UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/GVA/2015/1 0
!"#g$e%& No.:	UNDT/201'/00(
Da&e:	)e*+"a+, 201'
O+-g-%a.:	E%g.-s/

1. T!e A""#$%ant %ontests t!e de%$s$on not to e&tend !e' tem"o'a'('eass$gnment to t!e "os$t$on of)ega# *ff$%e'+ *ff$%e of t!e D$'e%to'+ Un$ted Nat$ons)ogst%s ,ase/Un$ted Nat$ons G#o-a# .e'/$%e Cent'e 01UN),/UNG.C23.

2. .!e 'e4uests as 'emed(t!at t!e $m"ugned de%$s$on -e set as$de.

5. T!e A""#$%ant $n$t$a##(se'/ed as a P'o%u'ement *ff$%e' 0P653 7$t! t!e Un$ted Nat$ons 8$ss$on $n)$-e'$a 01UN89)23 on a f$&ed6te'm a""o$ntment.

:. ;ffe%t$/e 2 Ju#(201:+ s!e 7as tem"o'a'$#('eass$gned to UN),/UNG.C as)ega# *ff$%e'+ *ff$%e of t!e D$'e%to'. T!$s "os$t$on 01t!e "ost23 !ad -e%ome /a%ant fo##o7$ng t!e tem"o'a'('eass$gnment of $ts $n%um-ent 01t!e $n%um-ent23 to Ne7 <o'=.

5. 9n 8a'%! 2015+ t!e $n%um-ent>s tem"o'a'('eass$gnment to Ne7 <o'= 7as e&tended unt$# 50 June 2015+ and so 7as t!e A""#$%ant>s tem"o'a'('eass$gnment 7$t! UN),/UNG.C. .u-se4uent#(+ t!e $n%um-ent>s tem"o'a'('eass$gnment to Ne7 <o'= 7as fu't!e' e&tended unt$# t!e end of 2015.

6. ,(ema$# of 11 June 2015+ t!e D$'e%to'+ UN),/UNG.C+ $nfo'med t!e A""#$%ant t!at !e d$d not $ntend to e&tend !e' tem"o'a'('eass$gnment -e(ond 50 June 2015. 9n t!e same ema$#+ !e offe'ed a fu't!

d. 9n t!$s %onne%t$on+ a num-e' of $n%ons$sten%$es su""o't a prima facie %ase of un#a7fu#ness+ as a 'esu#t of 7!$%! t!e -u'den to s!o7 t!at t!e de%$s$on 7as not -ased on nefa'$ous o' %a"'$%$ous 'easons s!$fts to t!e Aes"ondent. To 7$tF

$. T!e $n%um-ent>s tem"o'a'('eass$gnment to Ne7 <o'= !ad -een e&tended unt$# 51 De%em-e' 2015G

$$. *n#(one)ega# *ff$%e' "ost e&$sts 7$t!$n t!e)ega# *ff$%e+ UNG.C+ and t!$s "ost>s 'es"ons$-$#$t$es %annot s$m"#(-e t'ansfe''ed to anot!e' un$tG

$$$. T!e'e a""ea's to -e no $ssue as to t!e fund$ng of t!e)ega# *ff$%e' "ostG

$/. As t!e A""#$%ant #ea'nt f'om t!e 8;U 'es"onse+ $t 7as on#(at t!e management e/a#uat$on stage t!at t!e Adm$n$st'at$on ad/an%ed "oo' "e'fo'man%e as an e&"#anat$on fo' t!e %ontested de%$s$onG and

/. As 8;U 'a$sed+ t!e 'eass$gnment to UmoBa of t!e "ost $s $n and of $tse#f un#a7fu#G

e. T!e .tanda'd *"e'at$ng P'o%edu'e on .taff$ng Ta-#e and Post 8anagement of UN Pea%e *"e'at$ons 01.*P23 $s not a""#$%a-#e to UN),. A#-e$t -e$ng an essent$a# %om"onent of t!e De"a'tment of E$e#d .u""o't 01DE.23+ UN), $s not a "ea%e=ee"$ng m$ss$on -ut 'at!e' a su""o't st'u%tu'e used -(t!e De"a'tment of Pea%e=ee"$ng *"e'at$ons 01DPJ*23. H!$#st "a't of DPJ*+ $t 'eta$ns $ts o7n -udget and staff$ng st'u%tu'e+ as 7e## as $ts o7n un$4ue fun%t$ons and 'es"ons$-$#$t$es+ 7!$%! s!ou#d not -e %onf#ated 7$t! a%tua# "ea%e=ee"$ng o"e'at$onsG

