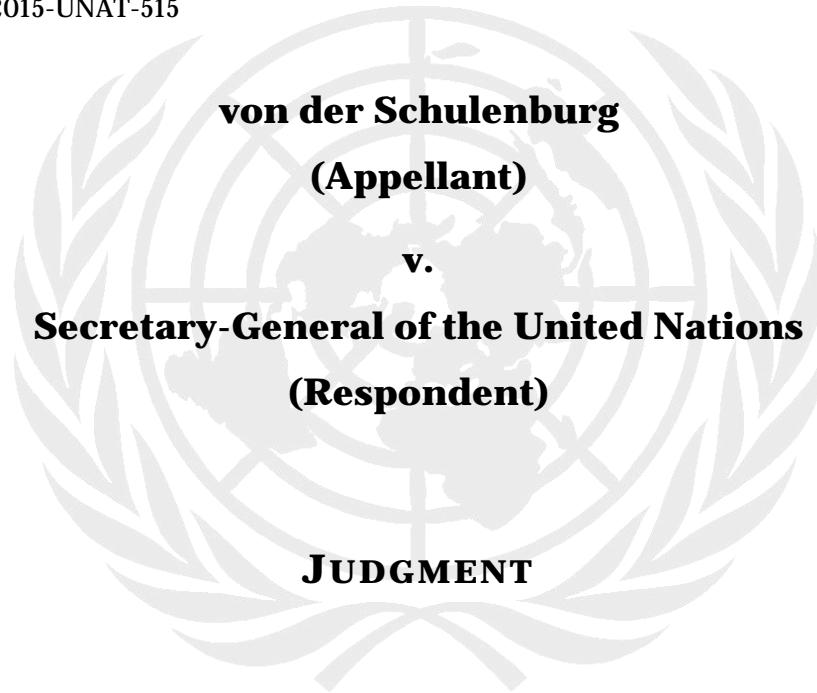




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2015-UNAT-515



**von der Schulenburg  
(Appellant)**

**v.**

**Secretary-General of the United Nations  
(Respondent)**

**JUDGMENT**

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**Before:** Judge Rosalyn Chapman, Presiding  
Judge Richard Lussick  
Judge Deborah Thomas-Felix

**Case Nos.:** 2014-589 & 2014-621

**Date:** 26 February 2015

**Registrar:** Weicheng Lin

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**Counsel for Appellant:** François Lorient

**Counsel for Respondent:** Stéphanie Cartier

**JUDGE ROSALYN CHAPMAN, PRESIDING.**

1. The United Nations Appeals Tribunal has before it an appeal filed by Mr. Michael von der Schulenburg against Judgment on Receivability No. UNDT/2013/178, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Nairobi on 24 December 2013 in the case of *von der Schulenberg v. Secretary-General of the United Nations* (Case No. 2014-589); and an appeal of Judgment on Receivability No. UNDT/2014/041, rendered by the UNDT in Nairobi on 15 April 2014 in the case of *von der Schulenberg v. Secretary-General of the United Nations* (Case No. 2014-621).<sup>1</sup> Mr. Michael von der Schulenburg filed his appeals on 2 February 2014 and 14 June 2014, respectively, and the Secretary-General of the United Nations filed his answers on 28 April 2014 and 26 August 2014, respectively. The Appeals Tribunal has consolidated the two appeals for purposes of judicial economy.

**Facts and Procedure**

*Case No. 2014-589*

2. On 7 December 2012, Mr. von der Schulenburg submitted a request for management evaluation of “the undated administrative decision to open a misconduct investigation against him”. On 17 January 2013, the Management Evaluation Unit advised Mr. von der Schulenburg that his request was not receivable since it was time-barred, having been filed more than 60 days after the decision to commence an investigation, which “must have been made” sometime before 6 January 2012.

3. On 15 April 2013, Mr. von der Schulenburg filed an application before the Dispute Tribunal contesting “a disguised disciplinary decision to suddenly terminate [him] without due process”. He annexed twenty-one documents to his application. On 22 May 2013, the Secretary-General filed his reply, in which he contended, *inter alia*, that the application was not receivable. On 24 December 2013, the Dispute Tribunal issued Judgment on Receivability No. UNDT/2013/178, in which it dismissed the application as not receivable *ratione materiae*.

