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*have a prima facie vested interest in the dismissal of my appeal.*



The General Assembly also decided,

*“...to establish by 1 March 2008 a five-member Internal Justice Council consisting of a staff representative, a management representative and two distinguished external jurists, one nominated by the staff and one by management, and chaired by a distinguished jurist chosen by consensus by the four other members.”<sup>7</sup>*

## **5. APPOINTMENT OF MEMBERS OF THE INTERNAL JUSTICE COUNCIL**

**5.1** The members of the IJC were appointed by the Secretary-General. The distinguished external jurist members were: Mr. Sinha Basnayake (Sri Lanka, nominated by management); Mr. Geoffrey Robertson QC (United Kingdom, elected by staff); Other members are Ms. Maria Vicien-Milburn (Argentina), the then Director of the General Legal Division of the Office of Legal Affairs as the management representative; and Ms. [...] (Australia), the Senior Legal Officer in the International Trade Law Division, Office of Legal Affairs, as the staff representative. These four members recommended to the Secretary-General the appointment as Chair of the Council, Justice Kate O'Regan of the Constitutional Court of South Africa.<sup>9</sup>

## **6. LEGAL PRINCIPLES**

### **6.1 The right to an impartial and independent Tribunal**

**6.1.1** Any person whose rights have to be determined is entitled to a fair hearing in public before an independent and impartial tribunal. This principle is embodied in a number of international instruments on human rights.

**6.1.2** For example, Article 10 of the Universal Declaration of Human Rights states that,

*“Everyone 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...”*

Article 6.1 of the European Convention on Human Rights recognizes that,

*“...in the determination of his civil rights and obligations or of any civil charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal...”*

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<sup>9</sup> See also Report issued by the IJC, General Assembly A/63/489, 16 October 2008.



“ ...



*“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 adviser, counsel, expert or witness; or*
- (c) Any other circumstances which would make it appear to a reasonable and impartial observer that the Judge’s participation in adjudication of the matter would be inappropriate.”*

**6.3.2** Article 28.2 of the Rules provides, *inter alia*:

*“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.”*

**6.3.3** It stands to reason from the wording of Article 28.2 that the circumstances must be such that the Judge finds himself in a situation of conflict as defined by Article 27.1 in regard to the case assigned to him.

## **7. FINDINGS OF THE TRIBUNAL**

### **7.1 On the selection of the Judges by the IJC with the participation of Ms. [...]**

**7.1.1** The mandate of the IJC was only to make recommendations on suitable candidates for the position of Judges at both Tribunals. This appears clearly in the report issued by the IJC on 16 October 2008:

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adopted and reiterated that principle in the Statute of the UNDT. <sup>16</sup>It is only the General Assembly that can remove a Judge for misconduct and incapacity.<sup>17</sup> That represents an absolute guarantee of the independence of the Judges.

## **7.2 On the lack of impartiality of the Judges of the UNDT and those of UNAT**

**7.2.1** The Applicant's averment of lack of impartiality is based on the fact that the Judges of the UNDT and those of UNAT were selected by the IJC with the participation of Ms. [...] and as such the Judges would necessarily find against him. The Applicant made general accusations of potential bias but has not given any precision on how this bias on the part of the Judges would arise except for the averment of an alleged professional relationship that would exist between the Judges and Ms. [...]. These misgivings of the Applicant on the impartiality and independence of the UNDT and UNAT cannot and should not be treated as objectively justified on the facts presented to the Tribunal.

**7.2.2** Under the subjective test, there is not an iota of evidence or proof that the UNDT Geneva Judge or ultimately the UNAT Judges would act with personal bias in dealing with his case. In any event, the personal impartiality of a Judge must be presumed until there is proof to the contrary and in the present case there is no such proof, as stated in judgment *Hauschildt v Denmark*, of 24 May 1989.<sup>18</sup> There is nothing in the averments of the Applicant that could give rise to a legitimate fear that the Judge or Judges who would be handling his appeal would not satisfy the objective test either. The Applicant has not demonstrated that the UNDT Geneva was not likely to be impartial towards him. He has utterly failed to establish or prove that the UNDT Judges in Geneva would already have made up their mind regarding his appeal. His apprehensions belong to the realm of mere speculation.

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<sup>16</sup> A Judge of the Dispute Tribunal shall serve in his or her personal capacity and enjoy full independence: Article 4.8 of the Statute.

<sup>17</sup> Article 4.10 of the Statute.

<sup>18</sup> *Hauschildt v Denmark*, Judgment of the European Court of Human Rights, 24 May 1989, Series A No. 154, p.21, paragraph 47.

### 7.2.3 The Tribunal is therefore of