ASSOCIATION INTERNATIONALE DES JURISTES DEMOCRATES
INTERNATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS
ASOCIACION INTERNACIONAL DE JURISTAS DEMOCRATAS
МЕЖДУНАРОДНАЯ АССОЦИАЦИЯ ЮРИСТОВ ДЕМОКРАТОВ
國際民主法律家協會
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July 16, 2010

Haidon Ali
President of the Economic and Social Council
Permanent Mission of Malaysia to the United Nations
313 East 43rd Street, New York, NY 10017

Re: Europe Third World Center (CETIM)

Dear President Ali:

The International Association of Democratic Lawyers (IADL) was founded in 1946 by lawyers, many of whom served as prosecutors at the Nuremberg trials, who knew the importance of creating a rule-based system of international relations. Our constitution commits us uniting lawyers around the world to achieve the purposes of the United Nations Charter. Rene Cassin, one of the principal authors of the Universal Declaration of Human Rights was our first president and we have tried over the years to use our legal skills to promote the rights enshrined in the Charter, the Universal Declaration of Human Rights and many other UN covenants, conventions resolutions, and programmes.

IADL has had special consultative status at ECOSOC since 1969 and has representatives in Geneva, Vienna, and UNESCO. Our representatives in New York are active in various committees. Presently we have affiliates and members in over 90 countries throughout the world. Our affiliates work in national organizations, and we work closely with regional bar organizations in the Americas, Europe and the Arab World.

We request, based on concerns stated below, that the matter of the recommendation from the NGO Committee regarding the Euorpe Third World Center's, (CETIM's) suspension for two years be tabled for further investigation and fact finding to ensure compliance with the standards required by Resolution 1996/31.

Firstly though, there are important policy considerations in this recommendation to suspend

which implicate issues of immunity and privilege for statements made to official bodies, and whether the proposed suspension hinders CETIM's access and communication with international bodies. That is, we note that the specific allegations made by Turkey are based on statements made by CETIM to official UN bodies whose roles are to evaluate the information provided and investigate allegations of human rights violations.

It is well established in common law that absolute privilege attaches to any statements made by judges, witnesses and advocates during the course of judicial or quasi-judicial proceedings. The principle and the immunity it provides from both civil and criminal proceedings has been a principle of primary importance to the integrity of common law legal systems for over three hundred years. The parameters of the doctrine of absolute privilege, which have remained constant, were enunciated in 1772 by Lord Mansfield in *R. v. Skinner*: "Neither party, witness, counsel, jury, or Judge, can be put to answer, civilly or criminally, for words spoken in office."

The doctrine of absolute privilege is based on public policy considerations. That is, there are certain occasions when it is in the public interest that people must be able to speak and write with complete freedom and without fear of prosecution.

These same policy considerations should exist with respect to statements made by groups such as CETIM which are mandated to investigate and report on suspected or confirmed human rights violations. In this regard IADL refers the Council to General Assembly resolution 53/144 of 8 March 1999 entitled: **"Declaration of the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms." This Declaration provides a clear basis for ECOSOC to apply principles of immunity and privilege to statements made before UN bodies, as it is absolutely imperative for these agencies, if they are to fulfill their mandates to receive information from interested persons without fear that what is said to the body will result in sanction.**

IADL specifically draws the Council's attention to Article 6(b) of the Declaration which states: "Everyone has the right individually and in association with others to:.. (b) As provided for in human rights and other applicable international instruments, to freely publish, impart of disseminate to others views, information and knowledge on all human rights and fundamental freedoms."

Just as judicial and quasi-judicial bodies must uphold the principle of immunity for statements made in those proceedings, so ECOSOC should protect the statements made by NGO's before UN bodies. Indeed, Article 8 protects groups and individuals from reprisals for making submitting to governments and "organizations concerned with public affairs" information which draws attention to aspects of their work that impede human rights protection.
Furthermore, Article 9 .4 of this declaration specifically states: "To this same end and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or specific competence to receive and consider communications on matters of human rights and fundamental freedoms."

Secondly we have evidentiary and procedural concerns. They are as follows:

•Article 56 of 1996/31 requires in cases of a recommended suspension that the NGO concerned "shall be given written reasons for that decision and shall have an opportunity to present its response for appropriate consideration."

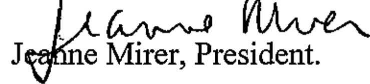
The record we have seen does not indicate any reasons were sent to CETIM. At best the record shows that Turkey's complaint was lodged to the NGO Committee on May 14th . On May 26th it was discussed in the absence of a response from CETIM. It also appears that while some countries expressed concerns whether the allegations were sufficient to merit withdrawal of status others indicated, also in the absence of any response, that there were elements of the complaint which "deserve a sanction" and members of the committee were reminded of the importance of consensus. The only communication to CETIM from the committee was a letter of May 26, 2010 sent to CETIM by Mr. Abramov "for its information". The letter did not indicate that the committee was considering taking any specific action against CETIM for any specific reasons even though it invited a response by May 28. ECOSOC therefore must consider whether Article 56 was specifically complied with in connection with this case. A delay to further consider this matter on the procedural aspects of this matter is, therefore, warranted.

• Article 57 1996/31 requires some level of proof of conduct beyond allegation/accusation. That is, under 57 (a) for consultative status to be withdrawn the organization has to **"clearly abuse"** its status. It must engage in a **"pattern of acts contrary to the UN Charter"**. The statements complained of must be **"unsubstantiated"** or politically motivated. The evidentiary burden to show **"clear"** abuse is substantial. In IADL's opinion, clear abuse can only be established when, after hearing all the facts, reasonable people can say there can be no two opinions on that question, the issue is clear. Also, although the word "pattern" is vague, IADL must raise a question of whether a pattern is established by a series of isolated actions taken years apart, or whether there must be evidence of more repeated and ongoing actions. The information IADL has seen shows that Turkey has made an allegation, CETIM has disputed the allegation. There were no documents submitted supporting allegations from Turkey. Not until after the deadline was CETIM able to gather all the documents to elaborate on their response. It appears to IADL that the NGO Committee has therefore not provided the Council with information sufficient for the Council to act at this time to ensure that the evidentiary burdens set out in Article 57 (a) have been met.

• Although the Complaint from Turkey is couched in terms of 57(a) bases for sanction, many of the allegations appear to implicate 57(b), to wit: by claiming CETIM is a propaganda arm of a terror organization, the allegation appears really to be that CETIM is influenced by internationally recognized criminal activities. CETIM states it has no relationship to any terror organization. If 57(b) is implicated in this case, the burden of proof is on the complaining party to provide **"substantiated evidence"** of the influence of criminal activities. At this time IADL does not believe, based on the record, that such evidence has been supplied by Turkey. We believe this requires the Council to defer the decision for further investigation.

IADL is mindful that the NGO Committee does not have extensive time to address many issues but suspension of an NGO is an important matter with serious policy implications for all countries and NGO's beyond this specific case. We know as lawyers that when there is a factual dispute between parties, an impartial fact finding is required so that each side can have a fair opportunity to make its case. A delay for further investigation, which could involve the appointment of an agreed upon third party is warranted here.

Respectfully submitted,



Jeanne Mirer, President.