UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/NY/2013/036–042 UNDT/NY/2013/044–068 UNDT/NY/2013/070–086
Order No.:	126 (NY/2013)
Date:	7 May 2013
Original:	English

Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

GATTI *et al.*

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON APPLICATIONS FOR SUSPENSION OF ACTION

Counsel for Applicants:
Self-represented

Counsel for Respondent:
Stephen Margetts, ALS/OHRM, UN Secretariat
Chenayi Mutuma, ALS/OHRM, UN Secretariat

Introduction

1. In the period from Friday, 26 April 2013, to Monday, 6 May 2013, fifty general service-level and professional-level staff members of the Department of General Assembly and Conference Management ("DGACM") filed fifty separate applications for suspension of action, pending completion of management evaluation, of the decision to relocate them from their current office space to various floors in the Albano building, located at 305 East 46th Street.[1]

2. The Applicants state that they first became aware of the contested decision on 12 April 2013. In the period of 26 April to 2 May 2013, prior to filing her or his application with the Tribunal, each Applicant individually requested management evaluation of the contested decision.

Procedural matters

Service of the applications on the Respondent

3. In the interests of expediency and judicial economy, and to do justice to the parties, the applications were served on the Respondent in two batches. The first

[1] Case Nos. UNDT/NY/2013/036 (Gatti); UNDT/NY/2013/037 (Griaznova); UNDT/NY/2013/038 (Thomas); UNDT/NY/2013/039 (Xu); UNDT/NY/2013/040 (Leboeuf); UNDT/NY/2013/041 (Hamill); UNDT/NY/2013/042 (Hya); UNDT/NY/2013/044 (Salz); UNDT/NY/2013/045 (Benalcazar); UNDT/NY/2013/046 (Camino); UNDT/NY/2013/047 (Girard); UNDT/NY/2013/048 (Zoubreva); UNDT/NY/2013/049 (Ali); UNDT/NY/2013/050 (Martens); UNDT/NY/2013/051 (Kollontai); UNDT/NY/2013/052 (Tyurina); UNDT/NY/2013/053 (Zeng); UNDT/NY/2013/054 (Taus); UNDT/NY/2013/055 (Reif); UNDT/NY/2013/056 (Agarkova); UNDT/NY/2013/057 (Kadic); UNDT/NY/2013/058 (Bustamante); UNDT/NY/2013/059 (Lohan); UNDT/NY/2013/060 (Garcia-Webster); UNDT/NY/2013/061 (Sack-Kastl); UNDT/NY/2013/062 (Walker); UNDT/NY/2013/063 (Ortega Garrido); UNDT/NY/2013/064 (Qi); UNDT/NY/2013/065 (Chesney); UNDT/NY/2013/066 (Elizbarashvili); UNDT/NY/2013/067 (Lisa); UNDT/NY/2013/068 (Goss); UNDT/NY/2013/069 (Larson); UNDT/NY/2013/070 (Abdel-Fattah); UNDT/NY/2013/071 (Al-Khawam); UNDT/NY/2013/072 (Schramm); UNDT/NY/2013/073 (Makarov); UNDT/NY/2013/074 (Grunina); UNDT/NY/2013/075 (Chistova); UNDT/NY/2013/076 (Zinovienva); UNDT/NY/2013/077 (Sergueenko); UNDT/NY/2013/078 (Cao); UNDT/NY/2013/079 (Litvinova); UNDT/NY/2013/080 (Galitchskaia); UNDT/NY/2013/081 (Trepelkova); UNDT/NY/2013/082 (Shibanova); UNDT/NY/2013/083 (Zhurbina); UNDT/NY/2013/084 (Klokovskaya); UNDT/NY/2013/085 (Korshunova); UNDT/NY/2013/086 (Apkhaidze).

batch of forty-four applications was served on the Respondent on 30 April and 1 May 2013, with the deadline for his reply set at 3 p.m. on Thursday, 2 May 2013. The second batch of six applications was served on the Respondent on 2 May 2013, with the direction to file his reply by 3 p.m. on Monday, 6 May 2013. The Respondent's replies to both batches of applications were duly filed.

4. With respect to the first batch of applications the Tribunal has five working days from their service on the Respondent—or until 5 p.m. on Tuesday, 7 May 2013—to complete its consideration. With respect to the second batch of applications, the Tribunal has five working days from their service on the Respondent—or until 5 p.m. on Thursday, 9 May 2013—to complete its consideration.

Consolidated consideration of the applications for suspension of action

5. The applications concern the same subject matter (the relocation to the Albano building); the Applicants raise similar claims; and the Respondent has provided what is effectively one consolidated reply to all applications. In the interests of expediency and judicial economy, and to do justice to the parties, the Tribunal will issue one consolidated order in relation to the filed cases, noting any material differences between the Applicants, by which all parties are to abide. Case No. UNDT/NY/2013/036 (Gatti) being the first case filed through the eFiling portal, Mr. Gatti's application will be considered as the lead application.

6. Ordinarily, the Tribunal would have issued separate orders with respect to each of the Applicants. However, in view of the very limited time available pursuant to art. 13 of the Rules of Procedure for the consideration of the present applications and for the preparation of the decision, it was not feasible to issue fifty separate orders. Instead, as many of the legal and factual issues are common in all fifty applications, the Tribunal will issue one consolidated order covering all fifty applications, noting any material differences.

7. On 1 May 2013, one of the Applicants[2] sought a withdrawal of her application for suspension of action. By Order No. 125 (NY/2013) dated 7 May 2013, the Tribunal dismissed her application as withdrawn.

Order No. 119 (NY/2013)

8. On Tuesday, 30 April 2013, the Tribunal issued Order No. 119 (NY/2013), directing the Respondent not to undertake, as from the date and time of service of Order No. 119, any further steps regarding the relocation of the Applicants before the Tribunal at the time of the Order until the determination of the suspension of action (*Villamoran* UNDT/2011/126; *Villamoran* 2011-UNAT-160; *Nunez* Order No. 17 (GVA/2013); *Quesada-Rafarasoa* Order No. 20 (GVA/2013); *Charles* Order No. 61 (NY/2013); *Kallon* Order No. 80 NY/2013); *Gandolfo* Order No. 97 (NY/2013)). The Tribunal also provided a list of issues to be addressed by the Respondent in his reply and granted leave to the Applicants before it to file any additional submissions by 3 p.m. on 2 May 2013. No additional submissions were filed by the Applicants by the established deadline.

Respondent's reply and objection to its late filing raised by Mr. Gatti

9. The Registry received the Respondent's reply to the first batch of forty-four applications at 3:17 p.m. on Thursday, 2 May 2013. Approximately two hours later, the Respondent filed a supplementary submission (discussed further below). On 3 May 2013, the New York Registry transmitted the reply and the supplementary submission to the forty-four Applicants from the first batch.

