6. In the morning of 20 December 2006, an incident occurred between the applicant and one of his colleagues of DITC (hereinafter colleague A). The same day, the applicant wrote an email to the Director, Division for Trade in Goods and Services, and Commodities, to report the incident. Colleague A, together with another ()-FLorvzí)bz-Yu with

12. On 1 May 2007, the applicant submitted to the Director, Division of

18. The Director, DOM, UNCTAD, referred the case to the Assistant Secretary-General, OHRM, New York, on 28 November 2007, together with the report of the Investigation Panel. He stressed that the panel's report showed that an incident occurred on 20 December 2006, which it seemed involved physical altercation between the applicant and colleague A and that in view of the serious nature of the allegations, "this case would seem to warrant some form of disciplinary action, once all the salient facts [were] fully ascertained".

19. By letter dated 3 April 2008, the O-i-C, Division for Organizational Development (DOD), OHRM, informed the applicant that on the basis of the findings of the Investigation Panel, he was "charge

23. The O-i-C, HRMS, UNCTAD, informed the applicant by memorandum dated 23 July 2008 that with respect to his complaint dated 14 July 2008, UNCTAD Administration would "proceed in accordance with established United Nations procedures" and that this complaint related to the ongoing case.

24. Effective 28 July 2008, the applicant was transferred from the Commodities Branch to the Trade, Environment, Climate Change and Sustainable Development Branch, as Special Adviser.

25. Colleague B retired from the Organization on 31 July 2008.

26. The Administrative Law Unit (ALU), OHRM, informed the applicant by emails dated 28 November and 3 December 2008 respectively that his comments to the charge letter dated 3 April 2008 were still under review and that he would be informed once OHRM had determined what action to take. The applicant was also informed that his complaint of 14 July 2008 against his two colleagues would be reviewed in addition to the other pending matters.

27. The applicant sent a letter to the Secretary-General on 26 February 2009, requesting administrative review of the decisions not to take any action with respect to his complaint of 14 July 2008 against his colleagues and to deny him justice by not dropping the charges against him. He repeated his requests that all charges against him should be dropped and that the two colleagues should be charged respectively with false testimony, defamation and interference with the investigation.

28. The Human Resources Management Section (HRMS), United Nations Office at Geneva (UNOG), informed the applicant on 6 March 2009 that the Acting Chief, ALU, OHRM, had placed a note in his OSF. The note stated that the applicant "resigned from service with the Organization effective 31 March 2009. At the time of his separation, a disciplinary matter was pending which had not been resolved due to his separation. In the event that [the applicant] should seek further employment within the United Nations Common System, this matter should be further reviewed by the Office of Human Resources Management […]".

29. The applicant sent an email to the Acting Chief, ALU, OHRM, on 17 March 2009 requesting several clarifications with respect to the decision to put the above-mentioned note in his OSF and to suspend the case against him. He

noted that he had requested an administrative review of OHRM actions in the case against him and asked whether she intended to affirm in the review that the disciplinary matter had not been resolved due to his separation.

30. On 30 March 2009, the applicant sent another letter to the Secretary-General requesting review of the decision to place the above-referenced note in his OSF, which he considered to be an abuse of authority. He requested that the Acting Chief, ALU, OHRM, be charged with abuse of authority.

31. The applicant resigned from the Organization effective 31 March 2009.

32. The Acting Chief, ALU, OHRM, responded to the applicant's request for review dated 26 February 2009 by letter dated 4 May 2009, informing him that her Office had reviewed "the implicit decision not to take any action with respect to [his] complaint … and to deny [him] justice by not dropping charges against [him]" and had concluded that the foregoing did not constitute administrative decisions within the meaning of former staff regulation 11.1 and staff rule 111.2. She further noted that "it was not legally possible for anyone to compel the Administration to take disciplinary action against another party". The Acting Chief, ALU, OHRM, informed the applicant that his second request for review, raising issues related to decisions taken by OHRM on his disciplinary case, was being reviewed by the Office of the Under-Secretary-General for Management.

33. Colleague A passed away on 5 May 2009.

34. By letter dated 4 June 2009 from the O-i-C, Human Resources Policy Service, OHRM, the applicant was informed that after review, it had been found that the decision to place the above-referenced note on his OSF was "proper and in accordance with the Administration's practice in similar situations". She noted that no final decision had been taken on the disciplinary case against the applicant at the time of his separation from service and that the Organization does not have

colleague A's case, but included a request that colleague A's conduct, already in the past, be reviewed, which never happened. The applicant has "dozens of hostile, insulting and slanderous emails" from colleague A but the Panel never asked for them, though the applicant had offered to provide them to the Panel. The Panel refused to hear witnesses as per the applicant's request and did not investigate accusations made by colleague A according to which the applicant had harassed other staff members. If the Panel had done so, it would have found that these allegations were absolutely baseless. This would have provided the Panel with further evidence with respect to the credibility of the parties involved in the incident of 20 December 2006;

b. The fact that the Panel did not set up a list of the persons it interviewed and did not prepare minutes of its interviews and meetings made it impossible for anybody to assess the basis of the conclusions drawn by the Panel. This is a violation of the procedural standards applicable to investigations as outlined in the Uniform Guidelines for Investigations, proposed by OIOS and the World Bank and adopted at the Fourth Conference of International Investigators of United Nations Organizations and Multilateral Financial Institutions, in April 2003. The Panel failed to make a proper reconstruction of the incident, which would have demonstrated the contradictions between the versions presented by colleague A and colleague B;

c. Crucial elements such as the interference of the Senegalese Ambassador were not addressed. Since the respondent argues that this did not have an impact on the course of action, the applicant requests to be provided with any correspondence and notes related to the meeting of the Ambassador with the Secretary-General of UNCTAD. The Panel based its conclusions on speculations and failed to investigate the credibility of the parties involved. UNCTAD Administration spread rumours about the incident, thus breaching its duty of confidentiality;

d. The case was sent to OHRM without the facts having been ascertained and without any indication as to who was the person who had actually been the aggressor in the case at hand. OHRM ignored UNCTAD recommendation to call for a proper investigation by competent investigators hence charged the applicant "on the basis of an incompetently executed investigation", ignoring contradictions;

e. OHRM did not investigate the applicant's complaints against his two colleagues. It put a note on his file creating the impression that the reason why the case had not been resolved was his leaving the UN while in reality, it was OHRM refusal to take action. The applicant was not informed about his right to comment on the note, in contradiction with article 3 of ST/AI/292;

f. In view of the jurisprudence of the former United Nations Administrative Tribunal (UNAT) on disciplinary cases, UNCTAD and OHRM actions were tainted by gross irregularities and the Administration violated the standards established by UNAT on disciplinary cases, i.e. the facts of the case were not established, no proper investigation was carried out and the pursuit of the case was biased in that it was done to please African delegations;

g. UNCTAD and OHRM actions were exacerbated by the extreme delays in taking action: the incident took place on 20 December 2006 and "even if [he] were guilty of the offense for which [colleague A] accused [him], it would be unacceptable to let such ly blhh

provided with a memorandum from the then Chief, HRMS/UNOG to ALU/OHRM on that issue;

h. The Secretary-General has an obligation to investigate all complaints that are not obviously frivolous and to inform the complainant of the results of the investigation. It is not understandable how ALU/OHRM could sit for eight months on a case which, according to the respondent, met all the necessary requirements for disciplinary action, without submitting the case to the Joint Disciplinary Committee (JDC). The applicant believes that the charges were never referred to a disciplinary committee because OHRM was aware that "they would not stand up to scrutiny". "UNCTAD and ALU willfully charged the wrong person and since then, the respondent has tried to cover up its mistakes";

i. A review of written material would show "that improper motives influenced the investigation and determined its direction"; hence, he requests the disclosure to him or to the Tribunal of a series of correspondence related to the case against him and to his complaints;

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a. "One year's net base salary for damage to [his] reputation and professional standing caused by the failure to accord [him] due process in the case against [him]";

b. "One year's net base salary for psychological suffering and anguish, eventually leading to [his] choosing to leave the United Nations, caused by the denial of due process, as well as by excessive and unexplained delays";

c. "US$ 100,000 that should have accrued to [him] in damages from [colleague A] for assault, false accusation and defamation, had the procedure been carried out properly, and which [he] now claims from the United Nations, since it is due only to the failure of the United Nations to pursue the case that [he] was not able to claim these damages from [colleague A]";

d. "US$ 25,000 that should have accrued to [him] in damages [from colleague B] for defamation and slander, had the procedure been carried out properly, and which [he] now claims from the United Nations, since it is due only to the failure of the United Nations to pursue the case that [he] cannot claim these damages from [that colleague]."

41. The respondent's principal contentions are:

a. The burden to proof that an administrative decision was tainted by improper motives and was not taken in accordance with the applicable procedure falls on the applicant who, in the present case, failed to provide evidence in that regard;

b. It was not the mandate of the Security and Safety Service to conduct a proper investigation but to ensure that the situation would not escalate; the applicant was given ample opportunity to present his version of the events to the Panel set up for the purpose of investigating the incident; the Investigation Panel could legitimately take into account the statement made by colleagues A and B to the Security and Safety Service the day of the incident;

c. The Investigation Panel had been properly established and its terms of reference, though extended over time, were clear and had been conveyed to the applicant when he was interviewed by the Panel;

d. Even if it would be good administrative practice, a

m. The complaint against colleague A will no longer be reviewed since he passed away; the review of his complaint against colleague B would resume if the applicant rejoined the Organization;

n. In view of the fact that it was decided, on 22 June 2010, that the charges against the applicant would be dropped and that the note

final arbiter of the case. It is not legally possible for anyone to compel the Administration to take disciplinary action against another party." (Judgement No. 1086, Fayache (2002)). On the basis of the available evidence, the respondent properly exercised its discretionary power with respect to the applicant's complaint dated 1 May 2007.

50. The same holds true with regard to the applicant's complaints of 14 July 2008. The former UNAT held that "even if it had been in the [a]pplicant's interests to take action on this issue, the decision to conduct such an investigation is the privilege of the Organization itself" (judgement No. 1271 (2005); cf. also judgements No. 1319 (2007) and 1385 (2008)). In the present case, at the moment of the applicant's complaints of 14 July 2008, the Administration did not and could not know what had actually happened on 20 December 2006. Therefore, it was reasonable to conclude that any further investigation into that new complaint, which was based on the incident of 20 December 2006 and related to allegations of defamation made in that context, would not make sense unless the facts of the incident of 20 December 2006 were established. In view of all the circumstances of the present case, the Organization's decision not to conduct another, separate investigation into the applicant's complaints of 14 July 2008 and not to provide further details to the applicant thereon was understandable, was within the discretionary power of the Secretary-General and did not violate the applicant's rights.

51. Since the quantification of immaterial damages is an "inexact science", the Dispute Tribunal in its judgment UNDT/2009/028, Crichlow, has established some guiding principles for calculation of compensatory damages; these include that damages may only be awarded to compensate for negative effects of a proven breach and that an award should be proportionate to the established damage suffered by the applicant.

52. The application of the universal principle of proportionality on the determination of financial award for a proven breach requires due consideration of all elements of the case at hand. Essential elements of this consideration are e.g.

53. On the applicant's account, first and foremost, there is the breach of Section 9 of ST/AI/371 as indicated above. For the applicant, this breach implied a long period of time being accused of misconduct. Secondly, as the Tribunal held in judgment UNDT/2009/025, James, "it is a universal obligation of both employee and employer to act in good faith towards each other. Good faith includes acting rationally, fairly, honestly and in accordance with the obligations of due process". By leaving the applicant in a limbo for about nine months (July 2008 to March 2009), without justification, the Administration caused unnecessary stress to the applicant who was uncertain about his professional future. Finally, more than one additional year had to pass by before the Administration found it suitable to drop the charges and to remove the note from