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<sup>1</sup> Mr. von der Schulenburg’s last name is misspelled in both UNDT Judgments on Receivability.

4. On 14 February 2014, Mr. von der Schulenburg filed an appeal of the Judgment, attaching four annexes to his appeal. The Registry of the Appeals Tribunal assigned case number 2014-589 to the appeal. On 28 April 2014, the Secretary-General filed his answer to the appeal and made a request that the Appeals Tribunal should not accept Annexes 3 and 4, submitted with the appeal, since they are “additional evidence that was not filed with the UNDT” and the Appellant submitted them without first seeking permission from the Appeals Tribunal, as required by the Rules of Procedure of the Appeals Tribunal (Rules).

5. On 6 February 2015, Mr. von der Schulenburg, proceeding through counsel, filed a Motion to Withdraw and Strike his appeal of UNDT Judgment on Receivability No. UNDT/2013/178, on the ground that “mediation was successful and all claims/disputes are settled between the parties”. The Registry of the Appeals Tribunal served this Motion on the Secretary-General.

*Case No. 2014-621*

6. On 7 October 2013, Mr. von der Schulenburg filed a request for management evaluation of the “decision not to select, reassign, reappoint, nor renew nor extend [his] employment contract with the United Nations”.

7. On 29 November 2013, Mr. von der Schulenburg filed another application before the Dispute Tribunal, this time challenging the decision “not to select, not to extend, not to renew, not to reassign, not to re-appoint [him] in the expected [United Nations] senior position [of Special Representative of the Secretary-General (SRSG) to the United Nations Support Mission in Libya (UNSMIL)]”. On 31 December 2013, the Secretary-General filed his reply, in which he contended, *inter alia*, that the application was not receivable. On 15 April 2014, the Dispute Tribunal issued Judgment on Receivability No. UNDT/2014/041, in which it dismissed the application as not receivable *ratione materiae* due to the Appellant’s failure to seek management evaluation of the non-selection decision he was challenging in his application.

8. On 14 June 2014, Mr. von der Schulenburg filed an appeal of Judgment on Receivability No. UNDT/2014/041, and the Registry of the Appeals Tribunal assigned case number 2014-621 to the appeal. The Secretary-General filed his answer to the appeal on 26 August 2014.

9. On 10 February 2015, Mr. von der Schulenburg, proceeding through counsel, filed a Motion to Withdraw and Strike his appeal of UNDT Judgment on Receivability No. UNDT/2014/041, on the ground that “mediation was successful and all claims/disputes are settled between the parties”. The Registry of the Appeals Tribunal served this Motion on the Secretary-General.

### **Considerations**

10. As a preliminary matter, the Appeals Tribunal consolidates the two appeals filed by Mr. von der Schulenburg, pursuant to Article 18bis of the Rules.

11. On 24 December 2014, the President of the Appeals Tribunal assigned case numbers 2014-589 and 2014-621 to a panel of the Appeals Tribunal for consideration and judgment at the spring session, which was to commence on 16 February 2015.

12. Our jurisprudence provides that “a party may withdraw an appeal simply by giving notice and need not necessarily provide any further justification”.<sup>2</sup> Accordingly, the Appellant’s motions to withdraw and strike the two appeals are granted and the Registrar should be directed to close Case Nos. 2014-589 and 2014-621.

### **Judgment**

13. The Registrar is directed to close Appeals Tribunal Case Nos. 2014-589 and 2014-621.

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<sup>2</sup> *Chowdhury v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-441, para. 13; *Oummih v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-413, para. 22.

Original and Authoritative Version: English

Dated this 26<sup>th</sup> day of February 2015 in New York, United States.

*(Signed)*

Judge Chapman, Presiding

*(Signed)*

Judge Lussick

*(Signed)*

Judge Thomas-Felix

Entered in the Register on this 17<sup>th</sup> day of April 2015 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar