



**Before:** Judge Marilyn J. Kaman

**Registry:** New York

**Registrar:** Santiago Villalpando

HASSANIN

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON APPLICATION FOR  
SUSPENSION OF ACTION**

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**Counsel for Applicant:**

Eman Hassanin, Self-represented

**Counsel for Respondent:**

Christine Graham, ALS/OHRM, UN Secretariat

Notice: The format of this judgment has been modified for publication purposes in accordance with Article 26 of the Rules of Procedure of the United Nations Dispute Tribunal.

## **Introduction**

1. By way of application filed on 13 May 2011, the Applicant seeks a suspension of action of the Secretary-General's decision not to intervene in proposed electronic, rather than manual, voting during upcoming United Nations Staff Union ("UNSU") elections to be held on 7-9 June 2011 (Application, para. III(1)).

2. On 11 May 2011, the Applicant requested management evaluation of the "[d]ecision of the Secretary-General not to act upon [the Applicant's] request to take the necessary corrective measures on the proposed use of electronic voting in conducting the elections of the Staff Union". The application indicates that the Applicant has not received a response to this request for management evaluation.

3. As directed by the Tribunal, the Respondent filed his response on 18 May 2011, and a substantive hearing on the application for a suspension of action was held on 19 May 2011.

## **Facts**

4. On 28 April 2011, the Applicant wrote to the Secretary-General and outlined concerns regarding the proposed electronic voting in UNSU elections, including, *inter alia*, that electronic voting "contravened procedures specified in the Statute and Regulations of the Staff Union" and that the polling procedures could be "compromised". The Applicant concluded his letter by saying,

I respectfully seek your intervention in the knowledge that the Staff Union is quasi-independent and without prejudice to the non-interference in its internal matters. I believe that these matters transcend the internal affairs of the Staff Union and require your intervention as chief administration officer of the Organization. The United Nations must be seen as an exemplar of electoral processes.

5. On 9 May 2011, the Under-Secretary-General ("USG") for the Department of Management ("DM"), Ms. Angela Kane, replied, in relevant part, as follows:

The matters you have raised in your letter, however, focus on issues relating to the internal workings of the Staff Union, including its internal electoral processes, which are not subject to the administrative authority of the Secretary-General as the Chief Administrative Officer. It would not be appropriate for the Secretary-General to intervene in matters of such a nature.

Furthermore, please note that contrary to what you have indicated in your letter, the Office of Human Resources Management has not supplied any external vendor with the index numbers and personal information of staff members.

6. On 19 April 2011, and again on 26 April 2011, the Chairperson, Polling Officers, UNSU, Ms. Bibi Khan, sent emails to staff members at the United Nations Secretariat in New York. The subject line of the email was “INFORMATION SESSION: Voting by Electronic Ballot, 26 April 2011”.

7. The 19 and 26 April 2011 emails explained that, as defined in the UNSU Statute, art.13.1, polling officers of the UNSU 43<sup>rd</sup> Staff Council of UNSU were tasked with organising and conducting elections for the 44<sup>th</sup> Staff Council and UNSU Leadership and with publishing the results of the elections. The emails further announced that the elections would be conducted through electronic polling

using an off-site high security facility that ensures (a) no individual can vote more than once; (b) results are accurate and secret until reported; (c) systems are secure, redundant and protected from hackers; and (d) audit trails track all activities for certification and validation.

8. By the 19 and 26 April 2011 emails, all staff were invited to an informational session to be held on 26 April 2011 on voting by electronic ballot.

9. On 13 May 2011, the Chairperson, Polling Officers, UNSU, sent another email to staff members at the United Nations Secretariat in New York. The “subject line” was: “Some Facts: Eligibility of criteria for nominations of candidates for the leadership positions and the 44th Staff Council”. Paragraph 3 of the email addressed the issue of electronic voting:

Dear Colleagues,

It has been brought to our attention that there is a certain degree of confusion on a couple of issues among staff members who would like to run as staff representatives for their Unit. We hope the information below provides clarification.