10. On 3 May 2013, one of the Applicants, Mr. Gatti, wrote an email to the New York Registry, stating that it appeared to him that "the Respondent filed after the deadline of 2 p.m." and that "the additional documentation was filed even later".

[2] UNDT/NY/2013/069 (Larson).

Contrary to the filing instructions on the Tribunal's website, Mr. Gatti did not serve his communication on the Respondent.

11. The purpose of Mr. Gatti's communication was unclear. To the extent it was intended to be regarded as a request to strike out the Respondent's reply, the Tribunal makes the following findings. Mr. Gatti's submission was not only made in an improper form (by email as opposed to a formal signed motion), but was also misguided. Firstly, the Respondent had until 3 p.m., not 2 p.m., to file his reply, and submitted his reply at 3:17 p.m. Secondly, at 3:10 p.m. and 3:24 p.m., the office of Counsel for the Respondent communicated to the Registry that they were experiencing technical difficulties with submitting the reply. The email of 3:24 p.m. was copied to Mr. Gatti, so he must have been aware of the difficulties. Thirdly, given the extraordinary number of applications and the limited time provided to the Respondent to prepare and submit his reply, a delay of approximately twenty minutes due to technical reasons caused absolutely no prejudice to the Applicants and will be disregarded (*Awad* UNDT/2013/071). Moreover, the Tribunal must have a certain amount of procedural laxity in dealing with urgent applications, and any technical objections are an unnecessary waste of time and resources.

Respondent's supplementary filing on 2 May 2013

12. At 5:32 p.m. on 2 May 2013, the Registry received a motion from the Respondent seeking leave to submit an email of 4 April 2013 (discussed in the Background section below) that was apparently inadvertently omitted from the annexes to the Respondent's reply, filed earlier that day. Given that the Respondent had less than two days from the service of the applications to prepare and file his reply, the Tribunal allows the filing of the omitted annex.

Motion for additional submissions filed by the Applicants

13. At 6:23 p.m. on Friday, 3 May 2013, and at 9:20 a.m. on Saturday, 4 May 2013, two Applicants, Ms. Griaznova and Mr. Gatti, filed two separate motions seeking leave to submit "the following additional documents which have been brought to [their] attention and which have a bearing on the issues". However, no documents or explanations as to their nature were attached to the motion. Ms. Griaznova and Mr. Gatti requested "additional time to gather and submit" relevant information.

14. The present proceedings are of an urgent nature, with the Tribunal having only five days to consider the applications from the date of service on the Respondent, the deadline for the Tribunal's consideration being 5 p.m. on Tuesday, 7 May 2013. Ms. Griaznova's and Mr. Gatti's motions were formally received by the Registry at 9:00 a.m. on Monday, 6 May 2013, one day before the expiration of the five-day period for the Tribunal's consideration of the applications for suspension of action. The motions do not explain the relevance of the documents that the two Applicants seek to "gather and submit", nor do they articulate when the documents would be available and why they were not provided to the Tribunal in the first instance. Notably, by Order No. 119 (NY/2013), the Applicants were granted leave by the Tribunal to file any further submissions they saw fit by 3 p.m. Thursday, 2 May 2013. No such submissions were filed by the specified deadline by any one of the numerous Applicants, or during business hours on Friday, 3 May 2013.

15. The applications presently before the Tribunal are applications for suspension of action pending management evaluation. It is an extraordinary discretionary relief, which is generally not appealable and which is intended to preserve the *status quo* pending management evaluation. It is not meant to make a final determination on the substantive claims. Such urgent applications do not lend themselves to cases where there is a substantial dispute of facts, capable of resolution only by a hearing.

Applications for interim relief disrupt the normal day-to-day business of the Tribunal and the parties' schedules. They also divert the Tribunal's attention from considering other cases filed under standard application procedures, some of which are long outstanding. Therefore, parties approaching the Tribunal must do so on genuine urgency basis which is not self-created, and with sufficient information for the Tribunal to, preferably, decide the matter on the papers before it. In view of the urgent nature of urgent applications, the Tribunal has to deal with them as best as it can, depending on the particular circumstances and facts of each case. An application may well stand or fall on its founding papers, and the Tribunal will rarely allow a third set of papers due to the time limitations.

16. Accordingly, in view of the urgent nature of the proceedings and the insufficiency of information provided in the motions filed by Ms. Griaznova and Mr. Gatti—and noting that the Applicants had been provided with the opportunity to file additional submissions by 2 May 2013, which they did not exercise—the Tribunal does not grant the request for "additional time to gather and submit" relevant documents and information.

Extraordinary number of applications

17. The filing of these applications was a very serious challenge for an already under-resourced Registry, which in the last two weeks had to consider—in addition to these fifty separate urgent applications requiring immediate attention—two other separate urgent applications for suspension of action in unrelated matters, with only one judge presently at the New York duty station. Regrettably, many of the applications in the present cases did not comply with the filing requirements articulated in the Tribunal's Rules of Procedure, Practice Directions, and the Registry Guidelines, all of which are available on the Tribunal's website. Furthermore, many Applicants submitted incomplete documents, with missing pages and annexes. All of this required urgent follow-up by the New York Registry.

18. Registering and processing this large number of applications required an extraordinary effort on the part of an already-overwhelmed Registry to ensure that all Applicants received the necessary guidance and assistance in completing their filings. As a result of the remarkable number of applications filed, the Tribunal's resources in New York in the last two weeks were stretched to the extreme, underscoring the need for the Tribunal to have adequate resources.

Registration of cases

19. Each Applicant filed her or his applications in their individual capacity, acting *pro se*. Although the applications were to a large degree similar, the Applicants' factual situations varied. Moreover, the claims made by them were not identical, as summarized in the section on the Applicants' submissions, below. The Applicants also submitted their applications at different times and on different dates, from 26 April to 2 May 2013. For all these reasons, it was necessary for the Registry to register each application under a separate case number.

Background

20. The Capital Master Plan ("CMP"), a large-scale, long-term renovation of the United Nations Headquarters Complex in New York, mandated by the General Assembly. The construction phase of the project commenced in 2008. CPM required the relocation of a significant number of staff from the Headquarters Complex to other buildings, including rental space, such as the building rented by the United Nations at 380 Madison Avenue in New York ("Madison building") and the Albano building.

21. As part of CMP-related work, by a note dated 27 August 2004 from the Under-Secretary-General for Management, the Secretary-General received new proposed individual work space standards. The note stated that an independent expert analysis had been conducted, based on which it was recommended that

the standards for individual work space should be reduced for general service-level and professional-level staff as follows: from the range of 96–144 square feet to just 96 square feet for all professional-level staff; from the range of 48–80 square feet to just 64 square feet for all general service-level staff. The note concluded by seeking the Secretary-General's approval for the proposed standards for various buildings occupied by the United Nations "where feasible".

