



Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

TAVORA-JAINCHILL

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:

George G. Irving

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Elizabeth Gall, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant contests “[t]he refusal of the Respondent to convene a Joint Negotiating Committee [(“JNC”)] meeting in order to discuss the flexible workspace proposal, a matter of staff welfare and conditions of work requiring staff-management consultations with the United Nations Staff Union [(“UNSU”)]”. She seeks the Respondent’s compliance with her request for a meeting of the Joint Negotiation Committee and compensation for moral damages for the violation of the Applicant’s contractual rights.

2. The Respondent contends that the application is not receivable because: (a) the application is time-barred; (b) the Applicant has no standing to challenge the contested decision in her alleged capacity as UNSU President; (c) the hearing of the case would interfere with an ongoing dispute within UNSU regarding the elections held in December 2013. The Respondent submits that, if found receivable, the application is without merit.

Factual and procedural background

3. By email of 13 February 2015, the Applicant filed the application. After having assisted the Applicant with filing the application through the eFiling portal, the Registry transmitted the application to the Respondent on 18 February 2015.

4. In the application, the Applicant outlines the facts as follows:

... Sometime in April/June 2014, it was decided by the Administration that a pilot project on [the flexible workspace proposal] would be introduced for the staff of [the Strategic Planning and Staffing Division (“SPSD”) in the Office of Human Resources Management (“OHRM”)]. There was no prior consultation with the staff representatives on the plan to implement the pilot project.

... Following some meetings with the staff of the division in July 2014, the pilot project was implemented in October 2014. A number of staff of the SPSD including the designated staff representative

approached the Executive Committee of the Staff Council to request that this matter be addressed as a potential Secretariat-wide policy in the forum for staff-management consultation at Headquarters, [the JNC] ...

... On 3 November 2014, the Applicant addressed a request to the Under-Secretary-General for Management pursuant to ST/SGB/2007/9 [(Joint Negotiation Committee at Headquarters)] for a meeting of the JNC to discuss the implementation of the policy ...

... On 14 November 2014, [the Assistant Secretary-General (“ASG”) of OHRM] responded to the request of the Executive Committee for a meeting of the JNC by refusing to meet on the pretext that it would constitute an interference in the internal impasse of the Staff Council over staff representation ...

... Since that time, the staff representatives of the [United Nations] Joint Staff Pension Fund made a similar request through [UNSU] to have a matter raised in the JNC and recently a request to discuss the Proposed Programme Budget for 2016-2017 was also rejected ... No meeting of the JNC has been called to date.

... On 16 January 2015, a proposal was discussed for submitting a report to the General Assembly in March 2015 recommending the institution of a Flexible Workplace policy in the [United Nations] Secretariat and FF buildings in New York, and requesting the [General Assembly’s] approval ... There was no prior or subsequent consultation on this unilateral action affecting the conditions of service of all staff at Headquarters.

... On 31 January 2015, the Applicant addressed an email communication to staff correcting misinformation in the proposal ...

5. On 25 November 2014, the Applicant requested a management evaluation of “[t]he decision rejecting [her] request of a meeting or [the JNC] to discuss the Flexible Workplace Study”.

6. On 26 December 2014, the then Chief of the Management Evaluation Unit responded that “we conclude that the matter you raised had not entailed a decision with direct legal effect on your terms of appointment, and accordingly was not receivable”.

7. On 20 March 2015, the Respondent duly filed his reply.

8. By motion for an expedited determination on receivability dated 24 March 2015, Counsel for the Applicant requested the Tribunal to order “further submissions on the issues of receivability posed in the Respondent’s Reply with a view to determining whether a determination on the merits of the case may be made”. In this regard, Counsel explained that “[g]iven the fact that implementation is proceeding at a rapid pace even in the absence of any formal consultation provided under the Staff Rules, it is a matter of some urgency that the issue of receivability be decided in a timely manner”.

