No. 136, Original

In The

Supreme Court of the United States

CYNTHIA BRZAK and NASR ISHAK,

Plaintiffs,

v.

UNITED NATIONS, KOFI ANNAN,
RUUD LUBBERS, WENDY CHAMBERLIN,
WERNER BLATTER, KOFI ASOMANI,
RAYMOND HALL, A.-W. BIJLEVELD, DAISY BURUKU,

Defendants.

PLAINTIFFS' MOTION FOR LEAVE TO FILE COMPLAINT IN AN ORIGINAL ACTION AND PLAINTIFFS' BRIEF IN SUPPORT AND COMPLAINT

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MOTION FOR LEAVE TO FILE COMPLAINT IN AN ORIGINAL ACTION

NOW come the Plaintiffs in the above-titled action and move this Honorable Court for leave to file the Complaint attached hereto as Appendix 1 with the Supreme Court as an original action pursuant to Article III, Section 2 of the U.S. Constitution, and 28 U.S.C. §1251(b)(1). The attached Complaint seeks redress to remedy retaliation committed against the Plaintiffs for their activities as employees of the Defendant United Nations, which activities were protected under Title VII of the Civil Rights Act of 1964, as amended, 42. U.S.C. §2000 *et seq.* ("Title VII"), as well as for indecent battery, for intentional infliction of emotional distress, for constructive termination, and for civil substantive violations of RICO under 18 U.S.C. §1962(c), and civil conspiracy violations of RICO under 18 U.S.C. §1962(d).

As grounds for this motion, the Plaintiffs respectfully submit that this action arises out of the deeds of individual Defendants committed in their capacity as employees of the United Nations against the Plaintiffs. The Defendants Annan, Lubbers, and Chamberlin are now or were formerly senior officials of the United Nations.[1] At all operative times pertinent to the attached Complaint, it is the Plaintiffs' information and belief that the Defendants

[1] At all operative times pertinent to this Complaint, the Defendant Annan was and is presently the Secretary General of the United Nations, the Defendant Lubbers was the United Nation's High Commissioner for Refugees through February 2005 when he resigned; and the Defendant Chamberlin was and is presently the UN's Deputy High Commissioner for Refugees. The positions of Defendants Lubbers and Chamberlin are equivalent to the rank of a United Nations' Assistant Secretary General.

Annan, Lubbers and Chamberlin were registered and accredited with the United States State Department as "diplomatic envoys" pursuant to Article 19 of the Convention on the Privileges and Immunities of the United Nations (21 U.S.T. 148 [1970]), entitling them thereunder to " . . . the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law."

Article III of the U.S. Constitution, and in particular 28 U.S.C. §1251, section b 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; . . . . "

The Plaintiffs respectfully submit to this Honorable Court that as the Defendants Annan, Lubbers and Chamberlin, in their capacities as senior United Nations officials, during all operative times pertinent to the attached Complaint, possessed all the indicia, and enjoyed all the privileges and immunities, of diplomatic agents of foreign states,[2] and as the United Nations is a body politic created by Charter to which almost all foreign states are a party including the United States, such Defendants are by analogy the equivalent of "other public ministers" or

[2] Although at no time where any of the Defendants in fact diplomatic envoys of foreign states, nor where they acting as diplomatic agents for a sovereign state, nor is the United Nations itself entitled to the protection or grant of sovereign immunity as it did not exist at the time of the adoption of the U.S. Constitution, nor is it a sovereign state.

"consuls" as set out in said Article III of the US Constitution, and 28 U.S.C. §1251, section b(1), and therefore, the Complaint attached hereto invoking this Honorable Court's original jurisdiction is appropriate and admissible.

A brief in support of this motion is attached hereto.

In the event this Honorable Court in its statutory discretion under 28 U.S.C. §1251 refuses to allow the above motion, as the Plaintiffs have or will shortly file the attached complaint with an appropriate Federal District Court in order to preserve the Plaintiffs' rights under said Title VII, and their other claims contained therein, the Plaintiffs respectfully request the Court to address and adjudicate, prior to such dismissal or referral, the Plaintiffs' assertion that the Convention on the Privileges and Immunities of the United Nations (21 U.S.T. 148 [1970]), and the International Organisations Immunities Act (22 U.S.C. §288 *et seq.*) are unconstitutional and violate, including without limitation, the Plaintiffs' due process rights under the Fifth and Fourteenth Amendments to the Constitution, as well as the Plaintiffs' equal protection rights under the said Fourteenth Amendment.

As grounds for this request, the Plaintiffs respectfully note that in the event the attached Complaint is dismissed by this Honorable Court and refiled in an appropriate District Court, it is likely that the Defendants will seek dismissal of the attached Complaint on the basis of the privileges and immunities purportedly granted to them by the Convention on the Privileges and Immunities of the United Nations (21 U.S.T. 148 [1970]), and the International Organizations Immunities Act (22 U.S.C. §288 *et seq.*). Based on the few reported cases involving suits against the United Nations and other international

organizations in US federal and state courts, and existing precedent, Plaintiffs believe it is likely that such relief will be granted to the Defendants. Plaintiffs will then be forced to begin a long appeal process that will likely end back with this Honorable Court as the Plaintiffs are challenging the very constitutionality of the Convention on the Privileges and Immunities of the United Nations (21 U.S.T. 148 [1970]), and the International Organizations Immunities Act (22 U.S.C. §288 *et seq.*). The Plaintiffs respectfully submit that it would be in the interest of justice and its economy for this Honorable Court to address the Plaintiffs' constitutional claims presented, pursuant to Supreme Court Rule 17.5, prior to its dismissal, or referral, if any, of the attached Complaint to an appropriate District Court.

The Plaintiffs also respectfully submit that the issues they raise against the constitutionality of the Convention on the Privileges and Immunities of the United Nations (21 U.S.T. 148 [1970]), and the International Organizations Immunities Act (22 U.S.C. §288 *et seq.*) are of exceptional importance justifying immediate Supreme Court review. The recent so-called Oil for Food scandal involving the United Nations, as well as the claims made in the attached complaint, clearly demonstrate the adverse effects that result from the inappropriate and unconstitutional application of the doctrine sovereign immunity to the United Nations and its senior officials.

In the event this Honorable Court decides to address pursuant to Supreme Court Rule 17.5 the constitutional claims of the Plaintiffs prior to dismissal or referral of the attached Complaint to an appropriate District Court, the Plaintiffs respectfully request additional leave to fully brief the underlying constitutional issues presented.

Respectfully submitted this 3rd day of May 2006.

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QUESTION PRESENTED

Whether this Court, pursuant to its original but nonexclusive jurisdiction under 28 U.S.C. §1251(b)(1), should grant leave to file a Complaint in an original action.

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JURISDICTION

Plaintiffs invoke this Honorable Court's original jurisdiction under 28 U.S.C. §1251(b)(1), and Article III of the U.S. Constitution on the grounds that this is a proceeding involving " . . . actions or proceedings to which ambassadors, other public ministers, consuls, or vice consuls of foreign states are parties. . . . ".

CONSTITUTIONAL AND/OR STATUTORY PROVISIONS INVOLVED

The First Amendment to the Constitution of the United States provides as follows:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Fifth Amendment to the Constitution of the United States provides as follows:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Fourteenth Amendment, Section 1, of the Constitution of the United States provides as follows:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article II, Section 3, of the Constitution of the United States provides as follows:

> He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Article III, Section 2, Clause 1 of the Constitution of the United States provides as follows:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; – to all Cases affecting Ambassadors,

> other public Ministers and Consuls; – to all Cases of admiralty and maritime Jurisdiction; – to Controversies to which the United States shall be a Party; – to Controversies between two or more States; – between a State and Citizens of another State; – between Citizens of different States; – between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Article IV, Section 2, Clause 1 of the Constitution of the United States provides as follows:

> The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

The International Organizations Immunities Act (22 U.S.C. §288) provides, in relevant part, as follows:

> For the purposes of this subchapter, the term "international organization" means a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities provided in this subchapter. The President shall be authorized, in the light of the functions performed by any such international organization, by appropriate Executive order to withhold or withdraw from any such organization or its officers or employees any of the privileges, exemptions, and immunities provided for in this subchapter (including the amendments

> made by this subchapter) or to condition or limit the enjoyment by any such organization or its officers or employees of any such privilege, exemption, or immunity. The President shall be authorized, if in his judgment such action should be justified by reason of the abuse by an international organization or its officers and employees of the privileges, exemptions, and immunities provided in this subchapter or for any other reason, at any time to revoke the designation of any international organization under this section, whereupon the international organization in question shall cease to be classed as an international organization for the purposes of this subchapter.

28 U.S.C. §1251(b)(1) provides, in relevant part, as follows:

> (b) 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 . . .

42 U.S.C. §2000e-3(a) provides, in relevant part, as follows:

> (a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has

> opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

The Convention on the Privileges and Immunities of the United Nations (21 U.S.T. 148) provides, in relevant part, as follows:

> . . . Article 105 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes and that representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization . . .

Article 1 of the Vienna Convention (23 U.S.T. 3227) provides, in relevant part, as follows:

> (d) The "members of the diplomatic staff" are the members of the staff of the mission having diplomatic rank;
>
> (e) A "diplomatic agent" is the head of the mission or a member of the diplomatic staff of the mission . . .

Article 3 of the Vienna Convention (23 U.S.T. 3227) provides, in relevant part, as follows:

> The functions of a diplomatic mission consist, *inter alia*, in:
>
> (a) Representing the sending State in the receiving State;

(b) Protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;

(c) Negotiating with the Government of the receiving State;

(d) Ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;

(e) Promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations . . .

Article 31 of the Vienna Convention (23 U.S.T. 3227) provides, in relevant part, as follows:

A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction . . .

Article 6.1 of the European Convention on Human Rights provides:

Article 6. Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to

the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

STATEMENT OF FACTS

Plaintiffs request this Honorable Court's leave to file a Complaint in an original action against the Defendant United Nations and several of its senior and mid-level officials.

1. The Plaintiff Brzak is an American national and a 26-year veteran of the United Nation's High Commissioner for Refugees subdivision, which is headquartered in Geneva, Switzerland. The United Nations is a body politic headquartered in New York City, New York, created by treaty in 1945, but it is not a sovereign state, nor an instrumentality of any one sovereign state.

2. The Plaintiff Ishak is a French/Egyptian national, and a 22-year veteran of the United Nation's High Commissioner for Refugees subdivision, which is headquartered in Geneva, Switzerland.

3. On or about 18 December 2003, Defendant Lubbers, while then UN High Commissioner for Refugees,[1] did commit indecent battery upon Plaintiff Brzak, in his executive offices in such an outrageous and inappropriate manner as to amount to actionable sexual harassment

[1] UNHCR is a subdivision of the United Nations, with its headquarters located in Geneva, Switzerland, although all UNHCR staff are UN staff members, and the UNHCR maintains a representative office at the UN in New York.

under Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000e-3(a)).

4. Plaintiff Brzak filed an internal complaint against Defendant Lubbers' actions with the UN's Office of Internal Oversight Services (OIOS), which conducted an investigation into the complaint, and ultimately reported to Defendant Annan that it had confirmed Plaintiff Brzak's complaint,[2] and recommended that appropriate disciplinary sanctions be applied to Defendant Lubbers (Apps. 5-30). Retaliation against Plaintiff Brzak began almost immediately after Defendant Lubbers was informed of her complaint, and such retaliation was the subject of two further official complaints by her to OIOS in June and September 2004 (Apps. 30-38). When, in July 2004, Defendant Annan ignored the clear and unequivocal findings of the June OIOS report, and instead purported to publicly exonerate Defendant Lubbers, Plaintiff Brzak filed a formal appeal action with the UN's internal justice system, so-called. Due to gross substantive and procedural deficiencies inherent to the UN's internal justice system, Plaintiff Brzak voluntarily withdrew her internal complaint against the Defendant Lubbers without prejudice in October 2004.

5. Instead of attempting to put this sad and symptomatic incident behind them, the Defendants named

[2] Finding four other women who had come forward during the investigation to complain of Defendant Lubbers' inappropriate advances towards them, leading OIOS to conclude in its report at paragraph 60 that Defendant Lubbers "lacks the requisite integrity" to be the UN High Commissioner for Refugees (Apps. 28-29, paragraph 60).

herein[3] continued to retaliate against Plaintiff Brzak for her actions in bringing complaints against Defendant Lubbers' actions which were actionable under said Title VII, which retaliation continues through the present day, once again in violation of said Title VII (42 U.S.C. §2000e-3(a)). Such retaliation is the basis in part of the Complaint attached hereto, and includes without limitation accessing and publicly disseminating Plaintiff Brzak's confidential medical records held by UNHCR in order to impugn her reputation or credibility, sending her a notice that her post was likely to be abolished resulting in her termination from service (dated 12 May 2005) (Apps. 85-89), withholding a performance evaluation for the past 2 years which will adversely affect her promotion prospects within the UN, and inhibit her ability to find employment in the private sector, and instituting special conditions of employment applicable only to Plaintiff Brzak.

6. As a result of the foregoing reprehensible and adverse employment behaviour on the part of the Defendant United Nations and its officials named above, Plaintiff Brzak has suffered severe personal injury on account of the discrimination and retaliation described herein.

7. The Plaintiff Ishak is an employee of the UNHCR's internal investigation body (UNHCR Office of the Inspector General). Shortly after Defendant Lubbers' indecent battery upon the Plaintiff Brzak in December 2003, she approached Plaintiff Ishak on an informal basis seeking his counsel and advice on how to deal with the

[3] Only the Defendants Annan, Lubbers and Chamberlin were believed to be registered and accredited with the U.S. State Department; the remainder of the Defendants are current or former UN staff members holding ranks lower than that of Assistant Secretary General.

actions of Defendant Lubbers. He advised her, in view of the lack of legal protection within the United Nations for so-called whistleblowers who report misconduct of senior United Nations' officials, to make a formal report of Defendant Lubbers' conduct to the UN's Office of Internal Oversight Services (OIOS), which she in fact did. It is the Plaintiff Ishak's information and belief that when his role in informally counseling the Plaintiff Brzak to seek a formal complaint against the Defendant Lubbers became known, he was marked for retaliation by the UN Administration and its senior officials, also in violation of said Title VII (42 U.S.C. §2000e-3(a)). Such retaliation has resulted in the Plaintiff Ishak being recommended for promotion in 2004 and 2005 by the UNHCR Promotions Board, only to learn that such recommendations have been ignored by the UN Administration without reason or explanation, causing Plaintiff Ishak great injury and monetary loss. The Plaintiff Ishak also believes that the Defendant Lubbers, prior to his resignation, upon learning of Plaintiff Ishak's role in counselling the Plaintiff Brzak, did on at least two occasions attempt to secure the abolition of the Office of the UNHCR Inspector General to which the Plaintiff Ishak was attached.

8. On or about 28 October 2005, the Plaintiff Brzak filed a charge under oath with the New York office of the U.S. Employment Opportunity Commission (EEOC) against the Defendants named in the attached Complaint (App. 1). Said charge was accepted by the EEOC, but on or about 31 January 2006, the EEOC issued the Plaintiff Brzak a letter of Dismissal and Notice of Rights, claiming simply, without explanation or argument, that the EEOC had "no jurisdiction" (Apps. 134-136). This letter was received by the Plaintiff Brzak's counsel on 6 February 2006, advising that

suit under Title VII against the subject Defendants had to be filed within ninety (90) days of such receipt.

LEGAL ARGUMENT

This Honorable Court should grant Plaintiffs' Motion for Leave to File a Complaint in an Original Action. This case warrants the exercise of this Court's original jurisdiction because there are no other more appropriate fora available for deciding claims of diplomatic immunity, particularly in view of the fact that the Plaintiffs assert that the Convention on the Privileges and Immunities of the United Nations (21 U.S.T. 148 [1970]), and the International Organizations Immunities Act (22 U.S.C. §288 *et seq.*) are unconstitutional and violate, including without limitation, the Plaintiffs' due process rights under the Fifth and Fourteenth Amendments to the Constitution, as well as the Plaintiffs' equal protection rights under the said Fourteenth Amendment.[4]

[4] Although these assertions are not directly relevant to the question presently before the Court, namely whether the Court should allow the Plaintiffs' Motion for Leave to File a Complaint in Original Action, the Defendants will undoubtedly, either in the opposition brief, or in their answer in the event the attached Complaint is referred to a District Court of competent jurisdiction by this Court, plead that the Complaint should be dismissed on the basis of the Defendants' enjoyment of privileges and immunities under the Convention on the Privileges and Immunities of the United Nations (21 U.S.T. 148 [1970]), and the International Organisations Immunities Act (22 U.S.C. §288 *et seq.*). The Plaintiffs believe that dismissal of their claims on the basis of claimed diplomatic immunity would be unconstitutional, and have hereinafter briefly set out the core elements of their arguments in this regard, although, as stated in the subject Motion, in the event this Honorable Court indicates that it is inclined to address or adjudicate the Plaintiffs'

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constitutional claims, the Plaintiffs would respectfully request a short further leave in which to fully brief such constitutional claims.

I. *Argument*

A. *The Defendants are Neither Sovereign States nor their Diplomatic Agents, and are therefore not entitled to full Diplomatic Immunity.*

Article 31 of the Vienna Convention (23 U.S.T. 3227) provides in part: "[A diplomatic agent] shall also enjoy immunity from the civil or administrative jurisdiction of the receiving State. . . . " A "diplomatic agent" is defined by Article 1(e) as "the head of the mission or a member of the diplomatic staff of the mission," while the "diplomatic staff" consists of the "members of the mission having diplomatic rank." Article 1(d). No definition of "mission" is offered, but the functional description of its duties in Article 3 suggests that the Defendants are not "diplomatic agents" of a mission:

> "1. The functions of a diplomatic mission consist, *inter alia*, in:
>
> (a) Representing the sending State in the receiving State;
>
> (b) Protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;
>
> (c) Negotiating with the Government of the receiving State;
>
> (d) Ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;
>
> (e) Promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations;
>
> 2. Nothing in the present Convention shall be construed as preventing the performance of consular functions by a diplomatic mission."

Employees of the United Nations are separate and distinct from persons designated by foreign governments to serve as their foreign representatives in or to the United Nations. *United States v. Melekh*, 190 F. Supp. 67, 79-80 (S.D.N.Y. 1960); *United States v. Egorov*, 222 F. Supp. 106, at 108 (E.D.N.Y. 1963). *Accord*, *United States v. Melekh*, *supra.*; *United States v. Coplon*, 84 F. Supp. 472, 474 (S.D.N.Y. 1949) (Coplon I). *And see Mpiliris v. Hellenic Lines, Ltd.*, 323 F. Supp. 865, 882-883 (S.D.Tex. 1969), *aff'd*, 440 F.2d 1163 (5th Cir. 1971). See also Ling, *A Comparative Study of the Privileges and Immunities of United Nations Member Representatives and Officials with the Traditional*

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Privileges and Immunities of Diplomatic Agents, 33 Wash. & Lee L.Rev. 91 (1976):

> The exemptions and immunities of United Nations officials in the United States, as stipulated by the terms of the United Nations Charter and the General Convention, are designed solely to protect the independence of officials in their United Nations functions. No exemption from local jurisdiction is provided officials for acts in their private capacity. (Footnote omitted). *Id.* at 138.

As Ling also points out: "[I]t is the work rather than the official which is protected," with the result that such officials "must obey all ordinary laws governing their private actions." *Id.* at 129.

Based on the foregoing, notwithstanding the fact that the Defendants Annan, Lubbers, and Chamberlin may have been registered and accredited with the U.S. State Department as diplomatic agents and imbued with the according privileges and immunities, it is clear that none of them were true "diplomatic agents" within the meaning of the Vienna Convention (so-called traditional "sovereign immunity"), and are not therefore entitled to the absolute immunity provided by the Convention on the Privileges and Immunities of the United Nations (21 U.S.T. 148 [1970]). Moreover, as the allegations of the Plaintiffs contained in the attached Complaint clearly indicate that the alleged actions of the Defendants Annan, Lubbers, and Chamberlin and the other defendants did not fall within their UN functions, and are instead acts committed in their private capacity (Title VII retaliation, indecent battery, intentional infliction of emotional distress, RICO racketeering violations, and constructive termination), nor are the Defendants therefore entitled to the limited (so-called "functional") immunity found in the International Organizations Immunities Act (22 U.S.C. §288 *et seq.*). Accordingly, the Plaintiffs respectfully submit that the present case may proceed on the merits.

B. *Even If some or all of the Defendants Are Entitled to Immunity under either 22 U.S.C. §288 et seq. or 21 U.S.T. 148, the Application of Such Immunity to the Present Case Will Violate the Plaintiffs' Constitutionally Protected Rights.*

Access to U.S. courts in order to claim the protection of laws is the essence of American civil liberty, and finds its robust origins in *Marbury v. Madison*, 1 U.S. 137 at 163 (1785):

> "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws whenever he receives an injury. One of the first duties of government is to afford that protection. In Great Britain, the King himself is sued in the

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respectful form of a petition, and he never fails to comply with the judgment of his court.

In the third volume of his Commentaries, page 23, Blackstone states two cases in which a remedy is afforded by mere operation of law.

> 'In all other cases,' he says, it is a general and indisputable rule that where there is a legal right, there is also a legal remedy by suit or action at law whenever that right is invaded.

And afterwards, page 109 of the same volume, he says,

> 'I am next to consider such injuries as are cognizable by the Courts of common law. And herein I shall for the present only remark that all possible injuries whatsoever that did not fall within the exclusive cognizance of either the ecclesiastical, military, or maritime tribunals are, for that very reason, within the cognizance of the common law courts of justice, for it is a settled and invariable principle in the laws of England that every right, when withheld, must have a remedy, and every injury its proper redress.'

The Government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested legal right."

At page 164, Justice Marshall continued for the Court:

> " . . . Is it to be contended that the heads of departments are not amenable to the laws of their country?
>
> Whatever the practice on particular occasions may be, the theory of this principle will certainly never be maintained. No act of the Legislature confers so extraordinary a privilege, nor can it derive countenance from the doctrines of the common law. After stating that personal injury from the King to a subject is presumed to be impossible, Blackstone, Vol. III, p. 255, says,
>
> > ' . . . but injuries to the rights of property can scarcely be committed by the Crown without the intervention of its officers, for whom, the law, in matters of right, entertains no respect or delicacy, but furnishes various methods of detecting the errors and misconduct of those agents by whom the King has been deceived and induced to do a temporary injustice.' "

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While the decisions of this Court have grounded the right of access to courts on numerous authorities, the totality of the Court's holdings suggests that such access is a fundamental constitutional right and not to be barred lightly. In support thereof, see Article IV, Privileges and Immunities Clause, *Chambers v. Baltimore & Ohio R. Co.*, 207 U.S. 142, 148, 28 S.Ct. 34 (1907); *Blake v. McClung*, 172 U.S. 239, 249, 19 S.Ct. 165 (1898); *Slaughter-House Cases*, 83 U.S. 36, 79 (1872); the First Amendment Petition Clause, *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 741, 103 S.Ct. 2161 (1983); *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 513, 92 S.Ct. 609 (1972); the Fifth Amendment Due Process Clause, *Murray v. Giarratano*, 492 U.S. 1, 11, n. 6, 109 S.Ct. 2765 (1989) (plurality opinion); *Walters v. National Assn. of Radiation Survivors*, 473 U.S. 305, 335, 105 S.Ct. 3180 (1985); and the Fourteenth Amendment Equal Protection, *Pennsylvania v. Finley*, 481 U.S. 551, 557, 107 S.Ct. 1990 (1987); and Due Process Clauses, *Wolff v. McDonnell*, 418 U.S. 539, 576, 94 S.Ct. 2963 (1974); and *Boddie v. Connecticut*, 401 U.S. 371, 380-381, 91 S.Ct. 780 (1971).

Interestingly, the European Court of Human Rights opined in a judgment (Application 28934/95 of 18 February 1999) concerning an international organization enjoying functional immunity that:

> 57. The Court is of the opinion that where States establish international organizations in order to pursue or strengthen their cooperation in certain fields of activities, and where they attribute to these organizations certain competences and accord them immunities, there may be implications as to the protection of fundamental rights. **It would be incompatible with the purpose and object of the Convention, however, if the Contracting States were thereby absolved from their responsibility under the Convention in relation to the field of activity covered by such attribution.** It should be recalled that the Convention is intended to guarantee not theoretical or illusory rights, but rights that are practical and effective. **This is particularly true for the right of access to the courts in view of the prominent place held in a democratic society by the right to a fair trial** (citations omitted; emphasis added).

The ECHR ultimately found that the organization's immunity from suit in a national court did not violate the European Convention on Human Rights Article 6.1 (Fair trial) as the alternative system of dispute resolution offered by the organization satisfied the minimum requirements of said Article 6.1. However, the Plaintiffs herein would

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1. This Court has observed that its original jurisdiction (28 U.S.C. §1251) should be exercised sparingly.[5] The court generally declines jurisdiction if another forum is available "where there is jurisdiction over the named parties, where the issues tendered may be litigated, and where appropriate relief may be had." *Illinois v. City of Milwaukee*, 406 U.S. 91, 93, 92 S.Ct. 1385 (1972). However, in this matter, if the Court were to dismiss or otherwise refer the Complaint to a U.S. District Court of appropriate jurisdiction, it is likely that the merits will not be litigated before the case is dismissed on the basis of the Defendants' privileges and immunities pursuant to the Convention on the Privileges and Immunities of the United Nations (21 U.S.T. 148 [1970]), and the International Organizations Immunities Act (22 U.S.C. §288 *et seq.*). *See Mendaro v. The World Bank*, 717 F.2d 610, 230 U.S.App.D.C. 333 (D.C. Cir. 1983).

Additionally, the question of the Plaintiffs' assertion that the Convention on the Privileges and Immunities of the United Nations (21 U.S.T. 148 [1970]), and the International Organizations Immunities Act (22 U.S.C. §288

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argue that the alternative system of dispute resolution currently provided by the United Nations to its serving staff members does not meet the minimum standards of due process required for the enforcement of arbitration agreements by this Court in *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 30-33 (1991); indeed it was for this reason that the Plaintiff Brzak withdrew her internal UN appeal without prejudice in October 2004.

