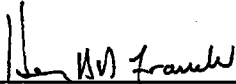
V.

CONCLUSION

Based on the foregoing, the Court should grant the Motion for leave to permit this original proceeding.

FRANCK & FRANCK

By:



Dated: September 22 1995

Herman A.D. Franck V

Attorney for Plaintiff Mark Steven  
Corrinet

PROOF OF SERVICE BY MAIL

The undersigned declares as follows:

That on the date signed below, I served by First Class Mail, Postage Prepaid, the following documents:

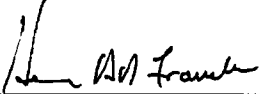
Motion for Leave to Proceed as an Original Proceeding.

On all parties to this proceeding, by mailing the above stated documents to the following address:

Hon. Boutros Boutros Ghali  
Secretary-General of the United Nations  
United Nations, New York 10017

Sinha S. Basnayake  
Director, General Legal Division  
United Nations  
Room S-3430  
United Nations, New York 10017

I declare under oath and under penalty of perjury that the foregoing is true and correct and that this declaration was executed this September 22, 1995 at San Francisco, California

  
\_\_\_\_\_  
Herman A.D. Franck V