22. On 8 September 2004, Chief de Cabinet of the Secretary-General sent a note to the Under-Secretary-General for Management, stating that "[t]he Secretary-General has approved the new space standards outlined in [her] note dated 27 August 2004 which shall be applicable to the new UNDC-5 building, the renovated Secretariat building and other Headquarters office space *wherever feasible*" (emphasis added).

23. Both parties produced to the Tribunal what appears to be a print-out of a PowerPoint presentation entitled "United Nations Capital Master Plan: Office Space Planning Guidelines August 2012" ("CMP Guidelines"). The document provides various plans for individual work spaces and includes a reference to the "new individual work place standard" for general service-level staff being 64 square feet.

24. The CMP Guidelines have been utilized, with significant modifications, for several thousand offices. The Respondent submits that there are many offices at the United Nations Headquarters that do not provide for the space allocation envisaged in the CMP Guidelines. For example, according to the Respondent, DC-1 and DC-2 buildings (in which many of the Applicants in these cases are presently located) contain many general service-level work stations in the range of 36 square feet, as opposed to 64 square feet referred to in the CMP Guidelines.

25. The Albano building has apparently been renovated at a cost of USD24 million to bring the working conditions up to "the required standard". Despite

the renovations, a number of issues with the Albano building were recorded in 2010 and 2011, which were the subject matter of a number of exchanges between senior officials of the Organization (including several serious complaints by the then Under-Secretary-General for DGACM) and which required action by the Facilities Management Service ("FMS"), CMP services, and building management. The issues included, *inter alia*, unacceptably low temperatures and high noise levels, as well as issues with elevators, air conditioning, ventilation, water pressure, and water leaks. It appears that many of these issues persisted in 2012 and continue to persist in 2013, despite efforts to resolve them.

26. On 13 December 2012, the Acting Head of DGACM sent an email to all DGACM staff entitled "The Albano Building". He stated that the Albano building is no longer considered "swing space" (i.e., a temporary location occupied before moving to a permanent site) and DGACM staff would occupy it for the foreseeable future. The Acting Head acknowledged that "there have been some issues with the Albano building" and that DGACM was "work[ing] closely with [FMS] to resolve them". He stated that the "rodent and insect issues have been addressed and climate control challenges on the various floors are being carefully monitored". He noted that "much progress has been made in overcoming the climate-control challenges of a largely closed-office rather than an open-plan configuration" and that "complaints concerning most building-related issues have decreased significantly". He further stated that "some DGACM colleagues who are currently located in the DC-1 and DC-2 building[s] will shortly be joining the Albano facility".

27. In the following months, staff-management consultations ("SMC") were held regarding the move to the Albano building. As it is one of the Applicants' claims that no consultations were held regarding the process prior to the final relocation decision made on 12 April 2013, the Tribunal will summarize the draft notes of those meetings below. They were provided to the Tribunal by the Respondent, except for the minutes of 23 April 2013, which were also produced by the Applicants. Neither

the Applicants nor the Respondent raised any concerns with the accuracy of the draft minutes, and, for the purpose of the present proceedings, the Tribunal has no basis not to accept them as accurate. In the summaries below, quotations indicate the text of the minutes as it is understood by the Tribunal that the minutes were not taken verbatim.

Staff-management consultations of 21 December 2012

28. Approximately one week after the email of 13 December 2012, an SMC meeting was held by DGACM on 21 December 2012. The meeting was chaired by the Acting Head of DGACM and was attended by representatives of management and staff. The meeting primarily concerned matters other than the move to the Albano building, with the Staff Representatives Coordinator noting during the discussion of the implementation of the FlexTime system (the new system to record timekeeping) that the staff of DGACM felt "unfairly targeted" in view of, *inter alia*, the implementation of the FlexTime system and "the conditions of work in the Albano building". At the end of the meeting, the Acting Head of DGACM proposed that the next SMC meeting, to be held in January 2013, would deal with, *inter alia*, conditions of work in the Albano building.

Staff-management consultations of 25 January 2013

29. The next SMC meeting, held on 25 January 2013, was also chaired by the Acting Head of DGACM. Staff representatives raised a number of concerns with regard to the conditions of work at the Albano building. These concerns included, *inter alia*, strong vibration and dust from demolition work at a nearby site, as well as poor air quality in the building.

30. One of the management representatives (Chief of the Editorial, Terminology and Reference Service ("ETRS")) stated at the meeting that a test of the air quality had been done two weeks earlier and that results were being awaited. She stated that

if pollution levels exceeded New York standards, FMS would take steps to address the situation. The Chief of ETRS further stated that a focal point had been designated to document all complaints about building facilities and to liaise with FMS to ensure a prompt and effective response to any such complaints.

31. The Staff Representatives Coordinator stated that "even if management was apparently trying to do everything possible within its mandate, staff remained unhappy". The Chief of ETRS replied that, on the contrary, "in a recent general survey, staff had reported genera[l] satisfaction with working conditions in the Albano building". She stated that the remaining concerns—in particular, chronic elevator problems and heating infrastructure—were being addressed by the building management and FMS.

32. The Chief of the English Translation Service ("ETS") stated (on behalf of management) that, with regard to the noise complaints on the lower floors of the Albano building relating to the demolition work, a number of solutions were identified during a recent meeting between management and staff representatives, including the provision of face masks and earplugs and the encouragement of staff to telecommute during the demolition work. The Chief of ETS added that the demolition work would be completed within one or two weeks (i.e., in February 2013). One of the staff representatives noted that similar issues would come up in one year's time when construction would begin on the demolition site.

33. The Chief of ETRS added, on behalf of management, that, at its next meeting with the building owners and the construction company, management planned to discuss long-term concerns. She said that even if the noise and air quality levels were well within the limits imposed by the City of New York, they nevertheless caused stress for staff. Even if not required by law, measures that would help staff deal with the noise and dust would be considered. One option would be to install air filters and, if the levels were found to be significantly below code limits, management could use

the results to put pressure on the building management company to find appropriate solutions.

Email of 4 April 2013

34. On 4 April 2013, the Assistant Secretary-General for General Assembly and Conference Management sent an email to the Chiefs of four Units—the Official Records Editing Section ("ORES"), the German Translation Section ("GTS"), the Copy-Preparation and Proofreading Section ("CPPS") and the Journal Unit ("JU")—stating that DGACM had been informed by CMP that these Units would be relocated from their present locations to the Albano building by the end of April 2013. The Assistant Secretary-General requested the Chiefs of Units to forward his email to their staff members, which was apparently done.

