



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2014/026

Judgment No.: UNDT/2015/085

Date: 17 September 2015

Original: English

Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

KISAMBIRA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:

Lennox Hinds

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Elizabeth Gall, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant contests the decision of the Under-Secretary-General for Management (“USG/DM”) “not to grant [him] full-time release from his assigned duties as a Population Affairs Officer during his term as United Nations Staff Union [(“UNSU”)] President starting on 2 January 2014”, and “the Administration’s actions and abuse of power consisting in the continuous refusal to grant his request”.

2. The Applicant requests the Tribunal to “rescind the USG/DM’s decision and to enforce the USG/DM’s duty to immediately grant the Applicant’s full time release from his regular job as a Population Affairs Officer during his term as President of [UNSU]“. He also requests the “enforcement of the Administration’s duty pursuant to Staff Rule 1.1(c) to immediately grant him full time release from his assigned duties as Population Affairs Officer during his term as President of [UNSU]“.

3. The Respondent claims that the application is not receivable for several different reasons. Firstly, the application is not receivable *ratione materiae* because (a) the Dispute Tribunal has no jurisdiction over disputes concerning the internal affairs of UNSU, including the conduct of elections and the determination of the new leadership of the UNSU, which remains disputed; and (b) disputes concerning the facilities to be provided to staff representatives under ST/AI/293 (Facilities to be provided to Staff Representatives), issued on 15 July 1982, are to be resolved under Chapter VIII of the Staff Rules and not Chapter XI. Secondly, the application is not receivable *ratione personae* as (a) access to facilities is granted to staff members in their capacities as elected staff representatives and not in their personal capacities; and (b) the Applicant has no standing to bring claim concerning the rights of the UNSU as a staff representative body, or his rights as the alleged president of the UNSU.

Factual and procedural background

4. In his application filed on 7 April 2014, the Applicant outlined the facts as follows:

... Applicant ran for leadership in the [UNSU] elections that were held on 10 and 11 December 2013.

... The results of the elections were communicated on 17 December 2013. Applicant was elected President of the Leadership of [UNSU] ...

... Consequently, in a letter dated 20 December 2013, Applicant informed ... [the] Assistant Secretary-General for Human Resources Management [(“ASG/OHRM”)] of the results of the elections and requested full-time release from his duties during the term of his office starting on 2 January 2014 ...

... In a decision dated 24 December 2013 ... [the USG/DM] refused to grant Applicant full-time release ... Instead, [the USG/DM] wrote that “a number of staff members have reported allegations of irregularities in connection with the recently held elections of [UNSU]”. [The USG/DM] also wrote that “pursuant to regulation 8.3 of the UNSU Statute and Regulations, ‘should any member of [UNSU] be of the view that an act of the Staff Council, Executive Board or any of its officers is in violation of [UNSU’s] Statute and Regulations, the complaint should be submitted to the Arbitration Committee’ of the UNSU” and then concluded that “the Administration will refrain from taking any action that may prejudice the outcome of the efforts by the Arbitration Committee to resolve these disputes”.

... On 31 December 2013, Applicant reiterated his request to [the ASG/OHRM] ...

... In a letter dated 2 January 2014, ... [the] Officer-in-Charge for Human Resources Management, reiterated the decision of the Under-Secretary-General dated 24 December 2013 ...

... On 24 January 2014, Applicant filed *pro se* a request for management evaluation of [the USG/DM’s] decision not to grant him full-time release ...

... In his request, Applicant argued that the Arbitration Committee of [UNSU], the final arbiter of the electoral process pursuant to the [UNSU] Statute and Regulations (UNSU reg. 8.1; UNSU Statute, art. 17.2), had not been seized of any allegations of irregularities concerning the elections held on 10 and 11 December 2013. Applicant also argued that since the refusal to grant him full-time release was motivated by nonexistent circumstances (i.e., allegations of irregularities), [the USG/DM’s] action was therefore unlawful.

... On 5 February 2014, Applicant filed *pro se* an application for suspension of action pending management evaluation of the decision taken by [the USG/DM] before the United Nations Dispute Tribunal pursuant to articles 2.2 and 13.1 of the Tribunal’s Rules of Procedure ...

... On 7 February 2014, the Management Evaluation Unit [(“MEU”)] ruled that Applicant’s request was not receivable because the decision taken by the Under-Secretary-General was not final but rather “a notification that Administration could not consider it in light of the fact that the results of the elections were the subject of dispute and therefore could not be considered final” ...

... On 10 February 2014, since the request for management evaluation was no longer pending before [the MEU], the [Dispute Tribunal] (Order No. 32, NY/2014) dismissed the Applicant's suspension of action ...

