

% 5 &'#ngs to t)e Eo&)#g) "e9e" of ene'g and \$omm#tment to
<o'=. F #t)#n a 9e' s)o't t#me(s)e esta&'#s)ed a net<o'=. of
!a'tne's and fa\$#"#tated t)e de9e"o!ment of d#st'#t "e9e" <o'=. !"ans
fo' GCBC/ <)#\$) <as \$onso"#dated #nto nat#ona" GCBC/ <o'=.
!"an. ;e' d'#9e fo' 'esu't <as fu't)e' e2!'essed t)'oug) su!!o't to
t)e off#e to \$o9e' mo'e t)an one d#st'#t #n t)e d#9#s#on. % 5)as
t)e a&'#t to a!!'o!'#ate ne<=no<"edge <)en t)e \$on\$e!t #s \$'ea'
and fa\$#"#tate &ot) \$ommun#t mo&'#Dat#on and data \$o"'e\$#on
du'#ng t)e G45 e2e'\$#se. A \$oo'd#nated te\$)n#\$a" su!!o't to t)e
% 5 #n de\$ent'a"#Dat#on and eme'gen\$ / D66 !'e!a'edness
!"ann#ng <#" &enef#t t)e staff mem&'e' to<a'ds st'engt)en#ng)e'

a. D#d -not ta=e \$onst'u\$#9e feed&a\$= f'om >)e'? su!e'9#so' as <e"" as
>)e'? \$o""eaguesJC

&. F as -not a team !"a e'00 and

\$.

a"egat#ons &'oug)t & >)e' su!e'9#so'? t)'oug) an

4H.

Case No. UNDT/GVA/2014/068

Judgment No. UNDT/2016/068

- The 'e&utta' su&m#ss#on statement ,o' KNote fo' +#"e* as #s \$a"ed & t)e staff mem&e'l #s !'edom#nant")#g)"#g)t#ng #ssues <#t) t)e !'o\$edu'es t)at <e'e not a!!'o!'#ate" fo"o<ed <#t) 'ega'd to t)e PA% !'o\$ess &ut does not d#s\$uss o' -'e&ut0 t)e \$ontent of t)e PA% #n an suff#\$#ent deta#". T)e staff mem&e' #nstead 'e@uests fu't)e' #nfo'mat#on f'om t)e su!e'9#so' before s)e #s #n a !os#t#on to do t)#s.
- T)e !ane" a"so o&se'9es t)at t)e'e a'e nume'ous \$omments & t)e su!e'9#so' unde' t)e d#ffe'ent <o'= out!uts <)e'e e2am!"es of <ea= !e'fo'man\$e a'e !'o9#ded. %u\$) \$omments a'e 'e'ated to s!e\$#f#\$ 'e!o'ts not &e#ng !'odu\$ed on t#me ,o' at a"l(meet#ngs and a\$#9#t#es not &e#ng)e'd et\$. T)e !ane" &e"e9es t)at t)e staff mem&e' \$ou'd)a9e made an attem!t to defend)e'se'f aga#nst t)ese \$on\$'ete \$omments & !'esent#ng e9#den\$e to \$ounte'a\$ t)em #.e. & su&m#tt#ng t)e a\$tua" 'e!o'ts(meet#ng m#nutes et\$. T)us(t)e 'e&utta" statement !'esented does not a!!ea' to meet t)e 'e@u#ements as deta#ed #n C+/A./20113001(!a'ag'a!) 7.12,fl.
- .n \$on\$'us#on t)e Pane" does not fee" t)at #t)as 'e\$e#9ed enoug) do\$umented e9#den\$e #n t)e \$ou'se of #ts <o'= t)at <ou'd Eust#f a \$)ange #n t)e su!e'9#so'*\$s 'at#ngs on <o'= out!uts and \$om!eten\$#es #n staff mem&e'*\$s 2014 PA%.