Staff-management consultations of 11 April 2013

35. At the next SMC meeting, held on 11 April 2013, the Acting Head of DGACM (who again chaired the meeting) noted that the following issues had been raised with regard to the Albano building and that he would endeavour to address them during the consultations: (i) the functional suitability of the Albano building for office work; (ii) comparison of the proposed distribution of units (seating) and the staffing tables; (iii) plan of the distribution of units (seating) and the organizational structure and requirements; (iv) the Medical Service's approval of the proposed plan. He noted that staff present in the Albano building had already endured many weeks of disruption from the demolition of the adjacent structure, which had been completed.

36. The Staff Representatives Coordinator recognized the efforts made to deal with the problems in the Albano building, but noted that not all of them had been solved. He expressed his dismay that consultations with staff regarding the move had just begun and stated that the decision not to involve staff in decision-making

regarding the move was regrettable. In response, the Director of the Documentation Division stated that she took exception to the implication that management had not consulted with staff, since the proposed restacking had been under discussion since she had taken up her duties in August 2012. She stated that the issues with access to natural light and climate control were acknowledged, but efforts to work with the landlord to correct them had thus far been unsuccessful. She stated that the plan of relocation of particular units had been finalized only one week ago and that management was committed to continuing to work on climate control and light issues. The Chief of ETRS added that, with regard to the question of functional suitability of the Albano building, the health and security risks had not been demonstrated.

37. A representative of FMS stated that the Albano building had received major upgrades to the elevators and the heating system. The ownership of the building changed in 2011 and the new owner was more responsive to the concerns expressed. Temperature readings were taken whenever FMS received a complaint; although they varied widely from room to room, they were found to be within an acceptable range. The air quality of the building had been tested more often than any other building. No problem had been discovered as the air quality was found to be within the parameters of all local building codes. FMS representative acknowledged that heating and ventilation remained major issues, adding that the new landlord was planning to reseal the windows in May 2013, which should help to stabilize temperatures, and to install new dampers on floors 1 through 6.

38. The Director of the Documentation Division confirmed that the lease on the Albano building ran until 2017 and DGACM would stay there until the lease expired. She apologized that there had not been more time to share information, which created confusion. She stated that once the moves were completed, further efforts would be made to improve conditions of work. She added that, once

the moves were completed, there was flexibility as to how each service or section would organize on each floor.

39. The Staff Representatives Coordinator replied that he would forward medical information from staff members documenting illnesses and problems with eyesight related to the conditions in the building. One of the staff representatives stated that the only information they had about the conditions were the stories they had heard from current staff, from which they had concluded that conditions were bad.

Staff-management consultations of 16 April 2013

40. The next SMC meeting was held five days later, on 16 April 2013, and was chaired by the Acting Head of DGACM. In response to the question regarding the relocation schedule, a representative of CMP stated that the schedule was tight and that the Organization would be subject to a penalty of almost USD9 million if it did not vacate the Madison building. (Staff members in the Madison building are apparently expected to move into the space in DC-1 and DC-2 that is currently occupied by DGACM and that is expected to free up with the move to the Albano building.) The CPM representative further stated that delay with the move would also have an impact on the schedule for renovation of the General Assembly building, with associated cost implications. The move had to be completed before the end of May 2013.

41. The Staff Representatives Coordinator stated that DGACM staff members were presented with the plan for the move on 12 April 2013. The Staff Representatives Coordinator raised the issue of the individual space allocation, recalling that the CMP Guidelines provided for general service-level staff to have cubicles of 64 square feet. He stated that there was a *de facto* inequality of treatment between general service staff in the Albano building and some other buildings, in which staff had 64 square feet of individual work space. The CPM representative stated in response that, although some alterations to the work areas were envisaged,

there was no mandate or funding to bring all "offsite" locations (i.e., locations outside the Secretariat building) into compliance with the new guidelines, which would entail a massive renovation. The CMP representative also stated that he disagreed that there was inequality of treatment of staff as workstations were of different sizes in different locations and, in some respects, the Albano building had better services than other buildings (for instance, the telephone system was more up-to-date). The Chief of ETRS added that some of the affected DGACM staff members would be moving into work stations in the Albano building that are larger than those they currently occupy. She added that no large-scale renovation work was feasible in the Albano building. The Staff Representatives Coordinator replied to this that the required modifications could be carried out progressively, floor by floor.

42. The Director of the Documentation Division, responding to a question from the Chair, said that the climate control was a major ongoing issue that was actively brought to the attention of the new owners of the building, who were more open to making changes than the previous landlord. The new owners had agreed to recaulk all windows both externally and internally, as well as to replace some of them. An audit of all windows on floors 1 to 6 had been carried out to identify which ones were particularly problematic. Further fixes would be made by the owners on several floors as well as the entrance area.

43. The Staff Representatives Coordinator raised a further concern regarding the lack of amenities in the Albano building, in particular, the absence of a cafeteria and communal eating area. According to him, staff had lost the benefit of subsidized food, which was available to staff in other locations and would suffer from food smells coming from adjacent workspaces. The Director of the Documentation Division replied that staff had access to subsidized cafeterias in other United Nations buildings (located several streets away) and could use restaurants or bring food from home. She stated that while there was no space in the Albano building for a common eating area, the owners and management were open to creating a communal rooftop

terrace, however, other issues, such as the refurbishment of windows and installation of an awning above the entrance, would take priority. A rooftop terrace would also require New York City approval and some safety and security issues would need to be addressed.

44. One of the staff representatives stated that the main concerns for the staff of his section (Copy Preparation and Proofreading Section, ("CCPS")) was the problem with climate control in the Albano building, which threatened the health of staff. According to him, the matter of natural light was of lesser concern.

45. The Chair of the meeting clarified that the relocation process would not begin before 26 April 2013 and urged management and staff representatives to take advantage of the remaining eight working days to sort out as many issues as possible.

Draft staff resolution of 19 April 2013

46. Three days later, on 19 April 2013, staff members working in the Albano building and staff members designated to move into it held a general meeting and adopted a resolution. The staff resolution recalled para. 1 of sec. II.B of General Assembly resolution 67/237, dated 24 December 2012, in which the Assembly requested the Secretary-General to

> ensure that the implementation of the capital master plan, including the reassignment of conference-servicing staff to swing spaces, will not compromise the quality of conference services provided to Member States in the six official languages and the equal treatment of the language service, which should be provided with equally favourable working conditions and resources, with a view to receiving the maximum quality of services.

47. The staff resolution stated, *inter alia*, that "[s]taff representatives have been charged to demand that no other section, service or unit be moved into the Albano building"; that "[s]taff representatives will, therefore, categorically reject the moving proposal in its entirety and will not engage in negotiations that rest on

the assumption that the proposed move will take place"; "[staff] have been betrayed by Management because the promise of a return to the Secretariat Building has been broken"; and that "the only moves that staff in the Albano building are prepared to accept during their stay in this swing space are those with a view to improve the working conditions of the staff, not to worsen them" (emphasis omitted).

