UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2012/037
Judgment No.: UNDT/2012/077
Date: 30 May 2012
Original: English

Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

ADUNDO *et al.*

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON INTERIM MEASURES UNDER ART. 10.2 OF THE STATUTE

Counsel for Applicant:
Lennox S. Hinds
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Counsel for Respondent:
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Introduction

1. On 17 May 2012, the Applicants, a group of 25 Security Officers serving at the S-1 and S-2 level in the Security and Safety Service ("SSS"), Department of Safety and Security ("DSS"), United Nations Secretariat, filed an application on the merits under art. 2.1 of the Dispute Tribunal's Statute, contesting the decision "to reduce the number of staff within SSS by subjecting all security officers recruited since November 2008 to an identical elimination process regardless of a security officer's appointment status or conditions of employment". The Applicants submit that the first step in the "elimination process" will take place on 2 June 2012, and the process is expected to be completed by mid-July 2012.

2. On 21 May 2012, the Applicants also filed a motion for interim measures under art. 10.2 of the Tribunal's Statute, seeking suspension of the implementation of the contested decision mentioned above. This application is considered in the present Judgment.

3. On 22 May 2012, the Registry transmitted the motion to the Respondent. The Respondent was informed that his reply to the motion for interim measures was due by 5 p.m., Friday, 25 May 2012. The Respondent's reply to the motion was duly filed.

4. Having reviewed the parties' submissions, and given the time limitations imposed by art. 14.3 of the Rules of Procedure, the Tribunal has determined that it has sufficient information before it to decide the present motion on the papers before it without a hearing.

5. It should be highlighted that the application filed by the Applicants is not a class action, which are not covered by the Tribunal's Statute. Each of the 25 Applicants requested management evaluation and filed a joint application on the merits with the Tribunal. Each Applicant also provided the Tribunal with copies of legal authorization for their Counsel. The Tribunal accepts that the Applicants make

identical claims and share common issues of law and fact. The Respondent not making any objections to the filing of a joint application, the Tribunal found it appropriate to dispose of the application for suspension of action in a single judgment.

Background

6. The following factual information is based on the parties' written submissions and documents included in the case record.

7. The Applicants were recruited as Security Officers in or around 2008 and their appointments were subsequently extended. The contracts of 19 of the Applicants expire in August 2012. The contracts of the remaining six Applicants expire in November 2012.

8. The Applicants allege that, when initially recruited, they were not informed of any special conditions or specific budgetary constraints attached to their appointment, including that their contract extensions were contingent upon the availability of funds related to the Capital Master Plan ("CMP"), which is a large-scale renovation of the United Nations Headquarters Complex in New York. The Applicants submit that, in contrast, Security Officers hired in 2010 and 2011 were informed at the time of their recruitment that they were recruited for the CMP project and that their employment was conditional upon the availability of funding related to that project. The Applicants submit that, while all of them were offered fixed-term appointments, those Security Officers that joined the Organization in 2010 and 2011 were offered either temporary or fixed-term appointments.

9. On 22 February 2012, the Chief of SSS convened the first in a series of town hall meetings held in February and March 2012 in which he allegedly informed the Security Officers present that the CMP was coming to an end and that, as a consequence, SSS would be abolishing a number of posts. The posts to be abolished would be those of 85 Security Officers allegedly recruited in connection with CMP and who joined the Organization starting November 2008.

10. The Applicants submit that the town hall meetings in February and March 2012 were the first notice they received that they had been hired under the CMP budget and that their posts were subject to abolishment upon termination of the project.

11. On 6 April 2012, an internal vacancy announcement was published in the SSS bulletin for 6–9 April 2012 for "the currently vacant regular budget posts" for Security Officers at the S-1 and S-2 level. The application deadline was set for 20 April 2012, and then later extended to 30 April 2012. The bulletin further stated:

> With reference to the recent town-hall meetings conducted by the Chief of Service and as guided by [Office of Human Resources Management ("OHRM")], all Security Officers who have been recruited since November 2008 are hereby invited to apply for the currently vacant regular budget posts for Security Officers at the S-1/S-2 level. This internal announcement will be the first in a number of steps towards establishing a post-CMF staffing table in view of the impending reduction of posts funded under the Associated Cost of the Capital Master Plan (CMP) project.
>
> All officers who joined SSS New York in or after November 2008 are strongly encouraged to apply. The assessment method will include a written test appropriate to the functions performed at S-1/S-2 level and a competency-based interview. Successful applicants will be formally placed against the regular budget posts.