f. No s"e%f% 'u#es e&$st "e'm$tt$ng t!e 'eass$gnment o' 'e"u'"os$ng of a "ost to an un'e#ated fun%t$on. An $nst'u%t$on -(t!e Cont'o##e' s!ou#d not -e %onfused $n an(7a(7$t! an Adm$n$st'at$/e 9nst'u%t$on o' ot!e' no'mat$/e $nst'ument. .u%! an $nst'u%t$on does not e/en featu'e $n t!e #ega# !$e'a'%!(of t!e *'gan$Iat$on>s no'ms. P'a%t$%e and -e!a/$ou' s!ou#d not 'e"#a%e

of t!e %u''ent f$nan%$a# "e'$od+ and t!e "ost L s!ou#d 'etu'n to $ts o'$g$na# off$%e -(t!en2G

e. T!e %ontested de%$s$on 7as Bust$f$ed -(t!e o"e'at$ona# %$'%umstan%es 7$t!$n UN) , /UNG . C. T!e "ost at sta=e 7as used afte' de%$d$ng to !a/e an UmoBa .$te Coo'd$nato' to su""o't t!e %'t%a# UmoBa de"#o(ment. H$t!out t!$s measu'e+ UN) , /UNG . C>s 'ead$ness to meet t!e UmoBa 1 No/em-e' 2015 de"#o(ment dead#$ne 7ou#d !a/e -een %om"'om$sed+ "otent$a##(Beo"a'd$s$ng t!e ent$'e C#uste' : de"#o(ment. 9n !$s memo'andum dated : June 2015+ t!e .e%'eta'(6Gene'a# d$'e%ted a## Deads of 8$ss$on to ded$%ate a""'o"'$ate #e/e# of 'esou'%es to UmoBa de"#o(ment 'ead$ness. T!$s d$'e%t$on 7as 'e$te'ated -(t!e Ass$stant .e%'eta'(6Gene'a# fo' E$e#d .u""o't -(ema$# of 8 June 2015. T!e UmoBa .$te Coo'd$nato' tem"o'a'("ost 7as f$##ed as of 1 .e"tem-e' 2015G

f. T!e A""#$%ant 7'ong#(a'gues t!at t!e -u'den $s on t!e Adm$n$st'at$on to "'o/e t!at t!e 'efusa# to e&tend !e' tem"o'a'(ass$gnment 7as mot$/ated -(an $m"'o"e' 'eason. 9nstead+ t!e -u'den 'ests 7$t! t!e A""#$%ant to addu%e e/$den%e t!at t!e de%$s$on 7as $m"'o"e'#(mot$/ated o' ot!e'7$se %a"'$%$ous. .!e !as fa$#ed to "'offe' an(su%! e/$den%eG and

g. T!e A""#$%ant !as a#'ead(-een "a$d %om"ensat$on $n t!e amount of U.D5+000 as 8;U %on%#uded t!at UN) , /UNG . C !ad not ade4uate#(su-stant$ated t!at t!e A""#$%ant !ad -een affo'ded "'o"e' due "'o%ess.

18. T!e T'$-una# 7$## f$'st add'ess t!e g'ounds fo' %!a##enge "e'ta$n$ng to fo'ma# as"e%ts of t!e $m"ugned de%$s$on+ $.e.+ matte's of aut!o'$t(and t!e natu'e of t!e A""#$%ant>s adm$n$st'at$/e #$n= to t!e #$t$g$ous "ost. 9t 7$## #ate' tu'n to su-stant$/e as"e%ts+ nota-#(t!ose %on%e'n$ng t!e 'easons -e!$nd t!e $m"ugned de%$s$on+ t!at $s+ t!e fa$#u'e to s!a'e 7$t! t!e A""#$%ant t!e 'easons fo' t!e end of !e' 'eass$gnment and t!e "'o"'$et(of t!e mot$/es t!e'eto.

The Applicant’s administrative link to the Legal Officer’s post

1 . Pu'suant to staff 'egu#at$on 1.20%3F

> .taff mem-e's a'e su-Be%t to t!e aut!o'$t(of t!e .e%'eta'(6Gene'a# and to ass$gnment -(!$m o' !e' to an(of t!e a%t$/

25. T!e A""#$%ant+ t!us+ !ad no ent$t#ement o' #ega# e&

2 . Whilst the title of the SOP explicitly alludes to “UN Peace Operations”, no definition of this term is provided. It is noticeable, nevertheless, that its text repeatedly refers to “missions” as its object/addressees. The Tribunal analysed at length the notion of “mission” in elpignano UNDT/2015/075 and, while observing a regrettable lack of clarity in defining this concept, it concluded that UN), was not to be considered as such. Relevantly, the Respondent himself claims that “the UN), is supported, administered an

Adm$n$st'at$on and t!ose su-Be%t to $ts aut!o'$t(7ou#d -e dee"#(un-a#an%ed and fundamenta##(une4u$ta-#e.

:1. 9n t!e %ase at !and+ $t $s "#a$n t!at t!e 7'$tten %ommun$%at$on0s3 %on/e($ng t!e %ontested de%$s$on to t!e A""#$%ant d$d not e&"'ess an('easons t!e'efo'+ and t!e'e $s no e/$den%e t!at s!e 7as ot!e'7$se $nfo'med a-out t!em+ des"$te !e' %#ea' 'e4uest of 25 June 2015+ unt$# s!e 'e%e$/ed a 'e"#(to !e' 'e4uest fo' management e/a#uat$on. To t!$s e&tent+ t!e Adm$n$st'at$on fa$#ed to fu#f$# $ts o-#$gat$on to "'o/$de t!e A""#$%ant+ as t!e staff mem-e' affe%ted -(t!e de%$s$on at $ssue+ 7$t! t!e 'easons not to e&tend !e' tem"o'a'('eass$gnment.

:2. T!e T'$-una# $s m$ndfu#+ ne/e't!e#ess+ t!at t!e Adm$n$st'at$on d$d 'e/ea# t!e 'easons fo' not e&tend$ng t!e A""#$%ant>s 'eass$gnment to UN) , /UNG.C 7!en 8 ; U 'e4uested $t $n t!e %onte&t of fo'ma# "'o%eed$ngs.

:5. 9t $s o-/$ous t!at+ f'om t!e A""#$%ant>s "o$nt of /$e7+ !a/$ng to fo'ma##(%!a##enge t!e de%$s$on $n 4uest$on to f$nd out t!e 'easons affe%t$ng !e' ass$gnment+ des"$te !a/$ng s"e%f%a##(as=ed fo' t!em+ %annot .1264(d)-0.6220.95 8 92(u)-0.95 8 9211.5331(+)-16.4

$ropriety of the motives alleged

:6. T!e T'$-una# notes t!at t!e A""#$%ant does not -'$ng s"e%f% a##egat$ons of "e'sona# "'eBud$%e o' ot!e' undue mot$/at$ons. .!e 'at!e' suggests t!at t!e de%$s$on must !a/e -een -ased on $m"'o"e' g'ounds -e%ause t!e'e 7e'e no o-Be%t$/e $m"ed$ments 0su%! as una/a$#a-$#$t(of t!e "ost o' -udget3 fo' !e' to 'ema$n #onge' $n UN) , /UNG.C+ and a'gues t!at+ as a 'esu#t of t!e fa$#u'e to "'o/$de !e' t!e 'easons -e!$nd t!e de%$s$on+ t!e -u'den to demonst'ate t!at $t 7as not $##6mot$/ated s!$fts to t!e Adm$n$st'at$on.

:7. 9n t!$s 'es"e%t+ t!e a-o/e6'efe''ed Obdei)n

> "'oof s!$fts to ?t!at staff mem-e'@ 7!o must s!o7 t!'oug! %#ea' and %on/$n%$ng e/$den%e t!at ?!e/s!e@ 7as den$ed a fa$' %!an%e of "'omot$on.

