



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

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Judgment No. 2021-UNAT-1170

**Matthew Russell Lee  
(Appellant)**

**v.**

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

**JUDGMENT**

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Before: Judge Martha Halfeld, Presiding  
Judge Graeme Colgan  
Judge Kanwaldeep Sandhu  
Judge John Raymond Murphy  
Judge Dimitrios Raikos  
Judge Sabine Knierim  
Judge Jean-François Neven

Case No.: 2020-1502

Date: 29 October 2021

Registrar: Weicheng Lin

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Counsel for Appellant: Self-represented

Counsel for Respondent: Maryam Kamali

**JUDGE JOHN RAYMOND MURPHY, DRAFTING FOR THE MAJORITY.**

1. The United Nations Appeals Tribunal (Appeals Tribunal or UNAT) has before it an appeal by Matthew Russell Lee (Mr. Lee), a member of the press who has never been in the employ of the Organization and who is also not acting on behalf of an incapacitated or deceased staff member.
2. Mr. Lee is challenging two orders issued by United Nations Dispute Tribunal (Dispute Tribunal or UNDT) Judge Joelle Adda in relation to Case No. UNDT/NY/2019/047 (Underlying Case),<sup>1</sup> of which Mr. Lee is not a party. In particular, Mr. Lee takes issue with Order No. 179 (NY/2020) (Contempt Order), issued by Judge Adda on the premise that he had published confidential materials from a virtual hearing held on 3 November 2020 in the Underlying Case. This was allegedly in contravention of the Judge's prohibition to make any recordings of the proceeding.
3. For reasons set out below, the majority rejects Mr. Lee's appeal as non-receivable.

**Facts and Procedure**

4. The facts of this appeal are unusual and pose an issue that is not straightforward. The appeal is against an order of Judge Adda of the UNDT which held a journalist, Mr. Lee, in contempt and prohibited him from attending any future public hearings of the UNDT conducted by Judge Adda, until he purged the contempt by extinguishing all illegal recordings of the 3 November 2020 hearing conducted by Judge Adda in the Underlying Case. Mr. Lee also appeals against a second order of the UNDT, Order No. 178 (NY/2020) (Case Management Order), which granted anonymity to the applicant and other individuals involved in the same case.
5. On 3 November 2020, the Dispute Tribunal held a virtual hearing in the Underlying Case. Mr. Lee is not a staff member or a former staff member of the Organization. Nor did he act on behalf of an incapacitated or deceased staff member. He was accordingly not a party, as contemplated in Article 3 of the Dispute Tribunal Statute

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<sup>1</sup> *Applicant v. Secretary-General of the United Nations*, Case No. UNDT/NY/2019/047 (Underlying Case); *Applicant v. Secretary-General of the United Nations*, Order No. 179 (NY/2020) dated 9 November 2020 (Contempt Order); *Applicant v. Secretary-General of the United Nations*, Order No. 178 (NY/2020) dated 9 November 2020 (Case Management Order).

(UNDT Statute), in the litigation of the Underlying Case during which the Contested Orders were issued.

6. Mr. Lee apparently had a journalistic interest in the case, but he was not able to gain access to the virtual hearing. An online link for the public's access was posted on the hearing calendar on the UNDT's website beforehand. However, access normally requires any person wishing to attend the hearing to join the virtual public gallery in a Microsoft Teams meeting via the link provided before the beginning of the hearing. The instructions clearly state that no members of the public will be allowed into the virtual gallery after the hearing has commenced. Mr. Lee attempted to join the hearing long after it had begun and therefore was not granted access. However, despite his absence, as will appear presently, Mr. Lee obtained access to information presented at the hearing.

7. At the beginning of the hearing, Judge Adda explicitly prohibited anyone admitted to the public hearing to make any recordings.

8. After the hearing, Mr. Lee published an article on the website of Inner City Press, which included hyperlinks to the Twitter account of Inner City Press containing exhibits introduced into evidence at the 3 November 2020 hearing. His article amongst other things complained about his being denied access to the virtual hearing. More pertinently, Mr. Lee published four photos displaying confidential materials presented to a witness during the hearing. Two of the photos contained confidential statements in which the first names of two persons who were not involved in the hearing were published. Mr. Lee admits that the four photographs were taken by a third party who subsequently passed them on to him. The publication of this material was in contravention of the explicit order of the UNDT prohibiting the recording of any aspect of the proceedings.

