Case No.: UNDT/GVA/2014/08 /R1

UNITED NATIONS DISPUTE TRIBUNAL

Introduction

matte(to t*e D\s#ute T(\'una $o(e\&ons\de(at\on 0so t*at t*e a##)\&at\on ma'' e \&ons\de(ed 5 t* t*e 'ene to t*e u); ; A82 (e&o(d1.$

-. !" ; (de(No. 131 +GVA/2016. o 1- June 2016) t*e T(\" una\" o(de(ed t*e Res#ondent to \"se t*e ; A82 C\"sosu(e Note '" 24 June 2016) and t*e A##\"s\" ant to

Hearing

11. G%3en t*at t*e #(esent &ase 5 as (emanded '" t*e A##ea\$s T(% 'una\$ s#e&% %&a\$\$" o(t*%s T(% 'una\$ to &ons%de(t*e ; A82

16. ; n - June 2014) t*e A##\$%&ant sent an ema% to t*e C*%e o %n3est%gat%ons)
; A82) UN/PA) &om#\$a%n%ng a'out a\$\$eged *a(assment aga%nst *e(and unet*%&a\$'e*a3%ou('" 6 (s. 7.) and as>%ng o(an %n3est%gat%on %nto *e(&om#\$a%nt.

1@. !" emails o 23 Jus" 2014) t*e A##\$il&ant add(essed to an 8n3estigations

and *a(assment 0Ed%dF not a\$\$ 5 %t*%n t*e s&o#e o #(o*%' %ted &ondu&t and Ed%dF not) #(%ma a&%e) meet t*e (easona ' \$e t*(es*o\$d \$e3e\$ o(m%s&ondu&t1.

20. !" ema%s o 16 2e#tem'e(2014) t*e A##\$%&ant 5 as not% ked t*at ; A82 5 ou\$d not 'e \$aun&*%ng an %n3est%gat%on %nto *e(0&om#\$a%nts o *a(assment) 'u\$\$"%ng and a'use o aut*o(%t" aga%nst 12 sta mem'e(s at P2!1) s%n&e ; A82 *ad 0&on&\$uded %ts #(e\$%m%na(" (e3%e5 o t*e matte(and E*adF ound t*at a u\$% %n3est%gat%on E5 asF not 5 a((anted1) t*e(e o(e &ons%de(%ng t*e matte(0&\$osed1.

21. !" emails o 20 2e#tem'e(2014) t*e A##\$\&ant su'm\tted a (e:uest o(management e3a\uat\on aga\u00ednst ; A824s de&\u00ed\u00ednon not to \u00edaun\u00ed* an \u00edn3est\u00edgat\u00edon \u00ednto 6 (s. 7.4s 'e*a3\u00edou(. 2*e (e\u00ede\u00ed\u00edad a (e#\u00ed\u00ed\u00ed to *e((e:uest on 31 ; \u00edto'e(2014 (om t*e CAe\u00edut\u00ed\u00eda D\u00ed\u00ed\u00edou) UN/PA) '" 5*\u00ed\u00ed\u00ed u s*e 5 as not\u00ed u ut\u00ed t\u00ed t ; A82 de\u00ed\u00ed\u00ed\u00edut\u00ed t\u00ed t\u00ed t\u00ed t\u00ed\u00edut\u00ed t\u00ed t\u00ed t\u00ed t\u00edut\u00edut\u00ed t\u00ed t\u00edut\u00ed

Parties' submissions

22. T*e A##\$%&ant4s #(%n&%#a\$ &ontent%ons a(eH

a. T*e (e usa% o ; A82 to %aun&* t*e (e:uested %n3est%gat%on %s un ounded) as *e(&om#%a%nt 5 as du%" do&umented and t*e %m#(o#e('e*a3%ou(o 6 (s. 7. aga%nst *e(%s e3%dent 'ased on a%% t*e #(oo s*e a%(ead" su 'm%tted on man" o&&as%ons8 and

'. Ge(&ase %s not 'e%ng t(eated se(%ous\$" '" UN/PA) and *e(manage(s t(eated *e('ad\$" as 5 e%) %nstead o s*o5%ng *e(su##o(t and %nteg(at%ng *e(%nto t*e P2 ! team.