50. 9n t!$s %onte&t+ $t $s a""'o"'$ate fo' t!e T'$-una# to e&am$ne t!e 'easons a##eged -(t!e Aes"ondent+ -ea'$ng $n m$nd t!e "'$n%$"#e t!at 7!en a Bust$f$%at$on $s g$/en -(t!e Adm$n$st'at$on fo' t!e e&e'%$se of $ts d$s%'et$on $t must -e su""o'ted -(t!e fa%ts 0+sIam 20116UNAT61153.

51. Con%'ete#(+ $n t!e "'esent %ase t7o d$ffe'ent Bust$f$%at$ons !a/e -een "ut fo'7a'd t!'oug!out t!e d$ffe'ent #$t$gat$on "!ases+ name#(F

a. T!e need to tem"o'a'$#(!$'e a ded$%ated "e'son to 7o'= on t!e de"#o(ment of UmoBa -(1 No/em-e' 2015 $n UN) ,/UNG.C 0UmoBa .$te Coo'd$nato'3G and

-. .ome "e'fo'man%e s!o't%om$ngs -(t!e A""#$%ant+ nota-#($n te'ms of %onsu#tat$on and %oo"e'at$on 7$t! %o##eagues.

52. T!e T'$-una# 7$## %ons$de' ea%! of t!em se"a'ate#(.

Need to se%u'e an UmoBa .$te Coo'd$nato'

55. UmoBa un%ontesta-#(7ent #$/e .e%'eta'$at67$de fo' t!e staff at #a'ge $n No/em-e' 2015+ and $t $s 7e##6=no7n t!at $ts de"#o(ment 'e4u$'ed s$gn$f$%ant "'e"a'at$on and !ad eno'mous 'e"e'%uss$ons on t!e *'gan$Iat$on>s fun%t$on$ng.)$=e7$se+ $t $s on 'e%o'd t!at t!e .e%'eta'(6Gene'a# !ad s"e%f%a##(u'ged t!e *'gan$Iat$on>s management to ta=e a""'o"'$ate measu'es and a##o%ate ade4uate 'esou'%es to ena-#e UmoBa to -e su%%essfu##(de"#o(ed+ an $nst'u%t$on t!at 7as #ate' 'e#a(ed and 'e$te'ated -(t!e Ass$stant .e%'eta'(6Gene'a# fo' E$e#d .u""o't.

5:. 9n add$t$on+ t!e Aes"ondent su-m$tted mate'$a# nd%at$ng t!at an UmoBa .$te Coo'd$nato' 7as $ndeed 'e%'u$ted s!o't#(afte' t!e d$s%ont$nuat$on of t!e A""#$%ant>s tem"o'a'('eass$gnment. A#t!oug! !e se'/ed fo' a fe7 mont!s on#(+ t!e s!o't du'at$on of t!$s a''angement seems %o!e'ent 7$t! t!e %$'%umstan%es of t!e %ase+ s$n%e t!e de"#o(ment of UmoBa to t!e staff at #a'ge 7as+ -($ts /e'(natu'e+ a "un%tua# e&e'%$se. Cons$stent#(+ t!e o(d8 892(a)-3.66523(a)-14.3239(t)0C)-4.49925(o)-0.9

Coo'd$nato' 7as "'esented f'om t!e outset as a t'ans$to'(measu'e C nota-#(+ t!e "os$t$on 7as ad/e't$sed t!'oug! tem"o'a'(/a%an%(announ%ements C and $t $ndeed #asted "'e%$se#(f'om t7o mont!s $mmed$ate#("'e%ed$ng t!e UmoBa 'eass$gnment of a staff mem-e'+ t!e Adm$n$st'at$on !as to 1"'o/$de a "e'fo'man%e6'e#ated Bust$f$%at$on fo' $ts de%$s$on2 and+ $n 'ea%!$ng $t+ t!e Adm$n$st'at$on must 'es"e%t t!e 1'u#e of #a7 and standa'ds of due "'o%ess $n de%$s$on6ma=$ng2. Eu't!e'+ 8 ;U o-se'/ed t!at t!e A""#$%ant>s "e'fo'man%e a""'a$sa# fo' 201:62015 !ad not -een %om"#eted at t!e t$me t!e $m"ugned de%$s$on 7as made and e/en $m"#emented. Eu't!e'mo'e+ no 'e%o'd e&$sts s!o7$ng t!at s!e !ad -een "'e/$ous#(not$f$ed of t!e %on%e'ns 7$t! !e' "e'fo'man%e and offe'ed an o""o'tun$t(to 'es"ond to t!em o' to 'e%t$f(!e' s!o't%om$ngs -efo'e end$ng !e' 'eass$gnment.

