UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2010/098
Judgment No.: UNDT/2011/168
Date: 26 September 2011
Original: English

Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Santiago Villalpando

DI GIACOMO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Susan Maddox, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant, a former intern with the Department of Economic and Social Affairs ("DESA") of the United Nations Secretariat in New York, contests two decisions: (i) the decision, communicated to him by letter dated 21 December 2006, not to pursue a disciplinary case against him, and (ii) the decision, communicated to him by letter dated 26 December 2007, to require him to be accompanied by a security escort when accessing the United Nations premises in New York. The Applicant describes both decisions as "illegal and unchallengeable disciplinary measure[s] against [him]".

2. The Applicant seeks an order directing the Respondent to provide him with an effective mode of settling his dispute or, in the alternative, to pay him: the salary and monetary value of benefits, with interest, "that he would have received if employed at grade P-3 from 1 July 2006 to the date of this judgment"; "moral and material damages totaling [USD]500,000 resulting from the defamation, the harassment and the discrimination that has severely impacted on [his] health, professional reputation, social standing and future earning capacity"; "an award of moral and material damages of [USD]50,000 for the delay in settling this dispute"; and USD12,000 as costs.

3. In the course of the present proceedings the Tribunal issued six orders: Order No. 335 (NY/2010) of 29 December 2010; Order No. 44 (NY/2011) of 15 February 2011; Order No. 156 (NY/2011) of 10 June 2011; Order No. 158 (NY/2011) of 17 June 2011; Order No. 166 (NY/2011) of 30 June 2011; and Order No. 180 (NY/2011) of 15 July 2011. As stipulated in Order No. 156 (NY/2011) and Order No. 158 (NY/2011), the Tribunal finds it appropriate to consider, as a preliminary matter, whether it has jurisdiction over this case, there being no objection from the parties to this issue being determined on the papers before the Tribunal.

Facts

4. This summary of facts, including those in dispute, is based on the parties' submissions before the Tribunal. The Tribunal has limited its summary only to those facts that pertain to the subject matter of the present Judgment—i.e., whether it has jurisdiction to consider the merits of the Applicant's claims. The Tribunal will not comment on the merits or the relevance or propriety of some of the material filed by the Applicant in this case.

5. The Applicant is not a staff member and has never been a staff member of the Organization. The initial incident from which this case stems took place on 10 April 2006, when the Applicant was an unpaid intern at DESA in New York. This internship lasted for less than three months—from 10 April to 30 June 2006. The internship agreement did not include any provision for the settlement of disputes.

6. It is common cause that on 10 April 2006—the first day of his internship with DESA—the Applicant went to the offices of the World Health Organization, an entity separate from the United Nations Secretariat. There, he went to the office of Ms. K, a staff member of the World Health Organization. It appears that Ms. K was an acquaintance of Ms. C, who was a staff member of the World Food Programme and whom the Applicant had met sometime in late 2003, when he worked in New York as a Junior Reporting Officer with his country's Permanent Mission to the United Nations. However, by the time of the Applicant's return to New York as a DESA intern in April 2006, he and Ms. C were no longer on speaking terms.

7. The reasons for the Applicant's visit to Ms. K's office and the exact circumstances that led to it remain a matter of dispute between the parties, as well as between Ms. K and the Applicant. It is not necessary to discuss them in detail, suffice it to say that Ms. K allegedly felt harassed and threatened by the Applicant's visit and, on 17 April 2006, filed a complaint of harassment against him, summarising her account of the visit and describing the surrounding circumstances. The Applicant disputes the accuracy of Ms. K's statement. At this juncture, however, the Tribunal is

not called upon to determine who was right and who was wrong; it is enough to say that, by all accounts, the meeting of 10 April 2006 was confrontational and did not end amicably.

8. Ms. K's complaint was subsequently investigated by the Department of Safety and Security, and its report was forwarded to the Office of Human Resources Management ("OHRM") on 13 July 2006.