9. On 9 November 2020, the UNDT issued the Contempt Order, finding Mr. Lee in contempt of court for reproducing illegal recordings of the hearing on Twitter in contravention of the order against such recordings.<sup>2</sup> The UNDT held Mr. Lee in contempt of court and prohibited him from attending any future public hearings conducted by Judge Adda, until he has demonstrated that the recordings from the 3 November 2020 hearing have been removed from the public domain and destroyed.

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<sup>2</sup> See Contempt Order.

10. In issuing the Contempt Order, the UNDT explained:<sup>3</sup>

... The Appeals Tribunal has held the Dispute Tribunal has the inherent right to hold a party in contempt of court if s/he refuses to execute its orders (...) A similar right would exist if an attendee in the public gallery of a hearing deliberately and directly refuses to follow the Dispute Tribunal's order not to make any recordings and these recordings are subsequently published.

(...) While Mr. Lee might not have taken the photos himself, it should, however, be clear to him, and whoever the photographer might be, that any illegal recordings from the hearing cannot be reproduced on a publicly accessible social media platform such as [Twitter]. Accordingly, until Mr. Lee has demonstrated to the Tribunal that all illegal recordings have been removed from the public domain and destroyed, it will hold Mr. Lee in contempt of court and prohibit him from attending any of its future public hearings.

11. Regarding Mr. Lee's complaint that he was denied access to the virtual hearing, the UNDT noted that it is standard practice to prohibit latecomers from attending a hearing after it has already begun. This is because, the UNDT reasoned, important instructions regarding the hearing, such as the ones prohibiting recordings, are normally issued at the beginning of the hearing.

12. On the same day that it issued the order holding Mr. Lee in contempt, the UNDT made a second order, the Case Management Order, in which it granted an application to restrict access to the case records.<sup>4</sup> Specifically, the Case Management Order granted the applicant's request to remove all orders pertaining to the Underlying Case from the UNDT's website and also to anonymize the name of the applicant in the Judgment of the case.

13. On 21 December 2020, Mr. Lee filed an appeal against the Contempt Order and the Case Management Order (collectively, Contested Orders), and the appeal was registered with the Appeals Tribunal as Case No. 2020-1502. On 22 January 2021, the Secretary-General filed his comments.

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<sup>3</sup> *Ibid.*, paras. 4 – 5 (internal citations omitted).

<sup>4</sup> See Case Management Order.

## Submissions

### Mr. Lee's Appeal

14. Mr. Lee admits he is neither a staff member nor a former staff member, and he is also not a party in the case during the litigation of which the Contested Orders were issued. However, Mr. Lee claims by declaring him in contempt of court in the Contempt Order, Judge Adda had extended the jurisdiction of the UNDT over him.

15. He further claims that the Contempt Order is defamatory in nature and penalizes him for exercising his freedom of expression and opinion and his rights as a journalist, which is guaranteed by the Universal Declaration of Human Rights and the Constitution of the United States.

16. Mr. Lee therefore submits that given the exceptional circumstances of this case, the Appeals Tribunal must allow this appeal from a non-staff member in order not to deprive him of any legal ability to answer the sanction imposed upon him by Judge Adda.

17. Mr. Lee requests, in the alternative, that the Appeals Tribunal directs the Secretary-General to lift the immunity of Judge Adda so he can pursue his legal remedies in local courts of competent jurisdiction.

18. Mr. Lee argues the UNDT holds the inherent power only to hold parties in contempt. He claims because he is not a staff member or a party to the litigation, the UNDT lacked the power to sanction him as a citizen of the United States from exercising his legal rights. Mr. Lee also argues he was not serving as counsel or witness in the case, and therefore the UNDT lacked the power to issue the Contempt Order.

19. Mr. Lee also submits that in issuing Contempt Order, the UNDT failed to take responsibility for a third party taking pictures of what was shared on the screen. Mr. Lee argues rather than acknowledge any lack of foresight on organizational inadequacies on the part of the internal justice system, Judge Adda instead sought to deflect attention on him for reporting on the proceedings.

20. Regarding the Case Management Order, Mr. Lee argues that the removal of the name of the applicant in the Judgment was clearly not warranted and amounted to an unjustifiable cover-up of a sexual harassment case.