[5] See also *South Carolina v. Regan*, 465 U.S. 367, 400-401, 104 S.Ct. 1107 (1984) (O'Connor, J., concurring in the judgment) ("An original party establishes that a case is 'appropriate' for obligatory jurisdiction by demonstrating, through 'clear and convincing evidence,' that it has suffered an injury of 'serious magnitude' and that it otherwise will be without an alternative forum." (citations omitted)).

et seq.) are unconstitutional will not likely be settled until addressed definitively by this Honorable Court. Finally, the Plaintiffs respectfully submit that the attached Complaint and Appendices set out sufficient facts for the Court to find through clear and convincing evidence that the Plaintiffs have suffered injuries of a serious magnitude on account of the actions of the Defendants, thereby further warranting the invocation of original jurisdiction.

2. Plaintiffs recognize that the Executive Branch's determination of a litigant's diplomatic status is a political question. This determination goes to the heart of the President's constitutionally prescribed power to conduct foreign affairs and to his exclusive authority "to receive Ambassadors and other public Ministers." U.S. Const. Art. II, Section 3. Thus, "the courts have generally accepted as conclusive the views of the State Department as to the fact of diplomatic status." *Abdulaziz v. Metropolitan Dade County*, 741 F.2d 1328, 1331 (11th Cir. 1984). *See, e.g., In re Biaz*, 135 U.S. 403, 431-432, 10 S.Ct. 854 (1890); *Carrera v. Carrera*, 174 F.2d 496, 497, 84 U.S.App.D.C. 333 (D.C. Cir. 1949); *United States v. Fitzpatrick*, 214 F. Supp. 425, 433 (S.D.N.Y. 1963); *United States v. Coplon*, 88 F. Supp. 915, 920-921 (S.D.N.Y. 1950). Here, the Plaintiffs are certain that the State Department, if invited to make a Statement of Interest of the United States in the present action, will confirm the diplomatic accreditation of Defendants Annan, Lubbers and Chamberlin.

3. Furthermore, as the Defendants Annan, Lubbers and Chamberlin, in their capacities as senior United Nations officials, during all operative times pertinent to the attached Complaint, possessed all the indicia, and enjoyed all the privileges and immunities, of diplomatic agents of foreign states (although they are clearly not

diplomatic agents of any foreign state), and as the United Nations is a body politic created by Charter[6] to which more than 150 foreign states are a party including the United States, such Defendants are by analogy, for the sole purpose of determining the invocation of this Court's original jurisdiction, the equivalent of "other public ministers" or "consuls" as set out in said Article III of the U.S. Constitution, and 28 U.S.C. §1251, section b(1), and, the Complaint attached hereto invoking this Honorable Court's original jurisdiction is therefore appropriate and admissible.

CONCLUSION

The motion for leave to file a Complaint in an Original Action should be granted.

Respectfully submitted this 3rd day of May 2006.

EDWARD PATRICK FLAHERTY
Counsel of Record for Plaintiffs
SCHWAB, FLAHERTY, HASSBERGER & CRAUSAZ
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CH-1211 Geneva 17, Switzerland
Tel: 4122.840.5000

[6] Although the United Nations is not in any way a sovereign state entitled to the protection or grant of sovereign immunity, nor was it in existence at the time of the adoption of the U.S. Constitution.

APPENDIX 1

[EEOC #160-2006-01029]

US Equal Employment
Opportunity Commission
(EEOC)
New York District Office
33 Whitehall Street
New York, New York 10004
USA

28 October 2005, Geneva

CHARGE OF DISCRIMINATION AND RETALIATION UNDER TITLE VII of the CIVIL RIGHTS ACT of 1964

1. The name, address, and telephone number of the person filing the charge:

Ms. Cynthia Brzak[1], c/o Schwab, Flaherty, Crausaz, Hassberger & Associés, case postale 510, Geneva 17, Switzerland. Tel: 4122 840 5000; Fax: 4122 840 5055.

2. The name, address, and telephone number of the company, employment agency, or union that the charge is filed against, and the number of employees (or union members), if known;

[1] One or more other UNHCR staff members who were retaliated against by one or more of the above mentioned Respondents on account of their assistance to the Claimant in reporting the violations of Title VII detailed herein may soon file separate charges with the EEOC, which new charges, as they originate in the same set of facts or circumstances as the current charges, will be requested by said new claimants to be joined with the current charges in the interest of justice and efficiency.

United Nations, 1 UN Plaza, New York, NY 10017, USA; Tel: 1 212 963 1234;

Kofi Annan, 1 UN Plaza, New York, NY 10017, USA; Tel: 1 212 963 1234;

Ruud Lubbers, Rotterdam, The Netherlands, current address and telephone number unknown;

UN High Commissioner for Refugees, PO Box 2500, Geneva 2, Switzerland, CH-1211, 4122 739 8111;

Werner Blatter, c/o UNHCR, PO Box 2500, Geneva 2, Switzerland, CH-1211, 4122 739 8111;

Wendy Chamberlin, c/o UNHCR, PO Box 2500, Geneva 2, Switzerland, CH-1211, 4122 739 8111;

Kofi Asomani, c/o UNHCR, PO Box 2500, Geneva 2, Switzerland, CH-1211, 4122 739 8111;

Raymond Hall, c/o UNHCR, PO Box 2500, Geneva 2, Switzerland, CH-1211, 4122 739 8111;

A-W Bijleveld, c/o UNHCR, PO Box 2500, Geneva 2, Switzerland, CH-1211, 4122 739 8111;

Daisy Buruku, c/o UNHCR, PO Box 2500, Geneva 2, Switzerland, CH-1211, 4122 739 8111; and

Such other Respondents subsequently identified in the course of these proceedings.

The United Nations currently employs in excess of 15 employees.

3. A short description of the event(s) with supporting documentation (if any) which caused the person filing the charge to believe that his or her rights were violated;

On or about 18 December 2003, Respondent Lubbers, while then UN High Commissioner for Refugees[2], did indecently assault the charging party, Ms. Brzak, in his executive offices in such an outrageous and inappropriate manner as to amount to actionable sexual harassment under Title VII of the Civil Rights Act of 1964.

Ms. Brzak filed an internal complaint against Mr. Lubbers' actions with the UN's Office of Internal Oversight Services (OIOS), which conducted an investigation into the complaint, and ultimately reported to Mr. Annan that it had confirmed Ms. Brzak's complaint, and recommended that appropriate disciplinary sanctions be applied to Mr. Lubbers (Annex 1). Retaliation against her began almost immediately after Mr. Lubbers was informed of her complaint, and such retaliation was the subject of two further official complaints by her to OIOS in June and September 2004 (Annexes 2 and 3 attached). When in July 2004 Mr. Annan ignored the clear and unequivocal findings of the June OIOS report, and instead purported to publicly exonerate Mr. Lubbers, Ms. Brzak filed a formal appeal action with the UN's internal justice system, so-called.

Regrettably, instead of attempting to put this sad and symptomatic incident behind them, Mr. Lubbers and the Respondents named herein continued to retaliate against Ms. Brzak for her actions in bringing complaints against Mr. Lubbers actions which were actionable under said Title VII, which retaliation continues through the present day, once again in violation of said Title VII (42 USC

[2] UNHCR is a sub-division of the United Nations, with its headquarters located in Geneva, Switzerland, although all UNHCR staff are UN staff members, and the UNHCR maintains a representative office at the UN in New York.

§2000e-3(a)). Such retaliation is the basis of this claim, and includes without limitation[3] accessing and publicly disseminating Ms. Brzak's confidential medical records held by UNHCR in order to impugn her reputation or credibility, sending her a notice that her post was likely to be abolished resulting in her termination from service (dated 12 May 2005, attached hereto as Annex 5), withholding a performance evaluation for the past 2 years which will adversely affect her promotion prospects within the UN, and inhibit her ability to find employment in the private sector, and instituting special conditions of employment applicable only to Ms. Brzak.

As a result of the foregoing reprehensible and adverse employment behaviour on the part of the UN and its officials named above, Ms. Brzak has suffered severe personal injury on account of the discrimination and retaliation. Ms. Brzak has no choice now but to continue her legal action despite the inevitable harm that it may cause her and the UN.

The EEOC will also no doubt be interested to note that the New York Women's Bar Association in 2001 retained the New York law firm of Chadbourne and Parke LLP to conduct a comparative review of the United Nation's internal anti-harassment procedures. The results of said review, attached hereto as Annex 6, found the UN's procedures grossly deficient under US and New York legal standards, in particular the prominent statement therein that false reports of harassment would be dealt with

[3] A detailed chronological account of the actionable discrimination and retaliation she has endured (during 2004-2005) is set out in Annex 4 enclosed herewith.

severely, and the absence of a clear and unequivocal statement therein that staff members who reported sexual harassment at the United Nations would be protected from retaliation. To the best of the undersigned's knowledge and belief, the UN's internal anti-harassment procedures have remained essentially unchanged from the date of the Chadbourne and Parke LLP comparative report through the present.

4. The date(s) the event(s) took place;

See Annex 4 attached for a detailed chronology of the acts of retaliation that began almost immediately upon Ms. Brzak's formal reporting on 28 April 2004 of the alleged indecent assault, and the most recent act of retaliation which occurred on 12 May 2005 (Annex 5 – notice that her post was likely to be abolished).

5. Whether the individual has filed the same or similar charge with a state or local fair employment practice agency;

No.

Signed under the pains and penalties of perjury this 28th day of October 2005, at Geneva.

/s/ Cynthia Brzak
Cynthia Brzak, Claimant

ANNEX 1

Note to the Secretary-General

1. On 24 May 2004, I sent you a preliminary report on the complaint against Mr. Ruud Lubbers, of misconduct involving sexual harassment. OIOS has since completed

the investigation into this complaint and the report is attached.

2. OIOS has concluded that the allegation against Mr. Lubbers is substantiated in that Mr. Lubbers did engage in unwanted physical contact with the complainant, a subordinate female staff member. New allegations that came to OIOS' attention during the investigation, were also examined and indicate a pattern of sexual harassment by Mr. Lubbers, OIOS is also of the view that Mr. Lubbers abused his authority as High Commissioner by his intense, pervasive and intimidating attempts to influence the outcome of this Investigation.

3. OIOS recommends that appropriate action be taken against Mr. Lubbers for misconduct and abuse of authority as set out in the attached report.

4. I am ready to provide any further clarifications on the report should you deem it necessary.

/s/ [Illegible]
Dileep Nair
Under-Secretary-General
for Internal Oversight
Service
2 June 2004

REPORT OF INVESTIGATION INTO MISCONDUCT AND ABUSE OF AUTHORITY AT UNHCR

I. Executive Summary

1. The Investigations Division of the Office of Internal Oversight Services [OIOS] received a complaint from Mrs. Cynthia Brzak, a staff member of the Office of the United

Nations High Commissioner for Refugees [UNHCR], who alleged that she had been sexually harassed by Mr. Ruud Lubbers, High Commissioner, UNHCR, and was subsequently harassed by Mr. Werner Blatter, Director, Division of Human Resources Management [DHRM], UNHCR.

2. Mrs. Brzak addressed a copy of the same complaint to the Inspector-General's Office, UNHCR [IGO]. However, given that one of the allegations involved the highest-ranking UNHCR official, the IGO, as per its terms of reference, was precluded from initiating an investigation into the matter, and OIOS became responsible for handling the case, but with assistance as necessary from the IGO. Given the nature of the complaint, OIOS opened an investigation under its terms of reference, of misconduct and abuse of authority by Mr. Lubbers and Mr. Blatter.

3. The misconduct alleged involved sexual harassment both in conduct and in words. The abuse of authority involved actions on the part of Mr. Lubbers after he was notified of the details of the complaint by the UNHCR Inspector General on 6 May 2004.

4. In her complaint, Mrs. Brzak alleged that on 18 December 2003, at the end of an official meeting held in the UNHCR office of Mr. Lubbers, which was attended by five other male colleagues, Mr. Lubbers engaged in inappropriate and unwelcome sexual conduct which included physical contact of a highly personal nature with her.

5. Mrs. Brzak also alleged that following the meeting, Mr. Blatter referred to the conduct of Mr. Lubbers and then attempted to replay the same conduct, much to her embarrassment and chagrin. Mrs. Brzak further alleged that a few days later when she and her colleagues were waiting outside their UNHCR offices, Mr. Blatter again

referred to the behaviour of Mr. Lubbers and tried to grab her.

6. Messrs. Lubbers and Blatter denied that they had engaged in the conduct alleged by Mrs. Brzak. However, OIOS found that the allegations of Mrs. Brzak were credible, and based upon the overall evidence adduced during its investigation, OIOS has concluded that Mr. Lubbers had engaged in serious acts of misconduct and abuse of authority and that Mr. Blatter had engaged in acts of misconduct in this case.

7. In the course of this investigation, OIOS was apprised of several other cases of Mr. Lubbers engaging in misconduct involving UNHCR staff or women closely affiliated with UNHCR. In at least four of these cases, OIOS has interviewed the women concerned and corroborated the incidents with others in whom they had confided. These cases indicate a pattern of such misconduct on the part of Mr. Lubbers.

8. The purpose of this report is for the Secretary-General to be provided with the detailed findings of the OIOS investigation and recommendations for appropriate action in response to these findings.

II. Methodology

9. Upon receiving the complaint of Mrs. Brzak, OIOS dispatched two investigators to Geneva for a preliminary assessment of the matter. Following an initial interview of the complainant and upon obtaining additional information, OIOS determined that a formal investigation into acts of misconduct and abuse of authority was warranted.

10. The investigation included interviews with current and former UNHCR staff members and other persons, with some interviewed more than once in order to ensure accuracy, completeness and fairness, and the collection of relevant documentary evidence.

11. Given the seriousness and sensitivity of the allegations and the position of the persons involved, all interviews with UNHCR staff members based in Geneva, except the one with Mr. Lubbers which was held in his office, were conducted outside the premises of UNHCR, to protect confidentiality and provide privacy and anonymity, as necessary. Additionally, telephone interviews were conducted with persons who were not present in Geneva and who possessed relevant information for the investigation. The investigators were especially careful in their contacts with staff members and others, and in the protection of case files.

III. Background information

12. Mrs. Brzak joined UNHCR in 1980. For the last 14 years she has been working in the Staff Development and Training Section, Division of Resources Management of UNHCR. She is a Training Assistant and has an indefinite contract at the G-6 step 12 level.

13. Mrs. Brzak has worked extensively with and on UNHCR Staff Council related matters and has chaired the Panel on staff career development. She has also served as a member of the Joint Advisory Committee [JAC], a principal consultative body created in 1990 which calls for the establishment of appropriate joint staff-management machinery and advises the High Commissioner on questions related to staff administration, human resources

policies and general questions of staff welfare. In October 2003, Mrs. Brzak ran for the position of Staff Council Chairperson. She lost by one vote to the current incumbent, Mr. Joseph Hegenauer, but remains active in the Staff Council.

14. On 18 December 2003, at around 15:00 hours, a JAC related meeting was held in the office of Mr. Lubbers. In attendance were Mr. Lubbers, Mr. Athar Sultan-Khan, his Chef de Cabinet and Mr. Werner Blatter, his Director, DHRM as well as, in the capacity of Staff Council members or experts, Mr. Hegenauer, Mrs. Brzak, Mr. Abid Mir and Mr. Kandiah Vanniasingam.

IV. Investigative Details

15. In her complaint dated 27 April 2004, sent to OIOS and to the Inspector's General Office of UNHCR, Mrs. Brzak alleged that at the end of the above-mentioned meeting, she had been sexually harassed by both Messrs. Lubbers and Blatter.

16. Her allegation against Mr. Lubbers is that at the end of the 18 December meeting, Mr. Lubbers placed his hands on Mrs. Brzak's waist, pulled her back towards him, pushed his groin into her buttocks and held her briefly in that position before releasing her.

17. Her allegation against Mr. Blatter is that, using a tone and an attitude of amusement, Mr. Blatter tried to replay the incident between Mrs. Brzak and Mr. Lubbers. The first time was on 18 December 2003, when shortly after the meeting held in the office of Mr. Lubbers, he joined Mrs. Brzak and her colleagues, raised the incident between her and Mr. Lubbers and moved towards her to

replicate it. The second time was a few days later when he joined Mrs. Brzak and her colleagues outside their offices, in the elevator area, and while referring again to the same incident, unsuccessfully tried to grab her.

Allegation 1:

It is alleged that at the end of an official meeting held in his office on 18 December 2003, Mr. Lubbers committed misconduct in that he engaged in inappropriate and unwelcome sexual conduct which included physical contact with a female staff member in UNHCR.

18. The statements provided to OIOS by all persons who attended the meeting agree on the following points:

a. all of them attended the meeting at the time and location indicated in the complaint of Mrs. Brzak;

b. the meeting was cordial and professional;

c. Mr. Lubbers sat on one side of the table, with Mrs. Brzak on his left side and Mr. Sultan-Khan on his right side;

d. Mr. Blatter sat in front of Mrs. Brzak, on the other side of the table, together with Messrs. Hegenauer, Mir and Vanniasingam;

e. at the end of the meeting, all persons in attendance rose from their seats;

f. Messrs. Hegenauer, Mir and Vanniasingam left the room *before* Mrs. Brzak; and

g. when Mrs. Brzak rose and passed in front of Messrs. Lubbers and Sultan-Khan, who were standing together, Mr. Blatter was still sitting across the table.

19. As regards the nature of the physical contact between Mr. Lubbers and Mrs. Brzak, the statement of Mrs. Brzak differs from that of the three others present at the time of the incident, namely Messrs. Blatter, Lubbers and Sultan-Khan.

a. Mrs. Brzak

20. Mrs. Brzak told OIOS that when she passed in front of Mr. Lubbers, who was standing behind her together with Mr. Sultan-Khan, without a word he abruptly put both of his hands on her waist from behind her, pulled her backwards towards him, took a step forward, pushed his groin to her buttocks and held her briefly in that position. Mrs. Brzak indicated that while Mr. Lubbers was acting in this manner, she noted the expression of great surprise on the face of Mr. Blatter, who, as she put it, "had a shocked look on his face, his mouth was open and his jaw dropped."

21. Mrs. Brzak added that although she was shocked and humiliated by the behaviour of Mr. Lubbers, she did not react immediately; she left the room without looking back and joined her colleagues who were standing by the elevator door on the 7th floor, where the office of Mr. Lubbers is located. She added that shortly thereafter, Mr. Blatter joined the group and they all took the elevator to the ground floor.

b. Mr. Blatter

22. Mr. Blatter said that he saw Mr. Lubbers touching Mrs. Brzak twice. The first time occurred just after the meeting when she passed in front of Mr. Lubbers who put his arm around her waist while talking to her, and a second time, in the same fashion, he put his arm around

her while "he led her along towards the door." Significantly, Mr. Blatter described these gestures by Mr. Lubbers as "overly familiar".

23. Further, he said that after the 18 December meeting, when he recalled how Mr. Lubbers had touched Mrs. Brzak at the end of the meeting, he told her "you saw how nice is the HC?" though not, as alleged by Mrs. Brzak "I saw what the HC did to you". He said that if he had seen Mr. Lubbers do anything improper, he would have intervened to protect Mrs. Brzak. However, he told OIOS that he had told Mr. Lubbers that his touching of Mrs. Brzak around the waist was "overly familiar".

c. Mr. Sultan-Khan

24. When asked whether he observed anything unusual during or after the meeting, Mr. Sultan-Khan recalled only that Mrs. Brzak had requested a pen and Mr. Lubbers gave her one. However, when asked whether Mr. Lubbers, at any point before, during or after the meeting on 18 December, had touched Mrs. Brzak, Mr. Sultan-Khan replied that he "did not see this". He conceded that from the position where he was standing (that is, next to Mr. Lubbers) he should have noticed any physical contact between Mr. Lubbers and Mrs. Brzak. He could not explain why his recollection differed from Mr. Blatter's.

d. Mr. Lubbers

25. At the outset of his interview, Mr. Lubbers requested that OIOS provide him with a copy of the complaint made against him, that he be allowed to have a third party present during the interview and that he be afforded the opportunity to review and sign the record of discussion

with him. OIOS responded that pursuant to its own mandate, terms of reference and investigative protocols, there is no requirement to provide copies of complaints nor is there a requirement that a third party be entitled to attend the interview. Moreover, Mr. Lubbers was fully aware of the details of the complaint, including the identity of the complainant because, at the request of the Under-Secretary-General, OIOS, the Inspector General of UNHCR had notified him of the complaint on 6 May 2004. Further, the Office of Legal Affairs has long advised OIOS that subjects of interview are not entitled to counsel in OIOS interviews. As is usual in administrative investigative practice, OIOS does not normally allow such third parties in order to protect against inappropriate disclosure of information. In any case, at the beginning of the interview, Mr. Lubbers was apprised of the allegation of misconduct made against him and he was invited to comment on it extensively. After the interview, he was provided with a copy of the record of discussion and was allowed to make editorial changes, clarify any misunderstanding, and offer any further comments. As such, OIOS rejects the charge, made days later by Mr. Lubbers, that he was not afforded due process.

26. When asked whether there was any physical contact between him and Mrs. Brzak at the end of the 18 December meeting, Mr. Lubbers initially told OIOS: "I cannot exclude that I might have touched her." He was emphatic that if he did touch her, he did so only in order to usher her out of the room, and not with the intent to embarrass her. He added that there were only two times during that meeting when he had had physical contact with Mrs. Brzak; the first was when he lent her a pen and the second

was when, at the end of the meeting, he ushered her out of the room, "in a friendly manner".

27. When advised that Mr. Blatter had told OIOS that he had twice seen Mr. Lubbers putting his arm around the waist of Mrs. Brzak, Mr. Lubbers replied that he was aware of this fact because he had discussed Mrs. Brzak's complaint with Mr. Blatter after the notification by the UNHCR IG. During that discussion, Mr. Blatter had reminded Mr. Lubbers that he had twice touched Mrs. Brzak at her waist. Referring to the statement of Mr. Blatter, he then said that he might have thus touched Mrs. Brzak, but only in a polite and friendly manner, to usher her towards the door.

28. Mr. Lubbers described himself as a "physical" and "friendly" person and while conceding that on occasion he touches people around him, he argued that his gestures should not be construed as improper, but rather as polite and courteous. For example, he said that sometimes, when he shakes hands, he does so using both of his hands.

29. In his interview, Mr. Lubbers was asked if he knew why Mrs. Brzak had filed such a complaint against him. He replied that he did not know but he offered two possible reasons. He noted that he had not remembered Mrs. Brzak when he was first advised of the allegation by the UNHCR IG. Subsequently, he queried his secretary who reminded him that he had met Mrs. Brzak in March or April 2001, when Mrs. Brzak applied for the position of Chef de Cabinet, which was available at that time. Mr. Lubbers said that although not eligible for that position because she was a General Service staff, Mrs. Brzak was interviewed by him at the request of the former Chef de Cabinet who had suggested that to do so would be good for

improving the relations with the Staff Council of which Mrs. Brzak was a member. Mr. Lubbers noted that she was not given the job as she was only a General Service staff and after her interview, Mrs. Brzak sent him a note apologizing for having taken up his time. He also described her as "outspoken" and "brutally frank". He said that Mrs. Brzak had made an impression on him, particularly during a farewell party organized in 2003 for Mr. Naveed, the outgoing Staff Council President, during which she made "a remarkable speech" which suggested that Staff Council members "knew everything" and managers did not. This prompted him to "neutralize" the effect of her speech when he spoke after her with light remarks.

30. Mr. Lubbers gave a second possible reason for her complaint which he had learned from Mr. Blatter. In late 2003, Mrs. Brzak had competed unsuccessfully with Mr. Hegenauer for the position of Chair of the Staff Council. He also recently learned that "things did not go well in the Staff Council". Mr. Lubbers opined that she might have been "frustrated" after she lost the election.

Allegation 2:

It is alleged that on two separate occasions Mr. Blatter committed acts of misconduct in that he tried to replay the incident between Mrs. Brzak and Mr. Lubbers in front of her colleagues.

a. Mrs. Brzak

31. Mrs. Brzak told OIOS that on 18 December, upon leaving the office of Mr. Lubbers, she joined Messrs. Hegenauer, Mir and Vanniasingam who were waiting for the elevator. Shortly thereafter, Mr. Blatter joined them

and they all took the elevator to the ground floor. As they exited the elevator on the ground floor, a smiling Mr. Blatter told her "I saw what the HC did to you" and, in a playful manner tried to grab her, in an attempt to imitate the action of Mr. Lubbers. This made her feel further humiliated, after the incident with Mr. Lubbers.

32. Mrs. Brzak further alleged that a few days later, when she and her colleagues were waiting in the elevator area, preparing for another meeting with Mr. Lubbers, Mr. Blatter came across the atrium to join them. When he approached her, she noted with surprise that he mentioned again the earlier behaviour of Mr. Lubbers to her. In doing so, he moved towards her and, again, tried to grab her. She stated that she had to use Mr. Hegenauer as a human shield, (as he is very tall) trying to keep him between herself and Mr. Blatter, to protect herself from the latter who feinted right and left to get around Mr. Hegenauer.

33. According to Mrs. Brzak, Mr. Blatter then stepped into the elevator and advised the group that he would meet with Mr. Lubbers alone. She added that Mr. Blatter asked her what she would do, should Mr. Lubbers grab her again, to which she said she replied, "But why didn't you protect me . . . or at least say something?" Noticing that Mr. Blatter was laughing at her, she said that she reproved him, saying: "Christ, it's not funny. You're the Director of DHRMI" Mrs. Brzak further said that as the elevator door closed, Mr. Blatter continued to laugh and retorted: "So?"

b. Messrs Mir, Vanniasingam and Hegenauer

34. When asked to comment on the first incident with Mr. Blatter, Mr. Mir replied that he did not recall the incident but "did not rule it out either". Mr. Vanniasingam said "I didn't see it", but, referring to Mr. Blatter, immediately added that "I do not normally challenge people older than me or in position of authority".

35. Mr. Hegenauer, when questioned, said "I remember them playing and making inside jokes". When further asked to indicate whether Mrs. Brzak had used him as a human shield in the second incident to protect herself against the "jokes" of Mr. Blatter, Mr. Hegenauer replied that he did not remember, but said that this is a group of persons familiar with each other who are used to making jokes. He added, however, "this doesn't mean it did not happen".

c. Mr. Blatter

36. Mr. Blatter denied the allegations made against him by Mrs. Brzak although he admitted "joking with her". He reiterated that the actions of Mr. Lubbers in twice touching the waist of Mrs. Brzak had been "overly familiar".

V. Credibility of the Complainant

37. In cases of this nature, it is usual practice to determine the credibility of the complainant and the witnesses. While investigating the alleged misconduct, OIOS had to consider the possibility that Mrs. Brzak had falsely accused Mr. Lubbers and Mr. Blatter. One of the key points was why she had waited for four months before filing the complaint.

38. Mrs. Brzak told OIOS that this was not the first time she had been sexually harassed since joining UNHCR. In the more than 20 years she has spent with UNHCR, there were occasions when she had been sexually harassed by other senior managers who, she said, have since left the Organization. She did not complain at the time because she believed that nothing could be done. However, this time, she said that she felt so angry and humiliated that she could not remain silent anymore.

39. Mrs. Brzak further stated that from the time of the incidents until April 2004, she had discussed the matter with several colleagues and friends to elicit their advice because filing a complaint, especially against Mr. Lubbers, was a serious step. To each of them, she said, she had described in detail what Mr. Lubbers and Mr. Blatter had done.

40. In the interviews with the persons consulted by Mrs. Brzak and with others, OIOS corroborated the statement of Mrs. Brzak. It was established that immediately following the 18 December meeting, while in the elevator, Mrs. Brzak had discussed the actions of Mr. Lubbers with Mr. Vanniasingam. Mr. Hegenauer also confirmed the details that Mrs. Brzak had discussed with him in early January 2004. Further, there is evidence that in February 2004, Mrs. Brzak had sought advice on how to proceed on her case from two members of the Inspector's General Office of UNHCR. Similarly, others interviewed by OIOS confirmed that she had spoken with them in detail and with consistency. OIOS noted that the chronology of events and the details provided by Mrs. Brzak to each of these witnesses were consistent with the complaint made by, and the interview statements of, Mrs. Brzak. In their interviews, the witnesses have confirmed to OIOS the details that Mrs. Brzak had provided to them of the incident with Mr.

Lubbers and of the incidents with Mr. Blatter. Most of the witnesses were told either immediately or shortly after the incidents complained of; some were consulted more than once while others were consulted only later as Mrs. Brzak deliberated on how to handle her concerns about raising this complaint. Given the actions of Mr. Lubbers following the reporting of the complaint, her concerns were manifestly not unreasonable.

41. Further, OIOS also queried each person interviewed in connection with this investigation on Mrs. Brzak's character and personality. Mrs. Brzak was described by everyone [except Mr. Lubbers] in very positive terms, as "mature", "very professional", "very strong advocate on matters of principle", "a person who would not make things up" and "articulate and bright".

IV. [sic] Pattern of Conduct

42. Another indicator in such cases of misconduct is whether there is a pattern of behaviour on the part of the actor. During this investigation OIOS was told of several other cases involving women who were either staff of UNHCR or were closely affiliated with UNHCR. OIOS has interviewed several of the women and corroborators who were able to confirm the incidents. When asked during his interview whether there were other instances, Mr. Lubbers said he only recalled one other incident. OIOS believes Mr. Lubbers referred to this other incident in his May 28 message to all UNHCR staff. However, as he refused to disclose the woman's name to OIOS, it was not possible to resolve that matter.

43. However, there are cases which OIOS has examined which confirm a pattern of misconduct on the part of Mr.

Lubbers. The women involved, who were approached by OIOS based on specific reports received from people they had confided in, expressed much concern about being identified and their fear of subsequent retaliation and public humiliation. OIOS advised each of them that while their information would be useful and included in this report, their identities would not be revealed by OIOS. Accordingly, OIOS is providing the following information without identifying the individual women:

a. Staff member A, a young woman, was invited to Mr. Lubbers' home in Geneva on a weekend, ostensibly to discuss her area of work with others. However, when she arrived, she discovered that no one else was present and that he was interested in discussing only matters of a personal nature while sitting very close to her and touching her in a sexual way. She indicated to OIOS that this made her extremely uncomfortable and had to leave quickly because she felt he was trying to go further and she became afraid. She reported this encounter to others at the time, but did not file a complaint because she felt extremely embarrassed.

b. Staff member B described an incident at an official UNHCR function during which Mr. Lubbers grabbed and embraced her pulling her body against his. She expressed shock and embarrassment and pushed him back. She reported this to other colleagues who confirmed to OIOS that she had done so.

c. Affiliated woman C described an incident where Mr. Lubbers while on mission to her location pulled her to him and tried to grope her. She pushed him back and said she would slap him if he attempted it again. The incident made her

very uncomfortable and concerned about her ongoing relationship with UNHCR. OIOS corroborated this report from others who were at the location.

d. Affiliated woman D from another agency which works closely with UNHCR told OIOS that an incident occurred shortly after first meeting Mr. Lubbers at an official event which was attended by Mr. Lubbers as well as herself and her supervisors, Mr. Lubbers twice made unwelcome advances and asked her to come to his hotel room because he was "feeling lonely." She reported the matter to her supervisor who confirmed the account. Mr. Lubbers apologized to her the following day for his behaviour.

44. It is therefore evident that the incident with this complainant is not an isolated case. Mr. Lubbers has objected to OIOS for conducting inquiries into the other cases. However, this now appears to be based not on the interests of the Organization but on self protection and to avoid disclosure of his pattern of misconduct with women.

Allegation 3:

It is alleged that Mr. Lubbers engaged in acts of abuse of authority in that he undertook measures, utilizing his position of highest authority in UNHCR, which were intended to influence the investigative findings in his favour.

45. Mr. Lubbers was apprised on 6 May by the UNHCR inspector General and again notified by the Under-Secretary-General of OIOS on the following day that OIOS was undertaking an investigation into the allegation against him, as well as those against his Director, DHRM. Nevertheless he immediately took actions which interfered

with the ability of the OIOS Investigators to conduct a thorough investigation before they had even arrived in Geneva.

46. The efforts of Mr. Lubbers to discuss the complaint with potential witnesses before and during the investigation were not appropriate. His actions may well have influenced the statements of at least two subordinates including Mr. Sultan-Khan. However, for reasons not difficult to understand, he decided to play it safe by claiming that he did not see anything, not even the touching described by Mr. Blatter and admitted to by Mr. Lubbers.

47. Other UNHCR staff told OIOS investigators that they were afraid to discuss the case for fear of retaliation. Indeed, the IGO was tasked by Mr. Lubbers to ascertain who was cooperating with OIOS, although they were advised not to do so by OIOS. Mr. Lubbers also sought to find out with whom Mrs. Brzak had consulted about her case. He held staff meetings with his managers to talk about the complaint and he encouraged other women to speak in his defence.

48. Mr. Lubbers also wanted to start an investigation into the leaks to the press about the complaint, the investigation and related matters. However, there was little press outside of The Netherlands, his home country. Moreover, the reports in the New York press included erroneous information – obviously, then, not from OIOS or the complainant. His attempted inquiries into the press reports is an ill-disguised attempt to prevent other staff from speaking with OIOS and, in fact, were perceived by many UNHCR staff as retaliatory action since he demanded to know who had spoken with OIOS and why Mrs. Brzak had not been asked to resolve her complaint strictly

within UNHCR by those staff with whom she had consulted about the case. Of course, Mrs. Brzak was entirely within her rights as a UN staff member to report her complaint to OIOS.

49. Additionally, on 28 May, although the investigation was not yet completed as he was well aware, Mr. Lubbers issued a note to all UNHCR staff, both at HQ and in the field, referring to the complainant in this case, and also to another very vulnerable female staff member, clearly trying to put his own "spin" on the case and presenting it as fact. OIOS believes that this second woman is the person Mr. Lubbers had referred to when asked by OIOS whether there were any other cases. During the interview, Mr. Lubbers refused to identify this woman so Mr. Lubbers' version of their interaction cannot be verified. Moreover, the underlying message of his note to all staff was clearly identified by a senior manager in UNHCR who described the message as telling UNHCR staff to "shut up". Further, a number of staff including the complainant saw the note as an effort to silence them and anyone else who might wish to come forward as well as to blame others for his current problems without acknowledging his own role.

VI. Findings

50. Misconduct may take a variety of forms. In this case, Mr. Lubbers treated a female staff member with serious disrespect of her person and her position, by forcing unwanted attention of a sexual nature on her. The Staff Rules provide that misconduct includes "specific instances of prohibited conduct" such as "any form of discrimination or harassment, including sexual and gender harassment,

as well as physical or verbal abuse at the workplace or in connection with work". [Staff Rule 101.2(d)].

51. In this case, the misconduct was of a sexual nature and may also be considered to be sexual harassment which the UN has defined as follows:

52. [. . .] *any unwelcome, sexual advance, request for sexual favours or other verbal or physical conduct of a sexual nature, when it interferes with work, is made a condition of employment or creates an intimidating, hostile or offensive work environment it is particularly serious when behaviour of this kind is engaged in by any official who is in a position to influence the career or employment conditions (including hiring, assignment, contract renewal, performance evaluation or promotion) of the recipient of such attention. [ST/AI/379]*

53. In this case, OIOS found that the allegations of misconduct and abuse of authority against Mr. Lubbers are credible and substantiated for the following reasons:

54. *First*, the only witnesses to the incident as described by Mrs. Brzak are two managers of UNHCR, both subordinate to Mr. Lubbers. One of them recalls two incidents of touching where Mr. Lubbers put his arm around her waist while the other does not confirm even the touching which has been acknowledged by Mr. Lubbers himself. The intensity of the efforts of Mr. Lubbers, including issuing a message to all UNHCR staff which seeks to discredit the complainant in this case, attempting to identify those who cooperated with the OIOS inquiry, and meeting with key witnesses during the investigation, clearly was intended as a message to all UNHCR staff that providing information to the Investigators would have negative repercussions for them. As noted by a senior UNHCR manager, the

message was clearly to "shut up". These are not the actions of a person who seeks only to ascertain the facts of a case.

55. *Second,* although not agreeing with all the details of Mrs. Brzak's report of the incident, Mr. Blatter confirms that Mr. Lubbers twice touched Mrs. Brzak's waist, and even described it as "overly familiar". Until so advised of this evidence of Mr. Blatter by OIOS, Mr. Lubbers had denied touching Mrs. Brzak; he then only admitted to doing so whilst ushering her out in what he described as "a polite manner". Nevertheless, Mr. Blatter does confirm that touching in an "overly familiar" manner occurred, and given the efforts of Mr. Lubbers to discourage cooperation, Mr. Blatter's statement goes some way to support the complaint. Moreover, the pattern of Mr. Lubbers' misconduct seems clear and demonstrates that the touching of Mrs. Brzak was not isolated but part of how Mr. Lubbers conducts himself with women whom he finds attractive, regardless of the impropriety of such conduct, the distress caused to the women involved, or the disparity in the positions held.

56. *Third,* Mrs. Brzak is a UNHCR staff member who enjoys respect from her colleagues and OIOS found no indication of a *male fide* complaint or a motive to conclude that she fabricated her story. Even Mr. Lubbers describes her as "brutally frank". That she did not get the post in Mr. Lubbers' office nor win the Staff Council election, the reasons posited by Mr. Lubbers, are not linked to an action by Mr. Lubbers which would create a motive to strike back at him. Indeed, she said that she had applied for the post of Chef de Cabinet thinking that she had the qualities and experience that the post called for. Others have verified that she was simply responding to an invitation issued by

Mr. Lubbers at a meeting attended by several hundred staff shortly after he joined UNHCR. At that meeting, as confirmed by the then Chef de Cabinet, Mr. Lubbers indicated that he would not be bound by the usual bureaucratic personnel rules. As for the Staff Council post, Mr. Lubbers had no influence over that election.

57. *Fourth*, as is often the case in sexual harassment complaints, there are no independent witnesses. As such, evidence must be adduced which tends to show the respective credibility of the principals. In this case, the evidence shows that from the date of the incident until April 2004 when she reported the incident formally to OIOS and the IGO, Mrs. Brzak met with UNHCR staff members, including IGO staff members, and others to seek their advice as to how best to proceed, or even whether to proceed or not. The information gathered in the OIOS interviews of UNHCR staff and other persons from whom she sought guidance – confirmed that from 18 December 2003 to April 2004, she has been consistent in her reporting of the details of the incidents, including in her interviews with OIOS, that she has not expressed hostility but only embarrassment and that she has been anxious about how such a complaint would be handled. Moreover, given the actions of Mr. Lubbers since 6 May, her concerns were well placed.

58. On the other hand, as noted above, Mr. Lubbers' actions undermine his denials. He has undertaken multiple steps to affect the outcome of the investigation in his favour and to interfere with normal investigative processes which now seem designed to hide the pattern of misconduct stated in this report and to prevent others from providing information. His discussion of the case with his Director, DHRM and his Chef de Cabinet may

well have influenced their statements when later provided to OIOS. Mr. Sultan-Khan, for reasons not difficult to understand, particularly in the light of Mr. Lubbers's actions, decided to play it safe by claiming that he did not see anything. Other UNHCR staff told OIOS that they were afraid to discuss the case for fear of retaliation. Given the continuing actions of Mr. Lubbers, that concern is well placed and OIOS will monitor the situation to ensure that no staff who cooperated will be negatively affected for so doing.

59. Similarly, as regards the two incidents between Mr. Blatter and Mrs. Brzak, it is equally understandable why Messrs. Hegenauer, Mir or Vanniasingam would give equivocal support to the report of Mrs. Brzak. They too decided to take the safe route. Again, none denied the events she related but their responses indicated that they were aware that providing evidence in support of the allegations by Mrs. Brzak would have serious consequences not only for Mr. Blatter, but also, more importantly, for Mr. Lubbers, given that Mrs. Brzak alleged that Mr. Blatter was imitating the actions of Mr. Lubbers – not to mention their own careers. As the 28 May note from Mr. Lubbers makes clear, according to a senior UNHCR manager, Mr. Lubbers wanted staff to "shut up".

VII. Conclusions and recommendations

60. It is the view of OIOS that not only did Mr. Lubbers engage in serious acts of misconduct in that he foisted unwanted physical attention of a sexual nature on a subordinate female staff member but also that he extensively and intentionally abused his authority as High Commissioner in his intense, pervasive and intimidating

attempts to influence the outcome of the investigation. Seen as part of a pattern of such conduct, these actions demonstrate that the most senior officer in UNHCR lacks the requisite integrity.

61. OIOS considers that there should be a distinction between the actions of Mr. Lubbers and those of Mr. Blatter. While it is indisputable that the actions of Mr. Lubbers constitute misconduct by touching with a clear intent to embarrass and humiliate Mrs. Brzak, this is not quite so clear in the case of Mr. Blatter.

62. While improper, the actions of Mr. Blatter rather suggest that Mr. Blatter – who was described by most interviewees as a playful person – might not have had a clear intent to harass Mrs. Brzak, but rather to joke about events which he had witnessed.

63. Finally, it is hoped that swift follow-up action on the findings of this current investigation will signal to UNHCR staff members, and to UN staff generally, that they may cooperate with an OIOS investigation, and indeed, may file good faith allegations with OIOS without fear of retaliation by their senior managers.

64. OIOS makes the following recommendations in view of the findings of this investigation:

1. It is recommended that appropriate action be taken against Mr. Lubbers for misconduct in that he engaged in unwanted touching of a female member of staff, for interfering with the investigation and for issuing a message to UNHCR staff members which was both intimidating and embarrassing to the complainant and at least one other female staff member. [IV/04/133/01]

2. It is recommended that appropriate action be taken against Mr. Blatter for inappropriate comments to a female member of staff and for failing to protect that staff member as required by his duties as head of the human resources department of UNHCR. [IV/04/133/02

3. It is recommended that the findings of this report be shared in general with UNHCR staff, to the same extent as has been Mr. Lubbers' message to staff [IV/04/133/03]

4. It is recommended that any retaliatory actions against staff who cooperated with this investigation be reported to OIOS. [IV/04/133/04]

5. It is recommended that the Under-Secretary-General for Management undertake a review of the protection measures afforded to women staff at UNHCR against sexual harassment. [IV/04/133/05]

Dileep Nair
Under-Secretary-General
for Internal Oversight
Services
2 June 2004

ANNEX 2

To Ms. B. Dixon, OIOS NY fax: + 212 963-7774, 8 pages
18 June 2004

Dear Barbara,

Further to our exchange of email on 16 June, please see below examples of actions which I believe have been taken or been supported by Mr. Ruud Lubbers that seriously

impact on me and have directly interfered with the course of the investigation in violation of ST/AI/379.

1. Mr. Lubbers did not take care to protect the identity of the complainant:

In his e-mail to all staff of 18 May 2004 the HC said –

> "It has been brought to my attention that a complaint about sexual harassment has been filed against me by a UNHCR staff member".

Mr. Lubbers thus publicly confirmed that the complainant is "*a UNHCR staff member*"

Furthermore, in his e-mail to all staff of 28 May 2004, Mr. Lubbers made further precisions which, being totally unnecessary, could only be construed as attempts to have my identity exposed to the staff at large, stating –

> "The complainant, who has a long history of advocacy on behalf of *her General Service Staff colleagues,* played a positive role in the discussions".

2. Mr. Lubbers violated due process and abused his authority in order to protect his personal interests:

Using his official status as High Commissioner and office resources placed under his authority, Mr. Lubbers sent me (and all staff) an unwanted communication on 28 May. Neither the staff at large, nor I *wanted* to receive an update from him covering his personal perspective of an event which was at the time the subject of an internal, confidential investigation.

This unwanted e-mail from Mr. Lubbers was sent only 24 hours after the Staff Council clearly expressed its position, that it would be inappropriate to comment upon the investigation until it had concluded, reaffirming that –

> "the best interests of UNHCR and its staff, including the High Commissioner and the complainant, are best protected by ensuring that due process and the confidentiality and independence of the investigation are respected." The Staff Council further stressed it was "incumbent upon all staff to comply with this obligation."

Yet, in his all-staff email of 28 May 2004 Mr. Lubbers said –

> " . . . as it is now one week later, I felt it was important to update you and to give you *my current perspective* on the events of December 18, 2003."

3. Mr. Lubbers has shown contempt for OIOS and its investigative techniques:

Again in his all-staff email of 28 May 2004, Mr. Lubbers said about the complainant –

> "the complainant felt she had no other choice than to turn to OIOS, New York . . . OIOS preferred not to inform me, as the alleged offender, and I did not receive a copy of the complaint as foreseen in the Administrative Instruction . . . ".
>
> "OIOS preferred not to inform me, the alleged offender, timely and properly and not to restrict itself to an investigation of the claim itself but instead to start to speak to many looking for a broader context".
>
> "I do not see that OIOS has made any serious effort to protect confidentiality or contain the leaks . . . "

4. Mr. Lubbers allowed himself to speak on my behalf and misrepresent my concerns and views in a manner which influence staff opinion about me and my actions

> "The complainant must feel terribly sorry for this. And so do I and I know that my concerns and feelings are shared by many, many others."
>
> " . . . I believe that if such guidelines had been available and followed in the case under investigation, the misunderstanding could have been clarified and the present situation avoided."

In his all-staff email he attempts to play down the seriousness of the incidents and belittle me in the eyes of the whole Organization, violating my due process and showing contempt for me, OIOS and the UN procedures in place.

Worse, when my name becomes known in future, his defamation could easily result in more unfair consequences both in and outside the office and the UN system on me, my reputation, my career, my children and husband, my residence and my life. His public statements add undue prejudice at a time when, instead, UNHCR should be taking all possible measures to protect these.

5. Mr. Lubbers allowed his spouse to influence public opinion against me:

While I kept my silence in the face of all this, even Mrs. Rubbers [sic] felt no such compunction. Although she does not know me and has never met me, she nonetheless felt free on several occasions to slander me in the media (excerpts attached).

Mr. Lubbers used his wife (and other media players) to confuse the simple issue at hand (his alleged wrong doing)

by deflecting attention elsewhere and placing political (e.g. nationality, regionalism) and emotional elements on to me (e.g., feminism, prudism, revenge, disappointment) in a confidential case which, at its origin, had neither.

6. Mr. Lubbers threatened me

As you are aware, I received a personal letter from Mr. Lubbers which I found highly inappropriate, implying a threat –

> " . . . I would restore with you a normal relationship with mutual respect . . . to make this possible, you would drop the complaint . . . "

putting further pressure on me in direct contravention of clear instructions from the UN/OIOS –

> "It would in fact mean that the alternative procedure of finding a solution without OIOS would still be practised. It is now 'two minutes to twelve'. either we clear the air or we close the doors".

and placing blame –

> "You cannot undo the damage with 'you – unwillingly! – caused, but Cynthia it will be easier to carry that burden in the years to come if I am on your side."

These actions place further unwarranted and unequal pressure on me.

7. Mr. Lubbers tried to debase my claims, subject me to public ridicule and suggest I was ill-advised by colleagues when consulting within structures and following procedures

Debasing my claim of harassment by publicly writing it off as a "friendly gesture" insinuates that we as an Organization do not understand the differences –

> "At the end of the meeting, I made what I considered, and still consider to be a friendly gesture to her."

Mr. Lubbers attempts to diminish me and my colleagues' confidential consideration of serious sexual harassment by executive officers, and then, in blatant disregard for the UN, UNHCR, and our organizational responsibility, accountability and rights, claims –

"UNHCR needs guidelines which include a clear definition of the elements of sexual harassment, illustrative examples of inappropriate behavior and guidance on actions to be taken."

8. I was told Mr. Lubbers threatened two Staff Council members

(S. Wolfson, J. Hegenauer) in a meeting about due process of the complaint and protection of the complainant when they represented positions he did not agree with.

9. I understand Mr. Lubbers is retaliating against those I consulted for advice

before deciding on a course of action for my complaint, i.e. K. Paul (Mediator), D Suzic, M. dos Santos (Staff Welfare Unit), T Ali, V Cochetel, N Ishak (IGO), S. O'Donovan (JMS) and T. Morel (DOS).

10. I understand Mr. Lubbers is writing to the Chairman of the UN General Assembly

to complain formally about OIOS

11. I understand Mr. Lubbers mobilized staff to collaborate with journalists

on press articles (see attached) which slander me. I have reasons to believe that this article and similar others are produced with the help of UNHCR staff and are circulated internally and externally to gather support to a particular point of view.

12. I understand Mr. Lubbers is attempting to cast doubt on legal UN/UNHCR procedural structures

under which he is being held accountable by, inter alia, calling for internal working groups to review the UN definition of "sexual harassment" which has stood the test in administrative tribunal rulings.

In conclusion, since Mr. Lubbers was informed of the formal complaint received by OIOS, he has created a widespread atmosphere of *intimidation* and *retaliation*, using his status as an executive officer in blatant *abuse of authority* at many levels to further *harass* staff, all of which are expressly prohibited and which Iqbal Riza specified on 29 May 2004 the Secretary-General will address.

Cynthia Brzak /s/ C. Brzak
Staff Development Section, DHRM Staff Council
Staff Council
UNHCR, Geneva

cc: F Postica, OIOS Vienna (also by fax: + 431 26060-5831)

[LOGO] **ANNEX 3**

[Names Omitted In Printing]

BY REGISTERED POST & BY FAX

Privileged and Confidential

Mr. Dileep Nair
Under-Secretary-General, OIOS
UN Headquarters
New York, NY 10017
USA

Geneva, 8 September 2004

Re: Ms. Cynthia Brzak v. UN/UNHCR

Dear Mr. Nair:

I enclose for your information a self-explanatory letter faxed today to the United Nations Secretary-General in the above-referenced matter.

Mr. Lubbers' ongoing and overt actions of retaliation against Ms. Brzak in our view are actionable misconduct under the applicable UN Standards of Conduct, undertaken by him with the sole intention of furthering his personal interests and airing his own grievances. Such actions appear to violate OIOS' own regulations prohibiting retaliation against staff filing reports of wrongdoing with OIOS (in and of itself misconduct)[1].

Therefore, by this letter we officially request on behalf of Ms. Brzak that OIOS immediately initiate a further, separate investigation into Mr. Lubbers' most recent acts of misconduct and retaliation.

---

[1] In particular, it would appear that Mr. Lubbers has breached paragraph 18 a., b., & c of ST/SGB/273.

Please consider this as a request for a final administrative decision.

Mr. Lubbers' most recent acts would seem to more than justify Ms. Brzak's written request to you dated 30 August 2004 (which to date remains unanswered) that OIOS immediately undertake a mission to UNHCR HQ to explain to and reinforce with UNHCR management its obligations under the UN Sexual Harassment policies and procedures, such as they are, and further, to make visible and bona fide attempts to shield Ms. Brzak from the illegal and reprehensible retaliation she has continued to suffer as a result of senior managers' actions, and her complaints about this.

Thank you for your kind and urgent attention. We look forward to a speedy and substantive reply.

Respectfully,

/s/ Edward Flaherty
Edward P. Flaherty

Cc: Client

Enclosure

ANNEX 4 ***RETALIATION & DISCRIMINATION*** *against* ***Cynthia Brzak*** *in 2004 & 2005*
page 1/30

version 10/27/2005

Claimant's Account of Discrimination and Retaliation by United Nations, UNHCR, Kofi Annan, Ruud Lubbers, Werner Blatter, Wendy Chamberlin, Kofi Asomani, Raymond Hall, A-W. Bijleveld and Daisy Buruku under Title VII of the Civil Rights Act of 1964

18 December and 22 December 2003
Sexual Harassment (Battery), Abuse of Authority and Misconduct *as filed with the UN Office of Internal Oversight Services (OIOS)*
(documented)

April 2004

On 27 April official complaint concerning indecent assault and battery of Claimant by Respondent Lubbers and Respondent Blatter sent by Cynthia Brzak to the UN OIOS in NY and the UNHCR Inspector-General's Office (IGO) in Geneva, by email, from home, using private email address
(documented)

May 2004

On 10 May, two UN OIOS staff members based in Vienna fly to Geneva to begin the official UN investigation into the complaint
(documented)

Investigators meet several times with the complainant Ms. C Brzak – and with at least four other women (as documented in final OIOS Report of June 2004)

On 18 May, the New York Times breaks the story in an article, *"U.N. Investigating Top Refugee Official in Sex Harassment Charge"*.
(documented)

On 18 May, UNHCR issues a Press Release "regarding allegations made against R. Lubbers".