12. All 25 Applicants have shown interest in being considered for vacant posts within the SSS. They have submitted their Personal History Profile and copies of their electronic performance evaluation reports to the SSS.

13. Although in March 2012 representatives from the Staff Union met with the Chief of SSS and consulted with OHRM regarding this matter, the Applicants submit that neither the Chief of SSS nor OHRM properly consulted with staff representatives prior to posting the vacancy announcement.

14. On 9 April 2012, a group of Security Officers delivered a petition to the President of the General Assembly and to the Ombudsman in protest of the Chief's

decision. This petition was subsequently provided to, *inter alia*, the Secretary-General and senior members of the Administration.

15. On 10 April 2012, one of the Staff Representatives sent a letter to the Chief of SSS expressing her disappointment that staff had not been consulted regarding the decision to post the vacancy announcement and highlighting the deficiencies in staff consultations that had occurred in March 2012.

16. A series of meetings took place in April and May 2012 between the staff representatives, the Chief of SSS, the Office of the Ombudsman, and OHRM. However, the Applicants submit that these meetings did not amount to an effective consultation process that should have taken place.

17. On 23 April 2012, the Applicants filed a request for Management Evaluation to contest the Chief's decision.

18. The Applicants submit that, on 2 May 2012, they were informed that the written examination to fill vacancies would be held on 2 June 2012 (which is a Saturday).

19. According to the Applicants, on 8 and 10 May 2012, the Chief of SSS met with several Security Officers. The Chief of SSS allegedly stated that there were 85 so-called "CMP Officers", 24 of whom were holding regular budget posts. He further said that there will be 49 regular budget posts available after CMP, including 25 posts that will be vacant and 24 regular budget posts that are currently held. He further stated that an additional number of posts will likely become available from buyouts and retirements of senior security officers, for a total of around 60 posts. All "CMP Officers" will be allowed to compete to replace the 24 officers currently occupying these posts in addition to the 25 vacant posts.

20. The Applicants submit that the Chief of SSS stated at the meetings that the written exam was scheduled for 2 June 2012. Those who do not pass with a mark of 65% or greater will not continue the competition. Those officers who pass the test

will proceed to a panel interview. According to the Applicants, the Chief of SSS stated that the panel would subject the successful candidates to competency assessment and then decide, based on criteria such as reliability, seniority, and gender, whether or not to place them on a roster for a regular budget post. The Chief of SSS allegedly stated that the whole process is expected to be completed by mid-July. The time-line for downsizing "CMP Officers" will then go in phases with graduated discharge beginning at the end 2012 until its completion in 2014. According to the Applicants, the Chief of SSS also stated that the Organization made the decision to hire officers for the CMP in 2007, and that the basis on which the 2008–2009 class of officers was hired was to fill CMP posts. He stated that the Advisory Committee on Administrative and Budgetary Questions only approved about 50 posts initially. However, since there was a need for more CMP officers, SSS recruited additional officers in 2010 and 2011.

21. On 9 May 2012, the Management Evaluation Unit responded to the Applicants' request for review, stating that the request was non-receivable due to the fact that no final administrative decision had been taken that could be the subject of review.

Applicants' submissions

22. The Applicants' principal contentions may be summarised as follows:

Receivability

a. The decision to post the vacancy announcement was a final decision that delineated the pool of officers who would be required to participate in the downsizing exercise in order to have the possibility of post-CMP employment. It is therefore a contestable administrative decision. The Applicants are not contesting an interlocutory decision to allow them to move forward through a process. Rather, the Applicants are challenging the

scope of the restructuring and the requirement that they be subject to an "elimination process" in its current form, which is arbitrary and capricious;

Prima facie *unlawfulness*

b. The reasons provided for the contested decision—i.e., that a group of officers were hired in connection with CMP and that funding for CMP posts will soon be cut due to completion of the CMP project—is not supported by the facts. The Chief of SSS has admitted on several occasions that 24 of 85 "CMP Officers" hold regular budget posts. It follows that lack of CMP funding will not affect their employment with the Organization since the Organization does not rely on that source of funding to pay their salaries;

c. The Organization is acting in breach of its obligation of good faith and fair dealing. Until February 2012, unlike the Security Officers hired in 2010 and 2011, the Applicants were not informed of any special conditions or specific budgetary constraints and were not made aware that their contract extensions were contingent upon the availability of temporary funds;

d. The Organization acted in breach of its obligation to effectively consult with staff;

