

Introduction

1.

12. The 'Lead' D3++ sent a memorandum dated 16 June 2016 to the 'sg(Comm'ssone)' entitled '0; o#o6 u' to the 'st? >nsttute 5e. 6 of the +u"#! C(a)n1. In the memo' the D3++ noted four '0")so)st! ations and de'sson ma<ng "o)nts fo) ons)de)at)on 7! the 'sg(Comm'ssone)1. One of the 'on%)ned 0t(e t)ansfo)mat)on of ")o)u)ement into a mo)e)o7ust se). %e 7!)e)onf)gu)ng the se). %e into a *F se)tion and a ;e)d se)tion1. To the memo)andum' the 'Lead' D3++ annexed five 'e: "#anations on the ")o)osed)est)u)tu)ng' \$n)ud)ng an o)gan)g)am on the ")o)osed D3++ ne 6 st)u)tu)e. The 'sg(Comm'ssone) signed the memorandum off on 26 June 2016.

18. The 'Lead' P, C+ the A" "#ant=s su"e). \$so)' \$nfo)med the #atte) du)ng a

16. At its 10 July 2016 session, the Budget Committee approved the proposed P, C+ adjustment of the disbursement of the "osition en"um7e)ed 7! t(e A""#%ant' effe%t\$.e 1 , a)(2016. T(e A""#%ant 6as \$nfo)med of t(at de%\$\$son 7! t(e *ead' P , C+' \$n a #ette) dated 24 Ju#! 201&' 6 (\$% (t(e A""#%ant s\$gned on 27 Ju#! 201&.

17. On 28 August 201&' t(e A""#%ant f\$hed a)e@uest fo) management e.a#uat\$on 6\$t(t(e De"ut! *\$g(Comm\$\$s\$one) of t(e de%\$\$son to a7o#\$s((\$ "ostG \$n (\$s)e@uest' (e a#so as<ed to 7e ")o.\$ded 6\$t(a %o"! of t(e Budget Committee De%\$\$son of 10 Ju#! 201&. T(e A""#%ant)e%e\$.ed no)es"onse 6\$t()es"e%t to su%()e@uest.

18. T(e A""#%ant-s)e@uest fo) management e.a#uat\$on %ontained inter alia)at(e) strong statements 6\$t()es"e%t to t(e *ead' P , C+. ;o) \$nstan%e' t(e A""#%ant)e%e)ed to (\$m as a #sa)' and t(at (e (ad d\$\$"#a!ed 0se)\$ous 7)ea%(of et(\$s and def\$%en%\$es \$n ")ofessona# %ondu%t1' and 0(a)assment1. *e a#so ment\$oned (a.\$ng %ommented on 0a)ange of .e)! se)\$ous ")o%u)ement s(o)t%om\$ngs1 at *ead@ua)te)s' 0\$n 7)ea%(of 7as% "u7#\$\$% ")o%u)ement ")\$n%\$"#es1.

1A. On 27 August 201&' t(e .a%an%! announ%ement fo) t(e D91 "ost of *ead' + , -+' 6as "u7#\$(ed 6\$t(an a""#%at\$on dead#\$(ne of 17 +e"tem7e) 201&. T(e A""#%ant a""#sed fo) t(e "os\$t\$on.

20. On t(e UN * C5 +e"tem7e) 201& %om"end\$um' t6o P9& "osts 6e)e "u7#\$(ed \$n t(e ne6#! %a##ed P)o%u)ement +e).\$e /OP+12' 6(\$% (6as %om"osed of t6o se%t\$onsD t(e P)o%u)ement * F +e%t\$on and t(e P)o%u)ement ;\$e#d +u""o)t +e%t\$on. 4ne of t(e P9& "osts "u7#\$(ed \$n +e"tem7e) 201& 6as t(at of C(\$ef of +e%t\$on /P)o%u)ement ;\$e#d +u""o)t2' 6(e)eas t(e ot(e) 6as t(at of C(\$ef of +e%t\$on /P)o%u)ement * F2. T(e A""#%ant d\$d not a""#! to e\$t(e) of t(ese "os\$t\$ons.

21. On 11 No.em7e) 201&' t(e D91 "ost of *ead' + , -+' 6as)e9o"ened fo) a""#%at\$ons 6\$t(a ne6 dead#\$(ne fo) a""#%at\$on set fo) 17 No.em7e) 201&.

22. ! ema\$# of 2 De%em7e) 201& f)om a +en\$o) 5esou)%e

7.