...

3) On the issue of electronic voting for the upcoming UNSU election:

a) The company supporting the elections process is a leading election software and services company that provides a suite of election management solutions for private sector entities around the world. In business for more than 25 years, the selected company has a professional team of election experts who have managed over 6,000 elections involving more than 25 million voters including the 2000 Democratic National Convention and the 2000 Arizona Democratic Primary in the USA.

b) The elections will be hosted on an external server located at an offsite high security facility and ensures, to the extent possible, that (a) no individual can vote more than once; (b) results are accurate and secret until reported; (c) systems are secure, redundant and protected from hackers; and (d) audit trails track all activities for certification and validation.

c) Maximum attention has been given to issues of security, including privacy of the individual voter, integrity of the process, and the system's ability to deliver timely results.

10. At the 19 May 2011 hearing on the application for suspension of action, the Applicant for the first time revealed that, in addition to being a staff member, the Applicant also is an active candidate for the presidency of UNSU.

11. At the same hearing, the Applicant confirmed to the Tribunal that he has not availed himself of the provisions of the UNSU Statute and Regulations (not to be confused with the Staff Rules and Staff Regulations of the United Nations) that establish an Arbitration Committee whose mandate is to "consider and rule upon matters related to violations of the [UNSU] Statute and Regulations".

12. The Applicant further stated that his efforts to resolve the matter of electronic voting internally within UNSU consisted of (a) attending the informational session

mentioned in paragraph 8 above, and (b) attending a private meeting with the Chairperson, Polling Officers, UNSU, during which the Applicant and two Information Technology Services Division officers “explained the risk” that electronic voting presents.

13. At the hearing, the Applicant also acknowledged that electronic voting is used by the United Nations within the mission context and further stated that he does not “question” the external vendor who would be conducting the electronic voting.

### **Relevant legal authority**

14. In making his arguments, the Applicant relies on ST/SGB/2011/1, Reg. 8.1 and Rule 8.1 (Staff representative bodies and staff representatives).

15. The UNSU Statute and Regulations were adopted as subsidiary to ST/SGB/2011/1, Reg. 8.1(b), which states that staff representative bodies “shall be entitled to initiate proposals to the Secretary-General” *inter alia* for issues relating to staff welfare, and provides that they “shall be organized in such a way as to afford equitable representation to all staff members ... under electoral regulations drawn up by the respective staff representative body and agreed to by the Secretary-General”.

16. The UNSU Statute and Regulations are staff-initiated proposals developed under ST/SGB/2011/1, Reg. 8.1(b). The Applicant himself has been a member of the working group which developed the UNSU Statute and Regulations, which were adopted by referendum of UNSU members on 14 December 2007. The Secretary-General’s only participation in the promulgation of the UNSU Statute and Regulations was to give his “agreement” to them.

17. At the substantive hearing, the Applicant emphasised that the Secretary-General’s mere “agreement”, rather than “approval”, was required. This mirrors again the concluding statement in the Applicant’s 28 April 2011 letter to the Secretary-General that UNSU holds a measure of autonomy from the United Nations Secretariat (“the Staff Union is quasi-independent and without prejudice to the non-

interference in its internal matters”). The Applicant’s insistence that UNSU possesses independence within the United Nations will be discussed elsewhere in this Order.

18. The UNSU Statute and Regulations were characterised at the substantive hearing as a “sub-statute and sub-regulations” for purposes of the Organisation’s regulatory authority.

### **Observations on the obligations of parties appearing before the Tribunal**

19. At the substantive hearing, the Applicant stressed to the Tribunal that it is the Respondent’s “obligation” to uphold the regulations and rules of the Organization, particularly in the electoral context. The Applicant stated, “I have the right to have a staff union under the regulations and rules and the right to union representation”.

20. However, in his 13 May 2011 application and again in his opening statement to the Tribunal, the Applicant did not at any time indicate that, in addition to carrying the status of staff member, the Applicant also is a current candidate for the presidency of UNSU whose name will appear on the ballot during the voting that takes place on 7-9 June 2011.