Particular urgency

e. The urgency has not been created by the Applicants. The restructuring is moving at an accelerated pace and will be completed well before a decision on the merits is made in this case;

Irreparable damage

f. Although the Applicants' employment will not end immediately, if they are not selected for a vacant post in the next six weeks, they are suffering and will continue to suffer significant psychological distress due to the anxiety produced by the arbitrary nature and scope of the downsizing and

having to suffer from the continued violation of their rights. Furthermore, the Applicants' right to be effectively consulted on conditions affecting their welfare is a fundamental procedural and employment right that has been ignored in this case. This harm caused to the Applicants is irreparable.

Respondent's submissions

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

Receivability

a. The Applicants are not contesting an administrative decision within the meaning of the Statute. The invitation to staff to participate in a comparative assessment is a preparatory step within the overall process of determining, on a fair and objective basis, which staff will be renewed following the funding cuts. The Administration' approach does not affect the Applicants' current terms of appointment. It is a preparatory step in light of pending decisions on renewal. Preparatory steps are intermediary in nature and are not subject to appeal;

b. The Administration has sought to ensure a fair and transparent comparative assessment process for all staff concerned to ensure that they have an opportunity to be considered for renewal against remaining posts. The bulletin for 6–9 April 2012 is not an administrative decision within the meaning of art. 2.1 of the Statute. Instead, it is an invitation to staff members who wish to be considered for vacant posts to participate in the exercise aimed at obtaining objective comparative information on the relative suitability of affected staff members for renewal against the remaining posts. It is not a decision on renewal or non-renewal, and it is not a decision on selection or non-selection. It is the start of a process that will inform future decisions on the renewal or non-renewal of the affected staff members;

c. Pursuant to art. 10.2 of the Tribunal's Statute, the Tribunal does not have jurisdiction to suspend decisions concerning appointment or non-renewal of staff members. In so far as the order the Applicants seek impacts on future appointment or renewal decisions, the relief sought cannot be granted;

Prima facie *unlawfulness*

d. The decision is not *prima facie* unlawful. The Applicants, in effect, seek suspension of the implementation of SSS's post-CMP staff restructuring plan. The Applicants' appointments will not be terminated, they will run their full term. Approaching the expiry of their appointment, the Administration must make a decision on whether their appointments will be renewed, and if so, for what period. This decision not only concerns each individual Applicant, but also concerns the other 60 Security Officers hired in connection with CMP who also will be competing for the vacant posts. In light of the cutbacks, all 85 affected Security Officers must be given an equal opportunity to demonstrate their relative suitability for renewal against the available posts. It is for this reason that it is essential that the comparative selection exercise proceed. If it does not proceed, the Administration will have significantly less information upon which to make its renewal decisions;

e. No representation was made to the Applicants that their appointments would be for any longer than the period of their contracts. There is no basis for them to claim any legitimate expectation for renewal;

f. The Applicants' allegations as to whether or not they were recruited against the regular budget posts are untenable and also irrelevant. The Applicants were recruited between 2008 and 2010 against 25 of the 61 posts approved for the CMP project. The decision to restructure SSS is supported by the facts. As such, the CMP-related cutbacks demand a reduction from 85 to 49 positions. The funding of the posts encumbered by the Applicants will no longer be available;

g. In anticipation of the funding cutbacks, the Administration has engaged in consultations with staff representatives and the affected Security Officers. The Chief of SSS has met 58 of the 85 Security Officers recruited since November 2008. He has been available to meet with all staff who have any queries related to the process. SSS also responded to questions and provided clarifications on the comparative selection exercise. Additionally, SSS held several meetings with staff representatives in March–May 2012, to discuss the pending downsizing, the criteria for the comparative selection process, and to receive their input, which was included in the criteria. The same was discussed with the Office of the Ombudsman;