A8. B ema#" of 17 June 2014 to t)e C)#ef(Po"#\$ and Adm#n#st'at#9e Ga< %e\$#on(D; 6(t)e A!!"#\$ant 'efe''ed to t)e -f#na" \$on\$'us#ons0 of t)e 'e&utta" !ane" s)e 'e#te'ated)e' \$on\$e'ns a&out t)e !'o\$ess as <e"" as t)e su&stan\$e of)e' !e'fo'man\$e e9a"uat#on(and as=ed(inter alia(<)et)e' t)e 'e&utta" of t)e PA% <as a"lead \$om!"eted and(#f not(<)at s)ou'd &e t)e ne2t ste! #n t)e 'e&utta" !'o\$ess and <)et)e' t)e #nte'9#e< 'e\$o'ds of t)e 'e&utta" !ane" \$ou'd &e s)a'ed <#t))e'.

AH. T)e C)#ef(Po"#\$ and Adm#n#st'at#9e Ga< %e\$#on(D; 6('es!onded & ema#" of 1H June 2014(not#ng t)at t)e t'ansm#tta" of t)e 'e&utta" !ane"*\$s 'e!o't \$onst#tuted t)e \$on\$'us#on of t)e 'e&utta" !'o\$ess and t)e f#na" de\$#s#on on)e' 'e&utta" \$ase.

60. 8n 24 June 2014(t)e De!ut /2e\$ut#9e D#e\$to'(UN.C/+('es!onded to t)e A!!"#\$ant*\$s 'e@uest fo' management e9a"uat#on of 7 5 a'\$) 2014(-of t)e de\$#s#on not to e2tend >)e'? a!!o#ntment u!on #ts e2!#at#on on 41 5 a'\$) 20140.

g. ;e' su!e'9#so' fa#ed to a!!' t)e 'emed#es !'o9#ded fo' unde' se\$.
10.1 and 10.2 of %T/A./2010/A(#n\$ud#ng t)e !'e!a'at#on of a <'#tten
!e'fo'man\$e #m!'o9ement !"anC

). ;e' se\$ond 'e!o't#ng off#se'(t)e C)#ef of +#e'd 8 !e'at#ons(fa#ed to
add'ess d#sag'eements &et<een)e' and)e' su!e'9#so'(and to)o'd t)e "atte'
a\$\$ounta&'e fo' not ensu'ing a fa# and \$ons#stent a!!'a#sa" of t)e
A!!"#Sant*s !e'fo'man\$e and \$om!eten\$#esC

#. T)e management e9a"uat#on <as &ased on t)e #m!'o!e' \$on\$"us#on of
t)e 'e&utta" !ane" and of t)e off#se of #n9est#gat#onC

E. T)e Pane" fa#ed to e2am#ne t)e 9a'#ous #ssues deta#ed #n t)e 'e&utta"
statement ,e.g.(non3ad)e'en\$e to t)e PA% !'o\$edu'esC a&us#9e and
defamato' \$ommentsC fa"se a""egat#ons and "a\$= of Eust#f#\$at#onC o9e'a"
#n\$ons#sten\$ &et<een \$omments and 'at#ngsC a&sen\$e of \$oa\$)#ngC
d#s\$'#m#nat#on1C

=. To e2am#ne <)et)e')e' negat#9e 'at#ng s)ou'd)a9e &een u!)e'd(#t #s
#m!o'tant to e2am#ne <)at Eust#f#\$at#ons and do\$umenta' e9#den\$es >s#\$?
t)e Pane" <as !'o9#ded <#t) & t)e A!!"#Sant*s su!e'9#so'C <)#'e t)e
T'&una" \$annot su&st#tute #ts assessment to t)at of t)e su!e'9#so'(#t)as to
\$ons#de' <)et)e' t)e do\$uments &efo'e #t !'o!e'" \$o''o'o'ate t)e negat#9e
!e'fo'man\$e e9a"uat#on g#9en to)e' #n su!!o't fo' t)e non3'ene<a"C

". T)e Pane" and management e9a"uat#on used -ad9e'se mate'#a"0 ,e.g.(
note of 6 +e&'ua' 2014 'e\$ommend#ng non3'ene<a" of \$ont'a\$tc f#e'd t'#!
'e!o't of A +e&'ua' 2014l(a't)oug) t)at mate'#a")ad not &een s)o<n to t)e
A!!"#Sant(<)o #nfo'med t)e 'e&utta" !ane" and t)e