... Nine weeks after the UNSU elections, in a letter to [the USG/DM] dated 11 February 2014, Applicant addressed the fact that the Arbitration Committee still had not been seized of any complaints about irregularities or dissatisfactions with the elections held on 10 and 11 December 2013 and therefore the Under-Secretary-General had no valid ground to refrain from taking action ...

To date, the Under-Secretary-General has not answered this letter.

... However, on 19 February 2014, ... [the] Director of the USG/DM's Office, called Applicant to his office to address the latter's concerns about [the USG/DM's] refusal to grant him full-time release. During the meeting, [the Director] proposed to resolve the alleged disputes regarding the elections by appointing an external or internal arbitrator whose mission would be to solve the dispute by arranging a meeting to be attended by an Administration's representative, ... ([the] Former President of the 44th Staff Council), ... [a] defeated candidate in the elections held on 10 and 11 December 2013) and Applicant.

... Upon this patent attempt of the Administration to interfere with the UNSU elections, in a letter dated 21 February 2014, Applicant asked [the USG/DM] to, once again, reconsider his position but to no avail ...

... On 24 February 2014, Applicant retained counsel to challenge the Administration's actions and to enforce [the USG/DM's] duty to immediately grant him full-time release from his assigned duties as Population Affairs Officer during his term as President of the [UNSU].

... Applicant's Counsel filed a request for management evaluation emphasizing that since the MEU's decision dated 7 February 2014, the Arbitration Committee had ruled, for the second time, and informed [the USG/DM] via email that the electoral process for elections held on 10 and 11 December 2013 was valid.

... On 25 February 2014, [MEU] rejected Applicant's request for management evaluation on false grounds, alleging that while Applicant "raised new arguments to some degree, (he) presented no new evidence or information to either distinguish it from the matter previously disposed or otherwise argue for reconsideration" ...

... On 18 March 2014, in responding to a complaint lodged by ... the newly elected Arbitration Committee (elected in February 2014) reaffirmed the 24 January 2014 ruling of the previous Arbitration Committee to wit that the election of 10 and 11 December 2013 "was conducted via a valid process" ...

... Based upon this ruling, on 20 March 2014, Applicant sent a letter to the Secretary-General of the United Nations requesting immediate grant of full-

time release ... To date, despite the rulings of both Arbitration Committees, the Secretary-General refuses to grant Applicant time-release.

... Therefore, Applicant challenges the Administration's actions and abuse of authority. Applicant requires enforcement of the Administration's duty pursuant to Staff Rule 1.1(c) to immediately grant him full-time release from his assigned duties as Population Affairs Officer during his term as President of [UNSU].

5. The application was transmitted to the Respondent on 9 April 2014.
6. On 10 April 2014, the Applicant filed a motion for interim measures under art. 10.2 of the Tribunal's Statute. The Respondent filed a response to the motion on 15 April 2014. By Order No. 80 (NY/2014) dated 17 April 2014, the Tribunal (Duty Judge) rejected the motion for interim measures.
7. The Respondent filed his reply on 9 May 2014. By Order No. 117 (NY/2014) dated 14 May 2014, the Tribunal (Duty Judge) ordered the Applicant to file a response to the reply. On 13 June 2014, the Applicant filed his response.
8. The case was assigned to the undersigned Judge on 15 April 2015.
9. By Order No. 92 (NY/2015) dated 22 May 2015, the Tribunal ordered the parties to attend a Case Management Discussion ("CMD") on 28 May 2015, which, after being postponed at the request of the Applicant, was held on 10 June 2015. Following the CMD, by Order No. 113 (NY/2015) dated 11 June 2015, the Tribunal instructed Counsel to consult with their respective clients about the possibility of entering into informal settlement negotiations and thereafter inform the Tribunal of the result by 12 June 2015.
10. By submission dated 11 June 2015, the Applicant filed and served: (a) the 14 May 2015 decision of the Arbitration Committee; (b) a resolution of an "Emergency General Meeting of the Staff" held on 23 January 2014; and (c) the UNSU Statute and Regulations.
11. On 12 June 2015, the Applicant filed a submission in response to Order No. 113 (NY/2015) stating that:

... On 11 July 2015, Applicant informed its Counsel that he agreed to resolve this matter amicably by referring it to the Mediation Services of the Ombudsman. Therefore, on the same day Counsel for Applicant sent an electronic mail to

Counsel for Respondent to inquire if Respondent would agree to such mediation. Counsel for Respondent replied by electronic mail the same day and wrote that it was apparent that there is no reasonable prospect of reaching a settlement in this case and, as a consequence, Respondent is unable to agree to refer this matter to the Ombudsman for mediation.

