

UNITED NATIONS



NATIONS UNIES

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EXECUTIVE OFFICE OF THE SECRETARY-GENERAL
CABINET DU SECRETAIRE GENERAL

OLA
Angola
Brazil
Portugal

REFERENCE:

2 October 2007

Excellencies,

I have the honour to refer to your joint letter dated 8 August 2007 that you delivered to me at a meeting held on 15 August 2007. The letter was with regard to depositary functions performed by the Secretary-General of the United Nations and the new International Coffee Agreement, 2007 (the "2007 Coffee Agreement") proposed to be submitted in English, French, Spanish and Portuguese, a non-official language of the United Nations.

In this regard, I note that final clauses of the draft 2007 Agreement were submitted by the Secretary-General of the International Coffee Organization (ICO) to the Treaty Section, Office of Legal Affairs, for review on 30 March 2007 and advice was given by the Treaty Section on 7 May 2007. In the advice, it is noted that the current practice of the Secretary-General is to avoid accepting depositary duties for agreements authentic in languages other than the official languages of the United Nations.

Prior to 2001, the Treaty Section, Office of Legal Affairs, in carrying out the depositary duties of the Secretary-General, had accepted depositary functions for a small number of treaties concluded in languages other than the official languages of the United Nations, including the International Coffee Agreement, 2001, the predecessor to the draft 2007 Coffee Agreement.

His Excellency Ismael Abraão Gaspar Martins
Permanent Representative of the Republic of Angola
to the United Nations
New York

Her Excellency Maria Luiza Ribeiro Viotti
Permanent Representative of Brazil
to the United Nations
New York

His Excellency João Manuel Guerra Salgueiro
Permanent Representative of Portugal
to the United Nations
New York

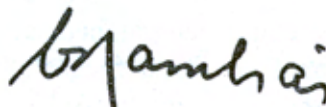
27-11016/27-11970

The precedent set by the acceptance of depositary duties for an agreement in a language other than a UN official language would give rise to similar expectations elsewhere and would run counter to the established practice of the Secretary-General as depositary.

Given the above, the Secretary-General will adhere to his current practice and decline to accept depositary duties for the 2007 Coffee Agreement should Portuguese be retained as an authentic language.

The Treaty Section has suggested to the ICO that an additional provision in the 2007 Coffee Agreement be added stating that Portuguese is an official language of the ICO and providing that the ICO shall make necessary translations of all documentation into Portuguese. In this regard, and noting with great appreciation the relevance your governments attach to depositing the 2007 Coffee Agreement with the Secretary-General, he remains available to act as depositary for the 2007 Coffee Agreement should the authentic languages of the Agreement be English, French and Spanish.

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



Vijay Nambiar
Chef de Cabinet

United Nations



Nations Unies

Executive Office of the Secretary-General
Cabinet du Secrétaire général

To: Mr. Nambiar,

Please find attached for your approval and signature a letter addressed to the Permanent Representatives of Angola, Brazil and Portugal regarding the authentic languages of the draft 2007 International Coffee Agreement.

A handwritten signature in dark ink, appearing to read 'N. Haysom', followed by a horizontal line.

Nicholas Haysom
2 October 2007

cc: KWS

27-11970

VN

ROUTING SLIP/FICHE DE TRANSMISSION		
TO: Mr. Vijay Nambiar, Chef de Cabinet		
CC:		
FROM: Mr. Nicolas Michel, Legal Counsel <i>N. Michel</i>		
DE:		
Room No. - No de bureau S-3427A	Extension - Poste 3-5338	Date: 28 September 2007
FOR ACTION		POUR SUITE A DONNER
FOR APPROVAL	X	POUR APPROBATION
FOR SIGNATURE	X	POUR SIGNATURE
FOR COMMENTS		POUR OBSERVATIONS
MAY WE DISCUSS?		POURRIONS-NOUS EN PARLER?
YOUR ATTENTION		VOTRE ATTENTION
AS DISCUSSED		COMME CONVENU
AS REQUESTED		SUITE A VOTRE DEMANDE
RETURN		RETOURNER
FOR INFORMATION		POUR INFORMATION

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 27-11970
 EXECUTIVE OFFICE
 OF THE SECRETARY-GENERAL

MESSAGE:

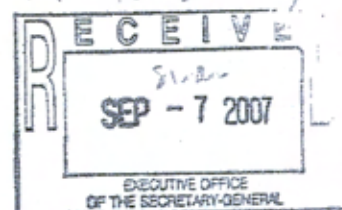
#27-11016

Further to the note that I sent to you on 6 September, I attach for your approval and signature a draft letter in response to the joint letter by Brazil, Angola and Portugal on the authentic languages of the draft 2007 International Coffee Agreement. (#27-10114)

The Working Group on the draft 2007 International Coffee Agreement meets this week to finalize the draft. In addition to your letter to the Permanent Representatives, a letter will be sent from the Office of Legal Affairs to the Executive Director of the International Coffee Organization with a similar message.

NOTE TO MR. NAMBIAR

Joint demarche by Brazil, Angola and Portugal
re. International Coffee Agreement



- (#21-10114)
1. I refer to your note of 15 August 2007, attaching a letter from the Ambassadors of the Permanent Missions of Angola, Brazil and Portugal regarding the acceptance of depositary functions by the Secretary-General of the United Nations of the International Coffee Agreement, 2007 (the "2007 Agreement") in Portuguese, a non-official language of the Organization. A copy of the note and letter is attached for your convenience as Annex 1.
 2. Final clauses of the draft 2007 Agreement were submitted by the Secretary-General of the International Coffee Organization (the "ICO") to the Treaty Section, Office of Legal Affairs, for review and advice was given by my office on 7 May 2007 (attached as Annex 2). In the advice, it is noted that the current practice of the Secretary-General is to avoid accepting depositary duties for agreements authentic in languages other than the official languages of the United Nations. As is noted in the joint letter, the International Coffee Agreement, 2001, the predecessor to the draft 2007 Agreement, is deposited with the Secretary-General and is authentic in English, French, Portuguese and Spanish.
 3. Prior to 2001, the Treaty Section, Office of Legal Affairs, in carrying out the depositary duties of the Secretary-General, accepted depositary functions for a small number of treaties concluded in languages other than the official languages of the United Nations.¹
 4. This practice was modified after the release of the Secretary-General's bulletin ST/SGB/2001/7 of 28 August 2001 "Procedures to be followed by departments, offices and regional commissions of the United Nations with regard to treaties and international agreements" (attached as Annex 3). According to Section 4.3, "[e]very endeavour shall be made to ensure that the texts of treaties and international agreements to be deposited with the Secretary-General are concluded only in the six official languages".
 5. In 2000, the Legal Counsel expressed a view on authentic languages of texts of treaties negotiated under United Nations auspices to be deposited with the Secretary-General (attached as Annex 4). In this opinion, dated 22 February 2000, the

¹ The *International Coffee Agreements of 1962 and 1968* (English, French, Portuguese, Russian and Spanish), the *Protocol to the International Coffee Agreement of 1968, 1974* and the *International Coffee Agreements of 1975, 1982, 1994 and 2001* (English, French, Portuguese and Spanish), the *International Agreement on Olive Oil and Table Olives, 1986* and its *Protocol of 1993 extending the International Agreement on Olive Oil, 1986, with amendments* (Arabic, English, French, Italian and Spanish), the *Agreement establishing the Fund for the Development of the Indigenous People, 1992* (English, Portuguese and Spanish), and the *Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas, 1992* (English, French, German and Russian) are examples of this practice.

Legal Counsel noted that acceptance of the depositary functions by the Secretary-General is not automatic and that:

...the Secretariat should resist requests to designate languages other than the UN official languages for the authentic texts if the intention is to deposit such treaties with the Secretary-General.

6. Since 2001, the Treaty Section has consistently refused to accept depositary duties for agreements authentic in other than the UN official languages.

7. Most recently, the Treaty Section advised the United Nations Conference on Trade and Development (UNCTAD) that the Secretary-General could not perform depositary duties for the *International Agreement on Olive Oil and Table Olives, 2005* if Italian was an authentic text. Subsequently, the negotiating states designated the Government of Spain as depositary.

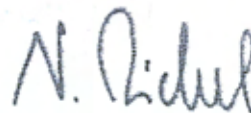
8. In 2001, the United Nations Economic Commission for Europe was advised that the adoption of the *Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway, 2001*, in Dutch and German, as well as English, French and Russian would result in the Secretary-General's inability to perform depositary duties. This Convention was deposited with the Government of Hungary.

9. The joint letter states that the Secretariat of the ICO is willing to present the Portuguese text in a clean version for the preparation of the original, and advise on the legal/technical terminologies applied in the Agreement should any clarification be required. Although we are aware of the ICO's capacity to prepare the treaty text in Portuguese, the depositary has the legal obligation to prepare the authentic texts of the treaties deposited with him. Duties stipulated in Article 77 of the *Vienna Convention on the Law of Treaties, 1969*, remain the ultimate responsibility of the Secretary-General as depositary. In this regard, the United Nations has approved terminology only for the official languages of the Organization and use of non-approved terminology may present future problems to which the Organization does not have the capacity or resources to respond to positively.

10. The precedent set by the acceptance of depositary duties for an agreement in a language other than a UN official language would give rise to similar expectations elsewhere and would run counter to the established practice of the Secretary-General as depositary.

11. Given the above, it is the position of Office of Legal Affairs that the Secretary-General should maintain his current practice and refuse to accept depositary duties for the 2007 Coffee Agreement should Portuguese be retained as an authentic language. //

12. The Treaty Section suggested to the ICO that an additional provision in the 2007 Agreement be added stating that Portuguese is an official language of the ICO and the Organization may make necessary translations of all documentation.



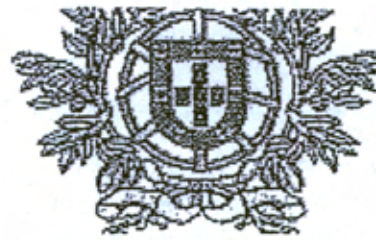
Nicolas Michel
6 September 2007



*Permanent Mission of Angola
to the United Nations*



*Permanent Mission of Brazil
to the United Nations*



*Permanent Mission of Portugal
to the United Nations*

Nº

New York, 8th August 2007.

Excellency,

The International Coffee Organization (ICO) is the main intergovernmental organization for coffee, bringing together 77 Member States with the objective of tackling the challenges of the world coffee sector through international cooperation. The ICO makes a practical contribution to the world coffee economy and to the improvement of the standards of living in developing countries.

The ICO was set up in London in 1963 under the auspices of the United Nations due to the great economic importance of coffee. The five Agreements adopted since the creation of the ICO (1962, 1968, 1976, 1983, 1994 and 2001 – currently in effect) have been deposited with the Secretary-General of the United Nations. Although Portuguese is not an official language in the United Nations, the Portuguese text, together with English, Spanish and French texts of the Agreement have always been considered authentic by the ICO and thus deposited with the UN Secretary-General.

The Members of the International Coffee Organization (ICO) are in the final phase of the negotiations of a new International Coffee Agreement, which is expected to be adopted by September 2007.

H. E. Mr. Vijay Nambiar
Chief of Cabinet of the Secretary-General
of the United Nations

27-10114

In accordance with the Secretariat of the ICO, difficulties have arisen regarding Article 54 of the draft Agreement ("Official languages of the Agreement"), which indicates the Portuguese text as authentic.

We have now been upraised that due to difficulties encountered, the depositary would no longer be willing to accept in deposit treaties concluded in non-official languages of the United Nations.

Concerns have been raised in this regard by the depositary to justify this new practice, such as that the UN has approved terminology only for the official languages and the use of non-approved terminology may present future problems that the Organization does not possess the capacity or resources to respond to positively.

On this matter of particular importance to our countries, we would like observe the following:

- in all previous Agreements deposited with the Secretary-General, the Portuguese version has been considered authentic;

- as soon as the upcoming Agreement is finalized, the Portuguese text will be presented by the ICO in a clean version, which will avoid any further preparation work by the Secretariat of the United Nations;

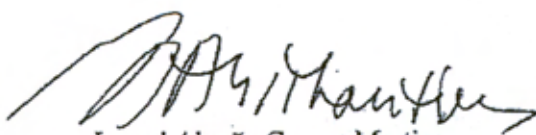
- regarding the concern that the use of non-approved terminology may present future problems that the Organization does not possess the capacity or resources to respond to positively, the Secretariat of the ICO, as in previous occasions, is capable and willing of advising on the legal/technical terminologies applied in the Agreement, should any clarification be required.

We would also like to stress the special representativity of the Portuguese language in this context, bearing in mind that it is the official language of major exporters and importers among the Parties to the International Coffee Agreement.

The Governments of Angola, Brazil and Portugal attach the greatest relevance to the maintenance of the International Coffee Agreement under the auspices of the United Nations.

We would appreciate that the traditional practice previously followed by the Secretary General of the United Nations be kept on this particular issue of the utmost importance to our Governments and, in particular, that the next International Coffee Agreement, upon conclusion, may be deposited with the Secretary General of the United Nations as it has been the case with the current and previous International Coffee agreements, in all authentic languages, including Portuguese.

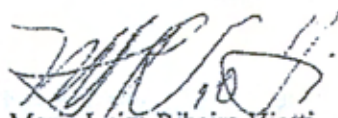
Please accept, Excellency, the assurances of our highest consideration.



Ismael Abraão Gaspar Martins

Ambassador

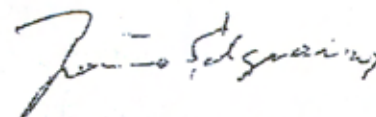
Permanent Representative of Angola
to the United Nations



Maria Luiza Ribeiro Viotti

Ambassador

Permanent Representative of Brazil
to the United Nations



João Manuel Guerra Salgueiro

Ambassador

Permanent Representative of Portugal
to the United Nations

NOTE TO MR. MICHEL

1/16/07
CT 16 Aug 07
CC: L.J.
NM d/2

Joint demarche by Brazil, Angola and Portugal
re. International Coffee Agreement

1. I met today with the Permanent Representative of Brazil, Ambassador Viotti, the Permanent Representative of Angola, Ambassador Gaspar Martins, and Ms. Helena Malcata, Counsellor at the Permanent Mission of Portugal. They had come to present a joint demarche with regard to the new International Coffee Agreement which is expected to be adopted by September 2007. Ambassador Viotti informed that in your absence, they had wished to raise this issue at the level of the Executive Office of the Secretary-General. Some concerns, she went on to say, had been expressed at the expert level in the Legal Office of the United Nations.

2. Ambassador Viotti recalled that the International Coffee Organization (ICO) was established in 1963 under the auspices of the United Nations and that it was customary for this organization to deposit agreements with the Secretary-General of the United Nations in Portuguese, English, Spanish and French. Even though Portuguese was not an official language of the United Nations, the past five Agreements had been deposited in these four languages which are considered authentic by the ICO. Ambassador Viotti informed that the Portuguese text of the new Agreement will be presented by the ICO in a clean version (thus avoiding further preparation work by the Secretariat) and that the Secretariat of the ICO was willing to advise on the terminology applied in the Agreement so as to clarify any difficulties encountered.

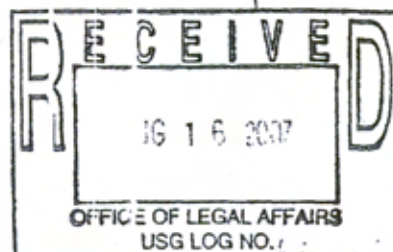
3. Concluding, Ambassador Viotti stressed that it was the wish of her Mission as well as that of Angola and Portugal to continue with the established practice of depositing the next International Coffee Agreement, upon conclusion, in all authentic languages, including Portuguese.

4. I ensured the Ambassador that I understood the rationale behind her joint demarche and indicated that I would inform you of the explanation provided by her, together with a copy the letter she handed over to me during the meeting (attached). I added that the case would be reviewed in the context of past established practices.

5. I would be grateful if due consideration could be given to this matter and thank you also for keeping me informed of subsequent developments.

Vijay Nambiar
Vijay Nambiar
5 August 2007

cc: Mr. Kim Won-soo



OLA TREATY SECTION

AUG 17 2007

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