



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

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Case No. 2022-1681

**Claude Cahn**

**(Respondent/Applicant)**

**v.**

**Secretary-General of the United Nations**

**(Appellant/Respondent)**

**ORDER No. 463 (2022)**

1. Following my Order of 20 May 2022,<sup>1</sup> the Staff Union of the United Nations Office at Geneva (UNOG Staff Union or Applicant) has now filed an amended motion seeking to file a Friend-of-Court (or *Amicus Curiae*) brief in this appeal.

2. Mr. Cahn and the Secretary-General have had an opportunity to make submissions as to whether that should happen and while the Secretary-General has done so, Mr. Cahn has not taken that opportunity.

3. I am satisfied that the Applicant has standing as such to make this application and has a proper interest in the issues for decision on the appeal. In cases such as this, it is not necessarily the situation that the individual staff member, the subject of the appeal, and the staff member's colleagues collectively have precisely the same interests.

4. Whether in this case it should be allowed to do so is a separate question and dependant on the circumstances of the case.

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<sup>1</sup> *Claude Cahn v. Secretary-General of the United Nations*, Order No. 457 (2022).

5. The appeal relates to the conclusions that the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) reached about the duty or duties of care owed by the Organisation to individual staff members. The Applicant wishes to advance the proposition that such duties cover all staff in all environments and not just staff serving in high-risk environments. The Applicant has referred to a number of United Nations official documents addressing these issues and wishes to make submissions expanding on these.

6. Before deciding the application, I wish to elaborate a little on *amicus* briefs in this jurisdiction. I do so because the Secretary-General has relied significantly on the jurisprudence in opposing the motion.

7. He did so in reliance on an early judgment of this Tribunal. It is appropriate to comment briefly on that Judgment as it may have had an unduly stultifying effect on such applications.

8. In *Masri*, the UNAT said this about friend-of-court (*amicus*) briefs:<sup>2</sup>

... The purpose of a friend-of-the-court brief will generally be to address matters other than the law. The Appeals Tribunal is composed of experienced, professional Judges who are able to ensure that proper deliberations are held concerning the general principles of law that are applicable in the case with the benefit of the parties' submissions, the UNDT Judgment and the judicial work of the Tribunal itself, without the need for additional contributions from friends-of-the-court.

... If the issues in a case raise very specific or particular questions of law which are not generally within the expertise of counsel or the Judges, an application to file a friend-of-the-court brief may be granted. But in this case, the issues can be addressed based on the submissions, the case record and the judicial work carried out by the panel of Judges hearing the appeal.

... In considering whether to allow a friend-of-the-court brief to be filed, the Appeals Tribunal will also examine the impact of its decision on the hearing of the case. The parties must be granted an adequate opportunity to be heard in

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<sup>2</sup> *Masri v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-098, paras. 26-28.

response to a friend-of-the-court brief. The Appeals Tribunal strives to dispose of its caseload in the most efficient way possible. In this case, granting the application to file a friend-of-the-court brief would defeat this goal by forcing the postponement of the hearing of the appeal to the next session to enable the parties to file submissions in response to the brief. The Appeals Tribunal considers that this outcome would be less desirable than the absence of additional submissions on the legal issues in the case.

9. While it is true that the UNAT consists of experienced and knowledgeable judges, learning is an on-going and essential judicial requirement and I suggest it would be a bold judge now who claimed to know everything there was to know about the law and had no need of further open-minded learning.

10. Indeed, the law of the international civil servant is, for most judges appointed to the UNAT, a new jurisprudence although containing a blend of different legal systems from around the world. The opportunity to consider and learn more from experienced and knowledgeable counsel and their clients can usually only benefit the Tribunal: at the very least it cannot reduce the quality of its decision-making. Well presented, focused and cogent submissions are a part of judicial systems in most national jurisdictions and what is presented in *amicus* briefs both occupies relatively little additional time but may ultimately, of course, not be accepted, in part or wholly.

11. *Amicus* briefs should be, and are usually, tightly constrained as to their content and focus on contextual and legal factors rather than on the particular facts of a case. They can be particularly useful to the Tribunal where, as here, there is a marked imbalance of representation and therefore potentially of the scope and quality of submissions.

12. It is appropriate that the statutory ground for admitting *amicus* briefs is broad and discretionary, being that it will assist the Tribunal: see Article 17 of the UNAT Rules of Procedure.

13. Such applications are rarely made, let alone granted. There can really be no risk of a 'floodgates' scenario if one is granted.

14. The Secretary-General has opposed the motion by the Staff Union. Mr. Cahn has made no submissions addressing it. The Secretary-General relies on the *Masri* Judgment, of which the relevant passages are set out above. This was a very early case decided by the UNAT and which I consider, respectfully, takes an unduly narrow and over-sensitive view of what is now, more than a decade later, a robust and confident UNAT but one which is open to new ideas if they assist it in its decision-making.

15. The foregoing are general observations about *amicus* briefs made because of their relative rarity and to hopefully provide guidance for others for the future.

16. However, as with all matters, the motion must be decided on its merits. Unfortunately for the UNOG Staff Union, these do not favour its position. That is because the UNDT's Judgment, in addressing the Organisation's duty of care to staff members, does not distinguish between staff in high risk operations or duties and those elsewhere in the Organisation and thereby impose a lesser standard on it for the protection of the latter's welfare. That the duty of care will manifest itself in different ways depending on the particular circumstances is not the same question as the UNOG Staff Union seeks to highlight. Duties of care vary in their detail in different cases: for example, the same duty may require the provision of military-grade personal protective equipment to some staff in warzones, but not to others running educational programmes in peaceful locations. That is not to impose a lesser duty on the Organisation in the latter case but is rather reflective of reasonable and practicable protections and support of staff in particular situations.

17. The allegation that the UNDT imposed a uniformity of the duty is the Applicant's principal ground for participation in the appeal but which is one without a substantive foundation, as the Secretary-General acknowledges in his submissions opposing this

motion and from which I consider he will not be able to resile in challenging the UNDT's Judgment on appeal.

18. In these circumstances, and while expressing the Tribunal's appreciation for the interest shown and submissions made by the UNOG Staff Union, the motion must be, and is, refused.

19. I do, however, direct that the various documents referred to by the UNOG Staff Union in its motion be made available to the UNAT panel which will consider the appeal.

Original and Authoritative Version: English

Dated this 24<sup>th</sup> day of June 2022 in  
New York, United States.

*(Signed)*  
Judge Graeme Colgan,  
President

Entered in the Register on this 24<sup>th</sup> day  
of June 2022 in New York, United States.

*(Signed)*  
Weicheng Lin,  
Registrar