

% & %' (%(&)%* +

" , , - & -, \$

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Case No. UNDT/GVA/2013/043

1. ! a""#%at\$on f\$#ed on 2& A""#\$ 2013 (\$t) t)e Ne(*o'+ ,eg\$st'! of t)e T'\$-una#. t)e A""#%ants Ovcharenko et al. %ontest t)e /e%'eta'!0Gene'a#ls 'efusa# to "a! "ost ad2ustment -ased on t)e mu#t\$"#e' 38.0 ()\$%) -e%ame due \$n Ne(*o'+ on 1 August 2012. T)e a""#%at\$on (as 'eg\$ste'ed unde' Case No. UNDT/N*/2013/043.

2. T)e ,es"ondent f\$#ed)s\$ 'e"#! on 10 June 2013.

3. ! 4'de' No. 15& 5N*/20136 of 27 June 2013. t)e T'\$-una# o'de'ed t)e "a't\$es to f\$#e su-m\$ss\$ons (\$t) 'es"e%t to t)e "'o"osed %)ange of 8enue of t)e %ase to t)e Gene8a ,eg\$st'! of t)e T'\$-una#. T)e A""#%ants su-m\$tted t)e\$' st'ong o-2e%t\$on to a t'ansfe' on 28 June 2013. ! 4'de' No. 188 5N*/20136 of 5 August 2013. t)e T'\$-una# o'de'ed t)at t)e %ase -e t'ansfe''ed to t)e Gene8a ,eg\$st'! of t)e T'\$-una#. ()e'e \$t (as 'eg\$ste'ed unde' Case No. UNDT/GVA/2013/43 and ass\$gned to t)e unde'\$sgned Judge.

Case No. UNDT/GVA/2013/044

4. ! a""#%at\$on f\$#ed on 7 9a! 2013 (\$t) t)e Ne(*o'+ ,eg\$st'! of t)e T'\$-una#. t)e A""#%ant Kucherov e:ua##! %ontests t)e /e%'eta'!0Gene'a#ls 'efusa# to "a! "ost ad2ustment -ased on t)e mu#t\$"#e' 38.0 ()\$%) -e%ame due \$n Ne(*o'+ on 1 August 2012. T)e a""#%at\$on (as 'eg\$ste'ed unde' Case No. UNDT/N*/2013/087.

5. T)e ,es"ondent su-m\$tted)s\$ 'e"#! on 10 June 2013.

3. ! 4'de' No. 130 5N*/20136 of 27 June 2013. t)e T'\$-una# o'de'ed t)e "a't\$es to su-m\$t %omments (\$t) 'es"e%t to a "'o"osed %)ange of 8enue of t)e %ase to t)e Gene8a ,eg\$st'! of t)e T'\$-una#. Ne\$te' "a't! f\$#ed a su-m\$ss\$on on t)\$s matte'. ! 4'de' No. 187 5N*/20136 of 2 August 2013. t)e T'\$-una# o'de'ed t)at t)e %ase -e t'ansfe''ed to t)e Gene8a ,eg\$st'! of t)e T'\$-una#. ()e'e \$t (as

'eg\$ste'ed unde' Case No. UNDT/GVA/2013/044 and ass\$gned to t)e unde's\$gned Judge.

7. ! 4 'de' No. 13 5GVA/20146 of 21 Janua' ! 2014. t)e T'\$-una# o'de'ed t)at t)e %ases -e 2o\$ned and t)at t)e! -e de%\$ded on t)e -as\$s of t)e ('\$tten "#ead\$ngs. ;t fu't)e' o'de'ed t)at t)e "a't\$es su-m\$t f\$na# %omments. \$f an!. -! 4 <e-'ua' ! 2014- t)e dead#sne (as su-se:uent#! e>tended unt\$# 11 <e-'ua' ! 2014. and t)e "a't\$es ? (\$t) t)e e>%e"t\$on of A""#\$%ant Kucherov ? su-m\$tted t)e\$' f\$na# %omments on t)at date.

8. ;n "a'a. .1. of \$ts 'eso#ut\$on A/ , @//33/235 of 24 De%em-e' 2011 5Un\$ted Nat\$ons %ommon s!stemA 'e"o't of t)e ;nte'nat\$ona# C\$8\$# /e'8\$%e Comm\$ss\$on6. t)e Gene'a# Assem-#! 'e: uested t)e ;C/CA

BTCo e>"#o'e t)e feas\$-\$#t! and su\$ta-\$#t! of "oss\$-#e measu'es to 'ef#e%t \$n t)e admn\$st'at\$on of t)e "ost ad\$ustment s!stem t)e "a! f'eeDe of t)e %om"a'ato' %\$8\$# se'8\$%e- to dete'm\$ne ()et)e' t)e \$m"#ementat\$on of su%) measu'es fa##s unde' \$ts aut)o'st!- to e>e'%'\$se su%) aut)o'st!. as a""'o""\$ate. and to 'e"o't t)e'eon to t)e Gene'a# Assem-#! at \$ts s\$>t!0se8ent) sess\$on.