Staff-management consultations of 23 April 2013

48. The next SMC meeting was held on 23 April 2013. In the absence of the Acting Head of DGACM, it was chaired by the Officer-in-Charge, DGACM.

49. The Alternate Staff Representative for French Translation Section ("FTS"), Russian Translation Section ("RTS"), and Spanish Translation Section ("STS") stated that the Albano building was unfit for occupancy by staff performing highly specialized tasks and that many staff members were experiencing health-related problems, which were in the process of being documented for submission to management. He stated that staff recognized that it was unrealistic to expect alternative office accommodations to be found in the short term, but would like a commitment from management that they would not be left in the Albano building under current conditions until 2017. He subsequently added, however, that management must commit itself to getting the staff out of the Albano building.

50. Staff Representatives Coordinator added that staff had a legitimate expectation of decent working conditions and a consensus between management and staff must be found on how this could be achieved. He indicated that 71 per cent of the total number of translators already housed in the Albano building had participated in a survey and 94 per cent of them had stated that their productivity would improve under better conditions. He indicated that the survey results would be made available to management.

51. Staff Focal Point for ORES enquired whether it would not be possible for the air quality in the Albano building to be verified by outside experts and the results communicated to staff. The Focal Point for CMP-related questions in the Albano building replied that an air quality test had been carried out by an independent company and the results (apparently showing that the quality of air was within the local standards) had been circulated but that they could be re-circulated, if needed.

Break-down of staff-management consultations

52. On 25 April 2013, the Staff Representatives Coordinator emailed the Officer-in-Charge of DGACM, stating that "DGACM staff representatives decided to ask the President of the United Nations Staff Union to call for an urgent meeting of the Joint Negotiation Committee [JNC]". (The role and functions of the JNC are explained in ST/SGB/2007/9 (Joint Negotiation Committee at Headquarters).)

53. On 25 April 2013, the President of the Staff Union emailed the Assistant Secretary-General for Human Resources, asking to urgently schedule a JNC meeting on 26 April 2013. The Assistant Secretary-General for Human Resources replied the same day, suggesting to schedule the JNC meeting for the following week. The President of the Staff Union replied stating, "Do I have your guarantee that no moving will happen before the JNC meeting? We don't want a meeting after the fact". The Assistant Secretary-General for Human Resources said in reply that she could not commit that the moves would not take place as scheduled due to the impact on other offices. The President of the Staff Union then sent an email higher up the chain, to the Under-Secretary-General for Management, seeking his "written guarantee that no move will happen before the JNC takes place". The President of the Staff Union further informed the Under-Secretary-General for Management as follows:

> If I don't hear otherwise until 6 p.m., I will assume that you, [the Under-Secretary-General for Management], in your capacity as [the Head of the] Department that the CMP responds to, are in agreement that this move will happen even though consultations have not been exhausted and DGACM staff members, through their representatives, do not agree to it.
>
> In practical terms, this means that [the Under-Secretary-General for Management's] decision will be the one to be contested through a management evaluation review and, due to time constraints, in an emergency request to stop action at the [United Nations Dispute Tribunal] (in case DGACM staff representatives decide to follow this course of action).

54. The Under-Secretary-General for Management replied the same day, stating that the matter was being handled by the Assistant Secretary-General for Human Resources and the Assistant Secretary-General for CMP. In response, the President of the Staff Union stated that she is "left with no option other than to rescind [her] request to hold a JNC on this matter". She added that it was "[her] opinion that, on this matter, the Administration is acting in bad faith".

55. One day later, on 26 April 2013, the Staff Representatives Coordinator sent an email to the Under-Secretary-General for Management, stating that DGACM staff representatives and the President of the Staff Union consider the Administration's refusal to postpone the relocation to be a breach of staff regulation 8.1, which requires the Secretary-General to "establish and maintain continuous contact and communication with the staff in order to ensure the effective participation of the staff in identifying, examining and resolving issues relating to staff welfare, including conditions of work, general conditions of life and other human resources policies". The Staff Representatives Coordinator stated that "[t]herefore staff representatives withdraw from staff-management consultations on this issue" but that they are "always ready to come back to the consultations table, provided that the action on the issues we hold discussions is suspended for the consultations period". He concluded by stating, "We reserve ourselves the right to turn to justice system to confirm our qualification of this Administration's action as unlawful".

56. On 26 April 2013, the Tribunal started to receive the first applications for suspension of action in relation to the contested decision.

Applicants' submissions

57. The Applicants' principal contentions may be summarized as follows:

Prima facie *unlawfulness*

a. With respect to the reasons for finding that the contested decision appears *prima facie* to be unlawful, the Applicants make several claims and it should be noted that the claims made in their individual applications are not identical. For example, while most of the general service-level Applicants raise claims regarding the expected size of their individual work stations (cubicles), professional-level Applicants make no such claims. The Tribunal reviewed the Applicants' submissions in full to ensure no relevant claims were left unaddressed. The claims made by all fifty Applicants with respect to the *prima facie* unlawfulness of the contested decision may be summarized as follows:

i. Staff have a right to proper working conditions, in terms of provision of office accommodation in accordance with generally accepted occupational health and safety standards;

ii. The Applicants are not aware whether any studies have been undertaken to ascertain whether the working conditions at the Albano building conform to the regulation of the host country;

iii. The working conditions in the Albano building are not safe, as numerous issues persist in relation to ventilation, heating, air conditioning, and light (including insufficient access to natural

light). In particular, some staff whose offices have access to natural light may be placed in rooms with no natural light, which will result in serious deterioration of their working conditions;

iv. No consultations were carried out by management with staff representatives before the relocation plan was presented as a *fait accompli*. Although consultations have been requested by staff representatives and the President of the Staff Union, the Administration refused to postpone the forced relocation pending those consultations.

b. In addition, twenty-three Applicants who are general service-level staff members are making the following claims:

i. The size of cubicles for general service-level staff in the Albano building will be either 48 or 36 square feet, below their current cubicle sizes and the standard of 64 square feet set by the CMP Guidelines;

ii. The size of cubicles for general service-level staff in other buildings occupied by the United Nations is larger, thus subjecting the staff in the Albano building to unequal treatment.

c. Further, five Applicants who are staff members of the Russian Text Processing Unit ("RTPU") submit that they are already located in the Albano building, on the 15th floor. They seek suspension of the decision to relocate them to the 6th floor in the Albano building as part of the relocation process. In addition to some of the claims summarized above, they submit that they feel that their Unit has been discriminated against since no other unit is due to relocate their whole staff from one floor to another in the Albano building,

away from their corresponding translation section. The staff of RTPU, being presently located on the same floor next to the Russian Translation section, after the proposed move to the Albano building would be located sporadically and 10 floors away from the Russian Translation Section, which will seriously impede the working processes and coordination of the Unit. The Applicants from the RTPU also make claims about the large number of staff that will be located on the 6th floor, resulting in limited access to common facilities and to work stations with natural light.