m. A(t)oug) t)e meet#ng of fo'ma" 'e@u#'ements #s a !'e\$ond#t#on to a! !o#nt a !ane" unde' se\$. 7.1A of C+/A./20113001(t)e Pane" <as des#gnated a(t)oug) s)e "ate' found t)at t)e 'e&utta" statement d#d not meet t)e 'e@u#'ements !'o9#ded fo' unde' se\$. 7.12,f1 of sa#d #nst'u\$#on(as su\$(t)e Pane" d'e< #ts \$on\$"us#on &ased on an #m!'o!e' assessment(a(t)oug) t)e \$om!eten\$e to as\$e'ta#n <)et)e' fo'ma" 'e@u#'ements)a9e &een met "#es <#t) t)e %e\$'eta' of t)e 'e&utta" !ane"(#t <as t)e !ane" #tse"f t)at d#d t)at assessment(

n. T)e \$omments made &)e' su!e'9#so' <e'e a&us#9e(#n\$ons#stent(9ague and at t#mes 'e!et#t#9e(t)e Pane" d#d not assess t)e o9e'a"" @ua"#t of t)e assessments and \$omments(t)e A!!"#\$ant <as e2\$"uded f'om !'oEe\$t 'e!o'ts and <as sto!!ed f'om #nte'a\$t#ng <#t))e' \$ounte'!a'ts fo' a !e'#od of n#ne mont)s(<)#\$) s)e 'e!o'ted to sen#o' management and t)e 'e&utta" !ane" (

o. T)e 2014 PA% m#d3 ea' assessment)as to &e seen #n "#g)t of t)e !os#t#9e e9a"uat#on 'e\$e#9ed fo' t)e ea' 2012 on" fou' mont)s ea""#e' (t)ese #n\$ons#sten\$es s)o< t)at s)e <as su&Ee\$ted to)a'assment(&ot) #n t)e m#d3 ea' and f#na" assessment(t)e su!e'9#so' !'o9#ded)e' \$omments and as=ed t)e A!!"#\$ant to s#gn t)e do\$ument(<)#"e g#9#ng)e' on" a fe<)ou's* not#Se(

!. %e <as g#9en not#Se of)e' se!a'at#on #n 5 a'\$(2014 des!#te t)e

##.

d. The Applicant's

...e' !e'fo'man\$e(#n t)e 'e'e9ant \$ \$"e()ad &een 'ated as
-unsat#sfa\$to' 0C

E. T)e A!!"#\$ant <as !ut on t#me" not#\$e a&out)e' !e'fo'man\$e
#nade@ua\$#es on at "east fou' o\$as#ons(and <as !'o9#ded <#t) s!e\$#f#\$
feed&a\$= and su! !o'tc do\$umenta' e9#den\$e s)o<s t)at t)e A!!"#\$ant <as
t'eated <#t) 'es!e\$t &)e' su!e'9#so'c t)e m#d3te'm 'e9#e< too= !"a\$e on
2H %e!tem&e' 2014C

=. B memo'andum of 6 8\$to&e' 2014(add'essed to t)e C)#ef(;uman
6esou'\$es(and a't)oug) not 'e@u#ed &ut fo' t)e sa=e of t'ans!a'en\$
\$o!#ed to t)e A!!"#\$ant()e' su!e'9#so' 'e\$ommended t)at)e' \$ont'a\$t not
&e 'ene<ed due to !e'fo'man\$e #ssuesC

". T)e a&o9e s)o<s t)at t)e A!!"#\$ant <as !ut on t#me" not#\$e and(
a't)oug) t)#s <as not 'e@uested & t)e 'u"es ,C+/A./20103001l(s)e <as
e9en 'e@uested to !'e!a'e a !e'fo'man\$e #m!'o9ement !"an(<)#\$) s)e
fa"#ed to do()o"d#ng t)at)e' !e'fo'man\$e <as #m!e\$sa&"eC

m. T)e 'e&utta" !'o\$edu'e <as \$o''e\$t" fo""o<ed and t)e \$on\$"us#ons &
t)e Pane" <e'e Eust#f#ed. T)e Pane" 'e9#e<ed t)e !e't#nent do\$umentat#on
and #nte'9#e<ed t)e A!!"#\$ant(as <e"" as)e' f#st and se\$ond 'e!o't#ng
off#\$e'(\$on\$"ud#ng t)at #t)ad 'e\$e#9ed #nsuff#\$#ent #nfo'mat#on Eust#f #ng a
\$)ange of t)e assessment & t)e su!e'9#so'. .n !a't#su"a'(t)e Pane" too= #nto
a\$ount t)e A!!"#\$ant*s 'e"u\$tan\$e to add'ess)e' su!e'9#so'*s \$omments
<#t) 'es!e\$t to)e' !e'fo'man\$e s)o't\$om#ngs(and found t)at s)e \$ou'd
)a9e made an effo't to 'e&ut t)em. +o' a 'e&utta" !'o\$ess to fun\$t#on
!'o!e'" (#t #s #nd#!ensa&"e t)at t)e staff mem&e' set fo't) t)e g'ounds <)
)e/s)e s)ou'd)a9e 'e\$e#9ed a)#g)e' 'at#ngC t)e A!!"#\$ant*s att#tude du'ng
t)e 'e&utta" !'o\$edu'e m#'o'ed t)e one t)at s)e)ad 9#s3N39#s)e' su!e'9#so'(
)e' team and UN.C/+ \$ounte'!a'ts. T)e Pane" found(\$o''e\$t" so(t)at t)e
2014 PA% \$onta#ned nume'ous s!e\$#f#\$ \$omments \$on\$e'n#ng !e'fo'man\$e
s)o't\$om#ngs(<)#\$) <e'e o!en to 'e&utta"C #t <as t)e A!!"#\$ant*s \$)o#se
not to 'e&ut t)em("ea9#ng t)e 'e&utta" !ane" <#t) no \$)o#se &ut to f#nd t)at #t

4.1 The 'a' and 'm' commitments are on the date of the 'ette' of a commitment. They do not 'a' an 'e' of 'ene<a". Notwithstanding the 'a' and 'm' commitments may be extended (subject to and in accordance with the provisions of the 'u'.

L

4.7 A 'm' commitment may be extended for an 'od(u! to t<o ea's at a time (subject to 'organizational' needs (sat#sfa\$to' se'9#Se and a 'a' of funds. A 'm' commitment may be extended an 'um&' of times, 'em!) as added!

7A. Adm'n'st'at#9e 'u\$#on C+/A./20103001 ,%e!a'at#on f'om se'9#Se1 of 10 5 a\$) 2010 states (#n se\$. A.2(t)at ->n?ot<#t)stand#ng t)e !'o9#s#ons of !'a'a. A.1(a tem!o'a' o' f#2ed3te'm a! !o#ntment ma &e e2tended(su&Ee\$t to o'gan#Dat#ona" needs(sat#sfa\$to' se'9#Se² and a9a#a&#"#t of funds(and #n a\$\$o'dan\$e <#t) t)e !'o9#s#ons of C+/A./200H300A on T !es of A! !o#ntment and Catego'#es of %taff(se\$. 4.

76. The A! !"#sant 'e"#es on %T/A./2010/A ,Pe'fo'man\$e 5 anagement and De9e'o!ment % stem! of t)e Un#ted Nat#ons %e\$'eta'#at. .n t)#s 'es!e\$t(t)e T'&una" 'e\$"'s <)at t)e A! !ea's T'&una")e'd #n Mashhour 20143UNAT3484('efe' '#ng to %T/%GB/200H/4 ,P'o\$edu'es fo' t)e !'omu"gat#on of adm'n'st'at#9e #ssuan\$es1B ->a?dm'n'st'at#9e #ssuan\$es s)a"" not a!!" to t)e se!a'ate" adm'n'ste'ed funds(o'gans and !'og'ammes of t)e Un#ted Nat#ons(un'ess

78. The Applicant made the statement that he is a non-employee of the Commission based on the information and the Administrative Tribunal's decision in the case of Morsy 2014/UNAT/3280 Ahmed 2011/UNAT/31A4 (Said 2013/UNAT/3A001) (a non-employee of the Commission - San & S) arranged on the grounds that the Agent was not asked for (Eust" o' t'ans!a'ent" <#t) the staff member o' <as mot#9ated & &#as(!'e#ud#Se o' #m!'o!e' mot#9e aga#nst the staff member ,Ahmed! (<)o)as the &u'den of !'oof #n t)#s 'es!eSt ,Said1.

79. The Applicant further alleged that he is not the owner of the Tribunal to exercise de novo the Agent's decision (and to !"a\$e #tse'f #n t)e !os#t#ion of t)e de\$#s#on ma=e' and dete'm#ne (<)et)e' #t <ou'd)a9e 'ene<ed t)e \$ont'aSt &ased on t)e !e'fo'man\$e e9a"uat#on.

80. The Applicant also urged in Assale 2013/UNAT/3A44 that he is not an employee under the law and that he is a 30% employee of the Commission of a 2nd tier of the Commission (and that suffices for the staff member) as been informed of the information issues and)as)ad t)e o' !o'tun#t (&et<een t)e m#d3!o#nt 'e9#e< and t)e end of \$ont'aSt(to #m!'o9e)#s/)e' !e'fo'man\$e.

81. The Applicant urged that

The Commission does not need for the Applicant to define the term - 'oo' !e'fo'man\$e.0 T)#s T'&una")as a'lead dete'm#ned t)at a P/6 does not need to 'ate a staff member as -unsat#sfa\$to' 0 #n o'de' to su' !o't an agen\$ *s de\$#s#on not to 'ene< an a' !o#ntment fo' !oo' !e'fo'man\$e. Fe)a9e a"so)e'd t)at a staff member <)ose !e'fo'man\$e <as 'ated as -!a't#a"" meet#ng !e'fo'man\$e e2!e\$at#ons0)ad no "eg#t#mate e2!e\$tan\$ of 'ene<a" of)#s \$ont'aSt and t)e non3'ene<a" of anot)e' staff member <#t) a #m#a' !e'fo'man\$e 'at#ng <as "a<fu".

82. For the reasons mentioned in the Tribunal's decision no examination of the issues arising in the present case is required.

8A. The A!!'#\$ant*s 2014 <o'='!an <as s#gned &)e' and)e' f#'st 'e!o't#ng off#se' ,)e' su!e'9#so'! on 7 A!'#" 2014(t)e m#d3!o#nt 'e9#e< <as f#na"#sed #n %e!tem&e' 2014(and t)e f#na" e9a"uat#on <as \$on\$"uded on 14 +e&'ua' 2014.

86. The e9#den\$e d#s\$"oses t)at se9e'a" meet#ngs <e'e)e'd &et<een t)e A!!'#\$ant and)e' su!e'9#so'. The T'#" notes t)at t)e A!!'#\$ant d#s!utes t)e \$ontent of t)e meet#ngs &et<een)e' and)e' su!e'9#so' of 24 A!'#" (40 Ju" and 2 %e!tem&e' 2014. .t #s a! !a'ent t)at afte' t)e meet#ngs #n Ju" and %e!tem&e' (t)e A!!'#\$ant*s su!e'9#so' <'ote deta#"ed ema#"s to t)e A!!'#\$ant('es!e\$t#9e" dated 41 Ju" and 1H %e!tem&e' 2014(e2!#"#t" 'efe' '#ng to t)e !e'fo'man\$e 'e"ated meet#ngs t)e)ad)ad on 24 A!'#" (40 Ju" and 2 %e!tem&e' 2014(and enume'at#ng s!e\$#f#\$ a'eas fo' #m!'o9ement t)at t)e A!!'#\$ant <as as=ed to add'ess. The T'#" f#nds t)at t)e a9a#a&'e <'#tten 'e\$'o'd #s 'e"#a&'e e9#den\$e to s)o< t)at t)e A!!'#\$ant <as !ut on not#se(ea" on and 'egu"a" t)'oug)out t)e !e'fo'man\$e \$ \$"e(t)'oug) s!e\$#f#\$ ad9#se !'o9#ded &)e' su!e'9#so' (t)at t)e'e <e'e se'#ous \$on\$e'ns a&out)e' !e'fo'man\$e(and #n 'es!e\$t of <)\$) a'eas.

87. .n "#g)t of t)e fo'ego#ng(t)e T'#" does not f#nd #t a!!'o!'#ate(no' 'e'e9ant(to a""o< t)e A!!'#\$ant to !'odu\$e t)e aud#o3'e\$'o'ds s)e made of sa#d meet#ngs <#t)out)e' su!e'9#so'*s =no<'edge and \$onsent. The T'#" fu't)e' f#nds t)at t)e ema#" 'e\$'o'd <#t) 'es!e\$t to t)e a&o9e3'efe'en\$ed meet#ngs &et<een t)e A!!'#\$ant and)e' su!e'9#so' (<)\$) 'ema#ned unans<e'ed & t)e A!!'#\$ant #n Ju" (#s suff#s#ent !'oof t)at s)e <as !ut on not#se(at t)e "atest #n Ju" 2014(#f not #n A!'#" 2014(t)at t)e'e <e'e \$on\$e'ns a&out)e' !e'fo'man\$e (<)\$) <e'e @u#te s!e\$#f#\$.

88. 8n 40 %e!tem&e' 2014(t)e A!!'#\$ant 'e\$e#9ed)e' su!e'9#so'*s \$omments on t)e m#d3 ea' 'e9#e<(<)\$) fo""o<ed et anot)e' meet#ng)e'd on 2H %e!tem&e' 2014. The m#d3 ea' 'e9#e< aga#n \$onta#ned a negat#9e e9a"uat#on of t)e A!!'#\$ant*s !e'fo'man\$e. The A!!'#\$ant(#n an ema#" of 40 %e!tem&e' 2014(noted t)at t)e <a t)e !e'fo'man\$e a!!'a#sa")ad &een done <as -demo'a"#D#ng0(t)us "ea9#ng no dou#t t)at s)e <as aga#n made a<a'e of \$on\$e'ns a&out)e' !e'fo'man\$e at t)at t#me.

8H. The A!!"\$ant*s su!e'9#so' a"so \$o!#ed)e' on t)e memo'andum of
6 8\$to&e' 2014 #n <)#\$) s)e 'e\$ommended not to 'ene< t)e A!!"\$ant*s +TA

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10 5 a' \$) 2014('efe''ed t)e A!!"# \$ant to t)e <'ong adm#n#st'at#9e #nst'u\$#on
,C+/A./20113001/Amend.1(<)# \$) <as not a!!"# \$a&"ei <#t) 'es!e\$ t to t)e 'e&utta"
!'o\$ess(<)# \$) !'o9#des fo' a dead"#ne of 4A da s to f#e a 'e&utta" statement.
T)e'efo'e(t)e ,unlt#me"#ness of t)e 'e&utta" statement <as not 'a#sed & t)e
Adm#n#st'at#on and #s not at #ssue)e'e.

106. T)us(t)e T'#&una" 'e\$a""s t)at t)e A!!ea's T'#&una")e'd #n
Das 20143UNAT3421(!a'a. 4A(name" (t)at -an effe\$t#9e 'e&utta" me\$)an#sm #s
an #nteg'a" !a't of a !e'fo'man\$e e9a"uat#on !'o\$ess0(\$onf#'m#ng t)e D#s!ute
T'#&una"*s f#nd

,fl T)e 'e&utta" statement s)a"" \$"ea" set fo't) t)e s!e\$#f#\$ 'easons <) t)e staff mem&e' s)ou'd)a9e 'e\$e#9ed a)#g)e' 'at#ng.

7.14 T)e %e\$'eta' of t)e 6e&utta" Pane" s)a"" as\$e'ta#n t)at t)e fo'ma" 'e@u#'ements fo' ea\$) 'e&utta" statement)a9e &een met.

7.14 %)ou'd t)e %e\$'eta' dete'm#ne t)at a 'e&utta" statement fa#'s to meet t)e fo'ma" 'e@u#'ements()e/s)e s)a"" su&m#t a &'#ef 'e!o't stat#ng t)at t)e 'e&utta" statement #s not 'e\$e#9a&"e(to t)e C)a#' !e'son of t)e 6e&utta" Pane" fo' endo'sement(and #nfo'm t)e staff mem&e' a\$So'd#ng" .

7.1A .f t)e fo'ma" 'e@u#'ements fo' t)e 'e&utta" statement a'e met(t)e %e\$'eta' s)a"" su&m#t t)e 'e&utta" statement to t)e

108. The Tribunal notes that under the applicable provisions (more specifically, articles 7.14 to 7.1A) of the Convention, a "substantive" statement meets the formal requirements on the "substantive" (i.e., the "substantive") part of the claim. In the present case, the Tribunal finds that the "substantive" part of the claim does not designate a "substantive" part. In the present case, the Tribunal finds that the "substantive" part of the claim does not designate a "substantive" part.