h. SSS has acted in good faith throughout this process. The lack of funding for the CMP project is beyond the Administration's control. In these circumstances, the Administration has exercised its discretion lawfully and responsibly, putting in place a methodology for the fair, objective, and transparent assessment of the relative suitability of the staff members competing for the vacant posts. The comparative selection process set up in this case is a points-based procedure that includes: (1) a written test; (2) competency-based interviews; (3) a comparative review; and (4) gender balance review. Factors to be considered during the comparative review include performance appraisals, reliability, seniority, contract type, and language. Following the comparative selection process a roster will be established and the contracts of the 49 most suitable Security Officers will be renewed. This is not a process of termination or "elimination". It is a fair and transparent process whereby all 85 Security Officers are given equal opportunity to have their suitability assessed on a comparative basis and to compete for the limited posts available. Without this process, the Administration will be left with significantly less information and objective criteria upon which to ensure fairness for all concerned;

Particular urgency

i. There is no urgency in this case. Participation in the process has no impact on the Applicants' terms of appointment. Should the process be suspended, the Administration will have less information by which to assess the relative suitability of those staff members in consideration for the remaining posts. Decisions on renewal will need to be made by the Administration as early as July 2012. The Administration is relying on the process proceeding in order that these decisions may be made on the best available information;

Irreparable damage

j. There is no irreparable harm. There has been no decision taken impacting on the Applicants' terms of appointment. The Administration has merely sought to put in place a fair process for all staff members affected by the cutbacks. The Applicants have not produced any evidence of moral injury, and, in any event, any claim for moral injury may be compensated monetarily.

Consideration

Motions for interim measures

24. A motion filed under art. 10.2 of the Tribunal's Statute (and art. 14 of the Rules of Procedure) is, by its nature, a request for urgent interim relief pending final resolution of the matter. It is an extraordinary discretionary relief, which is generally not subject to appeal, and which requires consideration by the Judge within five days of the service of the motion on the Respondent (see art. 14.3 of the Tribunal's Rules of Procedure). Such motions disrupt the normal day-to-day business of the Tribunal. Therefore, parties approaching the Tribunal with motions for interim relief must do so on real urgency basis, with full disclosure of the facts relied on for relief and sufficient information for the Tribunal to decide the matter preferably on the papers before it. The proceedings are not meant to turn into a full hearing. The motion must

not be frivolous or an abuse of process, or else the requesting party may well be mulcted in costs.

25. Due to the nature of urgent requests, both parties and the Tribunal are under pressure of time in such situations. Currently, with only one Judge in the New York duty station, the Tribunal is seized of three suspension of action cases. The Tribunal has to deal with these matters as best as it can on a case-by-case basis, depending on the particular circumstances and facts of each case, within five working days.

26. Since the Applicants filed their motion for interim measures shortly after filing their application on the merits, the suspension proceedings must be considered under art. 10.2 of the Tribunal's Statute and art. 14 of the Rules of Procedure. Article 10.2 of the Tribunal's Statute states:

> At any time during the proceedings, the Dispute Tribunal may order an interim measure, which is without appeal, to provide temporary relief to either party, where the contested administrative decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination.

27. Pursuant to art. 10.2 of its Statute, the Tribunal may order interim relief only if it is satisfied that all three requirements of that article have been met—i.e., that the case is of particular urgency, that the implementation of the contested decision would cause irreparable damage, and that the decision appears *prima facie* to be unlawful.

Receivability

Nature of contested decision and receivability of the application

28. Having carefully considered the parties' submissions, the Tribunal finds that the administrative decision contested in this case is the decision requiring the Applicants, as a condition of future employment, to undergo an *ad hoc* competitive process regardless of their contractual status.

29. Although staff members do not have an automatic right to renewal, they have a right to a fair consideration for renewal and for a decision based on proper reasons (*Obdeijn* UNDT/2011/032, *Obdeijn* 2012-UNAT-201). For instance, a decision not to renew may be based on documented poor performance or genuine lack of funding. As explained below, there are strong indications that some of the Applicants are on regular budget posts not funded through CMP-associated funds. By being required to participate in this competitive exercise, they are deprived of the right to a fair consideration for renewal and for a decision based on proper reasons. The moment the competitive process is put in motion, the rights of these staff members are affected by that decision. Thus, to characterise the contested decision as purely preparatory would be incorrect.

30. No doubt, whatever is going to be the outcome of the selection process in its currently proposed form, it is to be used in the future for various other administrative actions. However, this does not change the fact that the decision to launch this exercise is an administrative decision. Moreover, in the Tribunal's considered view, it is a decision that is capable of being suspended.

31. The Tribunal finds that, in the particular circumstances of this case, the present motion for interim measures is receivable.

Observation regarding cases of non-renewal and art. 10.2 of the Statute

32. The Respondent referred to art. 10.2 of the Statute, which states that temporary relief ordered during the proceedings "may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination". The Respondent submitted that art. 10.2 precludes the Tribunal from suspending the implementation of the contested decision in this case because it deals with future decisions on appointment or non-renewal. According to the Respondent, non-renewal cases are a type of termination mentioned in art. 10.2.

33. The Dispute Tribunal finds that since no decisions on appointment, promotion, or termination have been made in this case, the limitation in art. 10.2 of the Statute does not apply. In fact, the Respondent concedes that this case is not about any administrative decision to appoint, promote, or terminate any staff members. It is about a decision requiring the Applicants, as a condition of future employment, to undergo an *ad hoc* competitive process regardless of their contractual status. However, the Respondent's submission regarding the application of art. 10.2 of the Statute warrants some additional observations.

34. The Respondent's submission that non-renewal is a form of termination, and is thus covered by the exclusionary provision of art. 10.2 of the Statute, is surprising since it is plainly contrary to staff rule 9.6(b), which states that "[s]eparation as a result of … expiration of appointment … shall not be regarded as a termination within the meaning of the Staff Rules". It is clear that non-renewal decisions are not covered by art. 10.2 of the Statute as they are not a form of termination.

35. The Dispute Tribunal is aware of the United Nations Appeals Tribunal's ruling in *Igbinedion* 2011-UNAT-159, in which the Appeals Tribunal appeared to indicate that cases of non-renewal may be covered by the exclusion stipulated in art. 10.2 of the Statute. In my considered and respectful view, the language of the Appeals Tribunal's Judgment suggests that the distinction between cases of non-renewal and termination (see staff rule 9.6(b)) was not brought to the attention of the Appeals Tribunal and thus evaded the attention of the Honourable Judges.

Prima facie *unlawfulness*

Introduction

36. Given the interim nature of the relief the Tribunal may grant under art. 10.2 of the Statute, an applicant must demonstrate only that the decision appears *prima facie* to be unlawful. For the *prima facie* unlawfulness test to be satisfied, it is enough for an applicant to present a fairly arguable case that the contested decision was influenced by some improper considerations, was procedurally or substantively

defective, or was contrary to the Administration's obligations to ensure that its decisions are proper and made in good faith (*Jaen* Order No. 29 (NY/2011)).

Observation on rules on selection of S-1 and S-2 level staff

37. It appears from the internal vacancy announcement that the allegedly vacant posts are at the S-1 or S-2 levels. There appear to be no rules in the Organization on how selection for S-1 and S-2 level positions is to be conducted (see sec. 3 of ST/AI/2010/3 (Staff selection system)). It is certainly an unsatisfactory state of affairs. The previous redactions of ST/AI/2010/3—ST/AI/2002/4 and ST/AI/2006/3—stated that "[a] separate administrative instruction will be issued for the recruitment and promotion of staff up to the G-4, S-2 and TC-3 levels" (see footnote (c) on page 5 of ST/AI/2002/4 and footnote 11 on page 5 of ST/AI/2006/3). This reference is notably absent in ST/AI/2010/3, and apparently no administrative instruction has been promulgated regarding the selection of staff up to the G-4, S-2 and TC-3 levels despite the lapse of several years. The present dispute would likely be avoided had the Administration promulgated such an administrative instruction.

Findings on *prima facie* unlawfulness

38. It appears to be common cause that there are 85 Security Officers that are affected by the anticipated winding down of CMP. These 85 Security Officers were hired in the period of 2008 to 2011. The Applicants submit—and this appears to be supported by the documents—that those hired in 2008 and 2009 were not informed of their funding being connected to the CMP, whereas those hired in 2010 and 2011 were informed of it when they were recruited. The Applicants in this case belong to the first group of Security Officers who were not informed of the funding arrangements, although it is unclear whether that group of Security Officers consists solely of the 25 Applicants.

39. Of the 85 Security Officers that appear to be affected by the proposed exercise, 24 Security Officers are on regular budget posts, and 61 Security Officers are allegedly on CMP-funded posts. The Tribunal is not satisfied that there is

certainty as to which of the affected Security Officers encumber these 24 regular budget post.

40. The Respondent submits that, at some point in time—it is unclear when—there will remain only 49 available posts for the group of 85 affected Security Officers. These 49 posts will consist of (i) 24 regular budget posts and (ii) 25 of 61 remaining posts that are currently held by the 85 affected Security Officers.

41. Positions in the Organization may be funded through different means, such as regular budget and extra-budgetary funds, such as CMP-associated funds. Annex I to the Eighth annual progress report on the implementation of the CMP (A/65/511/Add.1), dated 21 October 2011, states (emphasis added):

> The Department of Safety and Security conducted an internal operational effectiveness review in November 2009, which resulted in the consolidation of certain functions, closure of some posts, reduction in coverage of other posts, and reduction in staffing of certain specialized units. *This action enabled the Department to redeploy approximately 20 officers from positions funded under the regular budget to cover functions related to the [CMP]*. In addition, another 9 officers are utilized from support units on a day-to-day basis. These supplement the approved 50 security officers under capital master plan to make a total of 79 officers.

42. The Applicants submit, in effect, that they are on regular budget posts, and even if they were not, they ought to be as they were hired earlier than other Security Officers concerned. The Respondent appears to submit that none of the Applicants belong to the group of 24 staff members on regular budget posts. However, no evidence to substantiate this has been provided by the Respondent. The documents provided by the Applicants, including their contracts of employment, indicate that the opposite of what is submitted by the Respondent may be true—that either they are actually considered to be on regular budget posts or, if they are not, a plausible case can be made that they should be.

43. Since these 24 regular budget posts are not dependent on CMP funds but on the regular budget, these posts cannot be included in the pool of posts advertised as

vacant. It is an important question as it arguably concerns some of the Applicants' posts (whether or not they are, in fact, encumbering those regular budget posts is yet to be determined—at this stage, it can only be said that it is likely that they are and that there is no evidence that they are not). The future of the 24 staff members on regular budget posts should be determined based on their performance as recorded in their performance evaluation reports. Accordingly, it would appear that the rest of the apparently affected staff members—61 Security Officers on CMP-funded posts facing a decrease to 25 posts—should be considered for renewal or non-renewal based either on their performance or on the budgetary guidance from the General Assembly depending on which posts are being discontinued.

44. As there are allegedly going to be 49 available posts, it appears that this selection exercise will eventually lead to the non-renewal of the appointments of at least 36 of the 85 affected Security Officers. For the affected Security Officers, it is unclear whether they will be considered for renewals of their current appointments or for new appointments. If it is to be done by way of new appointments, it is unclear why those Security Officers who already occupy regular budget posts will have to compete for the posts that they properly encumber instead of being considered for renewal based on their performance. If it is to be done by way of renewal, it is unclear on what basis a decision on renewal will be made on some *ad hoc* competitive process rather than the established evaluation procedures (see, e.g., ST/AI/2010/5 (Performance Management and Development System)). The proposed competitive process has the effect of substituting the standard performance review as it requires staff members, as a first mandatory step, to undergo a written test, followed by a competency-based interview. It also envisages that performance evaluations would be considered only as an "additional evaluation factor" for those who passed the written test.

45. Thus, there are significant doubts whether the reason for the proposed exercise is *bona fide* as it appears unsupported by the facts. If this exercise were due to the CMP budget limitations, then the 24 regular budget posts would not be included in the list of posts open for vacancies. Furthermore, the existence of an

actual restructuring plan, as submitted by the Respondent, is doubtful. No evidence of the existence of an actual restructuring plan has been provided. The only remotely relevant record provided to the Tribunal is an undated document "Basic information on evaluation criteria for the Security Officer selection process", which generally explains the proposed assessment process. However, the status and the authorship of this document have not been explained to the Tribunal. Further, the internal vacancy announcement issued in April 2012 does not indicate how many posts are being advertised. In addition, although the Respondent submits that the funding for the Applicants' posts will no longer be available, he does not state when exactly such funding will cease—in fact, it appears that CMP-related funding may be available at least until 2013 (see Report of the Secretary-General, "Associated costs related to the capital master plan", A/63/582 (3 December 2008), providing estimated costs for 2008–2013). It is unclear on what basis the Respondent submits that "cutbacks demand a reduction from 85 Security Officer positions to 49 Security Officer positions". The sole document proffered in support of this proposition—A/63/582—does not appear to contain this information. Thus, in view of the factors above, substantial doubts exist with the lawfulness of the proposed exercise.

46. If this were a *bona fide* restructuring exercise, the Respondent has wide, but not unfettered, discretion in its implementation and the Tribunal would not readily intervene in such an exercise. However, the circumstances in this case are exceptional. Whilst the Administration has to take into account operational requirements and the need for the efficient operation of the Organization in a restructuring exercise, it must also establish fair and reasonable procedures, including fair and objective criteria. The Tribunal has already expressed its disquiet with the rationale for and method of implementation and consequences of the proposed exercise. Furthermore, the Tribunal finds that by fudging the selection criteria for retrenchment and those for future employment, the Organization appears to lay the basis for grounds for non-renewal. Therefore, as explained above, the course of conduct chosen by the Administration appears to negatively affect the Applicant's rights under their terms of employment and thus appears *prima facie* to be unlawful.

47. In the circumstances of this case and on what is presently before it, the Tribunal is bound to conclude that the contested decision appears *prima facie* to be unlawful.

Particular urgency

48. Urgency is relative and each case will turn on its own facts, given the exceptional and extraordinary nature of such relief. The Dispute Tribunal has stated in a number of rulings that the requirement of particular urgency will not be satisfied if the urgency was created or caused by the party seeking interim relief (see, e.g., *Villamoran* UNDT/2011/126 and *Dougherty* UNDT/2011/133).

49. The written examination to eliminate the first round of officers to be considered for vacant posts will be held on 2 June 2012, and the selection process is expected to be completed by mid-July. On the Respondent's own submissions, decisions on renewal on the basis of this exercise will need to be made by the Administration as early as July 2012.

50. The written examination date was only set and announced three weeks ago, on 2 May 2012. On 9 May 2012, the Applicants received a response to their management evaluation request. One week later, on 17 May 2012, they filed their application on the merits, and two working days later filed the present motion. The facts of the case demonstrate that the Applicants pursued all avenues of redress available to them throughout the course of this dispute.

51. The Tribunal is satisfied on the facts that the urgency requirement has been met.

Irreparable damage

52. One of the requirements for a successful application for interim relief is that the applicant must satisfy the Tribunal that the implementation of the decision would result in irreparable harm.

53. It is generally accepted that mere economic loss only is not enough to satisfy the requirement of irreparable damage. Depending on the circumstances of the case, harm to professional reputation and career prospects, harm to health, or sudden loss of employment may constitute irreparable damage.

54. In each case, the Tribunal has to look at the particular factual circumstances. The Tribunal finds, in this case, that allowing the proposed exercise to proceed in its current form when its lawfulness is highly questionable would have such a detrimental effect on the Applicants' contractual situations as to warrant a finding of irreparable harm. Therefore, in view of the circumstances in this case, the Tribunal finds that the implementation of the contested decision would cause the Applicants irreparable damage.

Conclusion

55. The three conditions for granting of an interim measure under art. 10.2 of the Tribunal's Statute have been met. In view of the Tribunal's finding that all three requirements of art. 10.2 of the Tribunal's Statute are satisfied, the Tribunal will order that the decision to require the Applicants, as condition of their future employment, to undergo an arbitrary elimination process be suspended until the case is determined on the merits.

56. The Tribunal gave serious consideration to the issue of the duration of the suspension and finds that, on the information before it, the exercise in its present form cannot continue and the suspension on the exercise in its current parameters will remain in place until this case is disposed of on the merits. There is obviously a need to have some form of resolution of the situation in SSS, and the present judgment should not be interpreted otherwise. Whatever process is going to be eventually applied, even in the absence of a properly promulgated administrative issuance, such process must be conducted in compliance with the basic standards of fairness and reasonableness and it must be properly documented.

Order

57. The decision requiring the Applicants to undergo a competitive process announced in the SSS bulletin for 6–9 April 2012 being found *prima facie* unlawful, the Tribunal orders suspension of the implementation of the decision to carry out the said competitive process until the present case is disposed of on the merits.

(*Signed*)

Judge Ebrahim-Carstens

Dated this 30th day of May 2012

Entered in the Register on this 30th day of May 2012

(*Signed*)

Hafida Lahiouel, Registrar, New York