21. The Applicant stated that his status as an active UNSU candidate was known to him by the deadline for filing for UNSU office (10 May 2011), which meant that he was able to include this information in his 13 May 2011 application for suspension of action.

22. An obligation of good faith and fair dealing exists and is well-established within the United Nations context (see, e.g., *D’Hooge* UNDT/2010/044, *Chen* UNDT/2010/068, *Alauddin* UNDT/2010/114, and *Adorna* UNDT/2010/205). In *D’Hooge* UNDT/2010/044, the Tribunal there linked conscionability (according to good conscience) with the mandate of good faith and fair dealing. Actions of the conscience “can usefully inform the approach that the application of the conditions of

mutual good faith and fair dealing should have in contractual disputes in the United Nations context”.

23. The obligation of good faith and fair dealing is most commonly discussed as being an obligation of the Respondent, and the corresponding obligation on the staff member is little discussed. The obligation of good faith and fair dealing typically is raised by a staff member as a means of questioning the actions of the Respondent (non-renewal, non-selection, summary dismissal, etc).

24. Implicit within the Organization’s regulations, rules and administrative issuances is the understanding that both the Organization and staff members are bound to act in good faith and to make decisions in the course of fair dealing; such obligation is not satisfied by what might be called facial compliance with the text of the relevant instrument (*Alauddin* UNDT/2010/114, para. 8).

25. In this case before the Tribunal, not even facial compliance has been given by the Applicant, for he failed to reveal to the Tribunal that he is a current candidate for the UNSU presidency. That fact potentially carries legal significance, and is one that was purposely kept from the Tribunal.

26. The Tribunal considers the Applicant to have made an affirmative misrepresentation by omission to the Tribunal when he stated, in his application and in his oral comments to the Tribunal, that he carried the status of staff member only (and not the simultaneous status as a candidate for the UNSU presidency). As the Applicant was under an obligation of good faith and fair dealing, such nondisclosure is conduct upon the Tribunal of a fraudulent nature. It should not have been left to see if the Respondent or the Tribunal itself discovered the true state of affairs, as happened in this case.

27. In some jurisdictions, such conduct comes under the rubric of the doctrine of “unclean hands”. Under this doctrine, one who seeks justice before a court of law is prevented from prevailing on the claim because his/her conduct either was unethical or was done in bad faith, and that person’s claim is automatically dismissed.

28. The Tribunal has considered applying this doctrine to the present case, but considers it sufficient at this point to remind all parties of their obligation of good faith and fair dealing. The duty falls upon the Respondent, but it also falls upon the Applicant as staff member and upon the Applicant in all matters pertaining to UNSU. The obligation becomes all the more imperative in a judicial context where the aim of the Tribunal is to seek the truth in matters presented to it.

### **Applicant's submissions**

29. The Applicant's principal contentions may be summarised as follows (the Tribunal notes that these written arguments do not touch upon the Applicant's candidacy to become UNSU president):

#### *Prima facie unlawfulness*

a. The Secretary-General's decision not to intervene in proposed electronic, rather than manual, voting during upcoming UNSU elections is unlawful because it allows the elections for the staff representative body to be conducted in such a way that does not ensure the complete secrecy and fairness of the vote;

b. The Secretary-General's decision will subject the election process to the possibility of fraudulent actions and compromise the fairness of the votes cast, because an external vendor of electronic voting service will be used;

c. No recount possibility or ability to investigate the origin of the vote (verification of voter) exists for electronic ballots, in the event that the outcome is challenged and the possibility for fraud is significant;

d. The Secretary-General's decision is unlawful because the UNSU Statute and Regulations, agreed to by the Secretary-General on 14 December 2007, require Staff Union elections to be by secret ballot (Part I - Statute, Section 13.4) and the electoral process to be conducted "in such a way as to



ensure the complete integrity and fairness of the ballot” (Part 11- Regulations, Section 6.9), both of which are jeopardised by electronic voting;