9. The Applicant's internship ended on 30 June 2006. Approximately one month later, by letter dated 3 August 2006, the Director of the Division for Organizational Development, OHRM, informed the Applicant of the allegations made against him and of the findings of the investigation report. The Director also informed the Applicant that, since he was not a staff member, but an intern, the Organization had no "disciplinary jurisdiction" over him and this matter could not be pursued as a disciplinary case. The Director nevertheless requested the Applicant to provide "any written statement or explanations … in response to the allegations [made] against [him]".

10. It appears from the documents provided by the Applicant that, after receiving the letter of 3 August 2006, he contacted the Office of the Ombudsman, which advised him to prepare a response to OHRM's letter and referred him to the Organization's Panel of Counsel for assistance. Thereafter, many of the Applicant's subsequent communications with the Administration were copied to the Office of the Ombudsman, as well as to the Ethics Office of the United Nations Secretariat, among other recipients.

11. On 1 October 2006, the Officer-in-Charge of the Administrative Law Unit ("ALU"), OHRM, sent an email to the Department of Safety and Security, stating that, based on a meeting she had with the Applicant on 20 September 2006, she had concerns for Ms. K's and Ms. C's safety. The Officer-in-Charge requested that "the current security arrangement that [the Applicant] only be allowed onto UN premises under security escort at all times be maintained until further notice".

12. By letter dated 20 November 2006, the Applicant submitted a reply to the letter of 3 August 2006 from the Director of the Division for Organizational Development, OHRM.

13. By letter dated 21 December 2006, the Director of the Division for Organizational Development, OHRM, informed the Applicant that the Administration had determined that it could not pursue a disciplinary case against him because he was not a staff member and therefore the Organization had no "disciplinary jurisdiction" over him.

14. The Applicant and OHRM exchanged a series of communications between March and December 2007. The Applicant sought, *inter alia*: to have the matter reconsidered; to be provided with access to his Official Status File and various other documents; to have any adverse material removed from his files; to investigate the conduct of "the staff members that cooperate[d] in [the] investigation"; and to have the security escort requirement removed. In particular, by communications dated 13 November and 4 December 2007 (which were copied, *inter alia*, to the Ethics Office and the Office of the Ombudsman), the Applicant asked the Organization to "take congruent and remedial actions necessary to wipe out the injurious consequences arising out of its patent irregularities, and permit the restoration of the earlier situation".

15. According to the Respondent, OHRM provided available documents to the Applicant, informing him that he did not have an Official Status File as he was not a staff member. Further, by letter dated 26 December 2007, the Chief of the ALU—the same official who previously served as the Officer-in-Charge of the ALU—replied to the Applicant's counsel's letter dated 13 November 2007, reiterating that the Applicant did not have the rights of a staff member with respect to disciplinary proceedings and that the Department of Safety and Security, in exercise of its functions pursuant to ST/AI/309/Rev.2 (Authority of United Nations Security Officers), had confirmed that the Applicant's restricted access would continue.

16. By letter dated 25 February 2008, the Applicant requested administrative review of "the administrative decision which the OHRM-ALU ha[d] communicated to [him] on [26] December 2007". The Applicant's one-paragraph request stated:

> I address myself to you, in your capacity as Chief Administrative Officer of the United Nations, in order to kindly request that the administrative decision which the OHRM-ALU has communicated to me on [26] December 2007 is reviewed.

17. By letter dated 4 April 2008, the Chief of the ALU declined to proceed with the administrative review procedure, stating that it was not available to the Applicant as he was not a staff member but an intern.

18. It appears that, in or about February 2008, the Applicant also sought to file some documentation with the Joint Appeals Board. Neither party, however, submitted that any reports or recommendations had been issued by the Joint Appeals Board with regard to the Applicant.