23. T*e Res#ondent4s #(\n&\#a\ &ontent\ons a(eH

a. T*e &ontested de&%s%on o ; A82 5 as ta>en %n &om#\$%an&e 5 %t* %ts

'. T*e &*a\$\$enged administ(atil3e de&ision is u(t*e(mo(e \$a5 u\$ as it 5 as ta>en in &om#\$ian&e 5it* t*e (e:ui(ements #(o3ided o(in t*e Po\$i&". 8ndeed) ; A82 dete(mined t*at t*e in&idents des&(i ed '" t*e A##\$ikant in *e(&om#\$aint (e\$ated to 0inte(#e(sona\$ (e\$ations*i#s amongst &o\$\$eagues in3o\$3ing &(itik&ism and disag(eements18 *en&e) t*e" did not a\$\$ unde(t*e s&o#e o #(o*i ited &ondu&t and did not meet a prima facie (easona ise t*(es*o\$d \$e3e\$ o mis&ondu&t. 6 o(eo3e() t*e &om#\$aint 5 as time, 'a((ed as it 5 as &on i(med t*at it (e e((ed to in&idents t*at o&&u((ed #(io(to 22 2e#tem 'e(2013) 5*i&* is not 5it*in t*e siA,mont* dead\$ine #(o3ided o('" se&. <.3.1 o t*e Po\$i&")

&. 8n add%t%on to t*e a 'o3e) t*e A##\$%&ant d%d not d%s&*a(ge t*e 'u(den o #(o3%ng t*at s*e su e(ed an" damage (om t*e &ontested de&%s%onB and

d. Conse:uent\$") t*e Res#ondent as>s o(t*e a##\$%&at%on to 'e (e?e&ted.

Consideration

24. T*e A##ea\$s T(\\'una\\ ound \\n \\ts Judgment Nielsen 2016,UNAT,64@ t*at t*e D\\s#ute T(\\'una\\ d\\d not eAe(&\\se su \\&\\enternymbol{k}\\alpha\\se s&(ut\\n" \\n &on&\\u00edud\\ng t*at t*e A##\\\&ant4s &om#\\u00eda\\nt aga\\nst 6 (s. 7. 5 as t\\me, 'a((ed as \\t d\\d not (e3\\u00ede5 t*e u\\\se (e&o(d o ; A\\u00ed24s \\n3est\\\gat\\on) nota '\\" \\ts C\\u00edsosu(e Note. \\u00edan #a(t\\\u00edu\\u00eda) t*e A##ea\\s T(\\'una*e\\u00edt t*at\\

8n e e&t) t*e D\s#ute T(\s'una\4s Judgment (eads as a \st 41. Instanke assessment o t*e (ekel3a'III o 6 s. Niessen4s assegatsons o *a(assment 5 * en t * e # (o # e(un & t * o t * e UNDT * s to ?ud%&%a\$\$" (e3%e5 t*e de&%s%on o ; A82 5*%&* %s mandated unde(t*e 2013 UN/PA Possult to &ondu&t su&* an assessment) #a(t\&u\sa(\" \n &\(&umstan&es 5*e(e t*e(e 5as a 5(\tten (e&o(d &a#a'se o 'esing dss&sosed to t*e UNDT. T*us) 5e a(e not sats sed t*at t*e &on&\$us\$ons (ea&*ed '" t*e D\$s#ute T(% 'una\$ *a3e a #(o#e(segas 'assis in the alsenae o the a o(esaid do&umenta(" (e&o(d. A #e(usa) o t*e ; A82 5(#ten (e&o(d 5as t*e a##(o#(#ate sta(t))))#ownt (om 5 *%&* t*e UNDT s*ou%d *a3e & ommen&ed %ts %ega% and a&tua\$ (e3%e5 to dete(m%ne 5*et*e(; A824 &on&\$us%on not to t(%gge(an %n3est%gat%on *ad a #(o#e(%ega% 'as%s. A&&o(d%ng%") 5e &annot 'e satils led t*at t*e UNDT Judgment a&&o(ds 5 it* t*e (e:ullements o A(tlase 11+1. o t*e UNDT 2tatute. /o(t*e o(egoling (eason) 5e 5 11 (emand t*e matter to t*e Dis#ute