*Urgency*

e. If the election were to proceed using electronic voting, the Applicant, as a staff member, would be deprived of his right to be represented by a staff representative body whose members are lawfully elected by means that are in accordance with “electoral regulations drawn up by the respective staff representative body and agreed to by the Secretary-General” (Staff Regulation 8.1 (b)) and “in such a way as to ensure the complete secrecy and fairness of the vote” (provisional Staff Rule 8.1 (d));

f. The Secretary-General has an obligation to protect the Applicant’s personal information, which was provided solely for the purposes of his appointment with the Organization;

g. Electronic voting would result in providing the Applicant’s personal data to an external vendor, without the Applicant’s consent;

*Irreparable damage*

h. The Secretary-General’s decision, with identifying markers given to an external vendor, will breach the confidentiality of the Applicant’s personal data that has been given to the United Nations Secretariat;

i. The Secretary-General’s decision will create the potential risk of fraudulent election results and possible identity theft, among other risks;

j. The Secretary-General’s decision will cause irreparable harm to the Applicant’s right as a staff member to be effectively represented by a staff representative body elected under a lawful electoral process that ensures the complete secrecy and fairness of the vote.

### **Respondent's submissions**

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

#### *Receivability*

a. The Secretary-General's finding that it would be inappropriate for him to intervene in the UNSU's electoral process as communicated in the USG/DM's letter dated 9 May 2011 is not an administrative decision within the meaning of Article 2.2 of the Statute and under *Larkin* UNDT/2011/028;

b. The Secretary-General's determination that the Applicant's request concerned the internal affairs of UNSU does not carry sufficient direct legal consequences in respect of the Applicant's rights under the terms of his appointment or his contract of employment;

#### *Prima facie unlawfulness*

c. No evidentiary basis exists upon which the Tribunal can reasonably conclude that there exists "serious and reasonable doubts about the lawfulness of the contested decision", citing *Corcoran* UNDT/2009/071, para. 45;

d. The Applicant has not shown how the Secretary-General's determination breaches his contract of employment or his terms of appointment, particularly how it contravenes Staff Regulation 8.1(b), Staff Rule 8.1(d), art. 13.4 of the UNSU Statute, and sec. 6.9 of the UNSU Regulations;

e. The UNSU Statute and Regulations, which have been agreed to by the Secretary-General, include electoral provisions to ensure the confidentiality, integrity and fairness of the voting process; art. 13.1 of the UNSU Statute specifically provides that polling officers shall be independently responsible for organising and conducting UNSU elections; art. 13.4 of the UNSU Statute

states that elections may be conducted electronically or manually as determined by the UNSU Council, which is the legislative body of the UNSU;

f. The Chairperson, Polling Officers, UNSU, communicated to all UNSU members that the elections will be hosted on an external server located at an off-site high security facility to ensure that: (a) no individual can vote more than once; (b) results are accurate and secret until reported; (c) the systems are secure, redundant and protected from hackers; and (d) audit trails track all activities for certification and validation;

g. Art. 8 of the UNSU Statute provides a dispute resolution mechanism for dealing with alleged violations of its Statute; rulings of the Arbitration Committee shall be binding on all bodies of UNSU, and the Tribunal, thus, is not the proper forum to resolve the current dispute;

*Urgency*

h. The Applicant has not demonstrated sufficient urgency to the Secretary-General's determination not to intervene in the internal affairs of UNSU;

i. The Applicant is free to participate in the upcoming elections on 7-9 June 2011;

j. No decision on the part of the Secretary-General requires urgent suspension in order to safeguard the Applicant's rights in this case;

*Irreparable damage*

k. The Applicant has not shown irreparable harm resulting from the Secretary-General's determination not to intervene in the internal affairs of UNSU;

1. The Applicant has failed to provide proof that the decision breaches the confidentiality of his personal data, creates potential risks of fraudulent election results and identity theft, and will cause irreparable harm to his rights as a staff member to participate in and be effectively represented by a staff representative body.

### **Consideration**

#### *Receivability: the Applicant as an active candidate for the UNSU presidency*

31. The fact that the Applicant carries the status as candidate for the presidency of UNSU could fundamentally affect the receivability of the application for suspension of action. It is established that this Tribunal has no jurisdiction over matters involving the internal affairs of a staff association (*Hassanin* Order No. 83 (NY/2011)). Stated otherwise, the Tribunal does not have jurisdiction *rationae personae* in relation to applications filed by or on behalf of UNSU (*Kisambira* Order No. 36 (NY/2011)).

32. It was perhaps for this jurisdictional reason that, when asked by the Tribunal in what capacity he was appearing, that the Applicant merely stated that he was appearing “as a staff member, as a member of the union, for his own benefit”. The Applicant understood that if he stated he was appearing as a candidate for election of UNSU, the Tribunal would have concluded that such capacity touched integrally on the internal affairs of UNSU and that the Tribunal therefore did not have jurisdiction to hear the Applicant’s claim, under *Kisambira* and *Hassanin*.

33. If the application for suspension of action is evaluated against the Applicant’s true capacity as a candidate for the presidency of UNSU, the Tribunal finds that the Applicant’s application for suspension of action fails for being an internal affair of the UNSU.

*Receivability: the Applicant as a United Nations staff member and member of UNSU*

34. Article 2.1 of the Tribunal's Statute states:

The Dispute Tribunal shall be competent to hear and pass judgment on an application filed by an individual ... against the Secretary-General as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of the alleged non-compliance

...

35. Article 2.2 of the Tribunal's Statute states:

The Dispute Tribunal shall be competent to hear and pass judgment on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation ... .

36. The Respondent objects to receivability of the application under *Larkin* UNDT/2011/028, which adopted the test identified by the former United Nations Administrative Tribunal in its Judgment No. 1157, *Andronov* (2003), of whether "a unilateral decision [was] taken by the administration in a precise individual case ... which produces direct legal consequences to the legal order".

37. The Respondent correctly notes that the decision taken by the Secretary-General in this case differs in kind from most other administrative decisions, in that the Secretary-General here declined a request from the Applicant to have the Secretary-General "intervene" in the forthcoming UNSU elections. The Respondent has phrased the issue as follows: "The Applicant is seeking the Tribunal to suspend the non-action on the part of the Secretary-General and to order the Secretary-General to direct the UNSU to conduct the forthcoming elections by way of manual voting, instead of electronic".

38. The Secretary-General's decision not to intervene in the matter of electronic voting in UNSU elections differs from the majority of administrative decisions taken affecting staff members. In the context of contract non-renewal, for example, an affirmative decision is taken by the Respondent not to renew the staff member's contract, and the affected member may challenge the administrative decision on a number of grounds (see, e.g., *Syed* 2010-UNAT-061, *Abdallah* UNDT/2010/049, *Megerditchian* UNDT/2010/035). The administrative decision may be explicit or implicit, preparatory or final (*Larkin* UNDT/2010/108, *Elasoud* UNDT/2010/111). In all events, the action taken by the Respondent has been an affirmative decision affecting a staff member's rights.

39. The required analysis is under *Andati-Amwayi* 2010-UNAT-058, wherein the Appeals Tribunal held that apart from the "straightforward" determination of what constitutes a contestable administrative decision in terms of appointments, promotions and disciplinary measures, in other instances the administrative decision might be one of "general application" that seeks to promote the efficient implementation of administrative objectives, policies and goals. Although the administrative decision in the second instance may impose some requirements on a staff member to exercise his or her rights, the decision still does not necessarily affect his or her terms of appointment or contract of employment. In such an instance, the Tribunal will need to determine whether there exists a contestable administrative decision affecting the staff member.

40. Assuming that the Respondent has a general obligation to facilitate organisational rights of staff members (the right to freedom of association and collective bargaining) (*Kisambira*, para. 23), the analysis is whether the circumstances of the specific case are of "general application" that seek to promote the efficient implementation of administrative objectives, policies and goals (*Andati-Amwayi*). If so, then the decision may be found not to affect the staff member's terms of appointment or contract of employment.

41. In *Hassanin* Order No. 83 (NY/2011), the Tribunal referred to authority cited in the *Freedom of Association – Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO* (2006) (“Digest”). The Respondent notes, and the Digest of Decisions confirms, that the issue of staff union elections is one that must remain beyond an employer’s involvement.

42. In paragraph 429 of the Digest, it is stated that “any intervention by the public authorities in trade union elections runs the risk of appearing to be arbitrary and thus constituting interference in the functioning of workers’ organizations, which is incompatible with Convention No. 87, Article 3, which recognizes their right to elect their representatives in full freedom”. Further, “[a]ny interference by the authorities and the political party in power concerning the presidency of the central trade union organization in a country is incompatible with the principle that organizations shall have the right to elect their representatives in full freedom” (Digest, para. 432).

43. In *Hassanin*, the Tribunal was presented with an application for suspension of action of the Secretary-General’s decision to suspend payroll deductions from his salary for the staff member’s union membership dues and to suspend the dues remittance to UNSU. Examining the relevant organisational authority on which the application was based (staff rule 3.17(c)) and considering international norms on the right to freedom of association and collective bargaining, the Tribunal concluded that a contestable administrative was presented. The Tribunal, *inter alia*, found that the decision to suspend the remittance of the UNSU dues and to suspend the deductions “violate[d] the Applicant’s right to freedom of association ... and impede[d] his potential participation in the activities of UNSU”.

44. Simply because an administrative decision may touch upon matters affecting a staff member’s right to freedom of association does not automatically compel the conclusion that the administrative decision is contestable.

45. The underlying facts of *Hassanin* are fundamentally different from those presented in the Applicant’s case. In *Hassanin* (a) the Tribunal interpreted primary

governing regulations and rules of the Organization and (b) the case involved an affirmative decision of the Secretary-General to suspend payroll deductions. In this case, the Tribunal (a) is being asked to apply internal UNSU documents that were drafted by staff union members and adopted by UNSU referendum, and (b) is presented with a request by the Applicant to have the Secretary-General “intervene” in an area the Secretary-General had not taken any prior action.

46. Under principles of international law, the issue of electronic voting in UNSU elections is beyond the reach of the Secretary-General, and the Secretary-General made the correct decision not to intervene in the issue of electronic voting for the upcoming UNSU elections to be held on 7-9 June 2011.

47. Although the decision may be one that touches upon matters affecting a staff member’s right to freedom of association and may also affect the rights of staff members other than the Applicant (see, e.g., *Jaen* UNDT/2010/165 and *LeBoeuf et al.* UNDT/2010/206), the Tribunal agrees with the Respondent that the Secretary-General’s decision does not produce a sufficiently direct legal consequence to the legal order of the Applicant as a staff member. This particularly is true, considering the fact that the Applicant presents his application for suspension of action while simultaneously asserting the independent status of UNSU and the protection it enjoys from intervention by the Secretariat in its internal affairs. Both circumstances cannot exist simultaneously—either the Secretary-General may intervene (and UNSU loses its status as an independent body) or the Secretary-General cannot be criticised for *not* intervening, in which event UNSU preserves its quasi-independent status.

48. The Applicant’s request to suspend the non-intervention decision of the Secretary-General is not based on direct organisational authority and concerns an area protected from employer interference.

49. If the application for suspension of action is evaluated against the Applicant’s capacity as a staff member and a member of UNSU, the Tribunal finds that the Applicant’s application for suspension of action fails; the circumstances of the



specific case are of “general application” and do not constitute a unilateral decision taken by the administration in a precise individual case which produces direct legal consequences to the legal order.

50. For the above reasons, the present application is not receivable.

*Prima face unlawfulness*

51. In order to prevail on an application for a suspension of action, besides presenting a contestable administrative decision, the Applicant must also meet the elements of *prima facie* unlawfulness, urgency, and irreparable harm.

52. Having already found that the application is not receivable, a further discussion of the suspension of action is therefore not necessary. However, the Tribunal considers that a brief assessment may be useful for the parties in the instant case.

53. The Tribunal considers the Applicant not to have met any of the three criteria and will not discuss all three here. However, the Tribunal particularly notes that the administrative decision for which the suspension is sought is not *prima facie* unlawful. The Tribunal agrees with the Respondent that no evidentiary basis exists upon which the Tribunal can reasonably conclude that there exists “serious and reasonable doubts about the lawfulness of the contested decision”, citing *Corcoran* UNDT/2009/071, para. 45.

54. The Applicant has not shown how the Secretary-General’s determination breaches his contract of employment or his terms of appointment, particularly how it contravenes with Staff Regulation 8.1(b), Staff Rule 8.1(d), art. 13.4 of the UNSU Statute art. 13.4 and sec. 6.9 of the UNSU Regulations. Art. 13.4 specifically states that “[e]lections shall be by Secretariat-wide secret ballot and may be conducted electronically or manually as determined by the Council”. The Council, established under art. 7 of the UNSU Statute as the UNSU’s governing body, apparently took the

decision to implement electronic voting, which would make all steps taken to implement that measure explicitly *lawful* under the UNSU's governing documents.

55. The Applicant concedes that electronic voting is used within the mission context, further refuting the Applicant's contentions regarding *prima facie* unlawfulness.

*Exhaustion of remedies*

56. The application for suspension of action further fails due to the fact that the Applicant has not utilised a remedy available to the Applicant under the UNSU Statute and Regulations—the right of arbitration.

57. Article 8 of the UNSU Regulations is devoted to the subject of arbitration. Art. 8.2.3 (under "Terms of Reference") states that: "The Arbitration Committee shall receive, consider and rule upon matters related to violations of the Statute and Regulations". Article 13 of the UNSU Statute is devoted to the subject of elections, and art. 13.4 specifically states that "[e]lections shall be by Secretariat-wide secret ballot and may be conducted electronically or manually as determined by the Council" (whose duty it is to determine operational policy, except where such policy is determined by General meeting or referendum).

58. From the above-cited provisions of the UNSU Statute and Regulations, the subject of elections unequivocally comes within the authority of the UNSU Arbitration Committee, which is an internal forum available to staff members for alleged violations of the UNSU Statute and Regulations.

59. In response to a question from the Tribunal regarding the status of the Arbitration Committee, the Applicant stated that "We [UNSU] don't have one". Developing these comments further, the Applicant stated that there never has been an Arbitration Committee in existence, despite the fact that it is in the governing documents of UNSU. The Applicant attempted to explain this away by saying: "We couldn't get anyone to volunteer".

60. This Tribunal notes the general comment and conclusion in *Hassanin* that this Tribunal “has no jurisdiction regarding staff associations or the internal disputes within a staff union, its members or its executive. The only available recourse in terms of the UNSU Statute would be to the Arbitration Committee. The Tribunal was advised that despite provision for an arbitration committee, UNSU has failed since the inception of its Statute and Regulations in 2007 to install such a committee” (*Hassanin*, para. 37).

61. If UNSU seeks to preserve its status as an independent body which is shielded from outside interference in its internal matters, then the Applicant (and UNSU) must demonstrate that it is willing, and able, to act as an independent body by resolving disputes via the Arbitration Committee.

62. The Tribunal makes the finding that the Applicant has failed to exhaust his remedies for resolving the dispute over electronic voting through use of the internal UNSU mechanism of the Arbitration Committee, under art. 8 of the UNSU Regulations.

IT IS ORDERED THAT:

63. For all of the foregoing reasons, the application for suspension of action is rejected in its entirety.

(signed)

Judge Marilyn J. Kaman

Dated this 23<sup>rd</sup> day of May 2011