

UNDT/NY/2009/039/

Case No.: JA

Counsel for respondent:

1. This Order is to be read in conjunction with my previous Orders Nos. 40, 43 and 44 (NY/2010). Decisions are not made by the Organization or by the Secretariat. They are made by individuals. Those individuals are personally responsible for them. It is clear that the decision to disobey the Tribunal's Order No. 40 (NY/2010) as to production of documents was taken by an officer of the Organization. Accordingly, yesterday I also ordered (Order No. 44 (NY/2010)) the officer who had made the decision to disobey the order, whose identity has not been disclosed, to appear in the Tribunal this morning at 10:00am, expecting that counsel for the respondent then in court would take appropriate steps to ascertain that person's identity and inform him or her of the order to appear. Under art 17 of the Rules of Procedure the Tribunal "may make an order requiring the presence of any person or the production of any document." These Rules of Procedure were adopted by the General Assembly on 9 August 2009.

2. At shortly after 9:30am this morning the Registry was informed in a document entitled "submission" and signed by a legal officer and the Chief of the Administrative Law Section of the Office of Human Resources Management as follows—

In response to Order No. 2010/44, the respondent notifies the Tribunal that the officer referred to ... will not be appearing before the Tribunal at 10.00am on 10 March 2010.

3. At the hearing on 10 March 2010, counsel for the respondent appeared. I asked counsel for the grounds relied on for the non-compliance with the Order requiring appearance. I was informed that those grounds were the same as those contained in the submissions originally made in support of the contention that the production of the documents sought to be produced in the *Bertucci* case should not be required, submissions that I rejected as without merit in my ruling requiring production to the Tribunal. Those submissions concerned documents and had nothing to do with the order requiring attendance of the officer who had decided that they would not be produced. When I pointed this out to counsel, she simply repeated