The High Commissioner (Respondent Lubbers) wishes to make the following statement . . . "regarding a complaint filed by a UNHCR staff member. . . . in that meeting last December 18 there was no improper behaviour on my part."
(documented)

On 18 May, while the UN investigation is being conducted under confidentiality rules, Respondent Lubbers sends all UNHCR staff an email denying the allegations and offering information which partially identifies the complainant.

On 26 May Ruud Lubbers writes Cynthia Brzak a personal letter using intimidation and veiled threats of retaliation to pressure her to withdraw her complaint.
(documented)

On 27 May Ms. Brzak faxes Mr. Lubbers' letter to OIOS and sends an email to B Dixon, OIOS NY stating " . . . I feel the message is highly inappropriate and implies a threat, putting blame and further pressure on me".

Upon speaking with a Staff representative of retaliation action he reported by Respondent Lubbers, she further explains in her email to Ms. Dixon that she has been told

"the HC has held meetings and is taking action to retaliate against me and the Inspector General's Office (and possibly others I contacted informally before filing) for their roles and because I will not drop my complaint".
(documented)

On 28 May Ruud Lubbers sends a 3-page email to all UNHCR staff telling them (and the world) his side of the story. His account debases the claims, falsely puts motives and feelings in the mouth of the complainant, further identifies her and covers up the fact there are two defendants in the case – himself and the UNHCR Director of Personnel Respondent Blatter).
(documented)

To constant media requests from the US, Switzerland and the Netherlands, Ms. Brzak confirms she filed a complaint and refuses comment. Ms. Brzak alleges these calls caused her fright because they had her name and phone number and she was wholly unprepared.

In last part of May, Claimant meets Ms. Barbara Dixon, Director, Investigation Division of OIOS, New York. Ms. Dixon visited Geneva and requested the meeting, before going to Vienna (where two investigators are based). It is the Claimant's information and belief that she was there finalizing the investigation and its report.

June 2004

When Brzak phones OIOS she is told by Dixon that around 3/4 June, the final OIOS Investigative Report was sent to the Secretary-General. The Secretary General (Respondent Annan) failed to seek further information or

input from the Claimant or OIOS before making his ill-founded decision to exonerate the Respondent Lubbers.

It is the Claimant's information and belief that under the UN procedures for dealing with harassment stipulated in United Nations ST/AI/379 and 371, these findings constitute the final, irrefutable and official version of events. (documented)

Due to further illegal action in May and June, and despite feeling beleaguered, and extremely frightened by the pressure, Ms. Brzak undertakes to document further misconduct.

On 18 June Ms. Brzak sends her second official complaint to OIOS. This complaint alleges 12 areas of misconduct, 7 pertaining to what the Claimant believes is retaliation (including slander of her in the media):

1. Respondent Lubbers did not protect identity of the complainant (Retal 1.)
2. Respondent Lubbers violated due process and abused his authority in order to protect his personal interests
3. Respondent Lubbers showed contempt for OIOS and its investigation
4. Respondent Lubbers spoke on complainant's behalf misrepresenting her concerns to influence staff opinion (Retal 2.)
5. Respondent Lubbers allowed his wife to influence public opinion against Claimant (Retal 3.)
6. Respondent Lubbers threatened complainant (Retal 4.)

7. Respondent Lubbers tried to debase complaint, subject complainant to public ridicule and to suggest she was ill-advised by consulting within structures and by following procedures (Retal 5.)

8. Claimant was told Respondent Lubbers threatened Staff Council members

9. Claimant believed Respondent Lubbers had begun retaliation against those she consulted [before filing]

10. Claimant understood Respondent Lubbers wrote to the Chairman of the UN General Assembly

11. Claimant believed Respondent Lubbers mobilized staff to collaborate with journalists (Retal 6.)

12. Claimant believed Respondent Lubbers was attempting to case [sic] doubt on legal UN/UNHCR procedural structure (Retal 7.)

(documented)

July 2004

13 July. Because there is still no word or findings from the S-G's Office, Ms. Brzak sends a letter to the S-G (Respondent Annan) asking when he will take and share a decision.
(documented)

15 July. At 09h30 the secretary to the Deputy High Commissioner (Respondent Chamberlin) announces to Ms. Brzak that the Under Secretary-General for Management in New York, Ms. Catherine Bertini, is in town and would like to meet Ms. Brzak at 10h00.

The DHC receives Ms. Brzak first. She is then escorted to the Assistant High Commissioner's (Mr. K. Morjane) office to meet Ms. Bertini.

Ms. Bertini delivers the news of the Secretary-General's decision. She informs Ms. Brzak that a letter from Kofi Annan will go out in the afternoon as an all-staff email. She asks to see his communication; Ms. Bertini refuses. Instead, she hands Ms. Brzak a letter in a sealed envelope explaining it is authored not by Mr. Annan but by herself. (documented)

Ms. Brzak alleges that she opened it but could not focus on its contents. Ms. Brzak asks what nationality Ms. Bertini holds. When she tells her American, Ms. Brzak explains she asked in order to know whether Ms. Bertini would understand the reference she wants to make, Ms. Brzak tells her she feels like Rosa Parks – and shares her great disappointment at the decision.

As requested, Ms. Brzak goes back to see the DHC, W. Chamberlin, again.

First, Ms. Chamberlin invites Ms. Brzak to join the illegal group on redefining the definition of sexual harassment in UNHCR constituted by Respondent Lubbers after her complaint was lodged. Ms. Brzak cited this group work as one of multiple acts of retaliation (against her and UNHCR staff) in her second complaint to OIOS of 18 June.

Ms. Brzak, aware that the legality of the UN definition in ST/AI/379 of 1992 has been consistently upheld in UN Tribunal cases and aware of the illegality of an attempt by one Organization to redefine to a cause of action while complaints are pending, is stunned by the 'invitation' and

declines. It is the Claimant's belief that being asked to join is abusive and retaliatory.

Then Ms. Chamberlin asks Ms. Brzak to "trust her". Apparently the DHC does not know Ms. Brzak was told by two staff members that in a senior management meeting Respondent Chamberlin sang, "Stand By Your Man" in support of Respondent Lubbers. And Ms. Brzak should trust her? What song did the DHC sing publicly in her defense? Ms. Brzak alleges she agreed to nothing.

In shock and feeling unwell, Ms. Brzak alleges she discussed Respondent Annan's decision with the UNHCR Staff Council Chair and First Vice-Chair immediately upon exiting the elevator after leaving the 7th (executive) floor. They go to the cafeteria and on the way meet Mr. A. Mir. She alleges that the four of them sit and discuss the appalling decision. The Claimant alleges that the UNHCR Staff Council Chairperson stated to them, "I'm afraid for all of us. And I'm really terrified of the old man now". It is the Claimant's belief he was alluding to Respondent Lubbers. These colleagues then ask what they can do to help the Claimant. She says she needs time off to recover from the stress and shock and they offer to follow this up on her behalf.

16 July. Claimant returns to work where she is officially notified that following the request from the Staff Council Chair and First Vice-Chair to Respondent Chamberlin, the Respondent has put the Claimant on two weeks special leave with full pay.
(documented)

Ms. Brzak alleges that back home, she laid on the floor next to her half-packed suitcase feeling so fragile she was not sure she could finish preparations to leave for a 3-day

break she had booked in March. With immense difficulty, she said she drove to Montreux, arriving around 4pm
(documented)

23 July. Ms. Brzak writes to the S-G as a call for action against continued misconduct of Lubbers and intention to pursue her case.
(documented)

August 2004

Attorney Edward Flaherty comes back from vacation in US. Ms. Brzak calls to ask if he'll work with her on an appeal. They discuss many related issues and he agrees to represent her.

5 August. Letter to Ms. Brzak from USG Bertini purporting to reply to her missives of 13 and 23 July to S-G K. Annan.
(documented)

9 August Letter to D. Nair, Under Secretary-General of OIOS from Atty. Flaherty requesting information on the status of Ms. Brzak's second complaint to OIOS of 18 June. Letter remains unanswered.
(documented)

24 August. Letter from Atty. Flaherty to S-G requesting copy of OIOS report be shared with complainant.
(documented)

30 August. Letter from Atty. Flaherty to S-G requesting a review of his decision not to take disciplinary action against Lubbers and not to award damages.
(documented)

30 August. Letter from Atty. Flaherty to Nair requesting OIOS share report with Claimant and requesting OIOS mission to Geneva to instruct UNHCR staff on rules in ST/AI/379 and 371. Status unanswered.
(documented)

September 2004

8 Sept. On Ms. Brzak's behalf, Atty. Flaherty files third official complaint with OIOS (documented) against Mr. and Mrs. Lubbers for abuse of power and retaliation by knowingly engaging in slander of Ms. Brzak in the Dutch media (TV and press) on 6 and 7 September.
(documented).

8 Sept. Letter from Atty. Flaherty to S-G (Respondent Annan) requests Respondent Lubbers be sanctioned for misconduct as a result of his statements to the Dutch media.
(documented)

13 Sept Letter from Atty Flaherty to S-G requests status of second official complaint to OIOS, to award complainant damages, and to allow appeal directly to UN Administrative Tribunal (UNAT).
(documented)

16 Sept Letter from USG Bertini to Atty Flaherty expressing the 'dismay' of the S-G about Lubbers misconduct and S-G's verbal instructions to Lubbers to 'cease and desist from further public pronouncements'.
(documented)

22 Sept Letter from USG Bertini to Atty Flaherty on behalf of S-G denying complainant's appeals and various requests, and stating S-G will benefit from review by Joint

Appeals Board (JAB) before Ms. Brzak can put her case before the UNAT. The Claimant believed that with the SG/UN acting as both defendant and judge, there was no way for her complaints to be fairly adjudicated during the UN's internal appeal processes.
(documented)

24 Sept. Request by Ms. Brzak for second period of SLWFP, initially for 6 weeks.
(documented)

28 Sept. Bertini replies to Brzak referring SLWFP again to the DHC (Respondent Chamberlin) for UNHCR action.
(documented)

28 Sept. Letter from Atty. Flaherty requests S-G accord complainant right of reply on account of Respondent Lubbers' statements to the Dutch media on 6 and 7 September.
(documented)

29 Sept. « Road Map » letter from Atty. Flaherty to S-G with 17 Annexes is distributed to OIOS, Bertini, UN Office of Legal Affairs, UN General Assembly Chair (Gabon), UNHCR Executive Committee Chair, UNHCR Inspector General's Office, UNHCR Staff Council and Swiss Mission in GE, balancing Mr. Lubbers and senior UN management's one-sided versions.
(documented)

29 Sept. Ms. Brzak sends letter to UNHCR Executive Committee Chair, Swiss Ambassador Boulgaris, asking him and the Executive Committee to refrain from public pronouncements on her case in Committee and calling his personal public "satisfaction" over 15 July decision by

Secretary-General (Respondent Annan) premature if not questionable.
(documented)

October 2004

1 Oct. Ms. Brzak meets whistleblowers and international lawyers at Geneva Hotel des Bergues conference on UN internal justice and injustice.
(documented)

Sometime week of 3-7 October. It is the Claimant's information and belief that UNHCR Staff Council Chair, J. Hegenauer, is called by Lubbers to meet him at the Palais. It is further Claimant's information and belief that Respondent Lubbers is furious about the "Road Map" and is claiming Ms. Brzak has breached confidentiality by its distribution.

5 Oct. By internal mail Ms. Brzak receives authorization memo from DHC dated 1 Oct granting SLWFP and asking when it will begin. Ms. Brzak replies "immediately", covering 5 Oct – 16 November.
(documented)

6 Oct. Letter from USG Bertini to Atty. Flaherty conveying decisions by S-G:

a. no to right of reply;

b. no to lifting of privileges and immunity;

c. appeal must go first to JAB;

d. asking Atty. Flaherty and client to 'refrain from addressing the S-G further or imposing any more arbitrary deadlines'.

(documented)

13 Oct. Ms. Brzak receives an anonymous copy of the OIOS Report, mailed by public postal services from NY to her at work.
(documented)

18 Oct. Complainant asks Respondent Annan for a mutually agreeable resolution of her claims prior to litigation. On 26 Oct this is denied.
(documented)

26 Oct. Atty. Flaherty files official appeal against Respondent Annan's failure to share OIOS report with Claimant with Joint Appeals Board (JAB) in Geneva.
(documented)

26 Oct. Letter from USG Bertini to Atty. Flaherty replying no to request for settlement, declaring Ms. Brzak must go forward/fight internally (for years with every obstacle in place).
(documented)

Colleagues (former Staff Council Chair and former Chef de Cabinet) come to town. They try shuttle diplomacy between Respondent Lubbers and Claimant Brzak. They attempt to broker an apology from Lubbers to Ms. Brzak and a pledge from new Inspector General Kofi Asomani to Brzak to not pursue Lubbers' request she be sanctioned for breach of confidentiality. They try to move UNHCR forward into a new phase, but to no avail. Lubbers declines to meet or apologize, and UNHCR Inspector General (Respondent Asomani) calls her back alone after the 2 colleagues leave town.

November 2004

3 Nov. Brzak meets with Atty. Flaherty to inform him she wishes to end action without prejudice at that time. She cites the reasons being that her legitimate cause had been diverted from a simple case of sexual harassment by two senior officials in her capacity as an elected staff representative in an official meeting, and has turned into victimization of and retaliation against the victim. She expresses her shock at the bad faith, cover ups and lack of internal justice in the UN and by its leadership, and declares she wishes once again to act on behalf of UN ideals and humane principles by 'turning the page' and turning back to her work as a UNHCR Training Assistant and Staff Representative.
(documented)

4 Nov. Per Brzak's instruction, Atty. Flaherty withdraws her appeal without prejudice filed with the Joint Administrative Board (JAB).
(documented)

5 Nov. Meeting with UNHCR's Inspector General; Respondent Asomani, Brzak, ex-Staff Council Chair and ex-Chef de Cabinet (Cochetel's presence excluded). Meeting polite, inconclusive.

During first week of November. Yacoub El Hillo, ex-Chef de Cabinet of R. Lubbers, offers Brzak immediate, short-term work in Amman, Jordan for 3-6 months *without* the knowledge of ex-Staff Council Chair N. Hussain, who Claimant believes keeps her best interests at the fore and who stayed in same hotel during his and El Hillo's Geneva stay where they conferred often.

It is the Claimant's information and belief that Mr. El Hillo, who remained a close confidante of Respondent Lubbers and other senior managers, made this offer (unprecedented in her 25 years of service) with the intent to transfer Claimant away from a safe and known environment in Geneva, to a volatile and unknown environment where the presence of Americans was particularly dangerous at this particular time, and to get her away from upcoming elections for a second term as Staff representative. To note, Claimant won re-election.
(documented)

8 Nov. Cochetel of IGO insists IGO is not finished and emails Brzak to call for a meeting "as soon as possible *without* the presence of other colleagues". Brzak replies on 9 Nov. Meeting set up for 16 November (Claimant's first day back after six weeks SLWFP).
(documented)

12 Nov. Claimant Brzak writes to D. Nair, USG for OIOS explaining her viewpoint and requesting end of action on three complaints submitted (27 April, 18 June and 8 September 2004).
(documented)

16 Nov. It is the Claimant's belief that Vincent Cochetel of IGO is unstable and appears to be toying with her while Respondent Kofi Asomani, UNHCR Inspector General, his supervisor, is fully aware of this. Ms. Brzak alleges she felt this to be further abuse of authority and retaliation by senior officials, as orchestrated by Respondent Lubbers in his continued and futile quest for the recovery of his damaged reputation.

December 2004

No remarkable events.

January 2005

ABC investigative reporters Rhonda Schwartz and Brian Ross come to Geneva. They work on Oil for Food links here and on the Lubbers scandal. Upon arrival at the office early one snowy morning to questions posed about complaints against him by the Claimant, as cameras roll Lubbers declares, "It was simply crap."
(documented)

LUBBERS WRITES MALLOCH BROWN

In a 33-page letter it is the Claimant's information and belief that Respondent Lubbers sent in late January, Lubbers gives his accounting of the history of the sexual harassment case for Mark Malloch Brown (MMB), Annan's new Chef de Cabinet.

MISUSE OF CONFIDENTIAL MEDICAL INFORMATION

On pages 2 and 3 of the 33-page version, Lubbers transmits and perpetuates rumors gleaned from confidential medical information maintained by UNHCR's medical service concerning Ms. Brzak and her daughter which he is legally and morally bound to protect.

Most importantly, it is the Claimant's information and belief that Respondent Lubbers has used such rumors to slander the Claimant again in the Dutch press while UN management again does nothing to hold him accountable, publically or legally.
(documented)

OPEN HOSTILITY AT 2-DAY SECTION RETREAT

SDS has a Section Retreat for planning the year ahead. In group work (which was extensive) Ms. Brzak alleges that everything she says or contributes is treated by some colleagues as if she'd just broken wind. As a result of constant and open hostility, the group Ms. Brzak is part of dysfunctions and is the only one that does not meet its objectives on the first day.

On Day Two in a private aside, Ms. Brzak asks the facilitator, H. Lussey (working under consultancy contracts for the Senior Training Officer and Chief of Section, D. Buruku) to change her group, stating she is not at ease and could contribute more and work better in one of the other three groups. Ms. Lussey will not change Ms. Brzak's group – and Ms. Brzak does not insist as her goal is to de-escalate, not escalate the conflict within UNHCR towards her.

Certain Section staff continue the seemingly hostile and deliberate miscommunication on the second day, and again the group with Ms. Brzak in it does not finish their work (while all others do).
(documented)

Ms. Brzak alleges she cried for two days, and that in more than fifteen years of Section retreats, she had never cried. She alleges to feeling thin, fragile, worn out and particularly vulnerable having to deal with unrestrained hostility towards her from her colleagues without relief or support – which both frightened and deeply upset her.

(At the time, she told 3 colleagues she had spent each evening crying – Sandrine, Terry and Suzanne. She told

her office-mate Madeleine about a month later, after Madeleine returned from a long leave.)

February 2005

WORK BUDGET SLASHED

On 11 February Ms. Brzak is informed not by the Section Chief, D. Buruku, but by a peer, Budget Assistant (Frank) by email that he "was given to understand that the External Studies Programme was not to be continued" and that the working budget for 2005 has been reduced to only $805 (down from initial allocation of $297,000 cut to $175,000 in 1999, $200,000 in 2001, $50,000 in 2003).
(documented)

Respondent LUBBERS (UN High Commissioner) RESIGNS

At 7 am. on Friday, 18 February on Ms. Brzak's way to the airport for vacation, a friend calls to say that a large photo of R. Lubbers and a big article on her case are on that day's front page of the UK newspaper, "The Independent".
(article documented)

After a meeting with MMB in NY, followed by a press conference where Lubbers claims that whatever he did to the complainant he would do later that day to Mrs. Annan if he saw her, then pressure from NY and The Hague, Lubbers resigns on Sunday, 20 February – the day Ms. Brzak leaves Santa Fe for the northern part of the state, losing cell-phone coverage. Back in Santa Fe eight days later, calls and text messages have poured in and piled up from friends, family and the media.

On 21 February Annan issues a scurrilous letter to all UNHCR staff, calling "this painful and divisive episode" of

Claimant's case for UN internal justice and the media's attention holding UN leaders accountable an "unwanted distraction", stating, inaccurately, that Ruud Lubbers had "not been found guilty of any offence".
(documented)

On 24 February Lubbers gives an appalling farewell speech to a gathering of UNHCR staff, saying, "I was harassed [. . .] and I was raped and raped and raped", later disseminated by email to all staff. As Ms. Brzak was still away, she had no means to reply to inaccuracies and to defend truths.
(documented)

It is the Claimant's information and belief that no one anywhere in the UN mentions the victimization of the victim or the shooting of the messengers (including OIOS whose investigation substantiated her claims). Nowhere in the UN (or externally) has it been stated publicly that Claimant was sexually harassed in an official meeting with six men and in mockery of that on two other occasions while performing as an elected representative of 6000 staff.

Senior management continues to rally around the dissemination of one-sided accounts and messages supporting Respondent Lubbers, and undermining the reputation of the Claimant.
(documented – letter from staff in AFG; petition signed by some 200+)

Curiously, what is issued from the office of the UNHCR Staff Council (staff representatives) internally and externally consistently fails to allude to, mention or portray a staff representative's side (that of the Claimant) or implications for staff at large.

(documented – minutes of Feb general staff Assembly; Toure's statement to UNHCR Standing Committee early March)

March 2005

ATTEMPTS BY COUNCIL TO SIDELINE CLAIMANT

A 3-hour Staff Council meeting takes place around 22/23 March concerning the proposed SC mission to NY in order to discuss her experiences with UN managers. Ms. Brzak has worked actively to convince the Chairperson (Mohamed Toure) of its importance for staff, UNHCR and the Staff Council. From Staff representatives present, there is a mix of support for and against the idea of her accompanying him to see UN leadership.

Jacinta insists that knowing almost nothing of her case, background, action and retaliation is a big plus toward the idea of her accompanying Mohamed instead. Ms. Brzak responds with astonishment to this lack of professionalism and logic.

Hour 4 occurs in Mr. Toure's office. In his desk chair he tries to talk Claimant into the wisdom of seeing Respondent Lubbers' sister who has called him for his help to set up a meeting. He explains his cultural viewpoint on this (listening to one's enemy) which she understands and ponders, but does not share his enthusiasm for. Later, on his knees in front of her chair, he says he believes she needs to take several months off work because she is fragile and worn out. He implores her to take time off, offering to arrange this (with the DHC, Respondent Chamberlin). At this point Ms. Brzak alleges she is sobbing openly and blowing her nose into a kleenex, and that she left the Chairperson's office feeling unsupported,

manipulated and deeply puzzled as to where his real loyalties lie.

INTIMIDATION ATTEMPT BY SECTION CHIEF (1)

On 31 March Ms. Brzak receives an email from D. Buruku on a matter never taken up before. The subject is the scheduling of APPC meetings – of which she is a full Member.

Ms. Buruku states she is at pains to see how much this takes from your time viz a viz your direct responsibilities to the Section" and . . . after all, at the end of the day it is your actual job interventions which will have to speak for themselves".
(documented)

Stating concerns for performance, it is the Claimant's information and belief that this is an attempt to intimidate Ms. Brzak away from official work under UN Staff Regulations 8.1 and 8.2 and Staff Rules 108.1 and 108.2. Under these, Ms. Brzak was appointed in IOM/FOM/13/2005 by the High Commissioner on 17 February 2005 to serve on the APPC. In this IOM/FOM the High Commissioner calls on supervisors to note this extra contribution positively in each member's Performance Appraisal report (PAR). It is the Claimant's information and belief that unlike treatment accorded the eleven other staff on APPC, Ms. Buruku deviates from the instruction.
This email remains without reply in any form.
(documented)

April 2005

QUESTIONING RESPONDENT ANNAN'S ACTIONS

4 April. Ms. Brzak sends the S-G a letter requesting reparation and states she would like to meet him in Geneva during his upcoming visit.
(documented)

Telephone requests with his staff for a private meeting with Kofi Annan during his mission to Geneva are denied.

7 April, 15h00. S-G's Town Hall meeting with UNHCR staff. As the first question allowed from HQ staff, Claimant Brzak asks Respondent Annan " . . . The rules in place at the moment are flagrantly disregarded. Investigations on misconduct are undermined and recommendations for corrective action are flagrantly disregarded . . . The point here is our leaders don't enforce today's rules. My fear is that new rules will be treated with the same disregard as today's have been.

So my question is, can you please explain to me and every UN staff member in the world, why, last July, after the procedures were followed and the findings sent, why did you take action which sent the message that sexual harassers and those who abuse power need not fear as long as it remains internal"?

His answer, " . . . I still stand by the decision I took then, that evidence could not sustain the charges and that's when I thought we should close it. I plead with all of you to put it behind you and let's move on".
(Q+A documented)

16 April. NRC Handelsblad, Netherlands, publishes an in-depth, multi-page investigative article (in Dutch only) on

the downfall of Lubbers, highlighting his relationships with Annan and Malloch Brown and his efforts to obtain and use confidential medical information about Ms. Brzak and her family (and Lubber's retaliation against the UNHCR Medical Service).
(documented)

28 April. Brzak sends a letter to K. Morjane, Assistant High Commissioner seeking follow up to unresolved internal issues.
(documented)

Meeting follows. Nothing concrete is accomplished; Morjane sidesteps all issues by declaring he cannot trespass on the Deputy High Commissioner's (Respondent Chamberlin's) area.

May 2005

2 May. Letter from Mr. Malloch Brown, (new Chef de Cabinet to S-G Kofi Annan, purporting to reply to Ms. Brzak's 4 April letter to Respondent Annan.

In this letter Malloch Brown states "The Secretary-General does not consider that the contents of Mr. Lubbers' February letter to him merit either legal action against Mr. Lubbers or action against UNHCR staff members for the alleged participation in the preparation of the letter" illustrating Respondent Annan's acceptance of Respondent Lubbers' unethical and illegal use of confidential medical information about her and her family to retaliate against the Claimant.
(documented)

POST CUTTING

In the function since 1 May, on 12 May the new Director of DHRM, Respondent Raymond Hall sends Claimant Brzak an email notifying her that as part of a 'mandatory' budget exercise, posts must be identified for discontinuation – and hers has been one of those identified to be cut.
(documented)

Ms. Brzak alleges that she felt sick, did not sleep well for days, and at work sat in a chair in her office and cried.

On 17 May Brzak emails the Staff Council Chair, copying Staff representatives and the staff Co-Chair of JAC about JACs Workplan, already set during previous meetings. She voices her concern over the sudden appearance of a new agenda item – G Staff In Between Assignments (SIBAs).