9. By Order No. 49 (NY/2015) dated 26 March 2015, the Tribunal (Duty Judge) ordered (a) the Applicant to file and serve her submissions on the issues of receivability raised by the Respondent in his reply, and (b) the parties to inform the Tribunal whether they agreed to proceed with the issues of receivability to be decided on the papers before the Tribunal. On 9 April 2015, the parties duly complied with the Order No. 49 (NY/2015), including by confirming their agreement that the receivability issues could be decided on the papers.

10. The case was assigned to the undersigned judge on 15 April 2015.

11. By Order No. 93 (NY/2015) dated 22 May 2015, the Tribunal called the parties to attend a Case Management Discussion (“CMD”) to be held on 28 May 2015 to determine the further progress of the case. At the CMD, the parties informed the Tribunal that the Arbitration Committee had recently made a decision which was contested by the Applicant and confirmed that no further procedural steps were needed to determine the preliminary issue of receivability on the papers before the Tribunal.

12. By Order No. 103 (NY/2015) dated 29 May 2015, the Tribunal ordered the parties to file and serve their final submissions on the preliminary issue of receivability. The parties filed these submissions by 12 June 2015.

Respondent's submissions on receivability

13. The Respondent's contentions of receivability may be summarized as follows:

a. The Applicant's claim that the contested decision was only taken on 14 November 2014 is incorrect. On the contrary, the documents before the Dispute Tribunal establish that the Applicant knew that a decision had been taken on 8 July 2014, and that she failed to submit a request for management evaluation within the 60-day time limit;

b. The United Nations Appeals Tribunal has confirmed that the date of an administrative decision is based on objective elements that both parties (Administration and the staff member) can accurately determine (*Collas* 2014-UNAT-473). *Asariotis* UNDT/2013/144, relied upon by the Applicant in her submissions, is not binding on the Dispute Tribunal. Contrary to the Applicant's submissions, the jurisprudence does not require a decision to be in writing in order for the time limit to request management evaluation to start to run. A decision may be implied by the circumstances or information known to the applicant (*Belkhabbaz* UNDT/2015/046);

c. The Appeals Tribunal's jurisprudence in *Schook* 2010-UNAT-013 and *Bernadel* 2011-UNAT-180 concerned the former Staff Rules which provided that the time limit to request administrative review started to run upon notification in writing of the decision (former staff rule 111.2(a)). The current Staff Rules do not require an administrative decision to be in writing. Staff rule 11.2(c) requires a request for management evaluation to be sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested. The words "in writing" were omitted from staff rule 11.2(c);

d. An email of the Applicant dated 8 July 2014 constitutes reliable evidence that she knew that the Administration had decided not to convene

a JNC meeting. Her email demonstrates that she was aware of the decision. Further, she unequivocally stated in her email that this action constituted a breach of ST/SGB/2007/9. As such, the Applicant was notified of the decision not to convene a JNC meeting by 8 July 2014. The Applicant failed to request a management evaluation of the decision within 60 days of this date;

e. The Applicant does not have standing in her alleged capacity as UNSU President in which capacity she has filed her application. However, it is well established that the Dispute Tribunal does not have jurisdiction *ratione personae* in relation to applications filed by staff representatives or on behalf of staff unions;

f. The Applicant asserts that the Statute recognizes the right of individual staff members to bring claims related to their official capacity as staff representatives insofar as these relate to their own rights and conditions of service. Contrary to the Applicant's claims, the fact that staff representation is treated as an official function under the Staff Rules does not mean, *ipso facto*, that the Applicant's functions as an alleged staff representative confer her an individual right to challenge a decision connected to the functions she exercises as a staff representative. The Applicant's claims are inconsistent with the General Assembly's intentional limitation of the Statute, which the Dispute Tribunal has acknowledged in its jurisprudence, and the Tribunal's judgments relied upon by the Applicant are not persuasive;

g. The standing of staff representatives to bring cases before the International Labour Organization's Administrative Tribunal ("ILOAT") is irrelevant. The competence of the Dispute Tribunal is defined in its Statute. The General Assembly rejected a proposal to give the Dispute Tribunal competence to hear representative claims brought on behalf of staff members.

Further, the provisions relating to staff relations in the Staff Regulations and Rules are not identical to those of other international organizations;

h. Contrary to the Applicant's contentions, no individual right under her terms of appointment is directly affected by the contested decision. The pilot project on flexible workspace proposal is a limited study within OHRM. The Applicant is a staff member of Department of Economic and Social Affairs, and her work arrangements remain unchanged by the Pilot Project;

i. The decision at issue in the case is the decision not to convene a JNC meeting to discuss the pilot project, not the later proposal to implement the flexible workplace strategy within the Secretariat. This proposal was the subject of consultations before the Staff Management Committee in May 2015. The Applicant's request for management evaluation was limited to the decision not to convene a JNC to discuss the "Flexible Workplace Study", that is, the pilot project in OHRM. An applicant is required to identify in a clear and concise manner the administrative decision that he or she contests in the request for management evaluation and the application (*Pirnea* 2013-UNAT-311). The Dispute Tribunal has no competence with respect to an administrative decision that was not part of the request for management evaluation (*Munir* 2015-UNAT-522);

j. Contrary to the Applicant's claims, she has no standing to pursue a claim relating to her rights under the terms of her appointment arising from Chapter VIII of the Staff Regulations and Rules. The right of staff to be consulted under Chapter VIII is exercised through staff representatives. The staff members are represented in the joint staff-management machinery by duly elected staff representatives (staff regulation 8.2 and staff rule 8.2(a)). The Applicant cannot purport to enforce rights of staff representatives as an individual staff member. To do so would contravene the General

Assembly's express limitation of the Dispute Tribunal's jurisdiction in the Statute;

k. The Dispute Tribunal has repeatedly stated that it has no jurisdiction in matters concerning the internal affairs of UNSU, including the conduct of elections and the determination of its new leadership (*Hassanin* UNDT/2014/006, *Kisambira* Order No. 36 (NY/2011), *Tavora-Jainchill* Order No. 45 (NY/2014));

l. The internal dispute relating to the outcome of the UNSU elections is ongoing, and it extends to the Applicant's claim that she is entitled to act as President of the 44th Staff Council until her successor takes office. Contrary to the Applicant's claims, the Respondent does not recognise her authority to act as UNSU President. As noted by the then ASG/OHRM in her email to the Applicant of 14 November 2014, convening a JNC is not possible due to the ongoing dispute about who are the four highest ranking members of the Staff Council. The Administration is required to refrain from interfering with the affairs of staff unions.

Applicant's submissions on receivability

14. The Applicant's contentions of receivability may be summarized as follows:

a. On the issue of subject matter jurisdiction, the Respondent appears to have misstated the contested decision. The decision being contested is not the introduction of the policy of hot desking *per se*, but rather the refusal to accede to the Applicant's request for consultation prior to its introduction on an issue vital to staff welfare and their conditions of service;

b. Staff regulation 8.1(a) mandates 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”;

c. Staff regulations 8.1(b) and 8.2 describe the modalities for implementing staff regulation 8.1(a) on an Organization and Secretariat-wide basis. The JNC at Headquarters has been established for the purpose of facilitating those discussions. These staff regulations, the corresponding staff rules and pertinent administrative issuances form an integral part of every staff member’s contract of employment. Every staff member has a contractual right to see that these terms are carried out in accordance with the requirements of good faith and fair dealing;

d. The Respondent’s arguments on receivability are primarily based on the premise that the Tribunal has no jurisdiction over internal UNSU matters. This argument is misplaced. The Applicant is not seeking a judicial determination of internal UNSU matters, including the results of a disputed election, but rather is seeking to assert her own right to avail herself of the contractual guarantees she has been given by virtue of her individual status as well as by virtue of the office she holds;