... The same day ... Counsel for Applicant sent a second electronic mail to Counsel for Respondent. Counsel for Applicant wrote that his client regretted that Respondent rejected the possibility of a mediation of the Ombudsman and inquired whether Respondent would agree to refer the matter to an outside arbitrator.

... On 12 June 2015 ... Counsel for Respondent replied that Respondent does not see any prospect of resolving this case through outside arbitration either.

... Therefore, Counsel for Applicant is informing the Tribunal that he could not reach an agreement to amicably settle this litigation with Counsel for Respondent.

12. On 12 June 2015, the Respondent filed his response to Order No. 113 (NY/2015), informing the Tribunal that the parties were unable to resolve the proceedings informally.
13. By submission of 13 June 2015, the Applicant filed a response to the Respondent's reply on the receivability and on the merits.
14. By Order No. 120 (NY/2015) dated 17 June 2015, the Tribunal allowed the parties to file any other relevant document(s), including any available correspondence that the 14 May 2015 decision of the Arbitration Committee had been challenged, and further instructed them to file their closing submissions on the receivability of the application by 15 July 2015.
15. On 2 July 2015, the Respondent filed a submission, appending an email of 19 May 2015 from another staff member alleging to be UNSU President, by which this person claimed that the Applicant was not the duly elected UNSU President.
16. On 15 July, each of the parties filed their closing submissions on the receivability of the application.

Respondent's submissions on receivability

17. The Respondent's contentions on receivability may be summarised as follows:
- a. The Dispute Tribunal has repeatedly stated that it has no jurisdiction over matters concerning the internal affairs of the Staff Union, including the conduct of elections and the determination of the new leadership of the Staff Union;
 - b. The internal dispute relating to the outcome of the UNSU elections is ongoing. The other alleged UNSU President maintains that she is entitled to act as President of the 44th Staff Council until her successor takes office. She has argued that the purported decision of the Arbitration Committee dated 14 May 2015 has not resolved the dispute. As a result of the ongoing dispute concerning the UNSU elections, the Respondent does not recognise the Applicant or the other alleged UNSU President as the duly-elected UNSU President. The Administration is required to refrain from interfering with the affairs of staff unions, and the decision not to provide facilities to the Applicant accords with this principle;
 - c. The resolution of the dispute regarding the facilities to be provided under ST/AI/293 to the Applicant would require the Dispute Tribunal to make findings regarding the outcome of the UNSU elections in December 2013. Such disputes do not fall within the competence of the Dispute Tribunal;
 - d. The Application is not receivable *ratione materiae* as disputes regarding the provision of facilities to staff representatives under ST/AI/293 are to be determined exclusively under Chapter VIII of the Staff Rules, not Chapter XI of the Staff Rules;
 - e. Sections 13 and 14 of ST/AI/293 establish a mandatory and exclusive dispute resolution process in relation to disputes concerning the provision of facilities to staff representatives. Accordingly, disputes regarding the grant of time release under ST/AI/293 are to be addressed through the Headquarters joint advisory committee (the Joint Negotiation Committee) under staff regulation 8.2 and staff rule 8.2. There is no indication that the Applicant has complied with secs. 13 and 14 of ST/AI/293 to resolve the dispute under Chapter VIII;

f. The Applicant contests the decision in his capacity as a staff representative, namely as alleged UNSU President. 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;

g. The fact that staff representation is treated as an official function under the Staff Rules does not confer the Applicant an individual right as a staff member to challenge a decision relating to his alleged functions as a staff representative. To recognise the Applicant as having standing to challenge the contested decision would be inconsistent with the General Assembly's intentional limitation of the Dispute Tribunal's jurisdiction in its Statute.

Applicant's submissions on receivability

18. The Applicant's contention on receivability may be summarised as follows:

a. The Applicant seeks a ruling from the Dispute Tribunal requiring the Respondent to abide by the Arbitration Committee's rulings with regard to the UNSU elections of 10 and 11 December 2013. Contrary to the Respondent's allegations, the Applicant does not seek a ruling acknowledging that he is the duly-elected President of the UNSU; such a determination is a prerogative of the Arbitration Committee, of which the Respondent is also aware. Nevertheless, the Respondent must enforce the Arbitration Committee's decisions and cease giving credence to innuendos and false allegations brought by the other alleged UNSU President;