She queries the introduction of this item knowing from lists APPC members receive that there are no more than a total of 7-9 SIBAs at HQ – normally rendering this situation a 'non-starter'. She also wonders in writing whether it is a not-so-hidden attempt at retaliation against her, questioning what the Management is getting at, who they are trying to get at and what the Staff Council's position is.
(documented)

On 18 May the Claimant responds to R. Hall making eight main points about his "Planning exercise for 2006" which include her plans to share this information with those who had promised to protect her from retaliation, i.e. the AHC, MMB, and the Staff Council Chairperson M. Toure, as well as B. Dixon, Director of the OIOS Investigation Division who "committed to overseeing your case for several years

as normal practice for complainants at risk of being targeted later".
(documented)

On 19 May R. Hall replies assuring Ms. Brzak of his responsibility to see that she is not subject to retaliation.
(documented)

Ms. Brzak alleges she could see a hostile strategy forming – cut her post, turn her into a SIBA, push through JAC and the Executive Office (with an Acting High Commissioner, Respondent Chamberlin possessing only two years UN experience with 60 years of intricate UN rules, practice, procedures and legal decisions) a hastily-deliberated, new policy on SIBAs, and apply that to the Claimant, ultimately separating her from service.

Ms. Brzak alleges that she did not feel one bit reassured by Mr. Hall's reversal and, quite the opposite, feared for her job. She knows that if she loses it, she will be unable to support her family, all of whom still depend largely on her (husband for work permit; two daughters for financial support toward education, living and medical expenses).

Ms. Brzak alleges her courage plummeted. As happened last year, she alleges that she again finds she has no interest in food, music, reading or normal current events, barely eats, loses more weight and usually does not get a full night's sleep, waking up several times at night, then early each morning around 4h30 – laying in the dark with her mind running through crisis scenarios, particularly in the event she loses her job of 25 years at UNHCR.

On 19 May after restless days and nights (since 12 May) spent in worry and anguish, Ms. Brzak faxes the exchange of email about her post being cut to both M. Malloch

Brown and the US Mission to the UN in NY for their attention and follow up.
(documented)

On *Saturday,* 21 May at 13h11 Raymond Hall sends Ms. Brzak an email asking how he can assist with her retaliation concerns. This mail is not replied to.
(documented)

REQUEST FOR ANNUAL LEAVE

On 18 May Ms. Brzak submits a leave request which Claimant's supervisor, Jacinta signs on 19 May. On 23 May, Claimant's Chief of Section signs Regine's leave request immediately without question. Before signing Ms. Brzak's, she asks for her leave balance and finally signs on 25 May – one day before the time off requested.

June 2005

1 June. Ms. Brzak responds to MMB's letter of 2 May. Therein Claimant informs Respondent Annan's office that "the new document on whistleblower protection looks like an ill-advised patchwork which, in its present draft, seems a step backward".
(documented)

PHYSICAL INDICATORS

13 September. A colleague (FG) who Ms. Brzak has not seen for about 3 years since they worked on a report approaches her. He explains he did not respond to her eye contact and head nod the previous day when they passed on the street because he didn't know who it was. About a block further he explained, he realized it could have been

her and asked a colleague if it was. They confirmed it was. He apologizes, saying he didn't recognize her because she has lost so much weight.

Ms. Brzak alleges that in the past, stress and illness resulted in weight gain. From this ordeal, she has gone from about 71 kilos (approx. 155 lbs) to about 64 kilos (approx. 140 lbs).

Ms. Brzak believes that colleagues fail to mention other elements of her appearance which she has noticed, such as a haggard, pale face, a palpable look of stress reflecting an acute interior state of depletion and depression as she absorbs and reels from the blows and shocks.

On 10 June at 10h15 Ms. Brzak has her annual checkup with Dr. BB (who has been her regular gynecologist for more than fifteen years). When asked, "How are you", she sits and weeps, overcome, unable for to answer for many long minutes. Ms. Brzak alleges this has never happened before and it makes her realize she is not in good shape emotionally.

VERBAL HARASSMENT

On 30 June at 12h27 Ms. Brzak alleges she was sitting in a chair by the elevators reading a print out of an External Study case, one of eleven she constructed between 21-30 June, working with DIP, PAS, Budget and Staff Council when Section Chief, Daisy Buruku passed by. Seeing her sitting reading Daisy asked, "Is this some kind of strike?", automatically putting Ms. Brzak in the wrong, on the defensive and undermining her and her work.

July 2005

POST TRAUMATIC STRESS

4 July, 9h00 – 10h15. At Ms. Brzak's request [and after two months of her unrelenting efforts toward this, dating from 11 May] a meeting is held in VNG 604 on "Support and where we find ourselves now", whose purpose and objectives are to go over the general characteristics of Post-Traumatic Stress Disease (PTSD), as Ms. Brzak has spelled out in email.

Attending are –
Michel and Sinead (UNHCR Medical Service);
Claimant, Claimant's Supervisor Jacinta, Claimant's Chief of Section Respondent Buruku, and Respondent Hall (DHRM).
(documented)

Before this Monday morning meeting Ms. Brzak alleges she had an upset stomach and diarrhea all day Sunday, Sunday night and Monday morning, causing her to doubt she'd be able to drive the 30-40 minutes to work.

Ms. Brzak does manage and opens the meeting by presenting a 2-page paper on "Post Traumatic Stress, What This Means in Practical Terms.

In para 4, she has requested "No discussion at any level in any fora of my health; my family's or any element in my confidential medical dossier . . . Many facts and rumors from my dossier have appeared in the Dutch media so I am extremely sensitive about this. The false claims made against me and my family, as well as JMS and its Director – as premeditated retaliation against us – we are suffering from to this day".
(documented)

The Claimant alleges she left work early (around 16h30) exhausted from the stress, intestinal upset and the long struggle to get retaliation to abate.

MEDICAL SUPPORT

Tuesday, 5 July at 10h50 Ms. Brzak has a medical appointment with her general physician, Dr. MA (who has been her long-time treating doctor).

She weeps (like she had with Dr. BB on 10 June) explaining she is stressed, tired, is in the backlash phase at work experiencing retaliation, but has tried throughout the 18-month ordeal to stay strong. She has realized she is not doing well and the doctor suggests she needs to consult a psychiatrist "pour titre accompagne avec le PTSD". He puts her on sick leave through the end of the week. They agree Ms. Brzak will call Dr. DC for an appointment asap.

WORK DUMPING (1)

6 July. Madeleine calls Claimant Brzak at home (in bed on sick leave) to say new work has been assigned to her by Claimant's Section Chief, Respondent Buruku which Ms. Buruku has stated is urgent. Around 10h45 Ms. Brzak calls Jacinta's extension, explaining she had waited throughout the summer for Jacinta's return to set up 2005 objectives and competencies and review job responsibilities which remain unaddressed. She adds there is no way she can take on the work Daisy has assigned – it is designed to be in excess of what Claimant could reasonably expect to complete.

She explains she already took on new work from Frank of consultancies for 3 programmes – their contracts, payments and travel admin which is big – and Ms. Brzak is

not a Budget Assistant and has no help; he has Ravi. They discuss other new work mentioned envisaged with the Training Network and Ms. Brzak points out that External Studies work has not gone away even if the money has (the External Study Panel had met and approved a new batch in their bi-annual June session).

Ms. Brzak alleges she said, "If they're trying to kill me, this is how to do it". Jacinta says she will talk to the Chief of Section (Respondent Buruku), adding that she didn't say it at the Monday meeting (4 July) but thinks Cynthia needs rest. The call ends.

INTERFERENCE ON MEDICAL MATTERS

Ms. Brzak returns to work on 11 July and is informed that Respondent Buruku instructed the secretary to ask the Claimant to show Ms. Buruku her medical 'sick leave' certificate. As this is illegal (medical information is confidential and certificates are sent directly to Medical Service), Claimant Brzak informs the secretary to tell Respondent Buruku that she refuses.

PARs FOR 2004-05

On 11 July NY calls to inform they are sending a letter from OHRM as reply to Ms. Brzak's letter of 1 June to MMB. She receives a scanned letter dated 5 July from Jan Beagle, Officer-in-Charge, OHRM by email confirming inter alia action to waive her PAR for 2004 and through March 2005. No formal follow-up was undertaken, and as of the present date the Claimant remains without a proper PAR for 2004 and 2005 or an appropriate substitute in her personnel file.
(documented)

WORK DUMPING (2)

12 July. Meeting at 14h15, room VNG 684 on 'roles and responsibilities' with Daisy, Jacinta, Frank, Madeleine and Ms. Brzak.

Discussion centers around Madeleine's job description. Frank had prepared a checklist; Madeleine had prepared a "job aid"; Cyntha [sic] had not been requested to prepare anything. She asks the meeting why she is present to discuss Madeleine's job. She is told the meeting intends to look at her job – but no one has told Claimant or prepared relevant background information, e.g. her last Job Description, last PAR, current roles and responsibilities.

Cynthia informs the meeting she is uninformed, unprepared and cannot discuss without such information. With a wave of her hand, the Chief of Section orders her to go find this. Cynthia replies it is not possible in view of the time required to find some (e.g. Job Description dating from 1994). The question is asked, "When can these be available?". But it is not answered nor does the meeting conclude; all is interrupted when the conference room doors open and staff pour in to celebrate a birthday party for Jacinta.

After this impromptu party, Marie-Christine comments to Cynthia privately how upset she looked when the celebrations started and Ms. Buruku turned and ordered her in front of the group to "Cheer up Cynthia; it's a party".

13 July at 14h15. The next day Claimant Brzak receives an email from Respondent Buruku "transferring two courses to your charge as of immediate effect".
(documented)

Visibly upset, Claimant goes to discuss this action with her supervisor, Jacinta. Managing to side-step Jacinta's criticisms about her emotional state and anger, they discuss the Claimant's concerns and agree on ways forward and timing. Jacinta sends Respondent Buruku an email at 16h30 on 13 July confirming this.
(documented)

19 July meeting with Respondent Raymond Hall takes place as requested by Claimant – in lieu of meeting with High Commissioner Guterres requested and refused. Claimant Brzak prepared a Note with nine attachments and the concluding remark, "Little good could come from setting up SDS – or me – to fail publicly. Despite losing at least 4 staff mid 2004/mid 2005, I cannot accept more work than I can do. Being pushed to do so is tantamount to further abuse which we should avoid".
(documented)

Respondent Hall verbally agrees to intercede with Respondent Buruku. There is no feedback on whether/how this may have been done.

MORE MEDICAL SUPPORT & SICK LEAVE

12 July. Ms. Brzak goes to Medical Service in tears. Is prescribed medication by Dr. Baduraux for excessive stress and counseled to hold her ground quietly. At 10h28 she buys the medicine and begins taking it.
(documented)

13 July at 11h30. Cynthia talks with a trusted colleague about retaliation and resulting stress which have become alarming. Claimant states she is now totally fed up, realizing attacks and retaliation will not stop. Upon his

advice she makes an appointment to see Respondent Hall (19 July at 15h, see above) and decides to try to see the new High Commissioner (Guterres) who the Claimant believes could help the situation immensely – if he chose to.
(documented)

14 July. 17 months into the ordeal Claimant Brzak consults Dr. DC. Now extremely fragile, she welcomes this medical support and explanation by the doctor that Claimant cannot live and perform normally after the drawn-out ordeal at work in 2004-05. Her body has lost its ability to manufacture chemicals to resist stress, e.g. serotonin.

ATTEMPT TO MEET WITH NEW HC (1)

On 14 July Claimant Brzak begins trying to contact the office of the High Commissioner by telephone and email to set up a meeting with Mr. Antonio Guterres who took up the function of UN High Commissioner for Refugees on 15 June.
(documented)

18 July. Ms. Brzak receives email from HC's secretary (Micheline) stating, "the HC has been informed by the DHC [Respondent Chamberlin] – and as she has already informed you – that she is available to meet with you at any time. It is therefore suggested that this meeting with the DHC should take place".
(documented)

19 July. At 11h49 Ms. Brzak receives email from Respondent DHC Chamberlin indicating she has "understood you might like to talk". At 18h16 Ms. Brzak replies.
(documented)

September 2005

On 1 September Ms. Brzak communicates to her direct supervisor, Jacinta, what it is Claimant's information and understanding of Respondent Buruku's *post facto* action to question Jacinta regarding modification of Claimant's telecommuting arrangements already approved and filed. It is the Claimant's belief that Buruku's intervention constitutes an attempt to retaliate.
(documented)

WORK INCURRED ILLNESS

Per medical advice regarding her current medical state, Ms. Brzak claims and confirms admin action under Appendix D of the UN Staff Rules for reimbursement of expenses related to work-incurred illness.
(documented)

The Organization is in receipt of attestations from Claimant's doctors that her health has been severely affected as a result of her work situation. It is the Claimant's belief that should the Organization fail to recognize her current health situation as service-incurred illness after evidence to this effect, it will be another piece of retaliation and clear proof of the damages she has suffered due to the UN's and UNHCR's failure to protect her from retaliation or to support her.

ABUSE OF AUTHORITY (THE FRIDGE)

5 Sept. Respondent D. Buruku expresses her opinion in a Section meeting and records her admonition in meeting Minutes (approved by Buruku before issuance), that "individuals who wish to send all section emails have to

exercise caution in their choice of language and approach so as to avoid patronizing others or being disrespectful". Claimant Brzak had sent an email trying to help. Two other staff had as well.
(documented)

Receipt of Ms. Heywote's email dated 5 September – after the Section meeting she did not attend. Heywote inputs on a subject she says she has no idea about, while stating her opinion that the emails are "offensive", "disrespectful" and "condescending".
(documented)

REPLY TO OHRM NY

6 Sept. Claimant Brzak replies to Jan Beagle's letter dated 5 July, stating *"I consider more words of assurance from Mr. Annan as more empty promises. His and his Office's reprehensible lack of enterprise to defend legitimate whistle blowers and unhampered investigation, as well as the mandates of OIOS, the IGO in UNHCR, these staff members and others who cooperated are what speak volumes.*

In fact harassment and retaliation against me and others continue. I am suffering every day due to the stark reality that almost no one in a UN leadership position either in New York or Geneva engaged to protect me or secure my rights. In fact, my employment situation, reputation and health deteriorate steadily as a result".
(documented)

ATTEMPT TO MEET WITH HC (2)

On 30 August, Claimant Brzak sends a letter (with 5 attachments) to the High Commissioner confirming she's seen others and still requests a meeting with him.

On 6 September after the HC and the Staff Council go to the UNHCR Staff Memorial together to commemorate the murders of 3 UNHCR staff in Atambua in 2000, Ms. Brzak asks Mr. Guterres if he's setting up the meeting she's requested. The Claimant alleges Mr. Guterres turned away, to his left, and that about 10 seconds later when he turned back, she asked again. The Claimant alleges that he replied that Respondent Raymond Hall was away, implying his presence would be necessary. She alleges she responded, "I know. Okay," and dropped it.

ATTEMPT TO MEET WITH HC (3)

On 12 September Ms. Brzak sends a letter to Respondent Hall for follow up on retaliation the past few months and on the meeting she has requested with the High Commissioner since 14 July, asking for Respondent Hall's support to ensure a meeting takes place as soon as possible.
(documented)

LACK OF ACTION

12 September. Claimant checks with PMU – unit in her Section which processes all PARs. She is informed that no action has been taken to record anything about her 2004 or 2005 PAR – and is given print out of her Fact Sheet which shows nothing.
(documented)

In 2005 Brzak's supervisor, Jacinta has not requested a meeting, per normal practice, to discuss work on a 2005 PAR. Normal practice is to discuss, agree on objectives, select managerial and functional competencies, meet for a mid-term review and discuss then eventually finalize. None of this has taken place for 2004 or 2005.
(evidenced by lack of such documentation)

REBUTTAL OF IGO STAFF MEMBER

24 January. Claimant is informed by work unit responsible (Performance Management Unit (PMU)) that she has been selected by a staff member of the UNHCR Inspector General's Office (IGO) "to investigate the rebuttal of her Performance Appraisal Report (PAR)" for period Sept 03-Aug 04 in accordance with IOM/54-FOM/61/1997 and IOM/60-FOM/62/2004.
(documented)

3 February. Memo sent by H. Buss, Chief, Legal Affairs Section (LAS) to Rebuttal Panel members and others on "a dilemma faced in connection with the . . . case" and need for "utmost discretion".
(documented)

7 March. Relevant documentation sent to Rebuttal Panel members (much after memo from LAS!)
(documented)

11 May. Email sent to Panel member from Head, PMU (part of SDS and DHRM) stating, "We would like to meet with you and LAS . . . to discuss the ongoing examination of the rebuttal case of . . . ".
(documented)

12 May. Ms. Brzak sends email to Panel members stating, "We discussed being willing to go on the condition that it is not only us and them and that we would agree if allowed to include others . . . The reasoning behind our request was that this would ensure that the proceedings are balanced and fair on principle, and wholly transparent for the staff (plural) involved. [. . .] If what they've got to say can't be said in front of others, then I think we can legitimately question whether we should hear it – and be influenced by it".
(documented)

Regine and Claimant talk about this meeting informally in the corridor. The Panel is told Respondent Buruku intervened with the Panel Chair, to pressure the Panel to meet with LAS without others present. The Panel is told by one member he is having periodic interference from Buss (and has from the outset).

27 May. After three meetings, the Rebuttal Panel turns in a signed Final Report. Following on from three pages of allegations under four subject headings –

Unethical Behaviour,
Forgery and Errors,
Breaches of Confidentiality,
Obstruction and Use of Anonymity

cut and pasted from the rebuttal statements of –

s/m (42 pages plus 30 annexes),
supervisor (33 pages plus 12 annexes) and
senior IGO s/m (6 pages),

the Panel concludes in paragraphs 4 and 5 –

> "4. *In light of the reciprocal allegations of misconduct involving senior staff of the IGO of the*

Executive Office, and the fact that too many issues need to be clarified before a rebuttal process can be initiated, the Panel believes this case falls within the mandate of the Office of Internal Oversight Services and outside the purview of the rebuttal.

5. Therefore, we strongly recommend this case be referred to the OIOS for action as the above-mentioned IOM/FOM [IOM/FOM/65/2003 entitled "The Role and Functions of the Inspector General's Office"] instructs."

(documented)

9 June. Confidential memo sent from the Rebuttal Secretariat through Respondent Raymond Hall, Director, DHRM, to the Rebuttal Panel informing us in paragraph 3 a) that the,

" . . . Panel's conclusion . . . cannot be accepted as a substantiated report",

instructing the Panel on what to do instead,

"5. We trust that the above-mentioned elements will assist you in substantiating your report . . . "

and assigning a new date,

"6. We look forward to receiving the Rebuttal Panel Report by 27 June 2005".

(documented)

24 June. Ms. Brzak sends email to Panel members stating inter alia,

"I am shocked because the Rebuttal Panel did its work properly, without question, finishing and submitting its Report. [. . .] And I am shocked as a staff member and Panel member to be intimidated in such a manner. [. . .] Legally, this looks like 'detournement de procedures' and abuse of authority, including retaliation – issues I'm quite familiar with . . . "

(documented)

30 June. Head, PMU, sends email to Panel reminding them the "deadline of 27 June 2005, which you were given to provide the final report . . . has passed".
(documented)

30 June. Ms. Brzak telephones a former PMU staff member serving there when the rebuttal procedure was designed and implemented and who worked as Acting Head of PMU (as a P. 4). She worked under him on three previous rebuttals, one sensitive.

He confirms to her his knowledge that "Panels have (or should have) complete independence. Panels determine their working methods. Panel findings are binding. It is inappropriate (illegal?) for DHRM, IGO, LAS or any others to pressure PMU if it is far more than a simple rebuttal". He agrees with Panel's assertion that what is involved falls outside the purview of rebuttal and that with allegations of serious misconduct in IGO the case should be forwarded to OIOS.

22 August. Nearly three months after report submitted, the Performance Management Unit conveys to staff member the outcome of the rebuttal and encloses a copy of the Panel Report.

This communication fails to mention whether PMU/SDS/DHRM has or will comply with the Panel finding which is final, i.e. whether the rebuttal statements with allegations of serious misconduct by staff in the IGO were forwarded to the Office for Internal Oversight Services in New York. Per the 1997 UNHCR Administrative Instruction, final reports are binding (and can only be modified by the High Commissioner).
(documented)

30 Sept. Claimant sends letter to B. Dixon, Investigation Division, OIOS asking for information on whether the IGO rebuttal case was forwarded and if so, what action OIOS will undertake.
(documented)

DECISION FOR IGO TO 'INSPECT' SDS THIS YEAR

In a Senior Management Committee (SMC) meeting sometime after 4 May (SMC Minutes of that date contain no reference to discussion or decision) and before 19 May (email of that date substantiating it had been decided, the email being on how to proceed), a decision is made that SDS (Claimant's unit) will be the one HQ work unit 'inspected' by IGO this year. To note, this comes immediately after Respondent Hall takes up his new post as Director of DHRM on 1 May (after serving in Geneva as Director, Europe Bureau).
(documented)

Late Sept. It is the Claimant's information and belief that the setting up of IGO's inspection of SDS has begun.

NEW IOM/FOM ON ROLE AND FUNCTION OF IGO – JAC REVIEW

In mid-summer, the role and function of IGO is under revision at the request of Management. It is the Claimant's information and belief that this action is part of the plan to retaliate against the entire IGO since Dennis McNamara's and the IGO's work with OIOS last spring on the Claimant's case. However, it is the Claimant's information and belief that last summer the HC and DHC were forced by the S-G and USG Bertini to hold off on the blatant retaliatory action of restructuring they initiated,

but that Respondent Lubbers and Respondent Chamberlin planned to continue such retaliation later when the spotlight was off.

IGO staff drafted the new 2005 IOM/FOM, and the IG briefed HC Guterres and Respondent Chamberlin, with the HC unwisely promising ExCom this could be hastily reviewed by the Joint Advisory Committee (JAC) and finished by the end of July.

WITHDRAWAL OF SIGNATURE FROM HCR CODE OF CONDUCT

19 September. Ms. Brzak sends a missive to the Director of DHRM (Respondent Raymond Hall) requesting he ensure the appropriate administrative action to withdraw her signature.

Claimant cites that "*. . . the UNHCR Code of Conduct is a non-binding document. Adherence to it is a strictly optional undertaking in good faith [. . .] As we know since its dissemination, its spirit has been seriously breached by repeated internal and public demonstrations of bad faith and misconduct with impunity [. . .] I can no longer ethically undertake to adhere to an already empty and morally-bankrupt exercise and hereby formally withdraw my individual signature . . .*".
(documented)

3 October. Respondent Hall replies to Claimant in a memo that her request has been actioned. This action includes placing Claimant's letter to Respondent R. Hall and his reply in her permanent personnel file – prejudicial action she has not requested.
(documented)

STAFF COUNCIL CHAIR TARGETS CLAIMANT

Staff Council Chairperson Mohamed Toure leaves Geneva on or about 21 Sept to participate in an IGO Investigation Learning Programme (LP) in Dakar beginning 26 September without informing the Council of his absence or his purpose.

23 September. The Council agrees to an emergency meeting on the matter, decides to call him back and issues a letter to him to that effect.
(documented)

Same day. M. Toure responds by email to the mail they haven't yet sent, and in so doing requests his secretary send Claimant – and only Claimant background documentation on the LP. She does send it, only to Claimant. Why? The whole Council objects to his attendance. Officially, Claimant and one other Staff representative both wrote a Note in July 05 on Staff Council objections to the IGO turning volunteer staff into amateur, part-time 'witch hunters'.
(documented)

At 6:16 pm same day. Claimant Brzak sends the Staff Council Chairperson M. Toure an email entitled "Assez" asking a) why he keeps targeting her; b) him to cease, desist and apologize; and c) to put it in writing and share it with all staff before 3 October 2005. This is not done – nor is any reply received.
(documented)

PARTIAL and SUMMARIZED LISTING of
RETALIATION ELEMENTS
by RESPONDENTS

Retaliation element	By Respondent(s)
OIOS was set up by UN Member States (in GA Resolution . . .) to oversee the UN system, its procedures and its functioning. By action on 15 July 2004 declaring Claimant's "complaint cannot be sustained" he ignores the investigation report and UN procedures which is manifestly illegal. Further ignoring OIOS recommendations to restore credibility of the Claimant is damaging, prejudicial and constitutes retaliation	K. Annan
Talks by phone with Respondent Lubbers during the OIOS investigation to make agreements about outcome and to set date OIOS will finish (as claimed by Respondent Lubbers in his early 2005 letter to Malloch Brown); outside UN procedures, asks advice of one man, Max van der Stoel (as reported by Malloch Brown)	K. Annan
Refuses to share the OIOS Report with the Claimant/complainant contrary to UNAT 2002 case ruling in favour of such	K. Annan
Does not ensure investigation of Brzak's second and third official complaints to OIOS after Claimant was officially found by OIOS to already have legitimately brought gross misconduct to light	K. Annan

Right of reply not granted to Claimant	K. Annan R. Lubbers W. Chamberlin
No visible support; no word on what actions taken to protect Claimant (if any); refusal to repair damages or make reparations internally and externally	K. Annan UN UNHCR W. Chamberlin
Does not take action internally or externally to hold R. Lubbers accountable for slander and use of confidential medical information concerning Claimant and her family	K. Annan W. Chamberlin UNHCR
Illegal use of office resources and staff to perniciously prejudice legal and administrative processes and to discredit the Claimant	R. Lubbers A-W. Bijleveld UNHCR
Claimants information and belief of bias and active complicity of some Senior management and some 200 staff – press statement, letter signings, petition, circulation of one-sided views supporting Respondents and damaging Claimant (e.g. 16 July 04 congratulatory letter from ExCom Chair), promotions awarded in return for public support	UNHCR R. Lubbers
Various punitive action or lack of action against Claimants supporters (to note who are – or will soon be – without fixed work assignments)	R. Lubbers W. Chamberlin R. Hall UNHCR
Bias and active duplicity of some Staff Council members in 2004 and 2005 – public declarations in support only of Respondents, lack of defense of an elected staff representative performing	UNHCR

her duty, lack of circulation of balanced viewpoints, lying, not showing up, non-defense of the many principles impacting on Claimant and all UN staff	

THIS CASE IS BASED ON –

	By Respondent(s)
Battery **Retaliation** **Intentional infliction of emotional distress** **RICO** as evidenced by:	
Battery	R. Lubbers W. Blatter
Post cut	R. Hall
Work dumping	D. Buruku
Misuse of confidential medical information	K. Annan UN R. Lubbers K. Asomani
Different treatment than that accorded other staff	K. Annan R. Lubbers W. Blatter W. Chamberlin R. Hall D. Buruku A-W. Bijleveld K. Asomani
No substantive action on Claimant's requests for concrete support and for reparation for herself and colleagues	K. Annan W. Chamberlin UN UNHCR
No offer of help by UNHCR senior staff who supported Respondent	W. Chamberlin A-W. Bijleveld

Lubbers, except Respondent Chamberlin – who would *not* agree to meet Claimant and her lawyer informally	R. Hall D. Buruku UNHCR
Rebuttal case of IGO s/m	W. Chamberlin K. Asomani R. Hall D. Buruku UNHCR
Refusal of ex and current HC to meet Claimant or apologize	K. Annan R. Lubbers W. Chamberlin
Offer of mission to Amman, Jordan	R. Lubbers UNHCR
Mobbing (per RICO)	K. Annan UN R. Lubbers W. Chamberlin K. Asomani R. Hall
	D. Buruku A-W. Bijleveld UNHCR
Decision by Senior Management Committee to 'inspect' Claimant's work unit (SDS) as the only HQ unit to be inspected in 2005	W. Chamberlin K. Asomani R. Hall UNHCR
Actively ignoring the Claimant (which is not protection)	K. Annan UN W. Chamberlin UNHCR

Submitted under the pains and penalties of perjury this 28th day of October 2005.

/s/ Cynthia Brzak
Cynthia Brzak – Claimant

ANNEX 5

From: Raymond Hall
To: Brzak, Cynthia
Date: 5/19/05 3:34 PM
Subject: Re: Planning exercise fro [sic] 2006

Dear Cynthia,

The requirement for all headquarters divisions and departments to identify ten percent of their budgets (VAR, ABOD and staff) for potential reduction is part of this year's planning exercise set out in IOM/11/2005-FOM/11/2005, paras 20 to 25.

In a context where a management decision has been taken to contain headquarters at its present size, the aim of the 90/10 formula is to provide a mechanism that assists the Troika with any intersectoral prioritization necessary to make space for new needs and initiatives. Sectors placed within the ten percent bracket will not necessarily be cut; the mechanism simply allows the Troika to take its final prioritization decisions.

I am very aware of the risks involved in cutting some of the areas of DHRM (such as yours) which clearly add critical value over and above the routine administration of staff and will be arguing this forcefully throughout the review process. I think that these arguments will be heard.

In the interests of transparency, I have informed individually all staff, including yourself, whose posts have been placed within the ten percent bracket. The downside of transparency, of course, is that it provokes worries that I hope will turn out to be unnecessary.

The Executive Review as a whole is expected to begin on 27 May and is expected to last about a week. I believe that budgetary decisions are expected by 10 June. I will keep you in the picture once I have further confirmation of dates.

You raise the important issue of retaliation. I would like to assure you that you that, as the new Director of DHRM, I consider that I share with the other actors you have mentioned in your mail responsibility to ensure that you are not subject to any form of retaliation. I would pleased to join any meetings where you feel that my presence would be useful. Also to meet with you separately to discuss any concerns you have in this regard.

With best regards,
Raymond

>>> Cynthia Brzak 05/18/05 09:46PM >>>

Dear Raymond,

In response to your email of 12 May 2005 on "Planning exercise for 2006":

1. Both as a staff member and as a staff Representative, I am not aware of what exercise "this year's planning process for HQ [with] a mandatory requirement . . . [to] put on the table 10 percent of budgetary and staffing resources as potential reductions" was based on. When was it established or where was it announced?

2. As far as I am aware, this "mandatory requirement" has been arbitrarily imposed by the Acting High Commissioner, as the "overall zero growth at HQ" was arbitrarily imposed by the former HC.

3. After discussion with my new supervisor, J. Goveas and the Chief of SDS, D. Buruku, I have been informed that neither was involved in the designation of my post or is aware of the basis for this decision. Furthermore, Ms. Buruku, Ms. Goveas and I were discussing plans to finalize my responsibilities when your mail arrived.

4. Therefore, for the sake of the transparency you mention, I would appreciate receiving a copy of other posts identified in DHRM for possible cuts. . . . I would also wish to know what risks were identified with regard to cutting my post and what work would not be covered or would be handed to others, I note here the ongoing discussions in SDS about overall responsibilities, the new work being handed to me with so much to be done, and my full cooperation with proposals made.

5. Kindly also indicate when the executive budget review – which you note is the next administrative step – will take place, clarifying the overall timetable for the exercise, when results will be known and how I'll be informed.

6. The next step for me will be to share this development with Mr. Morjane, our Assistant High Commissioner and Mr. Malloch Brown, the Secretary-General's Chef de Cabinet for clarification on what is being done by the leadership, as is their duty, to protect staff who file complaints and cooperate with investigations. Both have committed to ensuring protection from retaliation in their meetings with the Chairperson of the Staff Council, Mr. Toure (here and in New York) as well as in the letters Mr. Malloch Brown sent to colleagues in April, and his to me of 2 May 2005.

7. I will also communicate with Ms. Dixon, Director of the OIOS Investigation Division, who committed to overseeing my case for several years as normal practice for complaintants at risk of being targeted later.

8. With a meeting on how to move forward already set with Mr. Morjane and Mr. Toure, in your capacity as Director of DHRM I look forward to information and discussion with you on what the Division of Human Resource Management – the one I work in – is planning to do to ensure the Organization is supporting and protecting me now and in future. Please feel free to join us should you wish.

With best regards,

Cynthia Brzak

>>> Raymond Hall 05/12/05 13:03 PM >>>
Dear Cynthia,

As you may be aware, this year's planning process for Headquarters includes a mandatory requirement that every Division, Department or Bureau put on the table 10 percent of its budgetary and staffing resources as potential reductions. The underlying logic of this approach is that, in a context of overall zero growth at Headquarters, necessary increases to accommodate new needs must be offset by reductions elsewhere. The overall objective of the exercise is containment of the size of Headquarters, together with a necessary margin of flexibility to accommodate new needs.

Following the budget review last week, we have submitted DHRM's proposals for posts to be included in this obligatory 10% "reserve". For the sake of transparency, I want to inform you that your post has been included in the 10

percent category. I would like to stress that this does not mean that it will be automatically discontinued, simply that it has been put into a process of headquarters-wide prioritization. As required by the 10 percent methodology, we have highlighted the important risks associated with each possible post discontinuation in DHRM.

The next step is for our budget to be considered by the Acting and Assistant High Commissioners during the executive budget review.

With kind regards.

Raymond Hall

ANNEX 6

REPORT COMMENTING ON

UNITED NATIONS

SEXUAL HARASSMENT POLICY

March 2001

Chadbourne & Parke LLP
30 Rockefeller Plaza
New York, NY 10112

TABLE OF CONTENTS

REPORT COMMENTING ON UNITED NATIONS SEXUAL HARASSMENT POLICY

INTRODUCTION

At the behest of the International Law & Practice Committee of the New York Women's Bar Association, Chadbourne & Parke LLP has reviewed on a *pro bono* basis documents which apparently constitute the sexual harassment policy of the United Nations ("UN"). A list of the documents determined to be most pertinent to our review is attached as Exhibit A. Unless otherwise indicated, the first three listed documents are hereafter referred to collectively as the "UN Policy" or the "UN Sexual Harassment Policy").[1] Our approach was to review the UN Sexual Harassment Policy as if it were the policy

[1] As noted in the listing, we also were provided with a booklet entitled, "Sexual Harassment In the UNICEF Workplace" which was distributed to "All UNICEF Staff" by Administrative Instructions CF/AI/1994-005, dated March 11, 1994 ("UNICEF Policy"). While not the subject of our review, we will refer to the UNICEF Policy from time to time in this report.

of an employer subject to the anti-discrimination and anti-harassment laws of the United States. This memorandum contains our detailed comments and recommendations and constitutes our report. A separate document, "Summary of Recommendations," accompanies this report.

SUMMARY

The UN Sexual Harassment Policy, although in some respects reading well on the surface, is deficient when measured against standards presently applicable under host country law. It is not enough simply to have a written policy which prohibits sexual harassment and purports to provide a mechanism for making and resolving complaints. A policy must be effective in fact.

To be effective in fact, a policy must be clear and unequivocal; it must provide a procedure for fairly and rapidly resolving complaints; it must be known to employees (victims and harassers alike) as being effective; it must encourage, not discourage, employees who experience harassment to report such activity; it must explicitly prohibit any form of retaliation against anyone who complains about harassment or who participates in an investigation; and it must be known to employees (victims and harassers alike) to assure that employees who use the policy will be protected – from the outset – against retaliation of any sort by anyone, no matter how high in the hierarchy. To assure an effective, anti-harassment policy, all employees (supervisory personnel especially) should receive appropriate training.

Our review indicates that the UN Sexual Harassment Policy is not clear and unequivocal, primarily because the policy and its related corrective and disciplinary measures

are not set forth in one document. Further, the UN Policy is remarkable for its complete failure to mention retaliation. In addition, it is our perception that the UN Policy involves investigative and disciplinary procedures which are confusing, cumbersome, bureaucratic and painfully slow. Moreover, because the investigation and determination procedures are adversary in nature and the bases of determinations apparently kept secret, it seems inevitable that employees perceive the process as being unfair and many actions as being retaliatory. These deficiencies and others described in this report would seem to us as necessarily having the effect of discouraging employees from using the current UN Policy.

Given these deficiencies, we believe most experienced employment law practitioners would conclude that the UN's Sexual Harassment Policy would not meet host country current standards for an effective anti-sexual harassment policy. What have been referred to as the "four Ps" are either not sufficiently present or are lacking entirely; i.e., Policy in writing; Prompt investigation; Protection of the victim Punishment of the harasser.

QUALIFICATIONS OF CHADBOURNE & PARKE LLP

Chadbourne & Parke LLP is a 300+ lawyer international law firm with offices in New York, Washington, D.C., Los Angeles, Hong Kong, London (a multinational partnership with registered foreign lawyers and solicitors) and Moscow. Chadbourne provides a full range of legal services including mergers and acquisitions, securities, project finance, corporate finance, energy, litigation, intellectual property and ePractice, antitrust, domestic and international tax, insurance and reinsurance, environmental, real

estate, bankruptcy and financial restructuring, employment law and ERISA, trusts and estates and government contract matters.

Chadbourne has had an active employment law practice since the early 1970's. This practice has involved, *inter alia*, counseling employers, including preparing policies on sexual harassment, and litigating employment cases at the federal and state levels throughout the United States, including sexual harassment cases. In addition, Chadbourne's employment law attorneys have written articles on and been speakers at seminars on the subject of sexual harassment, conducted sexual harassment investigations and presented training sessions on sexual harassment.

STANDARDS APPLICABLE IN THE UNITED STATES

Sexual harassment law in the United States has evolved from government agency regulations and case law over a number of years. Even though there is no federal statute which by its express terms specifically prohibits sexual harassment or dictates what steps an employer should take to prevent sexual harassment or to correct it when it does occur, the basic principles have become very well established.

These sexual harassment principles are derived from guidance issued by the United States Equal Employment Opportunity Commission ("EEOC") and from decisions of the courts, primarily the United States Supreme Court and the twelve federal Circuit Courts. Wise employers pay attention to these guidelines and decisions because if they do not, they risk having to pay perhaps millions of dollars in damages, possibly to just one individual.

As a practical matter, employers in the host country must have effective sexual harassment policies and training procedures if they want to minimize the risk of liability for damages for sexual harassment. The United States Supreme Court in recent years has ruled that an employer may have an affirmative defense to sexual harassment by supervisors where the conduct does not culminate in adverse job action and the employer exercised reasonable care to prevent sexual harassment from occurring and took prompt corrective action when it occurred and where the complaining party unreasonably failed to take advantage of the preventive and corrective opportunities offered by the employer or to avoid harm otherwise. Moreover, the Supreme Court has held that an employer may avoid liability for punitive damages for managerial employee misconduct if the employer has made a good faith effort to comply with the anti-harassment laws.

In these regards, merely having a written policy without more is generally not considered sufficient. An employer also needs to educate all its employees about sexual harassment, specially train supervisory and managerial personnel about their responsibilities regarding sexual harassment, periodically disseminate its policy, update the policy as needed and actively enforce its procedures for eliminating sexual harassment from the work place.

Equally important, if not more so, than avoiding liability, eliminating sexual harassment from the work place is good business policy. Sexual harassment creates anxiety, interferes with business relationships and adversely impacts productivity. Complaints of sexual harassment mean, at a minimum, lost time and productivity resulting from the investigation and discipline processes,

and, perhaps, from subsequent litigation. Such complaints also may result in the organization's loss of its good name and reputation.

In the comments which follow, we utilize host country principles to attempt to evaluate whether the UN Sexual Harassment Policy contains the elements of an effective policy and to try to recommend revisions or additions which would seem necessary in order to cure deficiencies.

GENERAL COMMENT REGARDING ANTI-DISCRIMINATION POLICIES

While our comments in this report focus on sexual harassment, it should be noted that under host country law, most employment law practitioners now advise employers to include sexual harassment as a special section in a general anti-discrimination, anti-harassment, anti-retaliation policy. This is because host country employers can have liability for harassment by employees on numerous bases in addition to sexual harassment, such as harassment based on race, religion, national origin, age and disability. While sexual harassment by its nature deserves special attention, our comments would be applicable generally to all types of harassment. In addition, including specific and detailed anti-retaliation provisions in policies has become of great importance in recent years because absent strong protection against retaliation, policies can be perceived to be of little or no real value.

GENERAL RECOMMENDATION

The UN Policy should make clear throughout that its protection and procedures cover all types of discrimination and harassment, not just sexual

harassment, and should contain strong anti-retaliation language.

APPLICATION OF SPECIFIC STANDARDS TO UN POLICY

1. *A User Friendly Written Policy*

Although the UN has documents which cover sexual harassment, there apparently is no one document which constitutes a sexual harassment policy *per se*. As we understand it, the UN "policy" consists in the main of three documents all of which were issued on October 29, 1992.[2]

- *Information Circular ST/IC/1992/67* to "Members of the staff" from The Assistant-Secretary-General for Human Resources Management, entitled "Subject: GUIDELINES FOR PROMOTING EQUAL TREATMENT OF MEN AND WOMEN IN THE SECRETARIAT," which guidelines apparently are contained in the UN Personnel Manual at index No. 1171 (hereafter "Equal Treatment Guidelines" or "Guidelines");
- *Administrative Instruction ST/AI/379* to "Members of the staff" from The Under-Secretary-General for Administration and Management, entitled "Subject: PROCEDURES FOR DEALING WITH SEXUAL HARASSMENT," which procedures apparently are contained in the UN Personnel Manual at index No. 1166 (hereafter "Procedures"); and,

[2] These October 1992 documents appear to have been intended to update, strengthen and reissue equal treatment guidelines originally issued in 1979 and first reissued in 1982.

- *Secretary-General's Bulletin ST/SGB/253* to "Members of the staff" entitled "Subject: Promotion of Equal Treatment of Men and Women in The Secretariat and Prevention of Sexual Harassment," which bulletin apparently is contained in the UN Personnel Manual at index No. 1165 (hereafter "Bulletin").

We found it very difficult, and time consuming, to ascertain what the UN policy on sexual harassment really is because all three documents must be read before one can begin to piece the policy together. If persons knowledgeable in employment discrimination law have to work at ascertaining what the UN policy on sexual harassment is, most employees of the UN must have an even more difficult time. This being the case, the element of having a clear, unequivocal, user-friendly, effective written policy (*i.e.*, one that is written in non-legal, non-regulatory language which the common person readily can understand) is significantly undermined.

To illustrate our problem, we set forth the following analysis reflecting the difficulties we had in trying to gain an understanding of the UN Policy:

(a) *The Bulletin*: The Bulletin contains a statement prohibiting harassment of any sort, including sexual harassment:

"Any form of harassment, particularly sexual harassment, at the workplace or in connection with work is contrary to [the anti-discrimination/equal treatment] provisions of [Article 101, paragraph 3] the Charter [of the United Nations] and, consequently, to the policy of the Organization; it is a violation of the standards of conduct

expected of every international civil servant and may lead to disciplinary action." Bulletin, ¶ 1.

However, the Bulletin does not define sexual harassment nor set out a zero tolerance policy nor specify any procedures for dealing with sexual harassment.[3] Instead, the Bulletin, in paragraph 2, refers to the Equal Treatment Guidelines simply by saying that the Guidelines have been updated, strengthened and reissued and, in paragraph 3, refers to the Procedures as having been issued "To address the problem of sexual harassment, which constitutes unacceptable behavior for staff working in the United Nations . . . [and that the Procedures document] defines sexual harassment and establishes informal and formal procedures for dealing with incidents of sexual harassment." Thus, the Bulletin, by itself, is not a written sexual harassment policy as such term is applied under host country law.

(b) *The Procedures.* Although the Procedures in some respects seem intended to comport with host country sexual harassment policy concepts (e.g., defining sexual harassment in paragraph 2; providing in paragraphs 5 to 7 for an informal approach to trying to resolve sexual harassment issues; and providing in paragraph 8 for a formal complaint procedure), the Procedures do not state explicitly that sexual harassment is prohibited and will not be tolerated.[4] Instead, there is simply an oblique reference to another document, the Bulletin, to suggest

[3] The Bulletin also is devoid of any reference to retaliation (as are all other documents). *See* discussion of retaliation, below, in the section "Provide Strong Language Prohibiting Retaliation."

[4] Nor, as noted above, do the Procedures mention retaliation.

that sexual harassment violates the UN's standards of conduct; i.e., "The Organization's policy regarding this unacceptable behavior is set out in ST/SGB/253."[5] Thus, the Procedures document, although coming closer to being a written sexual harassment policy as understood under host country law, is incomplete for not itself explicitly stating that sexual harassment is prohibited and will not be tolerated. Moreover, the Procedures do not set forth examples of sexual harassment or give any explanation of why sexual harassment presents peculiar problems. To obtain any hint of these aspects one must read yet another document, the Equal Treatment Guidelines.

(c) *The Equal Treatment Guidelines.* One of the stated purposes of the Equal Treatment Guidelines is to "indicate behavior that may constitute sexual harassment." While such an indication is appropriate, indeed essential, it should be an integral part of a sexual harassment policy, not a stand alone document. Because the Equal Treatment Guidelines do not set forth an explicit prohibition against sexual harassment or a complaint procedure,[6] the Guidelines themselves would not be considered to be, a sexual harassment policy under host country law.

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[5] As noted below, the Equal Treatment Guidelines also make weak statements indicating that sexual harassment may be prohibited (*i.e.*, "Sexual harassment of a person of either sex is unacceptable behavior . . . [which] may constitute sufficient ground for disciplinary measures . . . "). However, the Procedures make no reference to the Guidelines, and neither the Procedures nor the Guidelines clearly prohibit sexual harassment.

[6] In this regard, the Equal Treatment Guidelines simply refer to the Procedures; *i.e.*, "The informal and formal procedures established for dealing with sexual harassment are set out in ST/AI/379 of 29 October 1992."

(d) *Further Complications.* Ascertaining the UN's Sexual Harassment Policy is further complicated by the fact that the Procedures refer to yet another document, an Administrative Instruction, ST/AI/371, which apparently relates to how initial investigations and fact finding should be conducted and to disciplinary measures and procedures. The investigation procedures, time frames, and decision process should be contained in the sexual harassment policy itself, not in a separate document.

Recommendation As To Point I

To have a user friendly, effective, written sexual harassment policy, the UN should combine into one document the prohibition against sexual harassment, the definition and examples of sexual harassment, the procedures for reporting sexual harassment and the investigatory and disciplinary processes.[7] This single document also should contain new provisions prohibiting retaliation and providing examples of retaliation.

2. *Clearly and Explicitly Prohibit Sexual Harassment*

(a) *General Principles.* Host country employment law has evolved to the point that most practitioners believe an effective sexual harassment policy must explicitly and clearly prohibit sexual harassment to the extent of stating that the company has "zero tolerance" for sexual harassment and

[7] The UNICEF Policy is quite good in accomplishing most of these objectives, but even the UNICEF Policy contains no reference to retaliation.

will not tolerate conduct that can be construed as being sexual harassment. The reason for such a clear, unambiguous statement is twofold: (1) potential victims must see a straightforward, unmistakable commitment by the employer not to tolerate sexual harassment so that victims will feel free to report such conduct when it occurs and (2) potential harassers will get the message that they should not allow themselves to be in the position that their conduct can be brought into question.

(b) *The UN Policy Prohibitory Language.* Nowhere does the UN Policy make a clear, unequivocal, prohibitory, zero tolerance statement. The strongest statement, noted above, is in the Bulletin which says that sexual harassment:

"[i]s contrary to [the nondiscrimination and equality] provisions of the Charter and, consequently, to the policy of the Organization; it is a violation of the standards of conduct expected of every international civil servant and may lead to disciplinary action . . . [and] constitutes unacceptable behavior for staff working in the United Nations. . . ."

The Procedures, on the other hand, contain no language which remotely could be viewed as a prohibitory statement. The Equal Treatment Guidelines, like the Bulletin, also do not make a clear, prohibitive, zero-tolerance statement. Instead, the Equal Treatment Guidelines simply provide:

"Sexual harassment of a person of either sex is unacceptable behavior. . . . Such behavior may constitute sufficient ground for disciplinary measures under Chapter X of the Staff Rules."

The prohibitory language in the various documents constituting the UN Policy does not appear to be sufficiently strong to instill confidence in potential victims that the UN is serious about preventing sexual harassment or to instill fear in potential harassers that they will suffer serious consequences if they engage in conduct which could be sexual harassment. It is not enough, unfortunately, to speak about "the highest standards of integrity" or of "promoting equal treatment" or of "conditions of equality and respect" or even of "unacceptable behavior." There must be a very, very strong and clear statement prohibiting sexual harassment and announcing a zero-tolerance policy

Recommendation As To Point 2

The UN should strengthen its policy language to state explicitly that sexually harassing conduct in any form is strictly prohibited and that the UN has a zero-tolerance policy for any conduct which can constitute sexual harassment.[8]

3. *Provide An Effective Complaint Procedure*

(a) *General Principles.* An effective complaint procedure is one which not only permits persons who believe they have been subject to sexual harassment to report such conduct, but also encourages them so [sic] do so.[9] This

[8] The UNICEF Policy contains a strong anti-harassment statement which is strengthened by being in italics and being set off in a box.

[9] Concerns about false claims generally are not warranted. As discussed below in the section entitled "Treatment of False Claims," there are ways to handle any potential false claims problem without

(Continued on following page)

means that employees must feel they are partners with the UN in eliminating sexual harassment from the workplace. Employees must be able to report harassing conduct to someone who is in a position promptly to take action to stop the offending conduct.[10] Employees must feel confident that they will not be subject to retaliation for making a complaint.[11] The complaint procedure must provide alternatives as to whom the conduct can be reported so as to guard against the possibility that the person to whom a complaint would be made is the harasser (e.g., immediate supervisor). While a report procedure may provide that a written complaint is preferable, it should not exclude oral complaints.

(b) *The UN Policy Complaint Procedures.* Neither the Bulletin nor the Equal Treatment Guidelines set forth a complaint procedure. The Bulletin simply refers to the Procedures document which "establishes informal and formal procedures for dealing with incidents of sexual harassment." While the Equal Treatment Guidelines indicate that one of its purposes is "to advise staff members who believe they have been subjected to sexual harassment of the recourse available to them," it too simply refers to the Procedures document.

The Procedures, on the other hand, set forth informal and formal methods "for dealing with sexual harassment." However, we find these methods to be confusing and very

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having specific false claims language in the sexual harassment policy which will discourage employees from making justified complaints.

[10] *See* section below entitled, "Provide for Prompt Corrective Action."

[11] *See* section below entitled, "Provide Strong Language Prohibiting Retaliation."

difficult to follow. It almost seems that the methods are designed to discourage formal complaints rather than to encourage them.

The Procedures appear to contemplate five types of action which a victim of sexual harassment might take:

(i) *Self Help*: "encouraged to notify the offender that his or her behavior is unwelcome" (¶ 3); this is a typical procedure in many sexual harassment policies and often will bring any offending conduct to an end.

(ii) *Consult a Friend or Colleague*: "encouraged to discuss the matter with a colleague or friend as soon as possible" (¶ 3); "often be helpful to seek advice from a colleague" (¶ 5); this is not a typical procedure in most sexual harassment policies and generally would do little, without additional action, to end any sexual harassment; it may have some value in later providing contemporaneous confirmation that the victim perceived that a problem existed, but in this regard it seems to be more of a paragraph 4 issue (*i.e.*, documenting occurrence) than a means to correcting the problem

(iii) *Informal Consultation*: ¶ 3 provides that the victim "may *report* the incident to one of the staff members referred to in paragraphs 5 and 6 below" [emphasis added], but paragraphs 5 and 6 *per se*, do not speak in terms of a "report;" rather, paragraph 5 seems to contemplate that as a "next step" after trying (i) or (ii), above, the individual "may wish to *consult* the Staff Counselor at his or her duty station" or absent such, "may *communicate* with the Staff Counselor at Headquarters or other duty stations, or may *seek* "[*a*]*dvice and help*" from a member of the Panel of Counsel, or the Panel on Discrimination and Other Grievances, or the Staff Committee or its equivalent, or Focal

Point for Women, or Group on Equal Rights for Women or just staff representatives [emphasis added][12] while an expansive list of persons with whom to "consult" may seem advantageous, it is doubtful that each (or even most) of the persons indicated would be sufficiently familiar with issues of sexual harassment and what action should be taken to be of much value to the victim.