5 . 9n t!$s /$e7+ 8 ;U %on%#uded t!at t!e Adm$n$st'at$on !ad not 1ade4uate#(su-stant$ated t!at t!e A""#$%ant !ad -een "'o/$ded 7$t! t!e

*'gan$Iat$on and 7as ass$gned -a%= to !e' o'$g$na# dut$es+ 7!$%! 7e'e a""'o"'$ate fo' !e' $n te'ms of -a%=g'ound and g'ade. Eo' t!$s+ $t $s not 7a''anted to a7a'd !e' a !$g!e' %om"ensat$on.

62. 9n %on%#us$on+ !a/$ng s%'ut$n$sed t!e t7o "u'"o'ted Bust$f$%at$ons fo' t!e non6e&tens$on of t!e A""#$%ant>s 'eass$gnment C$.e.+ "e'fo'man%e s!o't%om$ngs and use of t!e "ost fo' t!e dut$es of UmoBa .$te Coo'd$nato' C t!e T'$-una# f$nds t!at a#t!oug! one 0"e'fo'man%e3 7as not "'o"e'#(do%umented+ t!$s s!o't%om$ng 7as a#'ead(a%=no7#edged and ade4uate#('ed'essed. As to t!e se%ond one 0'e"u'"os$ng3+ t!e'e $s not!$ng to nd%ate t!at $t $s man$fest#(un'easona-#e o' a'-$t'a'(+ o' e#se -e#$ed -(t!e fa%ts.

65. 9n t!$s #$g!t+ t!e T'$-una# $s sat$sf$ed t!at t!e *'gan$Iat$on !as m$n$ma##(s!o7n t!at t!e %ontested de%$s$on 7as not $m"'o"e'#(mot$/ated. A%%o'd$ng#(+ t!e onus fe## on t!e A""#$%ant to demonst'ate ot!e'7$se. Do7e/e'+ t!e A""#$%ant !as not addu%ed an(tang$-#e e/$den%e+ #et a#one %#ea' and %on/$n%$ng one+ t!at t!e end of !e' 'eass$gnment 7as due to e&t'aneous fa%to's. T!e fa%t t!at t!e "ost 7as funded and $ts $n%um-ent 'ema$ned ass$gned to Ne7 <o'= unt$# t!e end of 2015 does not suff$%e to ma=e an $nfe'en%e t!at t!e de%$s$on 7as %a"'$%$ous o' $##6mot$/ated.

6:. T!$s T'$-una# $s t!us una-#e to f$nd t!at t!e $m"ugned de%$s$on 7as ta$nted -($m"'o"e' mot$/es.

65. Eo' a## t!e a-o/e+ t!e T'$-una# f$nds t!atF

a. T!e A""#$%ant>s due "'o%ess '$g!ts %on%e'n$ng !e' "u'"o'ted "e'fo'man%e s!o't%om$ngs 7e'e /$o#ated+ -ut t!$s -'ea%! 7as dete%ted and 'ed'essed -(t!e 8;UG and

-. T!e Adm$n$st'at$on d$d not 'es"e%t $ts dut(to "'o/$de t!e affe%ted staff mem-e' 7$t! t!e 'easons -e!$nd t!e $m"ugned de%$s$on+ a#t!oug! $t #ate' m$t$gated $ts 'es"ons$-$#$t($n t!$s 'es"e%t -(d$s%#os$ng su%! 'easons at t!e management e/a#uat$on stage. Not7$t!stand$ng t!e nt$a# -'ea%! of t!e ne$t!e' 7a''anted to 'es%$nd t!e de%$s$on no' to a7a'd add$t$ona# %om"ensat$on to t!e A""#$%ant on t!$s a%%ount.

66. 9n /$e7 of t!e fo'ego$ng+ t!e T'$-una# D ; C9D ; . F

T!e a""#$%at$on $s d$sm$ssed.

0Signed3

Judge Te'esa , 'a/o

Dated t!$s 6