



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2025/023

Order No.: 44 (GVA/2025)

Date: 30 April 2025

Original: English

Before: Judge Sean Wallace, President

Registry: Geneva

Registrar: Liliana López Bello

TURCANU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**PRESIDENT'S ORDER
ON MOTION FOR RECUSAL**

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alister Cumming, UNICEF

Rosangela Adamo, UNICEF

Introduction

1. By motion dated 29 April 2025, the Applicant requested the Judge President of the Dispute Tribunal to order that the Dispute Tribunal Judge assigned to the Case No. UNDT/GVA/2025/023, namely Judge Sun, be recused from adjudicating it.

2. In support, the Applicant submits that, because Judge Sun has adjudicated in judgment UNDT/2024/112, a previous case of his (Case No. UNDT/GVA/2023/057) whose facts overlap and are deeply connected to the ones under dispute in Case No. UNDT/GVA/2025/023, Judge Sun has a conflict of interest that should warrant his recusal.

3. Pursuant to art. 28 of the Tribunal's Rules of Procedure ("RoP"), the Judge President sought comments from Judge Sun regarding the motion for recusal. Judge Sun provided his response by email dated 29 April 2025 to the Judge President. Judge Sun denies having any conflict of interest.

Consideration

The legal framework for requesting a recusal of a Dispute Tribunal Judge

4. Art. 28.2 of the Tribunal's RoP sets out the procedure by which an applicant can request the recusal of a Judge assigned to her/his case(s):

A party may make a reasoned request for the recusal of a judge on the grounds of a conflict of interest to the President of the Dispute Tribunal, who, after seeking comments from the judge, shall decide on the request and shall inform the party of the decision in writing. A request for recusal of the President shall be referred to a three judge panel for decision.

5. The Code of Conduct for the Judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal ("Code of Conduct") provides in its sec. 2 on impartiality that:

(c) Judges must recuse themselves from a case if:

(i) They have a conflict of interest;

(ii) It may reasonably appear to a properly informed person that they have a conflict of interest;

(iii) They have personal knowledge of disputed evidentiary facts concerning the proceedings[.]

6. The notion of “conflict of interest” is defined in art. 27.1 of the Tribunal’s Rules of Procedure as “any factor that may impair or reasonably give the appearance of impairing the ability of a judge to independently and impartially adjudicate a case assigned to him or her”.

7. Under art. 27.2 of the RoP, such a conflict of interest arises where a case assigned to a Judge involves any of the following:

a. A person with whom the Judge has a personal, familiar or professional relationship;

b. A matter in which the Judge has previously served in another capacity, including as an adviser, counsel, expert or witness;

c. Any other circumstances that would make it appear to a reasonable and impartial observer that the judge’s participation in the adjudication of the matter would be inappropriate.

8. With respect to conflict of interest, the Code of Conduct further provides in its sec. 1(a) that, “Judges must uphold the independence and integrity of the internal justice system of the United Nations and must act independently in the performance of their duties, free of any inappropriate influences, inducements, pressures or threats from any party or quarter”.

The motion for recusal

9. The Applicant specifically argues that Judge Sun should be recused from Case No. UNDT/GVA/2025/23 because he was involved in “factual findings concerning [the Applicant’s] professional conduct and interactions with supervisors now implicated in the current matter”, and “a broad endorsement of management’s actions concerning abusive performance management, harassment, and retaliation allegations that are central to [the Applicant’s] current claims”.

10. The Applicant further submits that, having already formed judicial conclusions on the pivotal matters aforementioned, it would be difficult for a

reasonable person to believe that Judge Sun can now adjudicate the present case with “fresh neutrality”. The appearance of partiality comes from the language, findings and overall acceptance of the Administration’s narrative found in Judgment UNDT/2024/112. The Applicant further asserts that adjudication of the present matter by the same Judge undermines his fundamental right to a fair and impartial hearing.

11. In the Judge President’s view, the Applicant has not supported any allegation of an actual conflict of interest, as defined in the legal framework above. The claim that Judge Sun’s previous ruling in another case of the Applicant would give the appearance of impairing the Judge’s ability to independently and impartially adjudicate the instant case lacks merit.

12. The ruling of Judge Sun in UNDT/2024/112 was based on adjudicative knowledge from the case record and not on any personal knowledge (*see*, Code of Conduct, para. 2(c); *Toson*, 2021-UNAT-1161, paras. 43-44; *Pascal* 2024-UNAT-1428, para.78; and *Toson* 2021-UNAT-1159, para. 35).

13. It bears reminding that judicial impartiality means a judge must be unbiased and fair to all parties involved in a case, ensuring decisions are based solely on objective criteria such as facts, evidence, legal principles, and the law. It does not mean that a judge cannot have ruled on similar cases and/or situations before. Such a broad interpretation would weaken the entire justice system and prevent judges from ever deciding on cases of a similar background.

14. In this connection, it further bears clarifying the meaning and purpose of art. 27.2 of the Tribunal’s RoP that the Applicant invoked to support his cause.

15. Contrary to the Applicant’s assertion, art. 27.2(b) does not mandate disqualification of a judge if said judge has previously dealt with the matter in “any capacity”. Instead, it provides that a conflict of interest arises, *inter alia*, when a case assigned to a judge involves “a matter in which the judge has previously served in another capacity, including as an adviser, counsel, expert or witness”. The key factor being “served in another capacity”.

16. Judge Sun has not *served* in *another* capacity in the matters related to the present case. He has served as a Judge in a previous case of the Applicant whose subject touches upon the one under dispute in Case No. UNDT/GVA/2025/023. That is not the situation that art. 27.2(b) aims to protect from a conflict of interest.

17. It is further noted that, in his submission, the Applicant has not stated or alluded to any personal, familiar or professional interests of Judge Sun that would impair his ability to adjudicate Case No. UNDT/GVA/2025/023 with the judicial impartiality expected of any judge.

18. Instead, the Applicant's contentions are limited to the Judge's previous ruling in UNDT/2024/112 which, as provided above, does not rise to a conflict of interest.

19. Accordingly, under arts. 27 and 28 of the Tribunal's RoP, the assignment of Case No. UNDT/GVA/2025/023 to Judge Sun does not point to any circumstance that would make it appear to a reasonable and impartial observer that Judge Sun's participation in the adjudication of the matters therein would be inappropriate.

Conclusion

20. In view of the foregoing, the undersigned Judge President finds that Judge Sun has no conflict of interest in the Applicant's matters related to Case No. UNDT/GVA/2025/023.

21. As there are no grounds to recuse Judge Sun from the aforementioned case, the Applicant's motion for recusal is, therefore, rejected.

(Signed)

Judge Sean Wallace, President
Dated this 30th day of April 2025

Entered in the Register on this 30th day of April 2025

(Signed)

Liliana López Bello, Registrar, Geneva