19. On 25 March 2008, the Applicant filed a "complaint for defamation" in the national judicial system of his home country against the Chief of the ALU. By letter dated 1 April 2008, addressed to the Secretary-General, the Applicant, through his legal representative, requested the Secretary-General to waive the immunity of the Chief of the ALU and "of any other officials who may have concurred in the alleged wrongful acts in connection with the communication signed by [the Chief of the ALU] on [26] December 2007".

20. By letter dated 18 June 2008, the Under-Secretary-General for Legal Affairs informed the Permanent Representative of the Applicant's country to the United Nations, that "[the Chief of the ALU], as a United Nations official, enjoy[ed,] pursuant to Article V, Section 18(a) of the Convention on the Privileges and Immunities of the United Nations … , immunity 'from legal process in respect of words spoken or written, and all acts performed by [her] in [her] official capacity'". The Under-Secretary-General for Legal Affairs further stated in his letter that the Secretary-General of the United Nations determined that the Chief of the ALU had

acted with respect to the "acts in question" in her official capacity and, therefore, enjoyed immunity from legal process, which the Secretary-General decided to "expressly assert" as it could not be waived without prejudice to the interests of the United Nations. The Under-Secretary-General for Legal Affairs further stated:

> Under Article VIII, Section 29 (b) of the [Convention on the Privileges and Immunities of the United Nations] "[t]he United Nations shall make provisions for appropriate modes of settlement of … disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General". Thus, [the Applicant], though not a staff member but rather a former intern, must be provided an "appropriate mode of settlement" of his dispute. Accordingly, consistent with the established practice of the Organization to address disputes involving interns on an informal basis, informal conflict resolution mechanisms existing within the Secretariat could be employed, in the first instance, as the mode of settlement for this matter, including, *inter alia*, the possibility of its reference to the Office of the Ombudsman.

21. According to the Applicant, on 26 June 2008, the court of first instance in his country issued a ruling dismissing his claim by reason of immunity. The Applicant submits that his appeals in the national court system were dismissed on similar grounds on 3 April 2009 and 14 May 2010.

22. It appears that, sometime prior to July 2009, the Applicant also filed a request for protection against retaliation with the Ethics Office, although the exact date of his request is unclear from the papers before the Tribunal. By letter dated 13 July 2009, the Director of the Ethics Office informed the Applicant that the Ethics Office had completed its assessment of his request pursuant to ST/SGB/2005/21 (Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations) and found that the Applicant had not engaged in any protected activity within the meaning of ST/SGB/2005/21, and, therefore, the Ethics Office would not undertake any further action regarding this matter.

23. On 5 June 2009, the Applicant sent a letter addressed to the Office of Legal Affairs of the United Nations Secretariat, as well as to the World Food Programme

and the World Health Organization, stating, *inter alia,* that he thus far had been unable to resolve the matter, including through the Office of the Ombudsman, and that "the only alternative left to settle this matter in the justice system of the Organization [was] by proceeding to arbitration".

24. On 18 September 2009, the Legal Counsel, World Health Organization, sent an email to the Applicant, stating, in effect, that this matter did not concern the World Health Organization and, therefore, it did not see any reason to be involved in it. A similar response was provided to the Applicant by the General Counsel and Director, Legal Office, World Food Programme, who stated in his letter dated 9 December 2009 that there was no basis for the Programme's involvement in this matter as it "was not a party to any contract with [the Applicant] and did not take any of the decisions that [the Applicant] claim[ed] ha[d] caused [him] harm".

25. Approximately nine months later, on 12 August 2010, the Applicant submitted a request for management evaluation of "the decisions concerning his case". (Effective 1 July 2009, the management evaluation procedure replaced the process of administrative review, which the Applicant underwent in February–April 2008.) The Applicant stated in his request for management evaluation that no mode of settlement of his dispute had been provided to him. He also requested the Office of the Ombudsman "to explore ways to facilitate an informal resolution of this dispute, or, should the other party refuse mediation, to be kindly made aware of other appropriate informal mechanism existing with the Organization to settle this matter".