e. The Applicant’s right to carry out the role of UNSU President as part of the 44th Staff Council is not in dispute. The Applicant herself has not disputed the results of the past contested elections for the 45th Staff Council. The 44th Staff Council has called into question the conduct and results of the disputed election in 2014 and the outcome has not yet been determined. What is undisputed, however, is that no election result has been recognized by the Secretary-General;

f. The Respondent mistakenly referred to recent decisions by an Arbitration Committee posted on the UNSU website. This is not accurate. No group presently has access to the website. The correct facts are that

the Arbitration Committee elected under the 44th Staff Council no longer exists, its members having resigned office. The logical next step would be to allow the polling officers of the 44th Staff Council to elect new members. That step, however, has been blocked by the Administration, which has refused them the documentation and faculties to conduct such an election;

g. No decisions of any arbitration committee have been posted on the UNSU website since the disputed election took place in early 2014. No election results have subsequently been recognized or certified by the Secretary-General;

h. The Respondent suggests that the Secretary-General has no role in resolving the present impasse over Staff Union elections. This does not relieve him of the obligation to continue to engage on issues of staff welfare until a new leadership is recognised;

i. The Applicant's right to facilities derives not from any contested election but rather by virtue of her continuing office of President of the 44th Staff Council. Pending the resolution of the disputed election, the Staff Regulations and Rules require the Secretary-General to maintain constant contact with the staff through their elected staff representatives. No one is contesting the Applicant's office as President of the 44th Staff Council. No other leadership or Council has been recognized or inaugurated. Until that happens, she remains the legitimate spokesperson and is thus entitled to all the facilities and access guaranteed to her office;

j. The Respondent also argues that staff representatives have no standing before the Dispute Tribunal. This is a misstatement of the intention of the General Assembly, which merely declined to give staff associations standing to bring claims as parties on behalf of their constituents. That is quite different from individuals who are asserting claims in their individual and

official capacity (see *Terragnolo* UNDT/2014/005 as well as ILOAT Judgment No. 2919);

k. The Respondent has not explained how the decision to exclude staff associations as parties before the Tribunals entails denying access to individuals who seek to enforce their contractual rights set forth in Chapter VIII of the Staff Regulations and Staff Rules;

l. The Respondent confuses the rights of staff associations with the rights of individual staff members. As the Tribunal held in *Hassanin* Order No. 83 (NY/2011), “[t]he benefits of a recognized organizational right are conferred on every individual staff member”. In *Campos* 2010-UNAT-001, the Appeals Tribunal recognized the right of a staff member to challenge a decision based on his representational capacity;

m. In that capacity the Applicant has questioned why a right that was formerly accorded her to utilize the forum of the JNC to discuss the introduction of a new policy has been withdrawn. In the absence of a certification of new election results, the Respondent should be estopped from asserting the present impasse as an excuse for denying the Applicant’s right to continuous contact and communication through the established channels on a matter of urgent concern;

n. The lack of good faith in this posturing is further demonstrated by the evidence adduced in the application that the Administration has on many occasions recognized the ongoing authority of the Applicant as head of UNSU to nominate members to the Central Review Bodies, to attend the Secretariat-wide Staff-Management Committee and to have access to the physical premises of UNSU. This fact remains uncontested and unaddressed by the Respondent. The Applicant cannot be recognised for some purposes but not for others. The Respondent is obliged to act consistently. The Applicant is

requesting that her right to be recognized and to carry out her functions be consistently respected.

Consideration

Applicable law

15. The Statute and Regulations of UNSU, adopted on 14 December 2007, provides as follows of relevance to the present case:

Part I – Statute

5. Leadership

The President, 1st Vice-President and 2nd Vice-President shall run for election in a single ticket and shall be elected by the staff-at-large.

8. Representatives

8.4 The role of representatives shall be as defined under the Regulations made under this Statute.

11. Standing Committees

There shall be the following standing committees of the Union:

- (a) Arbitration Committee;
- (b) Audit Committee.

15. Compliance

The Arbitration Committee shall consider and rule on compliance matters as specified in the Regulations made under this Statute.