Urgency

d. With respect to the urgency of the matter, the Applicants submit that, despite a request made by staff representatives to postpone the move, management has indicated that it plans to proceed with its implementation after 26 April 2013.

Irreparable damage

e. With respect to the irreparable harm that would be caused by the implementation of the decision, the Applicants submit that, in addition to violating the requirement for staff-management consultations, the imminent move represents a serious threat to their health and well-being.

Respondent's submissions

58. The Respondent's principal contentions may be summarized as follows:

Receivability

a. The Applicants do not have a right under their terms of appointment to determine at which particular building in their duty station they will be stationed. There is also no right under their terms of appointment to demand

that maintenance issues at the Albano building be fully resolved prior to them taking up their duties at that location.

Prima facie *unlawfulness*

b. Management has consulted and will continue to consult with the Applicants and other staff representatives concerning various issues that have arisen in the course of the occupancy of the Albano building. Issues concerning the Albano building have also been raised in the context of the JNC discussions in May 2011. It is likely that the JNC will follow-up on these discussions and the Albano building will be the subject of discussions at future JNC meetings.

c. While there are ongoing issues identified with the Albano building, at no time has the building not met the required occupancy standards. For example, indoor air quality testing has been performed by a specialist contractor. The air quality testing, including the tests conducted on 17 January 2013, confirm that the air quality meets acceptable standards. The next inspection of the building is scheduled for July 2013. Further, a number of improvements have been made to the heating, ventilation and air conditioning systems. In particular, electric heaters were installed in the air duct system on lower floors. Air intake dampers have been overhauled. The operation of the boiler has been set to a higher steam pressure improving the distribution of heat making it less variable from area to area and floor to floor. Staff members have been instructed not to place personal items and documents on radiators, not to block stairwell doors in the open position, and to move furniture away from radiators, which measures have also yielded improvements. Accordingly, efforts to address staff concerns with the Albano building have been ongoing since 2009 and continue today.

d. The Respondent submits that there are no requirements under New York City laws in terms of space sizes for work areas. For New York City building code purposes, capacity of a given office floor is calculated, and capacity would also be limited by available exit widths and number of toilets, but how the space is allocated on the floor is not regulated. The Albano building complies with all the relevant standards.

e. The Administration has acted rationally and reasonably in managing the office space available to it. The decision to relocate the Applicants was made in furtherance of a mandate by the General Assembly, which requested in para. 19 of sec. V.A of its resolution 67/246, dated 24 December 2012, the Secretary-General to "enhance efforts to manage the costs pertaining to swing spaces with a view to optimizing the rental contracts". If the planned relocation does not take place, three other departments will not be able to move into DC-1 and DC-2 buildings. Any delay with the move from DC-1 and DC-2 buildings to the Albano building will prevent the United Nations from vacating 250,000 square feet of space in the Madison building. A failure to vacate the Madison building by 31 May 2013 would result in additional lease payments of USD8.5 million.

f. The Applicants' reliance on the CMP Guidelines as creating a legally enforceable right to a cubicle of at least 64 square feet is misguided. The CMP Guidelines are executed with some degree of flexibility given various factors, including existing configuration of space at any given location, special programme requirements by departments and offices, financial considerations. It was not intended that the Guidelines bind the Administration to specific space allocations at all of the various locations across New York. The Guidelines were not fully implemented in any rental or annex building. For instance, DC-1 and DC-2 buildings have many work spaces for general level-service staff that are 36 square feet.

g. Contrary to the Applicants' concerns, 88 per cent of incoming staff will have access to natural light, 11 per cent will have partial access to natural light, and only 1 per cent will have no access to natural light. Moreover, none of the focal points for incoming units have had the opportunity to visit their intended new facilities to assign individual workspaces because these visits were planned for Monday, 6 May 2013, after an initial round of internal moves and alterations scheduled for the weekend of 3 May 2013. Thus, claims concerning natural light, and the suitability of the workspaces generally, are not well founded. In any event, there is no requirement that workspaces have access to natural light.

Urgency

h. There is no urgency in these applications. The email of the Acting Head of DGACM of 13 December 2012 put the Applicants on notice of the move to the Albano building, and they should have contested it then. The relocation of the Applicants is intended to take place on 10 May 2013.

Irreparable damage

i. The Applicants have failed to establish that they would suffer irreparable harm as a result of the relocation.

Consideration

59. Article 2.2 of the Statute of the Tribunal provides that it may suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The Tribunal can suspend the contested decisions only if all three requirements of art. 2.2 of its Statute have been met.

Applicable law

60. Staff regulation 1.2(c) provides that, while staff members are subject to assignment by the Secretary-General to any of the activities or offices of the United Nations, "[i]n exercising this authority the Secretary-General shall seek to ensure, having regard to the circumstances, that all necessary safety and security arrangements are made for staff carrying out the responsibilities entrusted to them".

61. Staff regulation 8.1(a) provides that "[t]he Secretary-General shall establish and maintain continuous contact and communication with the staff in order to ensure the effective participation of the staff in identifying, examining and resolving issues relating to staff welfare, including conditions of work, general conditions of life and other human resources policies".

62. It has been a long-standing principle in the United Nations, articulated by the former United Nations Administrative Tribunal in Judgment No. 1204, *Durand* (2004), that "the Organization has a legal obligation to protect its staff members and not put them in dangerous situations, if these can be avoided". This duty of care on the part of the Organization has been codified and incorporated into the Staff Regulations and Rules, thus ensuring such protection to all staff members as a term of their employment, in staff regulation 1.2 (quoted above). In Judgment No. 1125, *Mwangi* (2003), the former Administrative Tribunal emphasized the importance it attaches to the duty of care by the Respondent, stating:

> [E]ven [if] such obligation [were] not expressly spelled out in the Regulations and Rules, general principles of law would impose such an obligation, as would normally be expected of every employer. The United Nations, as an exemplary employer, should be held to higher standards and the Respondent is therefore expected to treat staff members with the respect they deserve, including the respect for their well being.

63. The former Administrative Tribunal found in *Durand* that an authoritative statement reflecting this general principle of the duty to exercise reasonable care to

ensure the safety, health, and security of staff members could also be found within the jurisprudence of other international administrative tribunals, including the Administrative Tribunal of the International Labour Organization (Judgment No. 402, In re *Grasshoff* (Nos. 1 and 2) (1980)) and the Asian Development Bank Administrative Tribunal (Decision No. 5, *Bares* (1995)). The Dispute Tribunal agrees with these persuasive pronouncements.

Receivability

64. The language of art. 2 of the Dispute Tribunal's Statute is clear—the Tribunal is competent to hear and pass judgment on an application appealing "an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment" (art 2.1). Article 2.2 provides that the Tribunal is competent to hear and pass judgment on an application seeking to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision, provided that the conditions specified in art. 2.2 have been met.