26. The Management Evaluation Unit replied to the Applicant's request on 27 August 2010, stating that it was not receivable because: (i) the request failed to identify the contested administrative decision; (ii) the request related to matters dating back to 2006 and was filed after the established time limits; (iii) the request was *res judicata* as the Applicant had already requested administrative review in relation to the same matters on 25 February 2008; and (iv) the management

27. On 25 November 2010, the Applicant filed his application with the Tribunal.

Applicant's submissions

28. In the course of these proceedings, the Applicant filed several submissions, which, with annexes, totaled several hundred pages. Below is a summary of the Applicant's relevant principal contentions:

a. The Administration should have investigated his case further to allow him to clear his name. The reasons for closing the case, expressed in the letter of 21 December 2006, were unlawful. Likewise, the decision to require him to be accompanied by a security escort when accessing the United Nations premises in New York was unlawful and made in violation of his rights;

b. The Under-Secretary-General for Legal Affairs in his letter of 18 June 2008 to the Permanent Representative of the Applicant's country to the United Nations stated that the Applicant would be provided with "an appropriate mode of settlement" of this dispute. However, since then the Applicant has not been offered any mode of settlement. The Applicant had his appeals against the Chief of the ALU dismissed by national courts on the ground that she enjoyed immunity from legal process by reason of her employment with the United Nations. The Dispute Tribunal is therefore the "appropriate mode of settlement" of this dispute;

c. The Applicant has a right to have his claim considered by virtue of fundamental rights protected by international law. The case law of the former United Nations Administrative Tribunal and of the International Labour Organization Administrative Tribunal ("ILOAT") suggests that international tribunals are accessible to non-staff members (see, *inter alia*, United Nations

Administrative Tribunal Judgments No. 212, *Ayah* (1976) and No. 230, *Teixeira* (1977) and ILOAT Judgment No. 122, *Chadsey* (1968)).

Respondent's submissions

29. The Respondent's principal contentions may be summarised as follows:

a. The Dispute Tribunal does not have jurisdiction to consider the present application. The General Assembly decided in resolution 63/253 (Administration of justice at the United Nations), dated 24 December 2008, which set up the new system of justice, that interns shall not have access to the Tribunal. The Applicant has produced no evidence and has raised no compelling legal argument to indicate that the Tribunal has competence to consider the issues raised in the application, which should therefore be rejected;

b. With regard to the merits of the Applicant's claims, the Respondent submits that, even if the Tribunal had jurisdiction to consider the present case, the Applicant's claims are without merit. The Administration's actions in relation to his case have been appropriate. No disciplinary measures were applied to the Applicant as he was not entitled, nor could be compelled, by virtue of his status as an intern, to be subjected to a disciplinary process;

c. As a member of the public, the Applicant is not entitled to unfettered access to the Organization's premises. Furthermore, ST/AI/309/Rev.2 authorises Security Officers to take appropriate measures to "preserve order and protect persons and property within the Headquarters area". The Department of Safety and Security found that there were reasonable concerns with respect to the Applicant, and, accordingly, the Administration decided that he could access the Organization's premises only with a security escort.

Consideration

30. As the Applicant is self-represented, the Tribunal will express its considerations and findings in sufficient detail. Before considering the Applicant's substantive claims, the Tribunal must ascertain whether it is competent to hear and pass judgment on the present application (*O'Neill* UNDT/2010/203, *Comerford-Verzuu* UNDT/2011/005, *Kunanayakam* UNDT/2011/006). Should the Tribunal determine that it has jurisdiction over this case, it will be required to examine whether this case is receivable, as other obstacles to the receivability of the present case may exist, such as non-compliance with the relevant time limits. Provided the Tribunal considers that it has jurisdiction over this case and that it is receivable, the Tribunal would then turn to substantive issues, which, in this case, include the following two: (i) whether the Administration acted lawfully when it decided not to pursue a disciplinary case against the Applicant, and (ii) whether the Administration acted lawfully when it took the decision to require him to be accompanied by a security escort when accessing the United Nations premises in New York.