### **The Secretary-General's Comments**

21. The Secretary-General submits Mr. Lee is not a staff member of the United Nations nor a party in the Underlying Case. As such, the appeal of the Contested Orders is a matter between the UNDT and Mr. Lee.

22. The Secretary-General, however, notes the protection of witnesses and participants in proceedings as well as the respect for the tribunal's orders are of utmost importance. Citing Article 19 of the Dispute Tribunal Rules of Procedure (UNDT Rules) and *Nartey*,<sup>5</sup> the Secretary-General accepts that the UNDT has the authority to issue the Contested Orders.

23. Finally, in regards to Mr. Lee's request that the UNAT directs the Secretary-General to waive the immunity of Judge Adda so he can bring an action against her in domestic courts, the Respondent notes that issues relating to the immunity of United Nations officials are policy decisions of the Secretary-General, which are not justiciable.

### **Considerations**

24. Article 19 of UNDT Rules confers upon the UNDT the jurisdiction to issue any order or give any direction which appears to it to be appropriate for the fair and expeditious disposal of a case and to do justice to the parties. This power includes the authority to take measures to protect the dignity, repute or authority of the tribunal or against the interfering in the administration of justice in a matter pending before it. The UNDT did not explicitly rely on this provision when issuing the Contempt Order. It proceeded rather on the assumption that it had an "inherent right to hold a party in contempt of court".<sup>6</sup>

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<sup>5</sup> *Nartey v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-544, para. 62.

<sup>6</sup> Contempt Order, para. 4.

25. There is no need in this appeal to pronounce definitively on whether the UNDT, as an administrative tribunal rather than a court, has an inherent power, beyond its statutorily conferred powers, to hold a non-party (a member of the public gallery) before it in contempt,<sup>7</sup> or whether Mr. Lee in fact committed contempt of the UNDT by publishing materials he obtained from another person attending the hearing, which he himself did not attend. For the reasons that follow, his appeal against the Contested Orders is simply not receivable by the Appeals Tribunal.

26. In terms of Article 2 of the Appeals Tribunal Statute (Statute), the Appeals Tribunal has jurisdiction *ratione materiae* to hear and pass judgment on an appeal filed against a judgment rendered by the UNDT in which it is asserted that the UNDT has: (a) exceeded its jurisdiction or competence; (b) failed to exercise jurisdiction vested in it; (c) erred on a question of law; (d) committed an error in procedure, such as to affect the decision of the case; or (e) erred on a question of fact, resulting in a manifestly unreasonable decision.

27. However, the jurisdiction *ratione materiae* of the Appeals Tribunal is subject to its jurisdiction *ratione personae*. In terms of Article 7(1)(b) of the Statute, an appeal shall be receivable if the appellant is eligible to file the appeal pursuant to Article 2(2) of the Statute, which in turn provides that an appeal may be filed “by either party (i.e., the applicant, a person making claims in the name of an incapacitated or deceased applicant, or the respondent) to a judgment of the Dispute Tribunal”. This latter provision has to be read with Article 3(1) of the UNDT Statute, which provides:

An application under article 2, paragraph 1, of the present statute may be filed by:

- (a) Any staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes;
- (b) Any former staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes;
- (c) Any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes.

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<sup>7</sup> The Appeals Tribunal has held that it has inherent jurisdiction to hold parties in contempt. See *Nartey Judgment, op. cit.*; *Igbinedion v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-410, paras 29 – 34; *Igunda v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-255, para 32. Before now, the Appeals Tribunal has not pronounced on whether it has contempt powers in relation to non-parties, though there is an *obiter dictum* in *Igbinedion*, para. 32, to the effect that it may do so in relation to witnesses. This *obiter* does not appear to have been informed by any argument in relation to the restrictive nature of the jurisdiction *ratione personae*.

28. By his own admission, Mr. Lee is not a person in respect of whom the Appeals Tribunal has jurisdiction *ratione personae* in terms of the express wording of Article 2(2) of the Statute. He is not, as required by Article 2(2) of the Statute, “either party” (applicant, respondent or representative of an incapacitated or deceased staff member) to a judgment of the UNDT. He is a member of the public who has been denied access to UNDT proceedings by way of a procedural directive or order.

29. Despite his apparent appreciation of the jurisdictional difficulty, Mr. Lee nonetheless requests the Appeals Tribunal to assume a jurisdiction not explicitly provided for in the Statute because he is aggrieved by the Contested Orders.