65. The Respondent submits that the applications are not receivable as none of the terms of appointment of the Applicants are violated. The Tribunal finds this submission to be misguided. The general principle of the duty on the part of the Organization to exercise reasonable care to ensure the safety, health, and security of its staff members is an express or implied term of the Applicants' contracts of employment. They claim that, in this respect, the relocation to the Albano building violates their terms of appointment because of the conditions in that building. Under the terms of art. 2 of the Tribunal's Statute, they are clearly seeking to suspend the implementation of a contested administrative decision that they allege to be in non-compliance with their terms of appointment. The Tribunal finds that the applications are receivable.

Urgency

66. Urgency is relative and each case will turn on its own facts, given the exceptional and extraordinary nature of such relief. If an applicant seeks the Tribunal's assistance on an urgent basis, she or he must come to the Tribunal at the first available opportunity, taking the particular circumstances of her or his case into account (*Evangelista* UNDT/2011/212). The onus is on the applicant to demonstrate the particular urgency of the case and the timeliness of her or his actions. The requirement of particular urgency will not be satisfied if the urgency was created or caused by the applicant (*Villamoran* UNDT/2011/126; *Dougherty* UNDT/2011/133; *Jitsamruay* UNDT/2011/206).

67. The Respondent submits that the email of the Acting Head of DGACM of 13 December 2013 put the Applicants on notice of the move to the Albano building, and they should have contested it then. The Tribunal does not find this argument persuasive. The email stated that "*some* DGACM colleagues who are currently located in the DC-1 and DC-2 building will shortly by joining the Albano facility" (emphasis added). By referring to "some DGACM colleagues", the email created uncertainty as to which of the recipients would be moving to the Albano building. The Tribunal finds that the Applicants were not informed of the relocation plan and the move to the new building until 12 April 2013, and therefore the filing of these applications for suspension of action was timeous.

68. The Tribunal finds that the requirement of particular urgency is satisfied.

Prima facie *unlawfulness*

69. For the *prima facie* unlawfulness test to be satisfied, the Applicants are required to show a fairly arguable case that the contested decision is unlawful. For instance, it would be sufficient for the Applicants to present a fairly arguable case that the contested decision was influenced by some improper considerations, was

procedurally or substantively defective, or was contrary to the Administration's obligation to ensure that its decisions are proper and made in good faith (*Jaen* Order No. 29 (NY/2011); *Villamoran* UNDT/2011/126).

70. The Applicants' primary contentions with regard to the *prima facie* unlawfulness aspect of the case is that management has failed to carry out consultations with staff prior to deciding to implement the move and that relocation to the Albano building would breach their right to a safe and secure environment at work. These contentions are considered below.

Consultations

71. An employer is entitled to reorganize the work or business to meet the needs and objectives set at a particular time (*Gehr* UNDT/2011/142). The Administration has broad (but not unfettered) discretion in organizing its offices and departments, including with respect to their location. This, however, has to be in compliance with the general principle of the Organization's duty to exercise reasonable care to ensure the safety, health, and security of its staff.

72. In exercising its discretion in this regard, the Administration must follow fair, reasonable, and equitable procedures, including a meaningful consultation process. Consultations must be carried out in good faith and should generally occur before a final decision has been made so that staff members concerned have a proper opportunity to be heard (*Chattopadhyay* UNDT/2011/198). Among the goals of the consultation process is ensuring that staff members have a say in the process, that they receive proper notice, and that their interests and views are taken into consideration (*Allen* UNDT/2010/009; *Adundo et al.* UNDT/2012/118; *Bauzá Mercére* UNDT/2013/011). However, staff members must keep in mind that consultations are not the same as negotiations. When carrying out consultations, it is not necessary for the Administration to secure consent or agreement of the consulted parties to satisfy the requirement of consultation (*Rees* UNDT/2011/156; *Gehr*

UNDT/2011/142; *Adundo et al.* UNDT/2012/118). It may well be that some of the issues raised in this case may be matters for negotiation, but the Tribunal has insufficient information in this regard. In any event, the role of the Tribunal in matters of collective bargaining is very limited and formal litigation should be resorted to only when staff members consider that their contractual rights have been violated.

73. Although the Applicants submit that "there was no prior consultation with staff representatives" regarding the move, the Tribunal finds from the record before it that consultations about the proposed move have been ongoing at least since December 2012 (although the final decision as to which particular unit would move was notified to the Applicants only on 12 April 2013); that SMC meetings have been held in the months prior to the proposed move; and that management appears to have been receptive of the concerns expressed by the staff representatives, although a notable number of concerns regarding the building remain. Notably, it was indeed acknowledged by staff representatives in those meetings that some of the issues have been addressed or ameliorated. For instance, at the meeting of 25 January 2013, the Staff Representatives Coordinator stated that "even if management was apparently trying to do everything possible within its mandate, staff remained unhappy". Further, at the SMC meeting held on 11 April 2013, the Staff Representatives Coordinator recognized the efforts made to deal with the problems in the Albano building, but noted that not all had been solved. Management representatives, too, noted some outstanding issues.

74. Based on the SMC minutes provided to the Tribunal, it is clear that the ongoing concerns have been brought to the attention of management and that it recognizes that issues remain. It also appears that management is not ignoring the existing complaints and that consultations have been held before the decision was announced and before its implementation, and that consultations continued prior to the break-down.

75. The Tribunal finds that consultations have been ongoing and in all likelihood will, and should, continue. For reasons above, the Tribunal is not persuaded that there was such failure in the consultation process by management as to result in the *prima facie* unlawfulness of the contested decision.

Work conditions

76. The Respondent submits that the move is required by several considerations, including the need to: optimize space density; consolidate related units that are presently scattered across different locations under one roof; and allow the relocation of other offices; and minimize the use of rental space and related expenses and avoid penalties for failure to vacate the Madison building. The Respondent acknowledges the ongoing issues concerning the Albano building but states that management has been addressing them and will continue to address them as they arise in consultation with the staff. Indeed, the notes of SMC meetings held in the period of December 2012 to April 2013 indicate that management representatives are aware of the concerns raised. They also indicate that steps are taken by management to address them.

77. The Respondent denies the assertion by the Applicants that the building may be in violation of the New York City regulations and standards. The Respondent states that tests have been carried out by a specialist contractor with respect to the air quality, and that these tests "have always satisfied [the required] standards". This is corroborated by the minutes of the SMC meetings, which indicate that staff representatives had been informed of the tests carried out by a specialist contractor that showed that the air quality in the Albano building was within the New York City standards. The records of the SMC meetings (see, in particular, the minutes of the meetings of 11 and 23 April 2013) indicate that none of the staff representatives questioned the results of those tests. Nor have the Applicants offered any evidence to the Tribunal, such as alternative test results, that would indicate that the test results relied on by the Respondent were flawed.