b. The Arbitration Committee is the final arbiter of the UNSU elections, and it is the Arbitration Committee's prerogative to rule on whether the elections of UNSU representatives violated any UNSU Statute and Regulations. Firstly, the UNSU Statute and Regulations established the Arbitration Committee to "review alleged violations of the Statute of the Staff Union and decide on sanctions where warranted" (UNSU Regulations, art. 8.1) and to deal with issues of "interpretation of the Statute, its Regulations or any policy" (UNSU Statute, art. 17.2). Secondly, pursuant to UNSU Regulations, art. 8.2.3, "the Arbitration Committee shall receive, consider and rule upon

matters related to violations of the Statute and Regulations”. Thirdly, pursuant to UNSU Regulations, art. 8.3.1, if any member of the UNSU is of the view that an act of the Staff Council, Executive Board or any of its officers is in violation of the Statute and Regulations, a complaint may be submitted to the Arbitration Committee. Finally, the rulings of the Arbitration Committee are binding on all bodies of the UNSU (see UNSU Regulations, art. 8.1);

c. The Dispute Tribunal’s jurisprudence has reaffirmed that the Arbitration Committee is the final arbiter on matters related to the UNSU, including the elections;

d. The record shows that prior to the elections held on 10 and 11 December 2013, the Arbitration Committee had ruled the electoral process valid. The record also shows that after the elections, the Arbitration Committee reiterated, in four different rulings or communications, that no irregularity tainted the elections held on 10 and 11 December 2013. Thus, to date, there is not dispute concerning the validity of the elections pending before the Arbitration Committee;

e. While, in a letter dated 24 December 2013, the Under-Secretary-General wrote that “once the disputes regarding the UNSU elections have been resolved, the Administration looks forward to working with the newly elected UNSU leadership”, the Administration has failed to do so despite the consistency and clarity of the Arbitration Committee’s numerous rulings and communications. In fact, the Respondent has deliberately chosen to endorse the crusade led by a resentful losing candidate, the other alleged UNSU President, and to support or give credence to any challenges the latter may raise and ignore the rulings of the Arbitration Committee;

f. The other alleged UNSU President asserted that the Arbitration Committee was not validly constituted. While this assertion is unsubstantiated and without merit, the Respondent vehemently supports it and uses it as a pretext to disregard the consistent Arbitration Committee’s rulings and communications;

g. Whereas, due to the principle of freedom of association, the Respondent must exercise restraint in relation to intervention in the internal affairs of the UNSU, in giving

credence to any allegations—even unsubstantiated—made by the other alleged UNSU President, the Respondent not only defies the Arbitration Committee’s authority but also violate the Statute and Regulations of the UNSU and the Staff Rules and Regulations of the UN;

h. Therefore, the application is receivable as the Applicant seeks a ruling to enforce the rulings and communications of the Arbitration Committee, the final arbiter, with regard to the validity of the electoral process of the elections held on 10 and 11 December 2013;

i. The Applicant acknowledges that only the joint staff-management machinery has jurisdiction over disputes concerning facilities provided to staff representatives, not the Dispute Tribunal. However, Respondent’s allegations concerning the application being not receivable *ratione materiae*, as disputes regarding the provision of facilities to staff representatives under ST/AI/293 are to be determined exclusively under Chapter XIII of the Staff Rules, not Chapter XI of the Staff Rules, are fallacious. In fact, the core dispute is whether the USG/DM has a duty to abide by the rulings and communications of the Arbitration Committee, reiterating that the process of elections held on 10 and 11 December 2013 was valid;

j. As mentioned by the Tribunal, full-time release and the provision of facilities to staff representatives are derivative rights of “the duly elected UNSU staff member with representational functions” (Order No. 45 (NY/2014), paras. 24-25). Therefore, while the Dispute Tribunal has no jurisdiction over disputes concerning facilities provided to staff representatives, it has jurisdiction over the duty of the Respondent to comply with the UNSU rulings with regard to the validity of the electoral process. Unless the Dispute Tribunal enforces the Arbitration Committee’s rulings, the Applicant will not be able to refer the issues of time release and provision of facilities to the joint staff-management machinery for Headquarters pursuant to the procedures set out in Chapter VIII of the Staff Rules, if necessary;

k. The Respondent’s allegation that the Applicant has no standing before the Dispute Tribunal, since the Tribunal has no jurisdiction *ratione personae* in relation to

applications raising claims regarding the rights of staff associations or claims filed by or on behalf of staff representatives, is spurious. While elected as UNSU President, the Applicant cannot act in such capacity since he is deprived, by the Respondent, of any means (facilities, time release, etc.) to do so. As a staff member, the Applicant is challenging the Respondent's ongoing failure to comply with the rulings of the Arbitration Committee, and under art. 2.1(a) of the Dispute Tribunal's Statute, such non-compliance directly affects his terms of appointment or contract of employment;