8&. 4n 4 , a)% (2016' t(e A ""#\$%ant 6as \$nfo)med a7out (

Case No. UNDT/GVA/2016/078

Judgment No. UNDT/2017/074

C.

status as an international organization. It is not an international organization.
The fact that it is an international organization does not mean that it is an international organization.

/he #ead0 P I CS

&8. T(e T)\$7una# (as to assess on t(e 7as\$s of t(e a.a\$a7#e e.\$den%e 6(et(e) an o7Ie%t\$.e o7se).e) 6ou#d (a.e %on%#uded t(at t(e *ead' P , C+' as t(e A""#\$%ant-s d\$)e%t #Sne manage)' (ad an a%tua# o) "e)%e\$.ed %onf#\$\$t of \$nte)est and 7\$as aga\$nst t(e A""#\$%ant.

&4. T(e T)\$7una#)e\$te)ates t(at t(e A""#\$%ant-s su7Ie%t\$.e fea) of 7\$as 7! t(e *ead' P , C+' %annot' \$n \$tse#f' 7e suff\$%\$ent to su""o)t a f\$nd\$ng t(at a %onf#\$\$t of \$nte)est')e@u\$)\$ng t(e)e%usa# of (\$s su"e).\$so) fom t(e Pane#' e:\$sted. At t(e

on the grounds that (e) (ad not) e. 6ed t(em afte) t(e! (ad 7een unde) e. 6 7!
t(e +en\$) +u" "#! 4 ff\$e).

&8. *o6e.e)' at t(e (ea)\$ng' t(e *ead' P , C+' adm\$tted t(at (e (ad ")ofessona#
d\$sag)eements 6\$t(t(e A""#\$%ant' 7ut a#so %a)\$f\$ed t(at t(e %(ange \$n t(e
)e"o)t\$ng #snes 6as suggested to \$m")o.e t(e 6o)<f#o6 and mot\$.at\$on of t(e
team' \$n "a)t\$u#a) of t(e +en\$) +u" "#! 4 ff\$e)' 6(o (ad 7een a\$t\$ng as 4>C ")\$o
to t(e A""#\$%ant-s a))\$.a# (ad s(o6n a .e)! good 6o)< "e)fo)man%e and' as a P94'
6as a7#e to assume some manage)\$a# fun%t\$ons.

&A. >n (\$s e.\$den%e' t(e *ead' P , C+' a#so e:"#a\$ned t(at t(e A""#\$%ant (ad
some 0%ommun\$at\$on ")o7#ems1 6\$t((\$s team' as)ef#e%ted \$n t(e m\$d9"o\$nt
)e.6 of t(e A""#\$%ant-s ePad' and t(at (e' as a manage)' t)\$ed to so#.e t(ose
\$ssues 6(\$#e' at t(e same t\$me' ensu)\$ng t(at t(e ")odu%t\$. \$t! of t(e team 6as
\$m")o.ed o) u"(e#d. *e a#so unde)#\$ned t(at des"\$te t(ose ")ofessona#
d\$sag)eements' (e ne.e) fe#t 7\$ased aga\$nst t(e A""#\$%ant and)e%ogn\$sed (\$s
%om"eten%e' ded\$at\$on and ")ofessona#\$sm. Conse@uent#!' on 26 , a)%(201&' (e
"e)fo)med t(e A""#\$%ant-s annua# e9"ad and e.a#uated (\$s "e)fo)man%e as
0su%%essfu##! meetB\$ngC e:"e%tat\$ons1.

60.

(ad) e@usted)e%usa# ' \$t 6ou#d (a.e 7een "oss\$7#e L a#7e\$t not \$dea# L to on#!)e"#a%e t(e *ead' P , C+.

66. *o6e.e)' and 6\$ (out ")eIud\$%e to \$ts f\$nd\$ngs t(at \$t 6ou#d (a.e 7een sound management to)e"#a%e t(e *ead' P , C+' t(e T)\$7una# \$s of t(e .se6 t(at t(e ")esent %ase (as to 7e d\$st\$ngu\$(ed f)om 2l34holy UNDT/2016/101.

67. Un#\$<e 2l34holy' \$n t(e %ase at (and' t(e A""#\$%ant)efused to unde)go t(e \$nte).se6. Unde) t(e %\$)%umstan%es of t(e ")esent %ase' t(e T)\$7una# %ons\$de)s t(at to assess 6(et(e) t(e A""#\$%ant 6as g\$.en fu## and fa\$) %ons\$de)at\$on' \$t 6ou#d (a.e 7een essent\$a# fo) (\$m to unde)ta<e t(e \$nte).se6. >ndeed' t(\$s \$s a <e! e#ement fo) t(e a""")e%\$at\$on of t(e ")esent %ase' s\$ne t(e A""#\$%ant=s)efusa# to

... (en a " " # ! \$ ng fo) t (\$s " os \$ t \$ on. As su % (' t (e T) \$ 7 una # notes t (at des " \$ te t (e \$) d \$ ffe) ent ") ofess \$ ona # . \$ e 6 s 6 \$ t () es " e % t to t (e management and " a) t \$ % u # a) # ! t (e) est) u % tu) \$ ng of P , C + ' su % (d \$ sag) eement does not seem to (a . e affe % ted t (e A " " # \$ % ant = s ") os " e % ts of de . e # o " \$ ng a % a) ee) \$ n t (e Un \$ ted Nat \$ ons ' su " " o) ted 7 ! t (e * ead ' P , C + = s " os \$ t \$. e) e % ommendat \$ ons.

70. ... , o) eo . e) ' t (e * ead ' P , C + ' a # so st) essed t (at t (e A " " # \$ % ant 6 as su \$ ta 7 # e fo) t (e ne 6 # ! %) eated P 9 & " osts ' and ' (ad (e a " " # \$ ed fo) an ! of t (em ' (e 6 ou # d (a . e (ad good % (an % es fo) 7e \$ ng se # e % ted. T (e fa % t t (at t (e * ead ' P , C + ' ") o . \$ ded t (ese " os \$ t \$. e) e % ommendat \$ ons ' and 6 as as

78. As t(\$s T)\$7una# found \$n Iudgment

78. Neither the D3++' also stressed that from a management point of view, the submitted testimony of the witness is not sufficient to establish the fact that the respondent as referred to in the memorandum of 16 June 2017 to the UN Commission' UN/C5.

7A. The Tribunal's findings that the Applicant's evidence to the D3++' (including the 06/11/17 and the 1/12/17) is not sufficient to meet the test of relevance under Finniss.

80. The reasons outlined above show that the Tribunal's findings that the respondent's testimony is not sufficient to establish the fact that the respondent is a member of the UN Commission' UN/C5.

§nte). §6. +(e fu)t(e) e: "#aned 6(! t(e d\$)e%t manage) of t(e "ost /D\$)e%to)' D3++2' as 6e## as t(e t6o te%(n\$a# sen\$) manage)s (ad to)ema\$n on t(e Pane#. ;\$na##!' s(e \$nfo)med t(e A""#\$%ant of t(e "oss\$7\$#t! to #a\$se 6\$t(t(e -ega# Affa\$)s +e%t\$on /0-A+12' UN*C5' and to %ons\$de) as<\$ng fo) t(e attendan%e of one of t(e\$) #a6 !e)s at t(e \$nte). §6s.

88. T(e T)\$7una# \$s sat\$sfed 6\$t(t(e)easons t(at t(e Adm\$n\$st)at\$on ga.e to t(e A""#\$%ant fo) \$ts de%\$\$son not to)e"#a%e t()ee Pane# mem7e)s. ;u)t(e)' \$t f\$nds t(at suggest\$ng to t(e A""#\$%ant to %onta%t -A+ 6as)easona7#e' and ")o.\$ded t(e A""#\$%ant 6\$t(a ")o%edu)a# safegua)d \$n %ase (e 6\$s(ed to %ontest t(e se#e%t\$on ")o%ess afte) unde)go\$ng t(e \$nte). §6. T(e A""#\$%ant d\$d not "u)sue t(at suggest\$on' 7ut 6\$##\$ng#! de%\$ded not to go to t(e \$nte). §6.

78ral hearing⁹ with the 5eputy #igh Commissioner

84. Anot(e) a)gument)a\$sed 7! t(e A""#\$%ant %on%e)ns t(e #a%< of)es"onse to (\$s)e@uest fo) an 0o)a# (ea)\$ng1 6\$t(t(e De"ut! *\$g(Comm\$ss\$one)' UN*C5. A#t(oug(' \$n t(e T)\$7una#-s .§6' \$t 6ou#d (a.e 7een a good management ")a%t\$se

The Tribunal finds that the respondent's failure to disclose the documents requested by the complainant constitutes a violation of the right to a fair trial. The Tribunal has ordered the respondent to disclose the documents requested by the complainant.