2-. Ga3%ng (e3%e5ed t*e ; A82 C\$osu(e Note and %ts eA*% '%ts) t*e T(% 'una\$ 5 %\$\$ eAam%ne 5*et*e(t*e de&%s%on o ; A82 not to #u(sue an %n3est%gat%on %nto t*e A##\$%&ant4s &om#\$a%nt o(m%s&ondu&t aga%nst 6 (s. 7. &om#\$%ed 5 %t* t*e Po\$%&") as d%(e&ted '" t*e A##ea\$s T(% 'una\$. /o(t*e sa>e o 2@. T*e Po\$%&" esta'\$%s*es an %n o(ma\$ and a o(ma\$ #(o&ess o(dea\$%ng 5%t* &om#\$a%nts %\$ed unde(%t +see se&. 6 o t*e Po\$%&".. As to t*e o(ma\$ #(o&ess) se&. 6.2 #(o3%des t*at#

28. D %t* (ega(d to se&. < +0/o(ma% P(o&ess1. o t*e Po%%&") %ts (e%e3ant #a(ts o(t*e #(esent &ase (ead as o%s05sH

31. T*e A##\$%&ant su 'm%tted *e(o(ma§ &om#\$a%nt aga%nst 6 (s. 7. to ; A82 on - June 2014) and su##\$emented %t on 13 Ju\$" 2014. As (e&a\$%ed a'o3e) ; A82 ound t*at a\$% %n&%dents %n3o\$3%ng 6 (s. 7.) des&(%'ed '" t*e A##\$%&ant %n *e(do&uments and &on3e(sat%ons 5%t* ; A82) o&&u((ed #(%o(to 22 2e#tem'e(2013. T*%s &on&\$us%on 5 as %ndeed &on %(med '" t*e A##\$%&ant %n *e(&on3e(sat%on 5%t* t*e ; A82 %n3est%gato(s on 10 2e#tem'e(2014) and a&&o(ds 5%t* t*e a&t t*at t*e A##\$%&ant 5 as #\$a&ed on 2=D/P on 23 2e#tem'e(2013 and t*at s*e ne3e((etu(ned to 5o(> a te(5a(ds. T*e(e %s no %nd%&at%on t*at t*e A##\$%&ant *ad an" &onta&t 5%t* 6 (s. 7. a te(22 2e#tem'e(2013. A'sent an" eAtens%on o t%me g(anted '" t*e D%(e&to() ; A82) t*e T(%'una\$ &annot 'ut &on %(m ; A824s &on&\$us%on t*at t*e A##\$%&ant4s &om#\$a%nt aga%nst 6

34. 8n t*e %nstant &ase) %t *as 'een esta'\$%s*ed t*at ; A82 (e3%e5ed t*e A##\$%&ant4s &om#\$a%nt aga%nst 6 (s. 7.) as 5 e\$% as t*e do&uments atta&*ed t*e(eto. ; A82 %n3est%gato(s a\$so &onta&ted t*e A##\$%&ant '" #*one on 10 2e#tem 'e(2014 to get u(t*e(%n o(mat%on and &\$a(% %&at%ons %n (es#e&t o *e(&om#\$a%nt.

3-. 8n %ts #(e%m%na(" assessment) ; A82 & on & uded as o \$0.5 s

/(om ; A824 (e3%e5 o Et*e A##\$%antF4s e%g*t %nd%3%dua\$ &om#\$a%nts o 'u\$\$"%ng and *a(assment aga%nst *e(o(me(P2 ! &o\$\$eagues and t*e su##o(t%ng %n o(mat%on s*e #(o3%ded) ; A82 ound t*at Et*e A##\$%&antF4s #(%ma(" &on&e(n 5as t*e \$a&> o

Case No. UNDT/GVA/2014/083/R1 Judgment No. UNDT/2016/111

3@. T*e same *o\$ds t(ue o(t*e A##\$%&ant4s a\$\$egat%ons %n (es#e&t o d%s&(%m%nato(" (ema(>s made ' " 6 (s. 7. T*e &om#\$a%nt me(e\$" states t*at 6 (s. 7. 0Ed%s&ussedF nat%ona\$%t%es toget*e(5%t* ot*e(team mem 'e(s +%n&\$ud%ng Russ%ans.1) and a\$so d%s&ussed t*e mean%ng o Russ%an 5o(ds and made

Conclusion

41. 8n 3%e5 o t*e o(ego%ng) t*e T(% 'una% DCC8DC2H

T*e a##\$%&at%on %s (e?e&ted %n %ts ent%(et".

+Signed.

Judge Te(esa !(a3o

Dated t*%s 1<t* da" o August 2016

Cnte(ed %n t*e Reg%ste(on t*%s 1< t* da" o August 2016

+Signed.

RenK 6. Va(gas 6.) Reg\st(a() Gene3a