31. Articles 2.1 and 3.1 of the Dispute Tribunal's Statute provide that the Tribunal is competent to hear and pass judgment on an application filed by any current or former staff member of the United Nations, or any person making claims in the name of an incapacitated or deceased staff member.

32. The General Assembly decided in its resolution 63/253, by which it adopted the statutes of the Dispute Tribunal and of the United Nations Appeals Tribunal, that "interns, type II gratis personnel and volunteers (other than United Nations Volunteers) shall have the possibility of requesting an appropriate management evaluation but shall not have access to the United Nations Dispute Tribunal or the United Nations Appeals Tribunal" (see para. 7 of the resolution). Therefore, there are limitations on the Tribunal's jurisdiction. (It may be useful at this juncture to note that the categories of gratis personnel and the history of their association with the Organization are explained in A/51/688 (Report of the Secretary-General entitled

"Gratis personnel provided by Governments and other entities"). In brief, interns belong to type I gratis personnel, which also include associate experts and technical cooperation experts on non-reimbursable loans. See pp. 6–8 of A/51/688; ST/AI/2000/9 (United Nations internship programme); and A/65/350/Add.1 (Addendum to the Report of the Secretary-General entitled "Composition of the Secretariat: gratis personnel, retirees and consultants"). Also, see sec. 4.1 of ST/AI/2000/9, which provides that interns are "not staff members".)

33. A number of recent judgments of the Dispute and Appeals Tribunals have dealt with claims brought by persons other than staff members, including consultants and interns, affirming the limitations on the Dispute Tribunal's jurisdiction. In *Megerditchian* 2010-UNAT-088, the Appeals Tribunal confirmed that appeals against decisions pertaining to non-staff member contracts are outside the jurisdiction of the Dispute Tribunal (see also *Gabaldon* 2011-UNAT-120).

34. In *Basenko* 2011-UNAT-139, the Appeals Tribunal affirmed the judgment of the Dispute Tribunal in *Basenko* UNDT/2010/145, which concerned a former intern to whom a further offer of internship had been made and subsequently withdrawn. Both Tribunals found that, while interns have the possibility of requesting an appropriate management evaluation, they do not have access to the Dispute Tribunal. Ms. Basenko's claim to have the right to appear before the Tribunal by virtue of the provisions of the Charter of the United Nations was also rejected.

35. In *Roberts* UNDT/2010/142, the Tribunal determined that a claim of Ms. Roberts, who worked under a "Personnel Service Agreement" (i.e., consultancy or individual contractor agreement), was not receivable. The Tribunal found that it was not disputed that Ms. Roberts never acquired the status of a staff member. The Tribunal stated that, pursuant to arts. 2.1 and 3.1 of its Statute, the status of staff member was a necessary condition for access to the Tribunal and that this was in line with General Assembly resolution 63/253, which intentionally limited the Tribunal's jurisdiction.

36. Further, in *Ndjadi* UNDT/2011/007, the Tribunal found that Ms. Ndjadi was recruited under a service contract (i.e., consultancy or individual contractor agreement) and was not a staff member, and, therefore that the case was outside its jurisdiction. Similarly, in *Mialeshka* UNDT/2011/055, the Tribunal found that Mr. Mialeshka was neither a staff member nor a former staff member within the meaning of art. 3.1 of the Statute, and, accordingly, did not have access to the Tribunal.

37. The Applicant referred the Tribunal to several cases of the former United Nations Administrative Tribunal and the ILOAT, suggesting that they support his position that the Dispute Tribunal has jurisdiction over his case. The Tribunal is not persuaded by this submission. Firstly, although the authorities cited by the Applicant may be persuasive, they are not binding on the Dispute Tribunal. Secondly, the statutory provisions regarding the jurisdiction of those Tribunals are dissimilar. In particular, art. II of the ILOAT Statute provides that it is open to an official or "any other person" who can show that he is entitled to some right under the provisions of staff regulations on which he could rely, there being no such corresponding provision in the Dispute Tribunal's Statute. Thirdly, as explained below, these cases do not support the Applicant's position.