1. The Dispute Tribunal has recognized that general principles of international law and norms are relevant in its interpretation of staff members' rights in the context of their terms of appointments (*Obdeijn* UNDT/2011/032). In Order No. 36 (NY/2011), the Tribunal stated that, in accordance with general principles of international law and norms (including as expressed in international instruments on the right to freedom of association and collective bargaining), the Administration has an obligation to facilitate organizational rights. Some of the basic organizational rights are the rights to elect staff representatives in full freedom (para. 388 of the Freedom of Association—Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO (2006)) and also to request that an employer does not interfere in the internal affairs of a union (para. 859 of the Freedom of Association—Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO (2006)). It should be noted that the benefits of such recognized organizational rights are conferred on every individual staff member. Thus, based on art. 2.1(a) of the Statute, the Applicant has standing before the Dispute Tribunal.

Consideration

Applicable law

19. The Statute and Regulations of UNSU, adopted on 14 December 2007, provide 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.

6. Executive Board

6.1 The Executive Board is the executive body of the Union and shall comprise the Leadership, Secretary, Assistant Secretary, Treasurer, Rapporteur, and Assistant Rapporteur, who shall be granted time release on conditions prescribed by the General Assembly.

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.

18.2 The Regulations may be established, altered, amended or added to by resolution of the General Meeting pursuant to Article 9, paragraph 3.

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.

20. ST/AI/293 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 acting 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.

10. The President or Chairman of the Executive Committee of each Staff Council or corresponding staff representative body in New York, Geneva, Addis Ababa, Baghdad, Beirut (ECWA), Bangkok, Nairobi and Santiago, if he/she wishes, be released from assigned duties during his/her term of office, as follows:
(a) Full-time release, if the number of staff members represented is 1,000 or more.

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.

21. 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.

Regulation 8.2

The Secretary-General shall establish joint staff-management machinery at both local and Secretariat-wide levels to advise him or her regarding human resources policies and general questions of staff welfare as provided in regulation 8.1.

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).

(g) In accordance with the principle of freedom of association, staff members may form and join associations, unions or other groupings. However, formal contact and communication on the matters referred to in paragraph (f) above shall be conducted at each duty station through the executive committee of the staff representative body, which shall be the sole and exclusive representative body for such purpose.

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.

22. ST/SGB/2007/9 (Joint Negotiation Committee at Headquarters) issued on 15 June 2007 provides, as relevant, 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 2

Purpose

2.1 As the joint staff-management mechanism for negotiation in good faith between representatives of staff and the administration, the Committee shall identify, examine and resolve issues through mutual agreements relating to staff welfare, including conditions of employment and of work, general conditions of life and other personnel policies, as provided for in staff regulation 8.1(a). It is understood that preliminary agreements of the Committee that have Secretariat-wide implications shall be referred to and considered by the established Secretariat-wide joint staff-management mechanisms before a final decision is taken.

23. ST/SGB/2011/6/Rev.1 (Staff-Management Committee) issued on 11 July 2013 provides in relevant parts that:

Section 1

Objective and purpose

1.1 Pursuant to staff regulation 8.2 and staff rule 8.2(a)(ii), the Secretary-General establishes the Staff-Management Committee as the joint staff-management machinery at the Secretariat-wide level for the purpose of advising him or her regarding human resources policies and general questions of staff welfare, as provided in staff regulation 8.1.

1.2 The Staff-Management Committee ensures the effective participation of the staff in identifying, examining and resolving Secretariat-wide issues relating to staff welfare, including conditions of work, general conditions of life and other human resources policies, as provided for in staff regulation 8.1(a).

1.3 The Staff-Management Committee shall consider Secretariat-wide issues relating to staff welfare, including conditions of work, general conditions of life

and other human resources policies, and shall provide advice and recommendations to the Secretary-General. The Committee shall endeavour to reach agreement on advice and recommendations for the Secretary-General. Where there are areas of disagreement, the parties shall work in good faith to overcome the barriers to agreement. Where agreement cannot be reached, or where there are views dissenting from the agreement, the different views shall be noted in the report of the Staff-Management Committee.

1.4 All interventions made by the members of the Staff-Management Committee shall carry equal importance and, as such, shall be given due consideration. In all of their discussions, Staff-Management Committee participants shall observe the highest standards of integrity, including probity, impartiality, fairness, honesty and truthfulness.

Section 2

Relationship with local joint committees.

The existence of the Staff-Management Committee does not preclude the consideration by local joint staff-management bodies of issues of importance to staff globally, it being understood that such matters shall be referred to the Staff-Management Committee for consideration.

24. 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 non-compliance.

25. ST/SGB/172 (Staff management relations: decentralization of consultation procedure) issued on 19 April 1979, arts. 2 and 4, state that:

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.

4. Staff members serving as unit representatives of the Staff Council will be allowed sufficient time off to permit their attendance to staff representation duties and should be helped and encouraged in every way to discharge those duties effectively.

Receivability ratione materiae

26. As results from the facts presented by the Applicant, he stated that he ran for leadership in the UNSU elections held on 10 and 11 December 2013. According to the results communicated on 17 December 2013, he was elected UNSU President. On 20 December 2013, the Applicant informed the ASG/OHRM of the results of the elections and requested full time release from his duties during the term of his office starting on 2 January 2014.

27. The Tribunal notes that the subject of the Applicant's 20 December 2013 letter addressed to the ASG/OHRM was time release for staff representatives, the 45th Staff Council, and, in the letter, the Applicant requested the full-time release for the incoming UNSU President, the first and the second UNSU Vice Presidents, and part-time release for the staff representatives.

28. On 24 December 2013, the USG/DM responded to the Applicant that:

... a number of staff members have reported allegations of irregularities in connection with the recently held elections of UNSU. Pursuant to regulation 8.3 of the UNSU Statute and Regulations, 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 of the UNSU. Once the disputes regarding the UNSU elections have been resolved, the Administration looks forward to working with the newly elected UNSU leadership.

29. Consequently, on 24 December 2013, the USG/DM informed the Applicant (a) about the existence of reported allegations of irregularities in connection with the December 2013 elections, which should be formulated as a complaint and submitted to the Arbitration Committee, and (b) that once the disputes regarding the UNSU elections would be resolved,

the Administration would work with the newly elected UNSU leadership. The USG/DM therefore considered that the alleged irregularities in connection with the December 2013 elections brought to his attention by a number of staff members fell under art. 8.3 of the UNSU Regulations and that the Administration would start working with the new UNSU President as soon as the disputes regarding the UNSU elections had been resolved.

30. It appears from the USG/DM letter that the Applicant's request for time release for the leadership, including full-time release for him as UNSU President, remained a pending matter to be decided only after electoral disputes are decided by the Arbitration Committee and that the letter only had an informative nature.

31. This aspect appears to be confirmed by the Applicant's request of 31 December 2013 addressed to the ASG/OHRM in which he states:

We have noted the response by the USG/DM in a memo dated 24 December 2013 to the request that I made to [the ASG/OHRM], on 20 December 2013 to facilitate the full-time release for the staff representatives for the forty-fifth Staff Council of the Staff Union in the UN Secretariat in New York ... The memo from the USG/DM does not address that request. It informs on "allegations of irregularities in connection with the recently held elections of the UNSU" ... [The Applicant] would like [the ASG/OHRM] to confirm that the newly elected staff representatives will be accorded time release beginning on 1 January 2014 to assume their duties and responsibilities in the forty-fifth Council, as requested in [the Applicant's] previous memo to [the ASG/OHRM] dated 20 December 2013.

32. In response to this request, by letter to the Applicant of 2 January 2014, the Officer-in-Charge of OHRM stated:

[T]his refers to your memorandum dated 31 December 2013, by which you reiterated your request dated 24 December 2013 for release from other official duties in the context of staff representative functions. The USG for management through his memorandum dated 24 December 2013 had already replied to your request of 20 December 2013. To reiterate that reply, please note that the Administration will refrain from taking any action that may prejudice the outcome of any efforts by the Arbitration Committee to resolve the ongoing disputes within the UN Staff Union. Accordingly the Administration is not in a position to accede to your request.

33. It follows that, on 2 January 2014, it was confirmed that the Administration could not agree (“accede”) to the Applicant’s request of 20 December 2013, which constituted a refusal for a limited period of time until the Arbitration Committee had resolved the disputes within UNSU.

34. As results from the documents filed by the Applicant on 11 and 20 February 2014, the Applicant filed two further requests with the USG/DM asking him to reconsider his decision of 24 December 2013 in light of the Arbitration Committee’s decisions of 28 November 2013 and 4 December 2013 and, between November 2013 and March 2014, the Arbitration Committee issued three decisions (28 November 2013, 4 December 2013 and 18 March 2014) related to different aspects of the elections held in December 2013.

35. Following the Arbitration Committee’s decision of 18 March 2014, on 20 March 2014, the Applicant filed a new request to the Secretary-General asking to be granted time release and other resources necessary for staff representation activities to members of the 45th Staff Council and the UNSU leadership.

36. The present application on merits was filed on 7 April 2014, and the Tribunal notes that, before and after the date of filing, the Tribunal registered the following cases in which orders have been issued:

a. Case No. UNDT/NY/2013/116 (Lane), in which the applicant filed, on 11 December 2013, an application for suspension of action pending completion of management evaluation of “the certification and implementation of an election process that is fundamentally flawed”. The applicant in that case identified the contested decision as the “failure of the Secretary-General to uphold staff right to free and fair elections as provided for in the Staff Rules and Regulations by acting upon decisions of the UN Staff Union [UNSU] Arbitration Committee and UNIT Chairs as provided for in the [UNSU] Statute”. By Order No. 341 (NY/2013) dated 16 December 2013, the application was dismissed;

b. Case No. UNDT/NY/2014/004 (Lane), in which the applicant filed, on 14 January 2014, an application on merits contesting the Secretary-General’s “decision rejecting the request to suspend the provision of official facilities to the polling officers who had

been called by the Unit Chairpersons of the 44th Council of United Nations Staff Union (“UNSU”), thereby consenting to an improper electoral process held in December 2013”, notified to the applicant on 9 December 2013. On 16 January 2014, the applicant filed a motion for interim measures under art. 10.2 of the Dispute Tribunal’s Statute, which was rejected by Order No. 18 (NY/2014) dated 24 January 2014;

c. Case No. UNDT/NY/2014/007 (Tavora-Jainchill), in which the applicant filed, on 12 February 2014, an application for suspension of action pending management evaluation of the refusal to provide her, as an allegedly elected UNSU official, with facilities including intranet access via the United Nations Secretariat’s intranet, iSeek, while according such facilities to persons who are not properly designated. The application was rejected by Order No. 36 (NY/2014) dated 21 February 2014;

d. Case No. UNDT/NY/2014/009 (Tavora-Jainchill), in which the applicant filed an application on the merits on 24 February 2014 contesting the refusal of the Respondent to provide her, as an alleged elected UNSU official, with facilities including intranet access via iSeek, while according such facilities to persons who are not properly designated. On 14 March 2014, the Applicant filed a motion for interim measures pending proceedings, which was rejected by Order No. 45 (NY/2014) dated 21 March 2014.

37. On 10 April 2014, in the present case, the Applicant filed a motion for interim measures under art. 10.2 of the Dispute Tribunal’s Statute, which was rejected by Order No. 80 (NY/2014) dated 17 April 2014.

38. The Tribunal notes that, starting from 11 December 2013, several applications were filed before the Dispute Tribunal involving contested aspects of the December 2013 elections. As all the above-mentioned orders were published, the parties were aware of the cases before the Dispute Tribunal and the disputes related to the December 2013 elections and their outcome.

39. The Tribunal further notes that, as follows from the Arbitration Committee’s response of 14 May 2015, three persons, including the Applicant, had filed a petition on 29 August 2014 and, according to the 14 May 2015 response, they requested the Committee to find that:

- 1- The former Union officials' terms of office ended on June 30 2013 and the Staff Council's, in caretaker capacity, on 31 December 2013.
 - 2- The terms of office of the chairpersons of electoral units during the 44th Staff Council began on 1 July 2011 and ended on 30 June 2013.
 - 3- The authorized budget for the 44th Staff Council began on 1 July 2011 and ran through 30 June 2013.
 - 4- All mandated activities of the 44th Staff Council ended on 30 June 2013, and its lawful activities stopped when its caretaker capacity ended on 31 December 2013.
 - 5- Any withdrawal or disbursement of Union funds since 1 July 2013 by any former member of the 44th Staff Council is unauthorized and illegal.
 - 6- Any types of associations or agreements entered into by the former Union officials since 1 January 2014 is null and void as well as unlawful.
 - 7- By allowing the former Union officers to withdraw and disburse the Union funds, the UNFCU [United Nations Federal Credit Union] is in breach of its fiduciary duty to the contributory members of the Union.
 - 8- The UNFCU shall cease and desist from allowing the former signatories to the Union accounts to access the Union funds.
 - 9- The belligerent actions of the listed violators have brought disrepute to the Union and to the United Nations Secretariat.
 - 10- In lieu of applying the sanctions provided for in Regulation 8.2.5(c), that the listed violators be suspended indefinitely from holding any elected office in the Union.
 - 11- That the former Union officials hand over the Union office, records, equipment and other facilities with immediate effect.
 - 12- That the term of office of the 45th Staff Council shall begin on the first day of the month following the Committee's ruling on this petition.
40. Accordingly, the Applicant expressly requested the Arbitration Committee to decide that the former UNSU officials hand over UNSU's office, records, equipment and other facilities with immediate effect, and that the term of office of the 45th Staff Council should begin on the first day of the month following the Committee's ruling on the petition (see requests no. 11 and 12 cited in para. 39 above).
41. The Tribunal observes that, based on its preliminary rulings and conclusions, the Arbitration Committee decided on request no. 11 "to order the former Union officers hand over the Union office, records, equipment and other facilities with immediate effect" and, as for

request no. 12, “to defer consideration of this request to such time as to when the elected Leadership and 45th Staff Council actually have taken full office”.

42. According to the mandatory provisions of arts. 4.3 and 4.4 of the UNSU Regulations, the Staff Council is comprised of staff representatives and alternates and shall take full office from the first day of the month immediately following the declared results of elections.

43. Further, as per arts. 10.1(a) and (f) of the UNSU’s Regulations, the President, as the principal executive officer of UNSU, leads, manages and represents the Union and acts as an *ex officio* member of any subordinate bodies of the Union as required. The UNSU President therefore also has a representative function and, as a staff representative, is a member of the Staff Council. Consequently, his term of office coincides with the term of office of the Staff Council.

44. According to arts. 3 and 13 from ST/AI/293, the facilities that are to be provided to the staff representatives as well as the staff representative bodies are necessary in order to allow the staff members duly designated or elected by the Staff Council to perform their representational functions. In the absence of the required facilities, the staff members with representational functions and the staff representative bodies cannot do so.

45. In accordance with the mandatory provisions of sec. 10(a) of ST/AI/293 and art. 6.1 of UNSU Statute, the elected UNSU President, who also appears to be the President of the Executive Board (Committee) of the Staff Council, at his/her request, is entitled to be released full-time from assigned duties during his/her term of office, if the number of staff members represented is 1,000 or more. Consequently, the right to a full-time release of the elected UNSU President is directly determined by the term of office because it starts and ends with the term of office of the Staff Council.

46. In the present case, the Applicant requests the Tribunal to make a determination on his right to be full-time released from his assigned duties as Population Affairs Officer during his term as President of the United Nations Staff Union.

47. As results from the above considerations, the term of office of the elected UNSU President coincides with the term of office of the 45th Staff Council and the beginning of the term of office of the 45th Staff Council is a matter still pending before the Arbitration Committee,

which is to be decided after the UNSU leadership and the 45th Staff Council actually have taken office, namely after the former UNSU officers handover UNSU's office, records, equipment and other facilities.

48. According to 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 were 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 on all members of these bodies and all UNSU members.

49. The Tribunal underlines that the Arbitration Committee's decisions/rulings are final (irrevocable) since it is the unique body competent to review alleged violations of the UNSU Statute and Regulations 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 the 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. Therefore, all the decisions taken by the Arbitration Committee are excluded from the Dispute Tribunal's jurisdiction.

50. Any judicial determination on the relief requested by the Applicant (directly determined by the term of office of the Staff Council) would result in the Tribunal adjudicating on the term of office of the 45th Staff Council, a matter on which the competence to rule belongs exclusively to the Arbitration Committee.

51. The Tribunal has no competence under art. 2.1(a) of its Statute to substitute, review or enforce any of the Arbitration Committee decisions/rulings and, consequently, the application is not receivable *ratione materiae*. The Tribunal will not further analyse claims on the receivability *ratione personae* raised by Respondent.

52. The Tribunal underlines that art. 14 of ST/AI/293 states that any disagreements concerning the implementation of the provisions of ST/AI/293, including art. 10(a), are to be discussed and resolved in accordance with the procedures set out in Chapter VIII of the Staff Regulation and Rules. According to the mandatory provisions of staff rule 8.2(a) and (d), the joint staff-management machinery consists of joint advisory committees at designated duty stations (see staff rule 8.2(a)(i)), and a Secretariat wide joint staff-management body (see staff rule 8.2(a)(ii)), and these bodies must establish their own rules of procedure (see staff rule 8.2 d)).

Conclusion

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

54. The application is not receivable *ratione materiae* and is dismissed.

(Signed)

Judge Alessandra Greceanu

Dated this 17th day of September 2015

Entered in the Register on this 17th day of September 2015

(Signed)

Hafida Lahiouel, Registrar, New York