17. Interpretation

17.1 Words used in this Statute and in any Regulation made thereunder have the same meaning as in the UN Charter.

17.2 In the event of an unresolved dispute arising over the interpretation of the Statute, its Regulations or any policy the matter shall be referred to the Arbitration Committee.

17.3 In circumstances where an interpretation is sought from the Arbitration Committee, it shall be reported to the Council and duly recorded.

18. Regulations

18.1 The Regulations of the Union shall deal with:

- (a) Membership;
- (b) Leadership;
- (c) Executive Board;
- (d) Council;
- (e) Representatives;
- (f) General Meeting;
- (g) Referendum;
- (h) Standing Committees;
- (i) Finance;
- (j) Elections;
- (k) Responsibilities.

Part II – Regulations

4. The Council

Preamble

The Council is:

4.1 The legislative assembly of the Union.

4.2 Responsible and accountable to the General Meeting for all its activities.

Composition

4.3 Comprised of staff representatives and alternates.

4.4 The Council shall take full office from the first day of the month immediately following the declared result of elections.

4.5 The term of office of the Council shall not expire earlier than a new Council assumes office.

8. Arbitration Committee

8.1 In order to increase accountability of elected Union officials, the Arbitration Committee is established to review alleged violations of the Statute of the Staff Union and decide on sanctions where warranted. Rulings of the Arbitration Committee shall be binding on all bodies of the Staff Union.

8.2 Terms of Reference

8.2.3 The Arbitration Committee shall receive, consider and rule upon matters related to violations of the Statute and Regulations.

8.2.5 The Arbitration Committee may impose the following sanctions:

- (a) A verbal warning, which may take the form of an informal or formal discussion of the problem;
- (b) A written warning, which will take the form of a letter from the Arbitration Committee;
- (e) Suspension of Executive Board and/or Council voting rights;
- (d) Recommendation for recall.

8.2.6 The Chair of the Arbitration Committee must in all cases inform the individual being sanctioned of his/her right to request a final review by the Committee.

8.3 Procedure for submitting a complaint

8.3.1 Should any member of the Staff Union be of the view that an act of the Staff Council, Executive Board or any of its officers is in violation of the Staff Union's Statute and Regulations, the complaint should be submitted to the Arbitration Committee in accordance with the procedures set out in Regulation 8.3.2 below within three months of such an act having been known or publicized.

8.3.2 Any complaint by a staff member must be submitted to the Arbitration Committee in writing and list the Articles of the Staff Union Statute and Regulations that have been allegedly violated by an act of the Staff Council, Executive Board or any of its members.

10. Responsibilities of Officers

10.1 The **President**, as the principal executive officer of the Union, shall:

- (a) Lead, manage and represent the Union;
- (b) Plan and oversee, either personally or through delegation of authority to other individuals or committees, the implementation of the policies and decisions of the Union, including financial governance, as established under the Statute and Regulations, all programs and activities necessary for the advancement and welfare of the Union, its membership and affiliated bodies;

- (c) Be responsible for all correspondence elaborating policy matters;
- (d) Submit a written report on affairs of the Union at each General Meeting;
- (e) Provide a summary record of communications and a report to each Council meeting, normally in writing;
- (f) Act as ex-officio member of all committees and subordinate bodies of the Union as required;
- (g) Call or convene meetings of any subordinate body or its boards or committees;
- (h) Request for special meetings of the Council as required by this Statute;
- (i) Act as certifying official of the Union;
- (j) Hold no other office or position in the Union or be engaged in any other employment.

