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

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Case No. 2022-1670

**John Gerald O'Brien**

**(Appellant)**

**v.**

**Secretary-General of the United Nations**

**(Respondent)**

**ORDER No. 449 (2022)**

1. On 30 December 2021, the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Geneva issued Judgment No. UNDT/2021/166 in the case of *O'Brien v. Secretary-General of the United Nations*, in which it dismissed Mr. O'Brien's application against the decision not to conduct an independent review of the investigation into the allegations of misconduct against him.
2. On 24 February 2022, Mr. O'Brien filed an appeal against the UNDT Judgment with the United Nations Appeals Tribunal (Appeals Tribunal). On the same day, he filed a motion to file additional evidence. He requests leave to adduce two documents into the evidence: i) a statement dated 27 January 2022 by the author about his report of independent investigation to the UNDP management dated 26 January 2021, and ii) a joint letter dated 2 February 2022 from the Transparency International, the Whistleblowing International Network, and the Government Accountability Project. Mr. O'Brien states that these two documents were not available at the time of the issuance of the UNDT Judgment, and that they are "highly relevant" to the issue as to whether the investigation was sufficient and satisfactory to justify the conclusions reached.
3. On 14 March 2022, the Secretary-General filed his comments on the motion, requesting that the Appeals Tribunal dismiss the motion, or give him an opportunity to file a submission in response if it grants the motion. In his view, neither of the documents is relevant to the present case. The Secretary-General notes that Mr. O'Brien had filed a

motion before the Dispute Tribunal seeking admission of the report of independent investigation, but the UNDT rejected his motion as irrelevant. This is another attempt on the part of Mr. O'Brien to introduce the evidence now before the Appeals Tribunal. He has not explained why he was not able to adduce the 27 January 2022 statement before the UNDT. Turning to the joint letter, the Secretary-General notes that, like the 27 January 2022 statement, which was prepared more than two years after the contested decision, the joint letter was also written almost two years after the contested decision. The Secretary-General maintains that the joint letter is not relevant to the issues to be decided on appeal, as it includes general statements on reforming the UNDP whistleblowers policies and protection system and calls for a review of two whistleblowers cases, one of which is that of Mr. O'Brien's.

4. The Appellant's Motion is misconceived. The documents he seeks to introduce for the first time are essentially recreations, and in some respects embellishments, of the same documents he sought, unsuccessfully, to adduce in evidence before the UNDT. His motion there was considered and dismissed in the UNDT's Judgment against which he has now appealed. His grounds of appeal may include a challenge to that dismissal of his motion by the UNDT, that is, he is entitled to argue that the UNDT erred in law or in fact or made an error of procedure by refusing to admit and consider those documents. In that event the documents themselves will be available for consideration by the Appeals Tribunal as they will form part of the record of the UNDT.

**IT IS HEREBY ORDERED** that the Appellant's motion seeking leave to file additional pleadings **IS DENIED**.

Original and Authoritative Version: English

Dated this 18<sup>th</sup> day of March 2022  
in Auckland, New Zealand.

*(Signed)*  
Judge Graeme Colgan,  
President

Entered in the Register on this 18<sup>th</sup> day  
of March 2022 in New York, United States.

*(Signed)*  
Weicheng Lin,  
Registrar