38. Judgment No. 230, *Teixeira* (1977) of the former United Nations Administrative Tribunal concerned an applicant who had served for 10 years on 25 successive special service contracts (i.e., individual contractor agreements). Mr. Teixeira claimed that the nature of his paid work "actually gave him the outward marks of a staff member … to such an extent that the Administration several times sought to regularize the situation by trying to incorporate [Mr. Teixeira] into the regular staff". Mr. Teixeira's main plea was that he had become a staff member and that the former United Nations Administrative Tribunal had jurisdiction to pass judgment on his application. Mr. Teixeira sought the Administrative Tribunal to either consider his case on the merits or to order the Respondent to establish arbitration machinery to hear his complaint, which pertained to his employment

conditions. The United Nations Administrative Tribunal found that it was competent to consider Mr. Teixeira's case and allowed him to, *inter alia*, file pleas dealing with the merits of the case. *Teixeira* is distinguishable from the present case. The Administrative Tribunal's finding was mainly based on its findings regarding the nature and duration of Mr. Teixeira's employment with the Organization and, also, on the language of art. 2.2(b) of the Administrative Tribunal's Statute, which permitted it to adjudicate disputes involving, in addition to staff members, "any other person who can show that he or she is entitled to rights under any contract or terms of appointment, including the provisions of staff regulations and rules upon which the staff member could have relied". In the present case, however, during the relevant time period, which lasted less than three months, the Applicant was an intern and, indeed, it is not argued or even arguable that he acquired the status of a staff member.

39. The Applicant also relies on the United Nations Administrative Tribunal Judgment No. 212, *Ayah* (1976). However, the Administrative Tribunal concluded in *Ayah* that it was not competent to consider Mr. Ayah's claim that he had been promised an internship. The Administrative Tribunal found that Mr. Ayah was neither a staff member nor a person who was "entitled to rights under any contract or terms of appointment ... upon which the staff member could have relied".

40. ILOAT Judgment No. 122, *Chadsey* (1968) concerned the decision of the World Postal Union not to offer Mr. Chadsey a permanent position and to terminate his temporary employment. Mr. Chadsey was a staff member of the World Postal Union, not an intern, and was on a temporary contract. One of the issues in that case was whether Mr. Chadsey was entitled to the protections of the staff regulations under the terms of his employment. The ILOAT made a general pronouncement that employees of international organizations are "entitled in the event of a dispute with [their] employer to the safeguard of some appeals procedure". Although the Dispute Tribunal agrees with this general pronouncement, it is of no assistance to the Applicant. Unlike Mr. Chadsey, who was a staff member of an international organization and therefore had access to the ILOAT, the Applicant in the present case

is a former intern. In this regard, the Tribunal notes that no disciplinary charges or proceedings were initiated against the Applicant—in fact, it is a fundamental part of his case that the matter should not have been closed due to the lack of "disciplinary jurisdiction".

41. The Tribunal notes that by letter of 18 June 2008, sent by the Under-Secretary-General for Legal Affairs to the Permanent Representative of the Applicant's country to the United Nations, the Organization appears to have made an undertaking to provide the Applicant with "an appropriate mode of settlement" of his dispute. However, due to the existing jurisdictional limitations, the Tribunal is not competent to consider this application, which stands to be dismissed without consideration of its merits.

Observations

42. At this juncture, it is appropriate to make some general observations in relation to the legal status of interns and with regard to disputes that may arise between them and the Organization.

43. The administrative instruction on the United Nations internship programme (ST/AI/2000/9), promulgated "for the purpose of establishing conditions and procedures for the selection and engagement of interns", explains in sec. 1 that the purpose of the internship programme is threefold:

> (a) to provide a framework by which graduate and postgraduate students from diverse academic backgrounds may be assigned to United Nations offices, where their educational experience can be enhanced through practical work assignments; (b) to expose them to the work of the United Nations; and (c) to provide United Nations offices with the assistance of qualified students specialized in various professional fields.

44. The institution of internship is beneficial for both the Organization and young professionals. The relationship between the Organization and an intern being a contractual relationship, both parties exchange something of value: interns provide

their services to the Organization, and, in exchange, the Organization provides them with experience, training, and knowledge. Internship contracts—although different from the Organization's contracts with its staff members—are contracts nevertheless, and they impose certain obligations on both parties and give them certain rights, albeit they differ from the rights and obligations of staff members (one of the many differences being lack of access by interns to the Dispute and Appeals Tribunals). Interns are required to comply with certain standards of conduct imposed on them by the Organization (see ST/AI/2000/9), and they have, *inter alia*, the right to be protected and to file complaints against discrimination, harassment, and abuse of authority. (See sec. 2 of ST/SGB/2005/21 (Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigation) and sec. 2.4 of ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority).)

45. It is quite natural that disputes may arise in the course of an internship, which is expressly acknowledged by para. 7 of General Assembly resolution 63/253, which states that interns "shall have the possibility of requesting an appropriate management evaluation". But management evaluation is only the Administration's own mechanism for internal review and correction of contested administrative decisions (*Omondi* UNDT/2011/020, *Obdeijn* UNDT/2011/032) and, by definition, is not a formal mechanism for the settlement of disputes. Not all matters can be resolved through management evaluation. It is unclear to the Tribunal whether, at the present time, there is an established and effective mechanism for addressing formal disputes brought forward by interns, particularly those claims that cannot be settled, for one reason or another, through management evaluation.

46. Where rights and obligations attach, there must be an effective mechanism for resolution of disputes and for reparation of breached rights through appropriate remedies (see *Gabaldon* 2011-UNAT-120 and *Bertucci* 2011-UNAT-121, referring to "the right to an effective remedy"). The Tribunal notes, in this regard, the Universal Declaration of Human Rights, which refers to "the right to an effective

remedy" and states that "[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial Tribunal, in the determination of his rights and obligations …" (see arts. 8 and 10), as well as the International Covenant on Civil and Political Rights (1966), which refers to access to "an effective remedy" (art. 2.3(a)), encourages the development of "the possibilities of judicial remedy" (art. 2.3(b)), and provides that "[i]n the determination … of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law" (art. 14.1).

47. The General Assembly, in para. 9 of resolution 64/233 (Administration of justice at the United Nations), dated 22 December 2009, requested the Secretary-General, with respect to remedies available to different categories of non-staff personnel, to analyse and compare the advantages and disadvantages of several options, including granting non-staff personnel access to the Dispute Tribunal and the Appeals Tribunal. On 16 September 2010, the Secretary-General provided a report to the General Assembly on the Administration of justice at the United Nations, discussing recourse mechanisms for non-staff personnel (see A/65/373, Report of the Secretary-General entitled "Administration of justice at the United Nations", paras. 165–191).

48. The Tribunal notes, however, that A/65/373 focuses, in large part, on consultants and individual contractors, and not interns. Although Annex IV to A/65/373, entitled "Contracts and rules governing relationships between the United Nations and the various categories of non-staff personnel", contains examples of contractual clauses regulating settlement of disputes, the examples provided are for consultancy and individual contractor agreements, and not internship agreements. The standard conditions regulating internships, set out in the Annex to ST/AI/2000/9, do not include any dispute resolution provisions, and it is unclear to the Tribunal whether the current legal framework in the Organization contains an effective dispute resolution mechanism for interns. No doubt, proper attention should be given to this issue.

Conclusion

49. The Dispute Tribunal does not have jurisdiction to consider the present application, which is therefore dismissed without consideration of its merits.

(*Signed*)

Judge Ebrahim-Carstens

Dated this 26th day of September 2011

Entered in the Register on this 26th day of September 2011

(*Signed*)

Santiago Villalpando, Registrar, New York