16. ST/AI/293 (Facilities to be provided to Staff Representatives), issued on 15 July 1982, provides in relevant parts that:

1. The term “staff representatives” shall mean staff members of the United Nations who have been duly elected to a Staff Council or corresponding staff representative body in accordance with the Staff Regulations and Rules.
2. The functions of staff representatives are official. Staff representatives shall have the same rights, duties, obligations and privileges as other staff members of the United Nations under the Staff Regulations and Rules and shall enjoy protection against any discriminatory treatment or prejudicial act based on their status or activities as staff representatives.
3. Staff representatives as well as staff representative bodies shall be afforded such facilities as may be required to enable them to carry out their functions promptly and efficiently, while not impairing the efficient operation of the organization. The precise nature and scope of the facilities to be provided at each duty station shall be determined in accordance with the procedures set out in chapter VIII of the Staff Rules.
4. Facilities for the holding of meetings duly convened by staff representatives, including general meetings, Staff Council meetings,

Staff Committee meetings and Unit meetings, shall be provided, to the extent possible.

5. Each Staff Council, Staff Committee or corresponding staff representative body shall be provided with secretarial assistance, office space and supplies as may be necessary for the proper discharge of their functions.

6. Each Staff Council, Staff Committee or corresponding staff representative body shall be accorded facilities for reproduction and distribution of notices, bulletins and other documents required for the proper discharge of their functions. The provision of such facilities shall be subject to the procedures governing requests for internal reproduction and distribution of documents.

7. Each Staff Council, Staff Committee or corresponding staff representative body may have its notices or bulletins posted at spaces or on bulletin boards especially designated for that purpose.

8. Each Staff Council, Staff Committee or corresponding staff representative body shall have use of telephone and cable communication facilities subject to the procedures governing requests for such services, budgetary considerations and any necessary security arrangements. Authority to sign cables and initiate calls shall normally be delegated to an officer designated by the Staff Council or by the staff representative body at the respective duty station.

13. Staff members duly designated or elected by the Staff Council, Staff Committee or corresponding staff representative body to perform representational functions may be accorded such facilities as may be required to perform those functions under arrangements to be determined in accordance with the procedures set out in chapter VIII of the Staff Rules.

14. Disagreements concerning the implementation of the above provisions shall be discussed and resolved in accordance with the procedures set out in chapter VIII of the Staff Rules.

17. ST/SGB/172 (Staff Management relations: Decentralization of consultation procedure), issued on 19 April 1979, provides, as relevant, that:

1. A comprehensive review of staff-management relations in the Secretariat is being undertaken by the Joint Advisory Committee. As decisions are taken on the basis of its recommendations, Secretary-General's Bulletins will be issued from time to time to provide general policy guidelines on various aspects of the subject. This Bulletin,

the first in a series, deals with decentralization of the consultation procedure and the role of unit representatives of the Staff Council in it.

2. Under staff regulation 8.1, the Staff Council is established as the staff representative body with which the Secretary-General shall consult on questions relating to staff welfare and administration. In the consultative process, members representing the Staff Council meet regularly with members representing the Secretary-General regarding personnel policies and general questions of staff welfare. In line with the policy of expanded delegation of authority in the administration of staff as announced in the Secretary-General's Bulletin ST/SGB/151 and in recognition of the effective and responsible role that the unit representatives of the Staff Council should play in the decision-making process affecting the conditions of service at the local level, the staff-management consultation procedure will be decentralized so that issues of particular concern to the staff of an organizational unit may be resolved expeditiously at the departmental level, without necessarily being referred to the Joint Advisory Committee.

18. ST/SGB/2007/9 (Joint Negotiation Committee at Headquarters), issued on 15 June 2007, provides, of relevance, that:

Section 1

General

1.1 The Joint Negotiation Committee at Headquarters, hereinafter referred to as "the Committee", is hereby established. The objective of the Committee is to have an equitable and effective mechanism for staff-management relations at Headquarters.

Section 3

Membership, meetings and participation

3.1 The Committee shall consist of four members representing the administration and four members representing the staff. The four members representing the administration shall be the Under-Secretary-General for Management, the Assistant Secretary-General for Human Resources Management, the Director, Division for Organizational Development, Office of Human Resources Management, and the Director, Operational Services Division, Office of Human Resources Management. The four members representing the staff shall normally be the four highest ranking members of the Staff Committee.