30. While it is debatable whether Article 19 of the UNDT Rules confers jurisdiction to hold a non-party in contempt, the UNDT undoubtedly may issue an order regulating access to its proceedings. However, in so far as the Appeals Tribunal has limited jurisdiction *ratione personae*, an appeal against such an order by a non-party will ordinarily not be receivable in terms of Article 7(1)(b) of the Statute. Whatever the merits of or justification for the Contempt Order, as said, the provisions of Article 7(1)(b) make it plain that for an appeal to be receivable, the appellant must be a party (the applicant or the respondent) in the matter before the UNDT. The Appeals Tribunal accordingly has no jurisdiction *ratione personae* to hear and determine an appeal against the Contempt Order barring Mr. Lee access to the hearings of the UNDT.

31. The limitation introduced by the text of Article 7(1)(b) is supported by the structural arrangements established by the statutory scheme and prudential considerations underpinning it. The UNDT is not the equivalent of a court of law in a municipal legal system. It is a special administrative tribunal concerned with internal issues arising in the employment relations of persons contractually associated with the Organization. Only those with a contractual nexus to the Organization are subject to its jurisdiction. Its writ does not extend to persons who have no contractual or legal relationship with the Organization. Moreover, Mr. Lee has no direct and substantial interest in the contractual rights and interests of the parties in the Underlying Case before the UNDT. He has no standing in that regard either.



32. A finding that Mr. Lee has no right of appeal or review against the order barring him from future proceedings of the UNDT until he complies with certain requirements is not entirely satisfactory. However, we also note the power of a tribunal, to protect its proceedings as it deems fit and so as to reserve the right of admission to the proceedings by excluding persons without standing, justifiable in the interest of judicial economy and effectiveness.

33. To the extent that there may be a *casus omissus* in the Statute by not permitting an appeal or review by non-parties affected by procedural orders issued by the UNDT, it is not an *omissus* that the Appeals Tribunal can easily or justifiably supply in the face of the unambiguous language adopted by the General Assembly in restricting the jurisdiction *ratione personae* of the Appeals Tribunal.

34. Allowing persons other than staff members, former staff members or the representatives of incapacitated or deceased staff members to access the appellate jurisdiction of the Appeals Tribunal by way of an application for judicial review of the decision of the UNDT (as the minority of judges propose) not only does violence to the language of the Statute but also detracts from the purpose of the Statute to establish an internal justice system for the benefit solely of the staff of the Organization.

35. The Appeals Tribunal, as its name makes evident, is an appellate tribunal with an appellate jurisdiction. It has no power to perform judicial review to assess the reasonableness, legality or fairness of a decision of the UNDT in which the parties (the applicant before the UNDT and the Secretary-General) have no direct interest. The Appeals Tribunal's jurisdiction conferred by Article 2 of the Statute (as with all appellate bodies) is restricted to finding error in decisions affecting the parties. To constitute a power of review in the legislative scheme on the basis of natural justice, with the greatest of respect, is an exercise in extensive interpretation amounting to an overreach, which will give rise to a number of unmanageable procedural and practical difficulties not within the contemplation of the governing legislation. Neither the Statute nor the Appeals Tribunal Rules of Procedure (Rules) make any provision for the prosecution and determination of a judicial review. Nor will it be straightforward to extend the writ of the Organization to persons not legally associated with it. To the extent that the problem may require a remedy, it is best left to the General Assembly.

36. For similar jurisdictional reasons, the Appeals Tribunal has no jurisdiction to hear the appeal by Mr. Lee against the Case Management Order imposing confidentiality in the proceedings, or (and perhaps for other reasons) to order the Secretary-General to waive the immunity of Judge Adda. Mr. Lee has no standing (no direct or substantial interest) in relation to the order of confidentiality. Finally, the issue of immunity is one falling exclusively within the remit of the Secretary-General or the General Assembly.

37. Hence, insofar as Mr. Lee may or may not have a legitimate grievance, redress does not lie in the hands of the Appeals Tribunal. We accordingly hold that the appeal is not receivable.

**Judgment**

38. Mr. Lee's appeal is not receivable and is accordingly dismissed.

Original and Authoritative Version: English

Dated this 29<sup>th</sup> day of October 2021.

*(Signed)*

Judge Halfeld, Presiding  
Juiz de Fora, Brazil

*(Signed)*

Judge Murphy  
Cape Town, South Africa

*(Signed)*

Judge Raikos  
Athens, Greece

*(Signed)*

Judge Knierim  
Hamburg, Germany

Judge Colgan, Judge Sandhu and Judge Neven append a joint dissenting opinion.

Entered in the Register on this 30<sup>th</sup> day of December 2021 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar

**JOINT DISSENTING OPINION OF JUDGE GRAEME COLGAN,  
JUDGE KANWALDEEP SANDHU AND JUDGE JEAN-FRANCOIS NEVEN.**

1. We respectfully dissent from the conclusion of the majority as to the Appeals Tribunal's jurisdiction to entertain this appeal. We acknowledge that this is a very difficult issue to which there are no plain and irrefutable answers.

2. We reach the same conclusions expressed as an observation by the majority in the opening sentences of each of paragraphs 28 and 30 in this Judgment. To be an appellant, one must be a party to the judgment challenged. For reasons set out below, we consider that Mr. Lee was a party to a proceeding, apparently instituted by the UNDT itself, against him for contempt. Indeed, we would go further and consider that the UNDT was without jurisdiction to hold Mr. Lee, as a stranger to the Underlying Case before it, in contempt. The requirements imposed on him were intended to be, and are, the consequential sanctions for his contempt. We would reach those conclusions by deciding first that Mr. Lee has a right of appeal (in the nature of a judicial review) in this case. Such a gateway conclusion would allow the UNAT to consider and rule on the UNDT's power in law to make the orders it did.

3. The UNAT can, and should, receive Mr. Lee's appeal. Not to do so would perpetrate an injustice to him and, thereby, to others who may be non-parties to a particular litigation but affected adversely by orders or judgments made in, or associated with, it. For a journalist interested in the affairs of the United Nations to be prohibited from attending and observing hearings of the UNDT is a significant sanction, and more particularly if his only means of purging that contempt, and thereby to allow him to attend and observe proceedings, he is required to achieve a difficult if not impossible task. This is a significant limitation on the freedom of the press and speech, which requires judicial oversight and review.

4. Natural justice requires at least a right of appeal or judicial review of such decision-making. We suggest that few, if any, judicial systems would not allow at least one right of appeal against, or judicial review of, potentially draconian orders in which the tribunal making those orders also instigates the process, frames the charge, decides guilt and then sets the penalty.

5. The necessity for judicial review of contempt orders against non-parties becomes fundamental in light of the Appeals Tribunal's clear direction that UNDT orders must be complied with, even if the UNDT may have exceeded its jurisdiction. For example, in *Igunda*,<sup>8</sup> the Appeals Tribunal, when considering the Secretary General's actions, held that:

This Court emphasizes that a party is not allowed to refuse the execution of an order issued by the Dispute Tribunal under the pretext that it is unlawful or was rendered in excess of that body's jurisdiction, because it is not for a party to decide about those issues. Proper observance must be given to judicial orders. The absence of compliance may merit contempt procedures.

6. If no judicial review is available to a non-party based on a lack of standing, the non-party has no recourse to justice even when the UNDT's decision is unlawful. This can only be contrary to a foundational tenet of the rule of law. The lack of opportunity to respond to the allegations of non-compliance that the UNDT relies on to justify the Contempt Order is contrary to the principles of natural justice. This cannot have been the intention of the General Assembly in enacting the legislative scheme providing an internal justice system for the Organization. It also cannot be the intention of the General Assembly to significantly limit basic fundamental freedoms, such as freedom of press and speech, without express and clear direction from the General Assembly. In this regard, we also diverge from the majority in comments made in its Judgment regarding the plain meaning of the language of the Statute and its purpose.

7. The justice of allowing Mr. Lee the ability to challenge the propriety of the Contempt Order made against him and thereby the sanction of exclusion from future hearings of the UNDT can, and in our opinion should, be achieved and rationalized as follows. Our analysis involves substance or reality trumping form or literalism. It also requires a purposive approach to the interpretation and application of the Statute. That purpose is broadly to provide rights of appeal and judicial review to persons affected significantly and adversely by judgments of the UNDT. We also diverge thereby from the majority's conclusion that there is "unambiguous language adopted by the General Assembly in restricting the jurisdiction *ratione personae* of the Appeals Tribunal".

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<sup>8</sup> *Igunda* Judgment, *op. cit.*, para. 32.

8. Although Mr. Lee was not an original party to the UNDT proceedings between the applicant and the Secretary-General in the Underlying Case, when the UNDT made an Order against him as it did, he became a party to what was, in reality, a proceeding for contempt apparently instigated by the UNDT itself. He was, again in reality, the respondent party to that proceeding for contempt. He thus meets the requirement for a “party” to appeal under Article 2(2) of the Statute, and on which the test of receivability of an appeal under Article 7(1)(b) of the same Statute depends.

9. Although the UNDT's declaration of his contempt and the sanctions that flowed were contained in an “Order” of the UNDT, in reality also, this was a UNDT “Judgment”. It was not an interlocutory procedural direction made for the expeditious and just progress of the case then before the UNDT. It was final and dispositive of the only issues then concerning Mr. Lee, whether he was in contempt of the UNDT and, if so, the consequences of that.

10. In *Villamorán*,<sup>9</sup> the Appeals Tribunal held that an appeal of an interlocutory order is receivable when the UNDT has clearly exceeded its jurisdiction:

... The Appeals Tribunal needs to establish whether it has competence under Article 2 of its Statute to hear the present interlocutory appeal. Article 2 inter alia provides that the Appeals Tribunal is “[...] ... competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has: (a) Exceeded its jurisdiction or competence”.

... The Statute of the Appeals Tribunal does not clarify whether the Appeals Tribunal may hear an appeal only from a final judgment of the UNDT on the merits, or whether an interlocutory decision made during the course of the UNDT proceedings may also be considered a judgment subject to appeal.

... The Appeals Tribunal has consistently emphasized that appeals against most interlocutory decisions will not be receivable, for instance, decisions on matters of evidence, procedure, and trial conduct. An interlocutory appeal is only receivable in cases where the UNDT has clearly exceeded its jurisdiction or competence.[...]

11. Therefore, the UNAT already allows appeals against orders of the UNDT as if they are judgments, albeit in limited circumstances. Those limited circumstances include where it is alleged that the UNDT acted without jurisdiction or competence in making the orders it did.

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<sup>9</sup> *Villamorán v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-160, paras. 34 - 36 (internal footnotes omitted).

Mr. Lee's too is a case about jurisdiction or competence. Consequently, it is not a barrier to consideration of Mr. Lee's appeal that it is against an "Order", even if the "Order" of the tribunal was truly an order and not in fact a judgment, which we consider not to be the case.

12. We agree that while the UNDT has the power to control its hearings including, potentially, to exclude one, more, or even all persons not involved in them, that power should be used judiciously and reasonably considering all the circumstances. This test would include the consideration of reasonably available alternate measures to prevent real and substantial risk to the fairness of its proceedings. Article 9(3) of the UNDT Statute makes the default position on hearings that "they shall be held in public unless (...) exceptional circumstances require the proceedings to be closed". In addition to not being entitled to use it as a sanction for contempt against Mr. Lee for reasons set out by us above, we do not consider that the UNDT can otherwise ban his attendance at hearings indefinitely and in blanket fashion. Accepting that closing hearings of proceedings may arguably include closing them selectively to certain persons, exceptional circumstances will be required for such an order to be made, and on a case-by-case basis.

13. We agree with the majority's finding that the UNDT had no jurisdiction to entertain the application by Mr. Lee in relation to the applicant's (staff member's) anonymization in that proceeding. Indeed, having allowed the appeal to be received and considered, we would have found against Mr. Lee on that point. He was not a party to that case within which the Order for anonymization was made and thus has no standing in that case.

14. We also concur with the majority that the issue of the UNDT Judge's immunity from legal suit is not a matter for the UNAT but falls to the Secretary-General, or more probably the General Assembly, to determine.

15. We also agree with the majority's position that, despite our interpretation and application of the Statute, it is preferable that issues of contempt of the UNDT (and indeed of the UNAT) be addressed legislatively, expressly and more comprehensively.

Original and Authoritative Version: English

Dated this 29<sup>th</sup> day of October 2021.

*(Signed)*

Judge Colgan  
Auckland, New Zealand

*(Signed)*

Judge Sandhu  
Vancouver, Canada

*(Signed)*

Judge Neven  
Brussels, Belgium

Entered in the Register on this 30<sup>th</sup> day of December 2021 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar