

24 February 1993

Mr. Dominique Leguillier

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1. Regulation of Charitable Organizations under U.A.E. Law

Ministerial Resolution No. 17 of 1978 Regulating the Collection of Money from the Public ("Resolution 17") regulates appeals to the public for funding, including charitable contributions. Resolution 17 states that no entity operating in the U.A.E. may collect funds from the public unless it has been licensed pursuant to Federal Law No. 6 of 1974 Regulating Public Welfare Societies (the "1974 Law").

The 1974 Law (as amended by Federal Law No. 20 of 1981) imposes a number of substantive requirements on so-called "public welfare societies" seeking licensing in the U.A.E. Among other things, a public welfare society must have at least twenty (20) founding members, all of whom must be U.A.E. nationals. In addition, all "active members" of the society (as opposed to "honorary members") must also be U.A.E. nationals. A public welfare society is managed by a Board of Directors, which is chosen from among the active members of the society. Consequently, all members of the Board of Directors would have to be U.A.E. nationals.

In addition, the 1974 Law and Resolution 17 limit the ability of a public welfare society registered in the U.A.E. to collect charitable contributions in the U.A.E. and disburse the funds collected to recipients outside the U.A.E. Among other restrictions, Article 11 of Resolution 17 requires prior approval from the Ministry of Labor & Social Affairs (which has jurisdiction over public welfare societies pursuant to the 1974 Law) for any donations made by a public welfare society to an entity abroad. It is possible that the Ministry could require such approval to be obtained on a case-by-case basis. In addition, Article 1 of Resolution 17 states that a public welfare society requires a special license for fund-raising activities issued by the Ministry of Labor & Social Affairs in order to collect funds from the public, even if the public welfare society is already registered with the Ministry. Moreover, Article 3 of Resolution 17 prohibits the grant of more than one such special license to any public welfare society in a single year, and appears to limit the validity of such a special license to one month (although the Minister has the discretion to grant exemptions to the provisions of Article 3).

We recognize that the foregoing restrictions, if applied to MSF, would render it difficult for MSF to conduct the activities it desires to conduct in Abu Dhabi. Although it could be possible to request the Ministry of Labor & Social Affairs to exempt MSF from some or all of the particularly burdensome requirements imposed by the 1974 Law and Resolution 17, there can be no guarantee that the Ministry would respond favorably to such a request.

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2. Other Options

In light of the foregoing, it would probably be impractical for MSF directly to submit an application to the Ministry of Labor & Social Affairs for registration as a public welfare society and permission to conduct its activities in accordance with Resolution 17. We nevertheless believe that it is important for MSF to procure formal approval from some governmental authority in Abu Dhabi for the conduct of its activities. The collection of funds from the public is a potentially sensitive topic and any suggestion that MSF was collecting such funds in the U.A.E. without proper authorization could prove embarrassing for both MSF and its patron.

We have held discussions with officials at the Abu Dhabi Municipality and with Mr. Anwar Sher (in his capacity as spokesman for H.E. Sheikh Nahyan's interests as patron of MSF). Our preliminary conclusion is that the following alternative options could possibly be available to MSF. These options are ranked in order of desirability, and explained further in section 3 below.

- a. Obtain a decree from His Highness Sheikh Khalifa bin Zayed Al-Nahyan, in his capacity as Crown Prince of Abu Dhabi, establishing a representative office of MSF and delineating its authorities and responsibilities.
- b. Obtain a letter from the office of the Crown Prince instructing the Ministry of Foreign Affairs to recognize MSF as an international organization and to allow it to establish an office in Abu Dhabi.
- c. Obtain a letter from the office of the Crown Prince instructing the Ministry of Labor & Social Affairs to register MSF as a charitable organization in Abu Dhabi with appropriate exemptions from the 1974 Law, Resolution 17 and other applicable law.

Each of the three options set forth above would require the personal intervention of MSF's patron, H.E. Sheikh Nahyan bin Muharak. Mr. Sher has therefore suggested that we prepare a formal proposal to His Excellency, after your consideration of the contents of this letter, so that His Excellency can evaluate the various options and suggest appropriate action.

3. Discussion of Optionsa. Emiri Decree

The most straightforward way for MSF to establish a presence in Abu Dhabi would be for the Ruler of Abu Dhabi to issue a decree ordering the establishment of an MSF office in Abu Dhabi. H.H. Sheikh Khalifa bin Zayed could also issue the decree in his capacity as Crown Prince. For obvious reasons, this option would

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require H.E. Sheikh Nahyan to intervene at a high level on behalf of MSF, and would thus require a high degree of commitment from His Excellency.

The Emiri decree should probably expressly define the activities that the MSF office would be permitted to conduct in Abu Dhabi, incorporate some type of by-laws pursuant to which the office would operate, and provide some means of supervision by outside auditors. To the extent MSF is able to participate in drafting the text of any such Emiri decree, we would be pleased to assist MSF in doing so.

An Emiri decree would have several advantages. First, it would clearly demonstrate to all concerned parties that establishment of an MSF office enjoyed support at the highest levels of the Abu Dhabi government. Second, it would effectively constitute a legislative enactment of the Abu Dhabi government expressly permitting MSF to conduct its desired activities within Abu Dhabi. Both of the foregoing advantages would likely facilitate the rapid mobilization of the MSF office once the decree was issued, as the Abu Dhabi Municipality and other concerned authorities in Abu Dhabi would probably issue the licenses and other documents necessary to run the MSF office and recruit support staff upon the strength of the Emiri decree.