3.2 Meetings of the Committee shall be held as required, but normally no less than every two months, with a prepared agenda that shall be issued seven calendar days before each meeting. The agenda

shall provide for any other business of an urgent nature to be discussed. Emergency or informal meetings may be called by either side, as required.

3.3 Subject to prior notification, an alternate may be designated as necessary to attend a specific meeting in the absence of a full member. The alternate should normally be:

(a) In the case of the staff, another member of the Staff Committee, in order of rank;

(b) In the case of the administration, the deputy or officer-in-charge of the department or office concerned.

3.4 Both parties shall be entitled to have advisers in attendance at meetings of the Committee, who shall have the right to speak. Each side shall give a minimum of seven days notice to the other side of its intention to invite such advisers to the meeting, except in cases of emergency or informal meetings, in which case notice shall be given when calling for the meeting.

3.5 The parties shall alternately preside at the meetings of the Committee.

3.6 The Committee shall nominate a staff member as a candidate for the position of Secretary of the Committee and forward the nomination to the Secretary-General for designation, pursuant to staff rule 108.2 (e). The Secretary of the Committee shall be responsible for convening meetings, preparing agenda in consultation with both sides and preparing and circulating minutes. Minutes shall be subject to the agreement of the Committee and will be signed by the Chairperson of the meeting at which they are agreed.

Section 6

Final provisions

6.1 The present bulletin shall enter into force on 18 June 2007.

6.2 Secretary-General's bulletin ST/SGB/200/Rev.1, entitled "Joint Advisory Committee at Headquarters", is hereby abolished.

19. Chapter VIII (Staff relations) of the Staff Regulations and Rules (ST/SGB/2014/1) states, in relevant parts, that:

Regulation 8.1

(a) The 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;

(b) Staff representative bodies shall be established and shall be entitled to initiate proposals to the Secretary-General for the purpose set forth in paragraph (a) above. They shall be organized in such a way as to afford equitable representation to all staff members, by means of elections that shall take place at least biennially under electoral regulations drawn up by the respective staff representative body and agreed to by the Secretary-General.

Rule 8.1

Staff representative bodies and staff representatives

Definitions

(a) The term “staff representative bodies”, as used in the present chapter of the Staff Rules, shall be deemed to include staff associations, unions or other corresponding staff representative bodies established in accordance with staff regulation 8.1 (b).

(f) The staff representative bodies shall be entitled to effective participation, through their duly elected executive committees, in identifying, examining and resolving issues relating to staff welfare, including conditions of work, general conditions of life and other human resources policies, and shall be entitled to make proposals to the Secretary-General on behalf of the staff.

Rule 8.2

Joint staff-management machinery

(a) The joint staff-management machinery provided for in staff regulation 8.2 shall consist of:

(i) Joint advisory committees or corresponding staff-management bodies, at designated duty stations, normally composed of not fewer than three and not more than seven staff representatives and an equal number of representatives of the Secretary-General;

(ii) A Secretariat-wide joint staff-management body composed of equal numbers of representatives of the staff and representatives of the Secretary-General.

(b) The President of the joint staff-management bodies referred to in paragraph (a) above shall be selected by the Secretary-General from a list proposed by the staff representatives.

(c) Instructions or directives embodying recommendations made by the bodies referred to in paragraph (a) above shall be regarded as having satisfied the requirements of staff rule 8.1 (f) and (h).

(d) The joint staff-management bodies referred to in paragraph (a) above shall establish their own rules and procedures.

(e) The Secretary-General shall designate secretaries of the joint staff-management bodies referred to in paragraph (a) above and shall arrange for such services as may be necessary for their proper functioning.

20. The Dispute Tribunal's Statute, art. 2.1(a), states that:

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged noncompliance.

Receivability *ratione materiae*

21. According to sec. 10.1 of the UNSU Regulations, the UNSU President, as principal executive officer of UNSU, shall, *inter alia*: lead, manage and represent UNSU (sec. 10.1 (a)); plan and oversee, either personally or through delegation of authority to other individuals or committees, the implementation of the policies and decisions of the UNSU, including financial governance, as established under the UNSU Statute and Regulations, all programs and activities necessary for the advancement and welfare of UNSU, its membership and affiliated bodies (10.1(b)).

22. Consequently, the right to request a JNC meeting in order to discuss a matter of staff welfare and conditions of work is a derivative right of the elected UNSU President.

23. Further, as follows from secs. 8.1 and 8.2.3 of the UNSU Regulations, the Arbitration Committee: (a) is the only body competent to review alleged violations of the UNSU Statute made by elected UNSU officials (Staff Council, Executive Board and any of its officers) in order to increase their accountability and decide on sanctions where warranted; (b) has an exclusive competence (“shall”) to receive, consider and rule upon matters related to violations of the UNSU Statute and Regulations, (c) issues decisions/rulings that are mandatory, final, and binding on all bodies of the Staff Union, including all members of these bodies and consequently on all UNSU members.

24. The Tribunal underlines that the Arbitration Committee’s decisions/rulings are final (irrevocable), since it is the unique body with the competence to review alleged violations of the UNSU Statute and Regulations made by the elected UNSU officials and decide on sanctions if warranted. In accordance with sec. 8.2.6 of the UNSU Regulations, only the decision(s) to impose sanction(s) on an elected UNSU official can be reviewed, but the application for a final review is to be filed only by the individual being sanctioned and is to be considered exclusively by the Arbitration Committee.

25. Therefore, all the decisions taken by the Arbitration Committee are excluded from the Dispute Tribunal’s jurisdiction under art. 2.1(a) of the Tribunal’s Statute.

26. The Applicant’s request to the Administration to convene a JNC meeting to discuss the flexible workspace proposal, considered by her to be a matter of staff welfare and conditions of work requiring consultations, is directly related to the December 2013 UNSU elections. The outcome of these elections, including the names of the leadership and the 45th Staff Council, was announced on 17 December 2013.

27. As stated in para. 20 of Order No. 45 (NY/2015) dated 21 March 2014 in Case No. UNDT/NY/2014/009, the Applicant’s claims are in direct contradiction

with those of the applicant in Case No. UNDT/NY/2014/026 and it appears that two United Nations staff members currently claim to be President of UNSU, namely the Applicant in the present case and the applicant in Case No. UNDT/NY/2014/026, and consequently the UNSU presidency constitutes a contested electoral issue.

28. The Applicant is seeking a judicial decision to confirm her position that the December 2013 elections are not valid and that she has the right to call a meeting of the JNC at United Nations Headquarters. According to sec. 3.1 of ST/SGB/2007/9, the JNC consist of four members representing the Administration and four members representing the staff, normally the four highest ranking members of the Staff Committee.

29. Any judicial determination on the application and the relief requested would result in the Tribunal adjudicating on a contested electoral issue over which it does not have jurisdiction with the effect of the Tribunal deciding on both the Applicant's right to continue her official function as President of UNSU and the right of the following three highest ranking officials after the UNSU President to continue their mandates after 17 December 2013, which will represent a direct determination on the validity of the December 2013 elections and its outcome for the leadership and the 45th Staff Council.

30. As results from the above considerations, the competence to rule on any dispute related to this matter belongs exclusively to the Arbitration Committee, and the Dispute Tribunal has no competence under art. 2.1(a) of its Statute to substitute, review and /or enforce any of the Arbitration Committee's decisions/rulings, including the ones on contested electoral issues.

31. Consequently, the application is not receivable *ratione materiae* and is to be dismissed. The Tribunal will not further analyse the rest of the of the Respondent's submissions on the receivability of the application.

Conclusion

32. In the light of the foregoing, the Tribunal DECIDES:

33. The application is dismissed.

(Signed)

Judge Alessandra Greceanu

Dated this 10th day of September 2015

Entered in the Register on this 10th day of September 2015

(Signed)

Hafida Lahiouel, Registrar, New York