(iv) *Consultation/Report*: if the provisions of paragraph 5, described above, were not confusing enough, paragraph 6 provides that the victim "may also *seek advice and help* from his or her Personnel Officer, or from a senior member of the department or office, who is in a position to *discuss the matter discreetly* with the individual and with the alleged harasser with a view to achieving an *informal resolution* of the problem, *where appropriate*" [emphasis added]; seeking advice and help from a paragraph 6 person seems to be a step up from seeking advice and help from a paragraph 5 person; a paragraph 5 person, apparently, is supposed to simply consult with the "aggrieved individual" whereas a paragraph 6 person is to discuss the matter with *both the victim and the alleged harasser* with the specific purpose of achieving an *informal resolution*, a situation which could be fraught with the possibility of retaliation; moreover, paragraph 7 provides that any paragraph 6 person *must* report any incident of sexual harassment, *i.e.*, " . . . staff members should be aware that incidents which *may* constitute *misconduct* will be reported by the officials listed in paragraph 6 to the Assistant Secretary-General for Human Resources Management" [emphasis added]; it would seem that any time a

[12] We understand that people serving on these groups are volunteers who are untrained regarding issues of sexual harassment.

victim consults with a paragraph 6 person who determines to discuss the matter discreetly with the alleged harasser with a view to achieving an informal resolution, a report situation necessarily would arise because it would involve an "incident which *may* constitute *misconduct*," [emphasis added].

(v) *Formal Procedure:* under paragraph 8, a victim of sexual harassment may also "make a *written* complaint to the Assistant Secretary-General for Human Resources Management"; that written complaint "*should*" contain several items of specified factual data and "be dated and signed by the complainant" [all emphases added.]; paragraph 8 is ambiguous and confusing in that it seems to indicate that (i) verbal complaints would not be accepted by the Assistant Secretary-General; (ii) even a written complaint lacking all the specified factual data would not be accepted; and (iii) a formal complaint to the Assistant Secretary-General is restricted to "circumstances where informal resolution is not appropriate or has been unsuccessful," thereby strongly implying that the "informal" methods must be exhausted before the "formal" procedures can be utilized; moreover, the "formal," written complaint can be made only to one person, the Assistant Secretary-General for Human Resources Management.

Because of the numerous problems mentioned above, the complaint mechanisms set forth in the Procedures are not simple, clear, straightforward and easy to use. On this basis alone, the complaint procedures would seem to discourage rather than encourage complaints. Moreover, to the extent the complaint procedures can be read, even if not so intended, (i) as requiring use of informal procedures before making a formal complaint, (ii) as limiting formal complaints to those made in writing or (iii) as prohibiting

formal complaints unless made to the Assistant Secretary-General for Human Resources, they would not constitute effective procedures under host country law.

Recommendations As To Point 3

Simplify the complaint mechanisms by providing (in the policy recommended in #1, above) for (i) self-help; (ii) a truly confidential consultation with a trained ombuds type person knowledgeable about sexual harassment and versed in the informal and formal ways to resolve complaints (could be centralized or specific persons in main locations or for specific regions of the world); (iii) more persons to whom a formal complaint can be made; (iv) that a formal complaint need not be in writing; and (v) that a victim has the option of using one or more of these mechanisms and need not do so in any particular order.

4. *Provide for a Prompt, Fair Investigation*

(a) *General Principles.* For a sexual harassment policy to be effective, employees must know that an investigation will be conducted promptly. Although neither the EEOC Guidelines nor case law specify a set time within which to initiate and complete an investigation, most employment law practitioners believe that the investigation should start almost immediately upon receipt of a complaint. In serious situations where there may be some physical danger to the victim or where retaliatory action has occurred or is likely to occur, an immediate response clearly would be required. In other situations, some delay might be warranted for schedules to be arranged and other preparations to be made. However, in

normal circumstances, no more than a day or two should pass before the investigation commences. "The sooner the better" is the best rule to follow.

Many sexual harassment policies now set forth a time period for investigations to begin and to end. Specifying time periods has come about because many employment law practitioners believe that doing so gives assurance to employees that a prompt investigation will be done if a complaint is made and also helps to convince a judge or hearing officer or panel that the employer is serious about eliminating sexual harassment from its workplace.

It is not enough, however, simply for a prompt investigation to be made. The investigation must be done by someone knowledgeable about sexual harassment and objective in assessing facts. The investigator must be perceived by employees, victims and harassers alike, as being knowledgeable, objective and fair. The investigator should not be someone who at a later stage in the process will become the prosecutor or defender of either of the parties involved. Nor should the investigative aspect involve adversarial proceedings where evidence is introduced and either party speaks only through or in conjunction with consultants or representatives.

(b) *The UN Policy "Investigative" Procedures.* The UN Policy language on its face does not appear to us to meet the requirements for a prompt, fair investigation. Moreover, anecdotal evidence indicates that the investigative process is slow, secretive, often adversarial to the complainant and does not result in prompt corrective action.

To begin to understand the UN investigative procedure once a formal complaint is received requires review of at least three documents, *i.e.*, paragraphs 9 and 10 of the Procedures; Administrative Instruction ST/AI/371 on revised disciplinary measures and procedures relating to "initial investigation and factfinding"; and Staff Regulations and Rules. Having to look at so many documents in order to understand the investigatory procedure would seem in itself to be a factor which would discourage rather than encourage employees to report sexually harassing conduct.

The investigation provisions of the Procedures do not set forth information considered to be important under host country law (*e.g.*, specific time periods; investigation will be conducted with the maximum degree of confidentiality possible;[13] witnesses and other employees will be interviewed as part of the investigation). Paragraph 9 of the Procedures states that upon receipt of a formal complaint of sexual harassment, "the Office of Human Resources Management will *promptly* conduct *at Headquarters* the initial investigation and factfinding provided for in administrative instruction ST/AI/371 . . . " [Emphasis added.] At any location other than Headquarters, the Secretary-General for Human Resources Management designates "an official [at the duty station] who will conduct the initial investigation and factfinding and report directly to"

[13] A sentence related to confidentiality does appear in paragraph 7 of the Procedures (*i.e.*, "All reports of sexual harassment will be handled discreetly to protect the privacy of all involved"), but it is out of place and not adequate to cover the investigation process after a formal complaint is received. *See* discussion of confidentiality in section below, "Assure Confidentiality to the Maximum Extent Possible."

that Assistant Secretary-General. Although the investigation at Headquarters is to be done "promptly," no time period is specified. Where the investigation is at a duty station, no time period is specified and, indeed, paragraph 9 does not even state that that investigation will be done "promptly."

(i) *First-Step "Investigative" Procedures.* More significantly, however, the Procedures seem to contemplate an initial "investigation" which is adversarial to the complainant and seems to favor the alleged harasser. Indeed, the first-step "investigation" appears to be a mini-trial. This is because paragraph 10 not only provides that the "offender shall receive a copy of the complaint . . . ," but goes much farther to provide that he or she will "be given an opportunity to answer the allegations *in writing* and *to produce evidence* to the contrary . . . [and] . . . be informed of his or her *right to the advice of* another staff member or retired staff member to assist in his or her response." [Emphasis added.]

Not only does this procedure seem to set up at the very outset a timeconsuming, adversarial process inconsistent with the concept of a prompt investigation, but also it seems to deny the complainant of equal rights. There is no provision giving the complainant the opportunity to see the written answer to the allegations or to produce evidence refuting the offender's evidence. Even more remarkably, the procedure does not provide for the complainant to be informed at the outset, or upon receipt of the answer, that like the offender, he or she has the right to the advice of another staff member or a retired staff member. In any event, the first-step "investigative" procedures do not seem to be at all conducive to prompt action.

(ii) *Second-Step "Investigative" Procedures.* Moreover, when this initial process is completed, it leads only to further investigation and/or a hearing whenever "the facts appear to indicate that misconduct has occurred." In such a case, instead of prompt remedial action being taken the "matter [is referred] to a joint disciplinary committee for advice." We understand that the members of the joint disciplinary committees are not trained in how to review allegations of sexual harassment. It also appears that the procedures applicable to joint disciplinary committee activities are not conducive to prompt action.

In sum, the investigatory procedures under the UN Sexual Harassment Policy provide for almost immediate, time-consuming adversarial contests, rather than prompt, impartial investigations resulting in prompt remedial action where necessary. From the literal language of the UN Policy, the adversarial procedure even seems to favor the offender. Given these circumstances, the present investigation provisions in the UN Policy would appear to have to operate to discourage rather than encourage employees to utilize the complaint provisions.

Recommendation As To Point 4

Revise the investigation procedure to provide for a true, objective, prompt investigation by specialized investigators trained in sexual harassment issues. Eliminate the dual "investigation" procedure by (i) devising a procedure to allow for prompt remedial and disciplinary action to occur whenever the investigation by trained investigators indicates that sexual harassment occurred and by (ii) providing for a separate, post-corrective action review if requested

by the complainant or harasser. Eliminate those provisions which make the "initial" investigation process adversarial.[14] Add specific time frames for investigations to be completed.

5. Provide for Prompt Corrective Action

(a) *General Principles.* A sexual harassment policy is a useless document unless it provides for prompt corrective action when a violation occurs and unless prompt corrective action is in fact taken. Any time an investigation reveals that sexual harassment clearly took place or would appear to have taken place, prompt corrective action to bring the conduct to a halt, to protect the victim and to discipline appropriately the harasser commensurate with the nature of the violation and other relevant factors is a necessity. If the investigative process drags on or if no determination is made promptly as to whether or not harassment occurred or if known harassment is not stopped immediately or if offenders are not quickly and appropriately disciplined, employees will have no confidence that the employer is serious about rooting out harassment. Under such circumstances, employees will not make use of the employer's policy no matter how good it looks on paper.

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[14] The adversarial provisions might be appropriate at a later review or appeal stage after the investigation is completed and corrective action has been taken. This would be analogous to host country procedure where an employer internally investigates a complaint, makes a determination and either does or does not take action, but thereafter may be sued externally by the complainant for not taking prompt and/or effective or sufficient action or sued by the offender for allegedly violating his or her rights.

(b) *The UN Policy Corrective/Disciplinary Action Provisions.* Each of the documents comprising the current UN Policy make some reference to disciplinary action. The Bulletin has a general statement that a "violation of the standards of conduct . . . may lead to disciplinary action." (¶ 1) [Emphasis added.] The Equal Treatment Guidelines similarly have a general statement that sexual harassment "may constitute sufficient ground for disciplinary measures under chapter X of the Staff Rules." (¶ 13) [Emphasis added.] In addition, the Equal Treatment Guidelines tell "managers and supervisors" that "[t]hey must make every effort to ensure that their staff work under conditions free from sexual harassment and to redress any inappropriate action or decision taken as a consequence of an incident of sexual harassment." (Id.) [Emphasis added.]

However, it appears that under the UN Policy, local managers and supervisors have no authority to take corrective or disciplinary action. Instead, under paragraph 11 of the Procedures document, the Assistant Secretary-General for Human Resources Management, apparently the only person to whom the report of the investigation and "factfinding" is made, has to make one of three decisions:

1. To close the case if "the facts . . . [do] *not appear to* indicate that misconduct occurred" [emphasis added][15]; or

[15] In instances where the facts do not appear to indicate that misconduct occurred, the file should not simply be "closed." Instead, a memorandum should first go to the file, and to the alleged offender's personnel file, to the effect that on such and such date a complaint was made, that after the investigation was completed, no determination could be made one way or die [sic[other, and that the sexual harassment

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2. To "*refer* the matter to a joint disciplinary committee *for advice*" whenever "the facts *appear to* indicate that misconduct occurred" [emphasis added][16]; or

3. To "*recommend* to the Secretary-General that the alleged harasser be summarily dismissed" in those instances where "the evidence *clearly indicate[s]* that misconduct has occurred and that the *seriousness* of the conduct warrants immediate separation from service." [Emphasis added.]

It seems apparent that this disciplinary scheme cannot result in prompt corrective action in situations where the facts indicate that sexual harassment occurred. There appears to be no authority at the local level to take corrective action and/or disciplinary action, even in those situations where it is known to local managers that harassment has or is occurring. In fact, even where the Assistant Secretary-General for Human Resources Management determines from the investigative report that misconduct has occurred, no action can be taken until "advice" is received from "a joint disciplinary committee." This could involve weeks if not months of delay while the harassment continues or retaliation occurs. Such delay

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policy was described to and read by the alleged harasser. Such a memorandum is innocuous if no further complaints are made, but is a basis for strong disciplinary action if a subsequent complaint occurs.

[16] As noted above in the "Provide for a Prompt, Fair Investigation" section, corrective action should be taken immediately whenever facts indicate that misconduct occurred. The process of referral to the joint disciplinary committee imposes a second "investigation," if not a bearing, as part of the "advice." It is a step which necessarily involves delay, duplication of effort and loss of confidentiality, as mentioned below in the "Assure Confidentiality to the Maximum Extent Possible" section.

flies in the face of any concept of prompt remedial action or prompt disciplinary action. Moreover, even where the investigation reveals that serious misconduct warranting immediate dismissal has occurred, the Assistant Secretary-General for Human Resources Management can only "recommend" to the Secretary-General that the offender be summarily dismissed.

In sum, the UN Policy corrective action/disciplinary procedures set forth such a cumbersome process as to dictate that prompt remedial and disciplinary action cannot occur. As a consequence, the corrective action and disciplinary provisions of the UN Policy must work to discourage employees from using the complaint procedures rather than encouraging them to do so.

Recommendation As To Point 5

The UN Policy should be revised to state clearly that a violation of the policy will result in disciplinary action (not simply "may" result.). The various types of discipline short of termination should be spelled out in the policy itself (e.g., suspension without pay, transfer, denial of promotion or increment, demotion, etc.). The UN Policy should provide that corrective action and discipline will be implemented as soon as the investigation indicates that sexual harassment appears to have occurred; i.e., some procedure should be devised to assure that prompt corrective and disciplinary action can be taken, meaning within hours or days of an incident being reported whenever the facts indicate that sexual harassment did in, fact or likely may have occurred. Any review of, appeal from or hearing relating to

such corrective action/disciplinary decisions should occur only after these decisions have been made rather than those decisions being held hostage to a drawn out, non-confidential process as presently appears to be the case.

6. Provide Strong Language Prohibiting Retaliation

(a) *General Principle.* An essential element of a sexual harassment policy is strong language conveying an employer's assurance that persons who complain about sexual harassment or participate in an investigation of sexual harassment will not suffer from any form of retaliatory treatment. Absent such assurances, victims are fearful that no matter how forcefully an employer's policy prohibits sexual harassment on paper and no matter what sort of a complaint mechanism the policy provides, they will suffer adverse consequences if they assert rights under the policy. Absent strong prohibitions against retaliation, harassers are not deterred from making victims pay, in explicit or subtle ways, for exercising their rights under the policy.

Prohibition against retaliatory action has been a part of host country statutory law since the passage of title VII of the 1964 Civil Rights Act. Section 704(a) of that Act prohibits retaliation against any employee "because he has opposed any practice made an unlawful employment practice by this [Act], or because be has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this [Act]." Over the years, case law has developed anti-retaliation protection to the level that an employee can successfully

assert a retaliation claim even where the employee loses on the underlying claim of sexual harassment.

As a result, knowledgeable employment law practitioners worry more about having to defend against a claim of retaliation than they do about defending the sexual harassment claim.[17] This concern flows from recognition of the public policy reasons courts give for providing extraordinary protection to victims of harassment, as well as to any employees who participate in investigations by providing information or employees who challenge an employer's policies as being discriminatory; *i.e.*, without such protection, victims will not come forward and employees will not assist in eliminating discrimination.

In May of 1998, the EEOC, in recognition of the increasing importance of preventing retaliation, released a new section to the EEOC Compliance Manual specifically addressing retaliation issues.

Many practitioners now believe that an employer's sexual harassment policy should contain the words "Against Retaliation" in the title of the sexual harassment policy; *e.g.*, "Policy Against Discrimination, Harassment and Retaliation." Practically all employment law practitioners are of the view that a sexual harassment policy which does not prohibit retaliation in very strong terms will not pass muster as an effective policy. In this regard,

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[17] One Circuit Court has gone so far as to hold that an employee is protected against being fired for testifying in a Title VII suit even though her testimony was unreasonable *Glover v. South Caroline Law Enforcement Division*, 50 BNA Daily Law Report AA 1, March 16, 1999 (4th Circuit) ("Reading a reasonableness test into section 704(a)'s participation clause would do violence to the test of that provision and would undermine the objectives of [the Act].")

the anti-retaliation provisions of a sexual harassment policy should give examples of the types of actions which can constitute retaliation so that employees, victims and harassers alike, will better understand what is prohibited.

(b) *The UN Policy Is Silent On Retaliation.* As has been noted, not one of the documents which make up the UN Sexual Harassment Policy so much as mention the word "retaliation." This omission constitutes a major deficiency in the UN Policy. If UN employees believe that their local or immediate supervisors will make them pay in some way if they complain or that persons in authority higher up the chain of command will not protect them or that they will be ostracized by their co-workers or otherwise will suffer, even if in subtle, intangible ways, they will not utilize the UN Policy.[18] Absent strong anti-retaliation language in the UN Policy and prompt disciplinary action when retaliation occurs, there is no reason for employees to believe that they will suffer no consequences for asserting their rights under the UN Policy.

Recommendation as to Point 6

Strong anti-retaliation language should be added to the UN Policy. Several examples of what can constitute retaliatory action should be set forth. The title of the UN Policy should reflect that it is also a policy against retaliation.

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[18] Employees who complain of sexual harassment or who are asked to give information in connection with an investigation should be told at the outset that they are protected from retaliation. They also should be told that retaliation in any form will not be condoned, that violators will be disciplined promptly and that they should immediately report any action which they believe to be retaliatory.

7. Assure Confidentiality to the Maximum Extent Possible

(a) *General Principles.* It is desirable to keep complaints of sexual harassment as confidential as possible, whether they are informal or formal complaints. Invariably the victim desires that confidentiality be maintained and is reluctant to complain if some degree of confidentiality is not provided. It generally is equally important to the alleged offender that there be confidentiality. Given the nature of sexual harassment complaints, disclosure beyond a small, need-to-know circle can be destructive to the careers and lives of the victim, the offender and witnesses alike.

Nevertheless, under host country law, an employer must conduct an investigation and take corrective action whenever an employee reports sexual harassment. Because of this requirement, an employer cannot honor an employee's request simply to listen to the complaint, keep it strictly confidential and do nothing. Instead, the employer must advise the employee that the law obligates it to act whenever a report is received. The employer can only commit to keep the matter as confidential as possible within the context of complying with its legal obligation to respond to the complaint. This means that only those with a need to know will be informed of the complaint (*e.g.*, the investigators, the alleged harasser, any witnesses and the decision makers).

In most cases, it will be necessary for the investigators to interview not only direct witnesses, if any, who saw the alleged offensive conduct, but also persons with whom the victim may have spoken about the events at the time they

occurred. Such persons should be told at the outset that they should keep the matter confidential.

In addition, under host country law in order to have an adequate investigation the employer may need to interview other persons who interact with the alleged harasser to see if employees other than the complainant have experienced similar problems. To protect confidentiality, these interviews frequently can be conducted in a way to elicit the information without disclosing why the interview is occurring or disclosing the identity of the complainant or harasser.

(b) *The UN Policy Confidentiality Provisions.* Surprisingly, the only references in the UN Policy to confidentiality appear in the Procedures in the "Informal Approach" section.

Paragraph 5 of the Procedures reminds staff members who might "wish to consult with the Staff Counsellor at his or her duty station" that "the Staff Counsellor's mandate is to provide advice and help on a strictly confidential basis." Paragraph 7 states, "All reports of sexual harassment will be handled discreetly to protect the privacy of all involved." However, paragraph 7 goes on to provide an exception in those cases where the aggrieved employee seeks advice or help from his or her Personnel Officer, or from a senior member of the department or office, and the facts indicate that the alleged "incidents . . . may constitute misconduct." In such event, confidentiality may be broken and a report made to the Assistant Secretary-General for Human Resources.

It is remarkable that there are no references to confidentiality in the "Formal procedures" section of the Procedures document. In fact the provisions in paragraph

10 for the alleged harasser to have a staff member adviser and in paragraph 11 to refer the matter to a joint disciplinary committee for advice whenever "the facts appear to indicate that misconduct has occurred" seem to indicate that there is no confidentiality if the aggrieved person proceeds in a formal manner, or is put in that position by a report from a paragraph 6 person.

It is difficult to understand why confidentiality would be maintained at the informal approach level, but not at the formal procedures level. If this is how the confidentiality provisions of the UN Policy operate in fact, the lack of assurances of confidentiality at the formal procedures level would discourage employees from making complaints. Even if an attempt is made to maintain confidentiality at the formal procedures level, the UN Policy does not read that way. Victims would not know of this attempt from reading the UN Policy. Moreover, it is highly doubtful that confidentiality could be maintained once a matter went to a joint disciplinary committee "for advice."

Recommendation As To Point 7

The UN Policy should be revised to provide a separate confidentiality section applicable to all aspects of the complaint procedure, both informal and formal, as well as to the investigatory, determination, disciplinary action and review or appeal stages. This section should indicate that at all stages confidentiality will be maintained to the maximum extent possible, on a need-to-know only basis.

8. Use Examples In Sexual Harassment Policy

(a) *General Principles.* Because sexual harassment and retaliation can be difficult concepts for employees to understand, it has become common practice in the host country for sexual harassment policies not only to define sexual harassment and retaliation in technical terms, but also to give examples. This is particularly important with respect to examples of hostile environment sexual harassment. The most effective means of providing examples of sexual harassment and retaliation is through easy-to-read, bullet-type listings rather than textual presentations. Many employment law practitioners believe that a policy is not adequate unless such examples are provided. In addition, examples of the types of disciplinary actions which may be implemented should also be listed in the policy.

(b) *The UN Policy Use of Examples.* The only document which provides examples of conduct which can constitute sexual harassment is the Equal Treatment Guidelines. While many good examples are given in the Guidelines, they are sandwiched at various places throughout the text. It is doubtful that employees will labor through the Guidelines or, even if they do, will sufficiently focus on the examples which are given. Many other examples could and should be provided. There are no examples of retaliation in the UN Policy and other than immediate separation where serious misconduct occurs (i.e. ¶ 11(e) of the Procedures), no examples of disciplinary action are mentioned.

Recommendation As To Point 8

The UN Policy should be revised to provide bullet-type presentations of examples of conduct which can constitute sexual harassment and retaliation. It also should provide examples of disciplinary action which can be imposed for violations of the UN Policy.

9. Treatment of False Claims

(a) *General Concepts.* Many employers are concerned that by widely publicizing a sexual harassment policy, they will encourage employees with a grudge or who want to get even with a fellow employee or a supervisor for some perceived slight to make a false claim of sexual harassment. To counter this possibility, some employers have included false claims provisions in their sexual harassment policies.

While many employment law practitioners believe that carefully worded false claims provisions are acceptable in sexual harassment policies, many other practitioners believe that such provisions, no matter how carefully worded, necessarily discourage employees from making complaints. Because many claims of sexual harassment come down to a she-said, he-said situation, employees can be fearful that they will be disciplined for making a false claim, even if they truly believe they were sexually harassed. This is particularly true where it is the complaining employee's word against a high level officer.

If a false claim provision provides that an employee will be disciplined for making a claim that is unreasonable, spiteful or unsubstantiated, the issue becomes who makes that determination and on what basis? Fear of not

being believed or of being overpowered by the offender's position in the organization will discourage legitimate claims. In a consent decree in a major class action sexual harassment suit, one of the provisions provided for a review of all the employer's policies on sexual harassment to eliminate false claims provisions, presumably because they were viewed in the litigation as discouraging legitimate complaints.

As a practical matter, the vast majority of sexual harassment complaints are not false. Even if some complaints are false, public policy and the need to encourage complaints to eliminate sexual harassment from the workplace dictate that a policy not contain a provision which could discourage legitimate complaints.

The way to handle any false claims of sexual harassment which might be made is to have a separate policy, which most employers do, that provides for disciplinary action or termination for providing the employer with any false information, whether that be on an application form, an insurance claim, or any other document or oral information given to the employer. Should an employee make a claim of sexual harassment which turns out to be truly false, that employee can be appropriately disciplined under the separate false information policy.

(b) *The UN Policy Regarding False Claims.* The UN Policy does not contain a false claims provision. The UNICEF Policy provides a note in the section setting forth the determinations which can be made after "the initial investigation and fact-finding exercise" which note states, "In the above, depending on the findings, the offender may be either the alleged harasser or the aggrieved individual. (¶ 24.d. at page 7). While the meaning of this cryptic note

is not clear, it seems to say that if the complaint is determined to lack merit, the complainant can be subject to disciplinary action. This would seem to send an even worse message than a false claims provision and to discourage employees from taking the chance of making a complaint which they view as being legitimate.

Recommendation As To Point 9

The UN Policy should not contain a false claims provision. Instead, protection against the rare instance of a maliciously, false claim should be dealt with under existing regulations and rules regarding submission of false information.

10. Distribution of Sexual Harassment Policy

(a) *General Concepts.* In order to be effective, a sexual harassment policy needs to have wide distribution with special attention given to supervisors and managers. Most employers put their sexual harassment policies in their employee handbooks or personal [sic] manuals which are distributed to all employees. As these handbooks and manuals generally contain many policies, there is a danger that the sexual harassment policy will become lost in the maze of other policies. For this reason, and as a result of key Supreme Court cases, most employment law practitioners in the host country now believe that much more is needed to have effective distribution of sexual harassment policies.

In addition to including sexual harassment policies in employment manuals, a copy also should be given to each employee, in a language he or she understands, including especially employees in supervisory or managerial positions. Each employee should sign an acknowledgment that

he or she has received the sexual harassment policy, read it and understood it. This signed acknowledgment should be retained in the employee's personnel file. Signing an acknowledgment of having received the entire personnel manual is no longer considered by most employment law practitioners to be sufficient to evidence that the employee has received, read and understood the sexual harassment policy.