Third, we believe that (as a practical matter) it would be highly unlikely that the Ministry of Labor or any other entity would challenge the constitutionality of such an Emiri decree once issued, or to interfere with the operations of an MSF established pursuant thereto, provided that MSF at all times operates within the scope of such Emiri decree. As a technical legal matter, an Emiri decree establishing MSF would create an arguable conflict with certain provisions of Federal law (such as the 1974 Law), which could implicate sensitive issues of federalism. The political considerations raised thereby would be considered by the Crown Prince and other concerned parties prior to any decision to issue such a decree.

b. Letter of Instruction to Foreign Ministry

It might be possible for MSF to obtain recognition by the U.A.E. Ministry of Foreign Affairs as an international organization engaged in charitable relief work. Such recognition would allow MSF to establish an office in Abu Dhabi and would probably enable it to carry out its fund-raising activities in Abu Dhabi. Inasmuch as the Minister of State for Foreign Affairs, H.E. Sheikh Hamdan bin Zayed Al-Nahyan, is himself Chairman of the U.A.E. Red Crescent organization, it is possible that the Ministry of Foreign Affairs could prove to be a sympathetic regulatory authority.

A letter of instruction from the office of the Crown Prince of Abu Dhabi (obtained through the efforts of H.E. Sheikh Nahyan) could probably induce the Ministry of Foreign Affairs to grant

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recognition to MSF as an international organization. It might be possible for H.E. Sheikh Nahyan to make a direct approach to H.E. Sheikh Hamdan bin Zayed, without the need to involve the Crown Prince's office.

If the Ministry of Foreign Affairs granted such recognition to MSF, then MSF staff members accredited to the Abu Dhabi office (such as yourself) would be considered members of the diplomatic corps. As such, the presence in the U.A.E. of such staff members would fall under the jurisdiction of the Ministry of Foreign Affairs, and such staff members would not need to obtain ordinary residence visas or labor permits. However, locally hired secretarial and other support staff employed by MSF would probably be required to obtain labor permits from the Ministry of Labor & Social Affairs pursuant to Federal Law No. 8 of 1980 Regulating Labor Relations.

c. Letter of Instruction to Ministry of Labor

A third possibility would be for the office of the Crown Prince to issue a letter (obtained through the efforts of H.E. Sheikh Nahyan) instructing the Ministry of Labor & Social Affairs to register MSF as a charitable organization in Abu Dhabi. Although this option would be preferable to MSF making a direct approach to the Ministry (without the intervention of H.E. Sheikh Nahyan and/or the Crown Prince's office), it is less desirable than the other options for the following reasons.

Either of the first two options would clearly remove the MSF office from the jurisdiction of the Ministry of Labor & Social Affairs and, by extension, from its administration of the 1974 Law and Resolution 17. Under the Emiri Decree option, regulation of the MSF office would occur pursuant to the terms of the Emiri Decree. Responsibility for the regulation of MSF's office under the Foreign Ministry option (and the scope of such regulation) would be somewhat less clear, but the decision to grant such recognition notwithstanding the 1974 Law and Resolution 17 would be tantamount to approval of MSF's proposed activities.

However, registration as a charitable organization with the Ministry of Labor & Social Affairs would place the MSF squarely within the jurisdiction of the same Ministry that administers the 1974 Law and Resolution 17. Although regulation by the Ministry of Labor & Social Affairs need not, in itself, mean that MSF would be subject to the provisions of such legislation, the Ministry might well take the position that such legislation would apply to MSF in the absence of an express exemption therefrom in the terms of MSF's registration. Since a number of the substantive provisions of the 1974 Law and Resolution 17 would at best render MSF's proposed operations in Abu Dhabi impractical, MSF would therefore probably want to obtain a clear and express exemption from a number of specific provisions of that legislation. Leaving aside the fact that addressing such a detailed request for exemption to the Ministry of Labor &

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Social Affairs could well be politically unpalatable, preparing such a request is likely to be administratively burdensome to the Ministry as well as to MSF, and could thus result in considerable delay in the formal establishment of the MSF office.

4. Conclusions

Choosing among the various options set forth in this letter is likely to be governed largely by political considerations within Abu Dhabi. The person in the best position to evaluate such political considerations is clearly H.E. Sheikh Nahyan. Accordingly, we agree with Mr. Sher's advice that a formal written proposal to H.E. Sheikh Nahyan be prepared setting forth the various options and requesting him to suggest an appropriate course of action.

If you agree, we would be pleased to draft such a proposal on MSF's behalf. We would of course provide you with a preliminary copy of the proposal for your review and comment prior to its submission to H.E. Sheikh Nahyan.

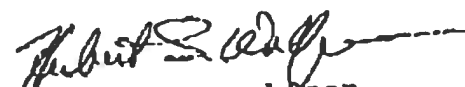
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We hope that the foregoing information is useful. Please feel free to contact us if you have any questions, or if we may otherwise be of assistance.

Very truly yours,


Herbert S. Wolfson

cc : Mr. Anwar Sher