



Case No. 2011-258

**De Kermel**  
**(Appellant)**  
**v.**  
**Secretary-General**  
**of the International Maritime Organization**

Applicant:

Marie Conilh de Beyssac

Counsel for Appellant:

Laurence C. Fauth, Esq.

Counsel for Respondent:

Christopher Young

JUDGE

introduce issues which were not considered by the JAB and could only be fairly deliberated in a forum in which all of the affected United Nations' agencies could be represented and could express their views.

6. IMO also submits that FICSA filed its application at a late stage in the proceedings which prolongs the resolution of the case and constitutes an abuse of process. It also submits that FICSA supported Ms. de Kermel with her appeal, inter alia, by drafting her submissions, and since FICSA merely supplements Ms. de Kermel's appeal, it should be bound by the time limits imposed for the filing of the appeal brief.

### Considerations

7. Article 17 of the Rules provides as follows:

1. A person or organization for whom recourse to the Appeals Tribunal is available and staff associations may submit a signed application to file a friend-of-the-court brief, which may be transmitted electronically. [...].

2. The President or the panel hearing the case may grant the application if it considers that the filing of the brief would assist the Appeals Tribunal in its deliberations. [...].

8. As a preliminary matter, I note that FICSA is a "staff association" within the meaning of Article 17 of the Rules, and that accordingly it has standing to file a motion under this provision. I will therefore proceed to consider the substance of its motion.

9. A decision on an application to file a friend-of-the-court brief is within the discretion of the Appeals Tribunal, and the primary criterion for the Appeals Tribunal in determining whether to grant leave is whether such submissions would assist the Appeals Tribunal in its consideration of the questions at issue on appeal.

10. In *Masri*, the Appeals Tribunal held:

The purpose of a friend-of-the-court brief will generally be to address matters other than the law. The Appeals Tribunal is composed of experienced, professional Judges who are able to

If the issues in a case raise very specific or particular questions of law which are not generally within the expertise of counsel or the Judges, an application to file a friend-of-the-court brief may be granted. [...].<sup>1</sup>

11. In the present case, Ms. de Kermel challenges several administrative decisions taken by the IMO Secretary-General in the context of her election to the post of FICSA General Secretary, as well as his decision to place her on SLWOP. In my view, this appeal does not raise issues that would require or benefit from a clarification by a friend-of-the-court and can be decided on the basis of the parties' submissions and the case record.

12. FICSA submits that it was directly affected by the decision of IMO and that the friend-of-the-court brief will assist the Appeals Tribunal during its deliberations on the factual and legal issues, "i.e. the impact of the decision on FICSA". Accordingly, it seeks to address in its brief the relationship between FICSA and the (member) agencies, and IMO in particular.

13. None of the issues that FICSA intends to raise are relevant to Ms. de Kermel's case and I do not find that the suggested brief would assist the Appeals Tribunal in its deliberations. In my view, the title of FICSA's motion "application to file a friend-of-the-court brief" is misleading, if not a misnomer, as in reality FICSA's motion is an application to intervene in the present matter for the purpose of presenting its own case.

### Conclusion

14. For the foregoing reasons, FICSA's motion to file a friend-of-the-court brief is rejected.

Original and Authoritative Version: English  
Dated this 29<sup>th</sup> day of March 2012  
in Montevideo, Uruguay.

*(Signed)*  
Judge Simón, Duty Judge

Entered in the Register on this 29<sup>th</sup> day of March 2012  
in New York, United States.

*(Signed)*  
Weicheng Lin, Registrar

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<sup>1</sup> *Masri v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-098, paras. 25, 26.