It also has been standard procedure for employers to post a copy of their sexual harassment policy on bulletin boards throughout their facilities in conspicuous locations frequented by employees. As policies have become much longer and more detailed, often consisting of many pages, such posting of the entire policy has become impractical. Instead, a short, one or two page summary of the sexual harassment policy should be posted. The summarized policy should indicate that the employer has a zero-tolerance for sexual harassment, briefly describe sexual harassment, recite the complaint mechanisms, indicate that retaliation for resisting sexual harassment or utilizing one's right to complain is strictly prohibited, indicate that prompt remedial and disciplinary action will be taken where sexual harassment or retaliation is found to exist and encourage employees to utilize the policy if they believe they have been subject to sexual harassment.

Employers also must be diligent in making sure that new employees receive a copy of the full sexual harassment policy when they commence work and that they sign an acknowledgment form. Providing copies to new employees should be part of the routine employee orientation upon starting employment.

(b) *UN Policy Distribution Procedures.* We understand that at the time of issuance, UN personnel policy documents are distributed desk-to-desk to all personnel and that copies of the documents which constitute the current UN Policy are contained at various places in the Personnel Manual. However, issuance of different documents at different times relating to various aspects of sexual harassment does not give employees an easily reviewable, all-in-one-place sexual harassment policy. Even though the Personnel Manual is available on the Intranet, an employee would have to search through it in order to locate the various documents relating to sexual harassment, as discussed in Point 1, above. Even then an employee would have a difficult time in uniting the documents into a whole to get an understanding of the UN Policy.

Recommendation As To Point 10

A single document reflecting all aspects of the sexual harassment policy should be prepared as recommended in Point 1. That policy then should be distributed individually to all employees, in a language they understand, and a signed acknowledgment obtained. If not already posted, a summary of the sexual harassment policy should be posted at each location on all bulletin boards in areas frequented by employees. New employees should be given copies of the sexual harassment policy upon commencing employment.

11. Sexual Harassment Sensitivity Training

(a) *General Concepts.* While many employers in the host country had been providing sexual harassment

sensitivity training for many years, new urgency was given to conducting, and periodically repeating, such training, particularly for supervisors and managers, as a result of Supreme Court decisions in mid-1998 and 1999. In those decisions, the Supreme Court held that employers are strictly and vicariously liable, whether they know about the conduct or not, if a supervisor subjects a subordinate to "tangible employment action" as a result of unwelcome sexual conduct.[19] Where "tangible employment action" is not involved, employers may have a defense if they have an effective sexual harassment policy with complaint procedures and an employee unreasonably fails to utilize them. An additional affirmative defense to punitive damages is available for employers who make a good faith effort to comply with the law through such activities as educating employees, training supervisors and periodically disseminating policies.

To avail itself of the first affirmative defense, the burden is on the employer to prove by a preponderance of the evidence that (i) the employer exercised reasonable care *to prevent* sexual harassment from occurring, (ii) the employer *promptly corrected* any sexually harassing conduct which occurred and (iii) the victim-employee unreasonably failed to take advantage of any preventative or corrective opportunities offered by the employer or to avoid harm otherwise. To utilize the second affirmative

[19] "Tangible employment action," according to the Supreme Court, "constitutes a significant change in employment status." As examples, the Court mentioned such actions as hiring, firing, failing to promote, reassignment with significantly different responsibilities, a less distinguished title, a demotion evidenced by a decrease in wage or salary, a material loss of benefits and significantly diminished material responsibility.

defense, the employer must show not only that it issued a policy, but also it must set forth evidence of training sessions it provided to employees and other actions it took which reflect that it tried in good faith to comply with the law. Because employers want to be able to use these affirmative defenses, they have been scrambling to improve their sexual harassment policies, to document an employee's receipt and understanding of the policy and to conduct sensitivity and consciousness-raising training sessions for all employees, but particularly for supervisors and managers.

Subsequent to these Supreme Court cases, most employment law practitioners in the host country believe that simply having a sexual harassment policy is not enough by itself adequately to prevent sexual harassment from occurring. It is necessary to educate, educate, educate employees, particularly decision makers, managers and supervisors, about sexual harassment. An employer must be able to show that it fostered a company-wide attitude that gave employees comfort in coming forward, i.e., that they had no bona fide reason to fear retaliation, that they knew their complaints would be taken and acted upon seriously and promptly, and that the company would do whatever it took to right the wrong. A major part of achieving such a company-wide attitude is sexual harassment sensitivity training.

(b) *UN Policy on Sexual Harassment Training.* We are not familiar with sexual harassment sensitivity training which has been conducted by the UN, although we understand that training sessions have been held in recent years. Given the diverse cultures of the employees who make up the UN work force, providing sexual harassment sensitivity training and developing an organization-wide attitude of

eliminating sexual harassment from the workplace would seem to be a daunting task. Nevertheless, if host country employment law provides any guide, there is no substitute for making every effort to provide such training.

Recommendation As To Point 11

The UN should revise its sexual harassment policy and procedures as recommended in the various points above and use the new policy as the basis for educating all employees in sexual harassment sensitivity training sessions, particularly all supervisors and managers.

CONCLUSION

For the reasons set forth in this report, our review of the UN Sexual Harassment Policy indicates that it would quite likely fall short of current standards in the United States applicable to determining the effectiveness of an anti-sexual harassment policy. While we appreciate that the UN is a unique body with many cultural, procedural and legal differences from those we encounter with host country employers and laws, we hope that the comments and recommendations contained in this report can be of some value to anyone assessing the UN Sexual Harassment Policy.

EXHIBIT A

LIST OF MOST PERTINENT DOCUMENTS REVIEWED BY CHADBOURNE & PARKE LLP FOR REPORT COMMENTING ON UNITED NATIONS SEXUAL HARASSMENT POLICY

- Secretary General's Bulletin ST/SGB/253, dated October 29, 1992, "Promotion of Equal Treatment of Men and Women in The Secretariat and Prevention of Sexual Harassment."
- Assistant Secretary-General for Human Resources Management Information Circular ST/IC/1992/67, dated October 29, 1992, "Guidelines for Promoting Equal Treatment of Men and Women in The Secretariat."
- Under Secretary-General for Administration and Management Administrative Instruction ST/AI/379, dated October 29, 1992, "Procedures for Dealing with Sexual Harassment."
- Under Secretary-General for Administration and Management Administrative Instruction ST/AI/371, dated August 2, 1991, "Revised Disciplinary Measures and Procedures."
- Staff Regulations of the United Nations and Staff Rules 100. 1 to 112.8 ST/SGB/Staff Rules/1/Rev. 9.
- Administrative Instructions CF/AI/1994-005, dated March 11, 1994, "Sexual Harassment In the UNICEF Workplace."

Return to paragraph 16 of Report of the Coordinator, Panel of Counsel for the Period 1 June 2000 – 31 May 2001

APPENDIX 2

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Cynthia Brzak**
c/o Schwab, Flaherty,
Crausaz, Hassberger
& Associe
Case Postale 510
Geneva 17, Switzerland

From: **Equal Employment**
Opportunity Commission
New York District Office
33 Whitehall Street, 5th Floor
New York, New York 10004-2112

☐ *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR § 1601.7(a))*

EEOC Charge No.	EEOC Representative	Telephone No.
160-2006-01029	**Legal Unit**	**(212) 336-3721**

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐ Your allegations did not involve a disability as defined by the Americans with Disabilities Act.

☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statues.

☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.

☐ Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.

☐ While reasonable efforts were made to locate you, we were not able to do so.

☐ You were given 30 days to accept a reasonable settlement offer that affords full relief for the harm you alleged.

☐ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☐ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☒ Other *(briefly state)* **No Jurisdiction**

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed *WITHIN 90 DAYS* of your receipt of this Notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **back-pay due for any violations that occurred *more than 2 years (3 years)* before you file suit may not be collectible.**

On behalf of the Commission

/s/ Spencer H. Lewis — 1/31/06
Spencer H. Lewis, Jr., — *(Date Mailed)*
District Director

Enclosure(s)

cc: **United Nations (Respondent)**

No. _____, Original

In The
Supreme Court of the United States

CYNTHIA BRZAK and NASR ISHAK,

Plaintiffs,

v.

UNITED NATIONS, KOFI ANNAN, RUUD LUBBERS, WENDY CHAMBERLIN, WERNER BLATTER, KOFI ASOMANI, RAYMOND HALL, A.-W. BIJLEVELD, DAISY BURUKU,

Defendants.

COMPLAINT

Plaintiff by her attorney, Edward Patrick Flaherty of Schwab, Flaherty, Crausaz, Hassberger & Associés, complaining of defendants, alleges:

JURISDICTION AND VENUE

(1) This action is brought to remedy discrimination and retaliation on the basis of sex in the terms, conditions and privileges of employment in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e *et seq.* ("Title VII"). Plaintiffs also seek a remedy for defendants' intentional infliction of emotion distress, indecent battery, constructive termination, and for civil substantive violations of RICO under 18 U.S.C. §1962(c) and civil conspiracy violations of RICO under 18 U.S.C.

§1962(d). Supplemental or pendant jurisdiction is conferred upon this Court to adjudicate the related claims under the same case or controversy principle recited in 28 U.S.C. §1367(a).

(2) Injunctive and declaratory relief, damages and other appropriate legal and equitable relief are sought pursuant to 42 U.S.C. §2000e. The amount in controversy exceeds $50,000.

(3) Plaintiff Cynthia Brzak ("Brzak"), a female, filed a charge of discrimination and retaliation against defendant United Nations ("UN"), *et al.* ("defendants") with the Equal Employment Opportunity Commission ("EEOC") on or about 28 October 2005, complaining of the acts of sex discrimination and retaliation alleged herein.

(4) On or about 31 January 2006, the EEOC issued the Plaintiff Brzak a letter of Dismissal and Notice of Rights, claiming simply, without explanation or argument, that the EEOC had "no jurisdiction". This letter was received by the Plaintiff Brzak's counsel on 6 February 2006, advising that suit under Title VII against the subject Defendants had to be filed within ninety (90) days of such receipt.

(5) Plaintiffs have complied fully with all prerequisites to jurisdiction in this Court under Title VII. Jurisdiction of this Court is also proper as an original action under Article III of the United States Constitution and 28 U.S.C. §1251 as Defendants Annan, Lubbers and Chamberlin currently have or were previously afforded at all times pertinent to this complaint the diplomatic status of ambassadors, foreign ministers or other consuls by the US State Department.

PARTIES

(6) Plaintiff Cynthia Brzak is a female citizen of the United States. She is employed by and is a twenty-six (26) year veteran of the United Nations' High Commissioner for Refugees ("UNHCR") subdivision at its headquarters located in Geneva, Switzerland.[1]

(7) Plaintiff Ishak is a French and Egyptian national, and a twenty-two (22) year veteran of the United Nation's High Commissioner for Refugees subdivision, which is headquartered in Geneva, Switzerland.

(8) Defendant United Nations is a body politic headquartered at 1 UN Plaza in New York City, NY 10017, created by treaty in 1945, but it is not a sovereign state, nor an instrumentality of any one sovereign state.

(9) Defendant Kofi Annan is current Secretary General of the United Nations. He resides on Sutton Place, New York, NY 10022.

(10) Defendant Ruud Lubbers is the former UN High Commissioner for Refugees. He is no longer an employee of the UN, having resigned in February 2005. His address and whereabouts are currently unknown.

(11) Defendant Wendy Chamberlin is a current member of UNHCR in Geneva. Her address is c/o United Nations, UNHCR, Diplomatic Pouch, New York, NY 10017.

[1] All UNHCR staff are UN staff members, and the UNHCR maintains a representative office at the UN in New York, NY. The United Nations is also headquartered in New York, NY.

(12) Defendant Werner Blatter is a former member of the UNHCR. His address and whereabouts are unknown.

(13) Defendant Kofi Asomani is a current member of the UNHCR in Geneva. His address is c/o United Nations, UNHCR, Diplomatic Pouch, New York, NY 10017.

(14) Defendant Raymond Hall is currently the Director, Division of Human Resources Management for UNHCR in Geneva. His address is c/o United Nations, UNHCR, Diplomatic Pouch, New York, NY 10017.

(15) Defendant A.-W. Bijleveld is a current member of the UNHCR in Geneva. His address is c/o United Nations, UNHCR, Diplomatic Pouch, New York, NY 10017.

(16) Defendant Daisy Buruku is a current member of the UNHCR in Geneva. Her address is c/o United Nations, UNHCR, Diplomatic Pouch, New York, NY 10017.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

(17) Plaintiff was hired as a "Clerk/Typist" by the UNHCR in 1980. Since late 1989, she has been working in the Staff Development and Training Section, Division of Human Resources Management as a Training Assistant. Throughout her employment, plaintiff has distinguished herself professionally, worked extensively with and on the UNHCR Staff Council and other statutory staff-management consultative bodies in addition to her regular duties, made substantial contributions to defendants, received regular salary increases and,

until she complained of discrimination, received regular promotions and salary increases.

(18) On December 18, 2003 at around 3:00 pm, a meeting was held in the office of defendant former UN High Commissioner for Refugees, Ruud Lubbers, at which Plaintiff Brzak, Defendants Lubbers and Blatter and others were present. At the end of that meeting, with several staff members still in the room, Defendant Lubbers placed his hands on Plaintiff Brzak's waist, pulled her back towards him, pushed his groin into her buttocks and held her briefly in that position before releasing her.

(19) Also on December 18, 2003, Defendant Mr. Werner Blatter, the then Director of the UNHCR's Division of Human Resources Management, who was present at the above meeting, tried to re-enact the incident between Plaintiff Brzak and Defendant. Lubbers by joining Plaintiff Brzak and her colleagues outside Defendant Lubbers' office and by attempting to physically grab her. He did so a second time a few days later when he again joined Plaintiff Brzak and some of her colleagues outside their offices in the elevator area, when he unsuccessfully attempted to grab her again while referring to the initial incident between Plaintiff Brzak and Defendant Lubbers.

(20) Shortly after Defendant Lubbers' indecent battery upon the Plaintiff Brzak in December 2003, she approached Plaintiff Ishak on an informal basis seeking his counsel and advice on how to deal with the actions of Defendants Lubbers and Blatter. He advised her, in view of the lack of legal protection within the United Nations for so-called whistleblowers who report misconduct of senior United Nations' officials, to make a formal report of Defendant Lubbers' conduct to the UN's Office of Internal Oversight Services ("OIOS").

(21) Plaintiff Brzak filed a complaint with the UN's Office of Internal Oversight Services ("OIOS") on April 27, 2004, which conducted an investigation into the complaint and reported to Defendant UN Secretary General Kofi Annan on June 4, 2004 that it had confirmed Plaintiff Brzak's complaint, and recommended that appropriate disciplinary actions be applied to Defendants Lubbers and Blatter. The OIOS report also confirmed that Defendant Lubbers had committed indecent sexual battery on at least three other females employed by or affiliated with the United Nations besides the Plaintiff Brzak during his employment with the UN.

(22) Almost immediately after Defendant Lubbers was informed of Plaintiff Brzak's complaint, Plaintiff Brzak began experiencing retaliation: her identity as a complainant was disseminated; threats against her career if she did not drop her complaint were made; Defendant Lubbers and other superiors turned her colleagues against her and themselves displayed open hostility toward Plaintiff Brzak and verbally harassed her; Plaintiff Brzak's work budget was slashed; Plaintiff Brzak's superiors began regularly dumping unmanageable work assignments on her, and withheld from her work assignments commensurate with her grade, training and experience which had previously been given to her, and which continued to be given to her colleagues and peers. Plaintiff Brzak eventually filed two more official complaints to OIOS based on said retaliation.

(23) When Plaintiff Ishak's role in informally counseling the Plaintiff Brzak to seek a formal complaint against the Defendant Lubbers became known, he was marked for retaliation by the UN Administration and its senior officials, also in violation of said Title VII (42 U.S.C. §2000e-3(a)). In 2004 and 2005, Plaintiff Ishak was recommended for promotion by

the UNHCR Promotions Board, only to learn that such recommendations have been ignored by the UN Administration without reason or explanation, causing Plaintiff Ishak great injury and monetary loss. Also, Defendant Lubbers, prior to his resignation, upon learning of Plaintiff Ishak's role in counselling the Plaintiff Brzak, did on at least two occasions attempt to secure the abolition of the Office of the UNHCR Inspector General to which the Plaintiff Ishak was attached.

(24) In July 2004, Mr. Annan ignored the findings of the OIOS report and purported to publicly exonerate Mr. Lubbers. Plaintiff then filed a formal appeal with the UN's internal justice system. At that point, she faced different and increased forms of retaliation, including public dissemination of her confidential medical records; receipt of notice informing her that her post was likely to be abolished, resulting in her termination from service; withholding annual performance evaluations for the past two years, which would adversely affect her promotion prospects within the UN, as well as inhibit her ability to find employment in the private sector; and instituting conditions of employment applicable only to the Plaintiff Brzak. Since the Plaintiff Brzak first reported Defendant Lubbers' battery upon her, the defendants have refused to assign her work and responsibilities commensurate with her grade, training, and experience, thereby resulting in her constructive dismissal.

(25) Plaintiff has suffered pain and humiliation as a result of the retaliation she has faced. Direct side effects from the harassment and retaliation have included severe weight loss, depression, stomach and digestive problems, which forced her to go on sick leave and to accumulate large medical bills.

FIRST CAUSE OF ACTION

(26) Plaintiff Brzak repeats and realleges each and every allegation contained in paragraphs 1 though 25 of this Complaint with the same force and effect as if set forth herein.

(27) Defendants have discriminated against Plaintiff Brzak in the terms and conditions of her employment on the basis of her sex in violation of Title VII.

(28) Defendants' acts were with malice and reckless disregard for Plaintiff Brzak's federally protected rights.

(29) Plaintiff Brzak is now suffering and will continue to suffer irreparable injury and monetary damages as a result of defendant's discriminatory practices unless and until this Court grants relief.

SECOND CAUSE OF ACTION

(30) Plaintiff Brzak repeats and realleges each and every allegation contained in paragraphs 1 though 29 of this Complaint with the same force and effect as if set forth herein.

(31) Defendants have retaliated against Plaintiff Brzak and have denied her opportunities for employment on the basis of her having complained of discrimination, and have constructively terminated her employment, all in violation of Title VII.

(32) Plaintiff Brzak is now suffering and will continue to suffer irreparable injury and monetary damages as a result of defendant's discriminatory and retaliatory practices unless and until this Court grants relief.

THIRD CAUSE OF ACTION

(33) Plaintiff Brzak repeats and realleges each and every allegation contained in paragraphs 1 though 33 of this Complaint with the same force and effect as if set forth herein.

(34) Defendants, by their conduct, including but not limited to, verbally harassing Plaintiff Brzak, revealing her identity in a confidential investigation, revealing her confidential medical records, imposing conditions of employment upon her different from those imposed on her other work colleagues, slashing her budget, failing to assign her work commensurate with her grade, training and experience, and encouraging open hostility against her, have intentionally caused plaintiff to suffer severe emotional distress. The defendants actions were extreme, outrageous and dangerous.

(35) As a result of defendants' conduct, Plaintiff Brzak has suffered damages, and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, loss of reputation, and loss of enjoyment of life; was prevented and will continue to be prevented from performing her daily activities and obtaining the full enjoyment of life; has sustained loss of earnings and earning capacity; and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

FOURTH CAUSE OF ACTION

(36) Plaintiff Brzak repeats and realleges each and every allegation contained in paragraphs 1 though 35 of this Complaint with the same force and effect as if set forth herein.

(37) Defendants Lubbers and Blatter, by their conduct, including but not limited to, physically grabbing Plaintiff Brzak or otherwise attempting to grab the Plaintiff Brzak, in a lewd and inappropriate manner, engaged in unpermitted, harmful and offensive sexual contact upon the person of Plaintiff Brzak, and have intentionally battered Plaintiff Brzak.

(38) As a result of defendants' conduct, Plaintiff Brzak has suffered damages, and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, loss of reputation, and loss of enjoyment of life; was prevented and will continue to be prevented from performing her daily activities and obtaining the full enjoyment of life; has sustained loss of earnings and earning capacity; and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

FIFTH CAUSE OF ACTION

(39) Plaintiff Ishak repeats and realleges each and every allegation contained in paragraphs 1 though 38 of this Complaint with the same force and effect as if set forth herein.

(40) Defendants have retaliated against Plaintiff Ishak and have denied him opportunities for employment on the basis of his having counseled Plaintiff Brzak about her rights to complain of discrimination, in violation of Title VII.

(41) Plaintiff Ishak is now suffering and will continue to suffer irreparable injury and monetary damages as a result of defendant's discriminatory and retaliatory practices unless and until this Court grants relief.

SIXTH CAUSE OF ACTION

(42) Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 though 41 of this Complaint with the same force and effect as if set forth herein.

(43) Defendants Annan and Lubbers are each persons under 18 U.S.C. §1961(3).

(44) The relationship between Defendant Annan and Defendant Lubbers (hereinafter the "Enterprise") constitutes an association in fact enterprise under 18 U.S.C. §1961(4) and the persons controlling or directing the affairs of the Enterprise have engaged in activities or a pattern or practice of conspiracy and racketeering activity in violation of 18 U.S.C. §1962 *et seq.*

(45) The Enterprise had an on-going business aside and apart from the racketeering acts alleged herein as the persons controlling or directing the affairs of the Enterprise were involved in the management of the United Nations and its subdivision, the High Commissioner for Refugees.

(46) The Defendants Annan and Lubbers maintained and exercised control over the Enterprise alleged.

(47) The Defendants Annan and Lubbers and others associated with or employed by those persons controlled or directed the affairs of the Enterprise and engaged in activities which affected interstate or foreign commerce.

(48) Since at least approximately 2001 through February 2005, the Defendants Annan and Lubbers, aided and abetted by each other, their agents, employees and other persons controlling or directing the affairs of the Enterprise engaged and/or associated themselves with the Enterprise through a pattern of

racketeering activity in violation of 18 U.S.C. §1962, as herein described, to intentionally, recklessly and/or negligently conceal criminal conduct of its agents, to aid and abet the concealment of criminal conduct, to aid and abet criminal sexual conduct, to obstruct justice, to obstruct criminal investigations, to evade criminal and/or civil prosecution and liability, to violate the civil rights of children and women and families, to engage in mail and/or wire fraud, committed fraud or fraudulent inducement of the member states of the United Nations in furtherance of its scheme to protect predatory officials of the United Nations and related organizations, to maintain or increase public or state contributions to the United Nations or its subdivision UNHCR, and/or to avoid public scandal within the United Nations. The foregoing specific acts included racketeering and conspiracy, and were of an ongoing nature continuing into the future; several of the foregoing specific acts arose out of the so-called "UN Oil for Food" fraud, and the UNHCR's management of several refugee camps in West Africa.

(49) Plaintiffs were injured in their business and/or property by reason, as described herein, of the above violation of 18 U.S.C. §1962(c).

SEVENTH CAUSE OF ACTION

(50) Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 though 49 of this Complaint with the same force and effect as if set forth herein.

(51) Defendants Annan and Lubbers are each persons under 18 U.S.C. §1961(3).

(52) The relationship between Defendant Annan and Defendant Lubbers (hereinafter the "Enterprise")

constitutes an association in fact enterprise under 18 U.S.C. §1961(4) and the persons controlling or directing the affairs of the Enterprise have engaged in activities or a pattern or practice of conspiracy and racketeering activity in violation of 18 U.S.C. §1962 *et seq.*

(53) The Enterprise had an on-going business aside and apart from the racketeering acts alleged herein as the Defendants Annan and Lubbers and others were involved in the management of the United Nations and its subdivision, the High Commissioner for Refugees.

(54) The Defendants Annan and Lubbers maintained and exercised control over the Enterprise alleged.

(55) The Defendants Annan and Lubbers and others associated with or employed by those persons controlled or directed the affairs of the Enterprise and engaged in activities which affected interstate or foreign commerce.

(56) The persons controlling or directing the affairs of the Enterprise agreed to enter into a conspiracy to violate the provisions of 18 U.S.C. §1962(c) as described herein and above. As evidence of this agreement, the persons controlling or directing the affairs of the Enterprise and other co-conspirators committed the acts described herein and conspired to conceal the criminal activity of Defendants Annan and Lubbers. As further evidence of this agreement, the persons controlling or directing the affairs of the Enterprise and other co-conspirators conspired with Defendants Annan and Lubbers and others to evade and/or aided and abetted Defendants Annan and Lubbers and others in evading criminal prosecution and the public embarrassment and liability related thereto.

(57) The above secret agreement or agreements were fraudulently concealed from the plaintiffs, the public, and officials of United Nations' member states.

(58) Plaintiffs were injured in their business and/or property by reason, as described herein, of the above violation of 18 U.S.C. §1962(d).

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully requests that this Court enter a judgment:

(a) Declaring that the acts and practices complained of herein are in violation of Title VII;

(b) Enjoining and permanently restraining these violations of Title VII;

(c) Directing defendants to take such affirmative action as is necessary to ensure that the effects of these unlawful employment practices are eliminated and do not continue to affect plaintiffs' employment opportunities;

(d) Directing defendants to place plaintiffs in the positions they would have occupied but for the defendants' discriminatory and retaliatory treatment of them, and make them whole for all earnings they would have received but for defendants' discriminatory and retaliatory treatment, including, but not limited to, wages, pension, and other lost benefits;

(e) Awarding plaintiffs compensatory and punitive damages for injuries suffered as a result

of violations of federal law in an amount not less than USD $25 million;

(f) Directing defendants to pay plaintiffs compensatory damages and damages for their mental anguish and humiliation;

(g) Trebling the damages awarded to the plaintiffs herein pursuant to 28 U.S.C. §1962 *et seq.*;

(h) Awarding plaintiffs the costs of this action together with reasonable attorneys' fees, as provided by §706(k) of Title VII, 42 U.S.C. §2000e-6(k), and as provided for in 18 U.S.C. §1962 *et seq.*; and

(i) Granting such other and further relief as this Court deems necessary and proper.

PLAINTIFFS DEMAND A TRIAL BY JURY PURSUANT TO 28 U.S.C. §1872.

Respectfully submitted,

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Dated: May 3, 2006