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J K S ,P .

1. The Appellant, a former P-4 Logistics Officer, working with the United Nations Interim Security Force for Abyei (UNISFA or the Organization) in Sudan and subsequently assigned to Gok Machar in South Sudan, contests the decision not to renew his fixed-term appointment. He appeals Judgment No. UNDT/2019/178 wherein the Unite

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the guise of frustration of contract due to [

why he was re-assigned and

]". This history and reason was

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18. Third, the Organization fulfilled its obligation to make good faith efforts to relieve the Appellant from the predicament of the declaration. The Organization found him an alternative employment on the same conditions for over two years in Gok Machar, South Sudan. Further, the Organization proactively engaged in relieving the

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25. When judging the validity of the Secretary-General's exercise of discretion in administrative matters, as in the case of a non-renewal decision, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate.¹⁰ The UNDT can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Dispute Tribunal to substitute its own decision for that of the Secretary-General.¹¹

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26. The Appellant says the decision not to renew the Appellant's fixed-term contract was unlawful as it was tainted by "bias, prejudice, and impropriety in the decision-making process". In particular, he alleges that the decision was ill motivated due to a long-running animosity against him by the Chief of HR against whom he had reported prior possible misconduct.

27. However, this is a new allegation and supported by additional evidence not before the UNDT. A party is not allowed to raise a new issue with additional evidence to the Appeals Tribunal, which was available to it while its case was pending before the UNDT. Nor should a party argue a different position on appeal than at the first instance.¹²

28. In the present case, the Appellant did not raise in his application to the UNDT allegations of improper motives, bias or prejudice as reasons for the unlawfulness of the non-renewal. Rather, before the UNDT, he argued that the decision to transfer him was temporary and that the Organization failed in its duty to alleviate the consequences of the declaration against him, including failing to explore the possibility of his redeployment to Abyei. There is no mention, express or implied, of improper motives, bias or prejudice in his submissions to the UNDT.

¹⁰ *Agha v. Secretary-General of the United Nations*
Kule Kongba v. Secretary-General of the United Nations,
¹¹ *Ibid.*
¹² *Wu v. Secretary-General of the United Nations*

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29. As stated by the Appeals Tribunal in ¹³, it is quite “unreasonable” for the Appellant to assert that the UNDT erred with respect to allegations which were not raised before the UN

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33. The UNDT has previously considered situations of staff members who have been declared .¹⁴ In the UNDT concluded that this principle applies to staff members working f

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41. Although, in his submissions before the Appeals Tribunal, the Appellant references statements from the "new Representative of the Sudanese Government" in Kadugli that he says would not "object" to the issuance of a visa to the Appellant, this does not appear to be in evidence before the UNDT and is therefore new evidence. The Appeals Tribunal is not the forum to introduce new evidence that could have or should have been presented before the UNDT and therefore this evidence canTf -108 (Appe)-1 (al) -1 (s) -1 ()] TJ ET @ 03 1 Tf (\$) Tj 8i1d

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Judgment

45. We vacate the UNDT J