78. Although the applications refer to "a large number of complaints documented by UN staff concerning the working conditions in the building", including vague references to unaddressed complaints to the United Nations Medical Services, none of these documents were provided to the Tribunal. The minutes of the SRC meeting of 11 April 2013 also indicate that staff representatives undertook to provide to management medical information from staff members documenting illnesses and problems with eyesight related to the conditions in the building, however, none of this evidence is before the Tribunal.

79. The Tribunal notes that, among the documents attached to the applications were results of two surveys for staff located in the Albano building. No explanations have been provided by the Applicants as to when the surveys were conducted and as to their representativeness and methodology used. (It appears from the SMC minutes of 26 April 2013 that the surveys may have been conducted in early 2013.) No evidence, however, has been provided by the Respondent to contest the results of the surveys, and the Tribunal accepts that they reflect the general dissatisfaction of staff located in the Albano building with their working conditions (for instance, the average score for the working conditions was slightly above 3 on a 10-point scale (1 being "very bad" and 10 being "very good").

80. At this stage of the proceedings, the Tribunal is not persuaded by the Applicants' submissions that the provision of smaller cubicle space than that envisaged by the CMP Guidelines is *prima facie* unlawful. Notably, when the CMP Guidelines were approved by the Secretary-General, it was done with the caveat that they would apply "wherever feasible". A final determination as to whether there is a legal right or legally or reasonably enforceable expectation to a workspace area of at least 64 square feet is a matter that would require further consideration and submissions in the event any applications are filed under art. 2.1 of the Tribunal's Statute.

81. Therefore, with respect to the claims regarding the working conditions, while it is apparent that there are a number of issues with the Albano building (as acknowledged by management) and there is a sense of dissatisfaction of staff presently located there with the quality of their work conditions, the Tribunal is not persuaded on the papers filed that the Applicants have made out a case of *prima facie* unlawfulness of their relocation.

Other allegations

82. The Tribunal has considered additional claims raised by the Applicants, including those from RTPU with regard to the alleged discriminatory treatment experienced by their Unit. The Tribunal is not persuaded, on the documents filed, that these additional claims satisfy the requirement of *prima facie* unlawfulness. In particular, with regard to the claims made by the members of RTPU, there is lack of evidence at this stage that the move of the Unit is motivated by improper reasons or is otherwise unlawful. Although relocation of staff from one floor to another may be logistically impractical or a managerial decision that will, with time, show itself to be unsound, that in itself is also not sufficient to satisfy the requirement of *prima facie* unlawfulness. However, it is to be kept in mind by the Administration that staff members of DGACM, including RTPU, perform important functions and have a right to safe and secure work environment, and management should not turn a blind eye to their views and concerns.

Conclusion with respect to the *prima facie* unlawfulness

83. Presently, on the information available, the Tribunal finds that the Applicants have not satisfied the requirement of *prima facie* unlawfulness of the contested decision.

84. As one of the conditions required for temporary relief under art. 2.2 of the Statute has not been met, the Tribunal need not determine whether the remaining condition—irreparable damage—has been satisfied.

Observations

Observations on the way forward

85. The Tribunal trusts that common sense will prevail with a view to resolving the outstanding issues amicably between the parties as soon as possible. The concerns of staff are understandable and shall not be ignored. The Albano building, which was apparently envisaged as temporary swing space, will now apparently serve as a more-or-less permanent (or, at least, long-term) location for a large number of staff members. It may well be that the standards for permanent or long-term locations should be higher than those for swing spaces. While the final decision on the relocation schedule was communicated to the Applicants on admittedly short notice, it may well be that both management and staff representatives could have done more to engage in a more effective and productive consultation process in the months prior to the filing of the present applications.

86. It appears from the record before the Tribunal that, while the Administration feels constrained to proceed with the move, a number of concerns remain with the Albano building, as acknowledged by management representatives and highlighted by the surveys produced by the Applicants. It is not unreasonable to expect that it will be a testing time for everyone involved if further alterations and repairs are to be made after more occupants are moved into the Albano building. From the record before the Tribunal, however, it appears that there is a genuine effort on both the side of the Administration and staff to resolve the outstanding issues as soon as possible. Many of the issues apparently will need to be revisited from time to time, particularly in view of the Respondent’s obligation to provide

a proper working environment and the obligation on both sides to collectively and in good faith engage in consultative process.

87. Staff members of DGACM perform functions that are crucial for the effective functioning of the United Nations as an international organization of paramount importance to international peace and security. The importance of work performed by each staff member of the Organization—particularly those who provide the necessary services related to the proper functioning of the General Assembly—should not be forgotten behind the seemingly mundane nature of some of their tasks. The health and safety of staff should not be sacrificed on the high alter of economic expediency. History is replete with such examples, often with disastrous consequences. In view of the obligation of the Organization to exercise reasonable care to ensure the safety, health, and security of its staff members, there is no doubt that management must continue to engage staff in a constructive consultation process regarding any outstanding issues. This, however, means that all those involved in the consultation process must approach it constructively and in good faith.

88. It should be reiterated that the present Order is issued on the basis of the limited information made available to the Tribunal as part of these urgent proceedings. Should the Applicants maintain the view that their rights are violated in connection with the move, each Applicant has the right to file an application on the merits under art. 2.1 of the Tribunal's Statute, which shall be dealt with by the Tribunal in due course.

Observations on the extraordinary number of applications filed

89. Many of the Applicants were involved in staff-management consultations as staff representatives, and some of the papers indicate that the filing of the extraordinary number of individual applications was encouraged in order to find strength in numbers. Whilst the Tribunal recognizes the right of every individual staff member to file a complaint, and the right of the collective to bargaining and

consultation, the Tribunal notes that it is incumbent on all parties appearing before it to act in good faith (*Hassanin* Order No. 139 (NY/2011)). As a result of the filing of fifty individual applications for suspension of action, the work of the Tribunal in New York on any other matters was effectively paralyzed and required an extraordinary effort on the part of the already under-resourced New York Registry. It would have been advisable for the Applicants to seek professional legal assistance, including through the Office of Staff Legal Assistance, with a view to filing pursuant to the Registry's instructions on the filing of applications with multiple applicants (see sec. III.F of the Registry's Guidelines on the Filing of Submissions through the eFiling Portal, approved on 30 August 2012, and available on the Tribunal's website). Such a joint filing by the Applicants would have preserved the right of each Applicant who submitted her or his claim for management evaluation, claiming violation of her or his legal rights under individual contracts of employment.

Conclusion

90. The present application for suspension of action is not granted. This Order applies to all the Applicants referred to in footnote 1 on page 2 of the present Order.

(*Signed*)

Judge Ebrahim-Carstens

Dated this 7th day of May 2013