communications dated 19 and 20 July 2017. That case was registered by the Nairobi UNDT Registry as Case No. UNDT/NBI/2017/108. The case is yet to be adjudicated upon by this Tribunal.

8. The present case results from the application filed pursuant to staff rule 11.4(a) on the basis that the decision from 11 May 2017 was one requiring management evaluation, after the Applicant obtained a management evaluation on

Summary of relevant facts

9. In September and October 2016, cost-of-living surveys were conducted by the International Civil Service Commission (ICSC) at seven headquarter duty stations outside New York (Geneva, London, Madrid, Montreal, Paris, Rome and Vienna). The purpose of these surveys was to gather price and expenditures data to be used for the determination of the post adjustment index at those locations. In the years prior to this round of surveys, the ICSC had approved a number of changes to the survey methodology based on recommendations of the Advisory Committee on Post Adjustment Questions (ACPAQ).[2]

10. The results of the surveys were included in the ACPAQ Report presented to the ICSC Secretariat at its 84th meeting in March 2017. The ICSC Secretariat noted at the time that, in the case of Geneva, implementation of the new post adjustment would lead to a reduction of 7.5% in the net remuneration of staff in that duty station as of the survey date (October 2016).[3]

11. On 11 May 2017, the Applicants received an email broadcast from the Department of Management, United Nations Headquarters, informing them of a post adjustment change effective from 1 May 2017 translating to an overall pay cut of 7.7%. The email states in relevant part:[4]

> In March 2017, the International Civil Service Commission (ICSC) approved the results of the cost-of-living surveys conducted in Geneva in October 2016, as recommended by the Advisory

[2] Paragraph 5 of the reply.
[3] Paragraph 6 and Annex 2 of the reply.
[4] Paragraph 7 and Annex 3 of the reply.

results of the 2016 baseline cost-of-living surveys at Headquarters duty stations.

12. Subsequently, in a

stations whose post adjustment multipliers had been revised as a result of cost-

been revised as a result of cost-of-living surveys approved by the ICSC during its 85th session. The post adjustment multiplier for Geneva was now set at 77.5 as of August 2017. The memorandum also indicated that staff serving in Geneva before 1 August 2017 would receive a PTA as a gap closure measure that would totally offset for a six-month period any negative impact of the reduction in the post adjustment amount; and that this allowance would be revised in February 2018.[8] The Tribunal has no information as to whether the memorandum was made accessible to the Applicants.

17. Following this new ICSC decision, retroactive payments were made to new staff members in Geneva who joined after 1 May 2017, and had not received a PTA.[9]

18. In the period from July to September 2017 the post adjustment multiplier has been further revised, mainly as a result of fluctuation of the US dollar. The decision of ICSC of May 2017 has not been implemented. The later decision has been implemented to the extent that the affected staff received a PTA meant to moderate the impact of the decreased post adjustment. This was reflected by pay check at the end of August 2017.[10]

19. On 14 September 2017, OSLA acting on behalf of the Applicants requested a management evaluation of the decision to implement the July 2017 ICSC decision. On 3 October 2017, the Applicants were informed that there was no administrative decision to be evaluated.[11]

20. On 16 October 2017, OSLA filed 344 applications including the present

20 July 2017.[12]

21. On 6 November and 28 November 2017, OSLA again filed 344 applications contesting the decision to implement a post adjustment change in Geneva.[13]

[8] Paragraph 13 and Annex 10 of the reply.
[9] Paragraph 14 and Annex 11 of the reply.
[10] Application, Annex 4.
[11] Annex 17 of the reply.
[12] Paragraph 20 of the reply.

22. On 24 December 2017, the General Assembly adopted resolution A/RES/72/255 on the United Nations common system, calling, inter alia, for the United Nations common system organizations and staff to cooperate in the implementation of the post adjustment system.

23. On 5 January 2018, the Respondent filed a reply in response to this application.

Respondent's submissions on receivability

The May 2017 ICSC decision, or the implementation thereof, is moot.

24. The management evaluation request dated 10 July 2017 relates to the May 2017 ICSC decision, or its implementation, which was superseded by the July 2017 ICSC decision. The July 2017 decision constitutes a new decision of the ICSC and that the May 2017 ICSC decision is void.

25. The July 2017 ICSC decision cannot be considered as a continuation of the May 2017 decision. The May 2017 decision was initially projected to result in a decrease of 7.7% in net remuneration. The payment of a post adjustment based on the revised multiplier was to be paid to new staff joining the Organization on or after 1 May 2017. However, the July 2017 ICSC decision superseded the May 2017 ICSC decision, by increasing the post adjustment multiplier, establishing different gap closure measures and a different implementation date for the payment of post adjustment at the new rate, i.e., 1 August 2017. The cancellation of the May 2017 ICSC decision also resulted in retroactive payments to staff members who joined on or after 1 May 2017.

26. On 21 and 22 August 2017, the Applicants were informed by the Management Evaluation Unit of the United Nations Secretariat that the July ICSC decision rendered moot the matter raised in their management evaluation request.

27. In its application dated 31 October 2017, OSLA submitted that the July

[13] Paragraph 23 of the reply.

The implementation of an ICSC decision on post adjustment multipliers is not an administrative decision subject to review pursuant to the UNDT Statute.

28. Criterion for receivability of an application in cases of implementation of ICSC decisions should be whether the Secretary-General has room for discretion in implementing them. The Secretary-General has no discretionary authority in

that the effect of this new decision cannot be foreseeable, the application should not be receivable at t89(not behe)-8e

were not made by technical bodies falling under staff rule 11.2(b). The

subject to change over time and is not necessarily consistent between the MEU and Counsel representing the Respondent before the UNDT (for example as illustrated by *Syrja* UNDT/2015/092).

36. Given the difficulty in predicting the position that might be taken by the Respondent in the instant case, the Applicants are obliged to file multiple applications in order to ensure that they are not procedurally barred.

37. The instant application is filed pursuant to staff rule 11.4(a) on the basis that the decision was one requiring management evaluation.

Deadline is triggered by communication of a decision not implementation.

38. Staff rule 11.2(c) provides that the time limit for contesting an administrative decision runs from notification rather than implementation.

39. The Applicants understood the 11 May 2017 email as having notified them

Tribunal, the position taken by the Administration is not necessarily dispositive as to whether challenge to the 11 May 2017 decision was rendered moot by the amendment. Through an abundance of caution, the Applicants, therefore, consider it necessary to maintain this challenge even while a further challenge relating to the communications of 19 and 20 July 2017 is filed.

Considerations

47. The layered argument concerning receivability of the application involves the following issues: whether the application required a prior request for management evaluation; whether the application is directed against a reviewable administrative decision in the sense of art. 2.1(a) of the UNDT Statute; and, an issue that the Tribunal takes on *ex officio*

against the same decision, i.e., whether by the virtue of final Judgment UNDT/2018/015 Corr. 1, which -found the lack of an administrative decision capable of being reviewed, the adjudication of the present application is barred by *res judicata*.

Whether the application required prior request for management evaluation

48. The issue arises from the question whether a decision taken pursuant to

this respect, art. 8 of the UNDT Statute and staff rule 11.2(b), provide, in relevant parts:

> Article 8
>
> (a) The Dispute Tribunal is competent to hear and pass judgement on the application, pursuant to article 2 of the present statute;
>
> (b) An applicant is eligible to file an application, pursuant to article 3 of the present statute;
>
> (c) An applicant has previously submitted the contested administrative decision for management evaluation, where required[.]

Staff rule 11.2

on behalf of the Respondent, especially given that in the past different positions were expressed by him as to the status of the ICSC.[16] The Tribunal finds no grounds to attribute to the Applicants abuse of process under 10.6 of the UNDT Statute.

Whether the application is barred by res judicata

51. As noted by UNDT in *Nadeau*[17], it is questionable whether a matter adjudicated as non-receivable can be said to be *res judicata* if the merits have not been canvassed, considered and determined, and if there is still an actual unresolved controversy between the parties. In this connection, this Tribunal notes

Annex I

List of Applicants

1	Mr	Abd Al-Shakour	Mohmmed	

16	Mr	Barczak	Leszek
17	Mr	Belokurov	Alexander

50	Ms	De la Fuente Noriega	Maria
51	Ms	De La Sierra De La Vega	Lucia Gloria
52	Ms	De Luis Y Ponce	Isabel
53	Mr	De Medts	Stijn
54	Ms	De Rivero	Juliette Sophia
55	Ms	De Thorpe Millard	Vanessa Mary
56	Mr	De Vylder	Jochen
57	Ms	Deda	Paola
58	Mr	Del Prado	Thierry
59	Ms	Dessables	Myriam
60	Mr	Di Luca	Leonardo
61	Mr	Diallo	

67	Mr	Dzioubinski	Oleg
68	Ms	Eam-On	Pitchaya
69	Ms	El Dalati	Chirine
70	Mr	Elagraa	Mutasim
71	Mr	Elkhafif	Mahmoud
72	Mr	Elten	Marcus Philip
73	Ms	Fabiani	Helene Jeanne
74	Mr	Fernandez-Vernet	Enrique
75	Mr	Ferrer Amich	Alfonso
76	Ms	Fillion-Wilkinson	Leslie
77	Ms	Fleury	Marie-Pierre
78	Mr	Foster	Scott Bailie
79	Ms	Foucher	Myriam
80	Mr	Francois	Laurent
81	Mr	Fraticelli	Fausto
82	Mr	Frydman	Norberto
83	Mr	Gahbiche	Ouassim

84	Mr	Galtier	Sebastien
85	Ms	Garcia Couto	Rosa
86	Ms	Garcia Martos	Susanna
87	Ms	Garcia Perez	Maria Isabel
88	Ms	Garcia Soto	Maria Elisa
89	Ms	Gehl Sampath	Padmashree
90	Mr	Geronimi	Eduardo
91	Mr	Gibbons	Declan

92

101	Ms	Haggar	Nathalie
102	Mr	Harrison	Daniel
103	Mr	Hauser	Benjamin
104	Ms	Hecht de Alwis	Sophie
105	Ms	Held	Stefanie
106	Mr	Henderson Castro	Carlos Humberto
107	Ms	Hernandez	Eleonora
108	Mr	Hetland	Jarle Henning
109	Mr	Hlaing	Thuta Phyo
110	Ms	Huang	

118	Ms	Jennings	Satya
119	Mr	Jimenez Pont	Miguel
120	Mr	Kalbusch	Marco Didier Marie
121	Mr	Kangur	Tauno
122	Ms	Karadjova	Albena
123	Ms		Roula
124	Mr		Sadiq Ahmed
125	Ms		Michelle Elena
126	Mr		

Ms

135	Ms	Laev	Talvi
136	Mr	Lamolle	Mathieu
137	Mr	Lapper	Richard
138	Mr	Lara Alonso	Jesus
139	Mr	Lee	Jeff
140	Ms	Legardeur	Blandine
141	Ms	Legrand	Aurelie
142	Mr	Leighton	Robbie
143	Ms	Leite	Fernanda
144	Ms	Linn	Monika
145	Ms	Loose	Hine-Wai Kapiti
146	Mr	Lopez Maidana	Martin Fernando
147	Ms	Lopez Urib945.50Tc[(Mr)	

152	Ms	Maniu	Daniela Elisabeta
153	Ms	Mansion	Sabrina
154	Ms	Markides	Olga
155	Ms	Marshall	Fiona
156	Ms	Marx Medvedowsky	Saskia
157	Mr	Maystre	Nicolas
158	Mr	Meyer	Olivier
159	Mr	Meyer	Stephane
160	Mr	Michalak	Roman Witold
161	Mr	Millet	Fabrice
162	Ms	Miquel Gelabert	Joana Maria
163	Ms	Mireles Diaz	Alibech
164	Mr	Mirghani	Bishr
165	Mr	Mongelard	Eric
166	Ms	Morgan-Casades	Ana
167	Mr	Mueleman	Patrick
168	Mr	Muller	Peter

169	Mr	Munyan	Jason
170	Mr	Munyaneza	Samuel
171	Mr	Murillo Gonzalez	

219	Ms	Sharma	Vishal
220	Ms	Siari	Mahdia
221	Mr	Solchaga Zubillaga	Juan
222	Mr	Souto-Maior	Alexandre
223	Mr	Steierer	Florian
224	Ms	Susla	Justyna
225	Mr	Tan	Kok Cheng
226	Mr	Tasic	Dejan
227	Mr	Teeling	Gerard
228	Ms	Tinschert	Elisabeth Janina
229	Mr	Tistounet	Eric
230	Ms	Toll Velasquez	Katarina
231	Mr	Torreblanca Cardenas	GodocJeW*1asque

253	Mr	Watson	Nicholas David
254	Mr	Watson	Jon
255	Mr	Weber	Joerg
256	Mr	Wells	Colin
257	Mr	Willems	Erik
258	Ms	Xie	Qiong
259	Ms	Zhang	Yenlin
260	Mr	Zhao	Quan
261	Mr	Zhao	Junxiang
262	Ms	Samoulada	Alexandra