&. Pa'ag'a") 121 of t)e 2012 ;C/C 'e"o't to t)e Gene'a# Assem-#! 5A/37/306 'eadsA

121. T)e Comm\$ss\$onA

5a6 Noted t)at a "ost ad\$ustment mu#t\$"#e' of 38.0 (ou#d -e%ome due \$n Ne (*o'+ on 1 August 2012 \$n a%o'dan%e (\$t) t)e a""'o8ed met)odo#og!-

5-6 De%\$ded to defe' t)e "'omu#gat\$on of t)e 'e8\$sed Ne (*o'+ "ost ad\$ustment mu#t\$"#e' \$n 8\$e (of t)e f\$nan%a# s\$tuat\$on of t)e Un\$ted Nat\$ons as des%'\$-ed - ! t)e /e%'eta' !0Gene'a#-

5%6 A#so de%\$ded t)at un#ess t)e Gene'a# Assem-#! a%ted ot)e' (\$se. t)e mu#t\$"#e' (ou#d -e "'omu#gated on 1 Janua' ! 2013

10. On 1 August 2012, the C/C issued C/CA; C/C/C; C/PAC/452
5Conso#dated Post Adjustment C/CA'6. ()'eads as fo#o ()>ta

1. Based on the 'e8\$e (of the "ost adjustment #assf\$at\$on
fo' Ne (*o'+. a 'e8\$sed "ost adjustment mu#t\$"#e' of (ou#d
-e%ome due \$n Ne (*o'+. effe%t\$8e 1 August 2012. . at
\$ts se8ent!0f\$ft) sess\$on. f'om & E 20 Ju#! 2012. the ;C/C de%\$ded
to defe' the "'omu#gat\$on of t)\$s 'e8\$sed mu#t\$"#e' to
1 Janua'! 2013. (\$t) 'et'o0a%t\$8e 5s\$%6 as of one August 2012.
un#ess the Un\$ted Nat\$ons Gene'a# Assem-#! a%ted ot)e' (\$se. T)e
"ost adjustment mu#t\$"#e' of 35.5 t)e'efo'e 'ema\$ns \$n effe%t fo'
Ne (*o'+ unt\$# fu't)e' not\$%e. 5em")as\$ \$n o'\$g\$na#6

11. The Gene'a# Assem-#!. on 24 De%em-e' 2012. ado"ted de%\$s\$on 37/551
5see A/37/4& 5Vo#. ;;6 and A/C.5/37/F.146 5)e'e\$nafte' Gene'a# Assem-#! de%\$s\$on
37/5516. ()\$%) 'eads as fo#o (sA

37/551. Un\$ted Nat\$ons %ommon s!stem

At \$ts 32nd "#ena'! meet\$ng. on 24 De%em-e' 2012. the
Gene'a# Assem-#!. on the 'e%ommendat\$on of the <\$ft) Comm\$tee.
)a8\$ng %ons\$de'ed the 'e"o't of the ;nte'nat\$ona# C\$8\$# /e'8\$%e
Comm\$ss\$on fo' 2012. 'e: uested the Comm\$ss\$on to ma\$nta\$n the
%u' 'ent Ne (*o'+ "ost adjustment mu#t\$"#e' to 31 Janua'! 2013.
(\$t) the unde'stand\$ng that the no'ma# o"e'at\$on of the "ost
adjustment s!stem (ou#d 'esume on 1 <e-'ua'! 2013.

12.

14. The ;C/C. on 15 <e-'ua'! 2013. Issued a HConso#dated Post Adjustment C\$%u#a'I 5;C/C/C; , C/PAC/4586 "'omu#gat\$ng. unde' \$ts /e%t\$on ;V. a "ost ad2ustment mu#t\$"#e' of 38.7 fo' Un\$ted /ates. Ne(*o'+. effe%t\$8e 1 <e-'ua'! 2013.

15. /ome of t)e A""#%ants. \$n#ud\$ng A""#%ants Ovcharenko and Kuchero. 'e: uested management e8a#uat\$on of t)e Hadm\$n\$st'at\$8e de%ss\$on of t)e /e%'eta'!0 Gene'a# to \$m"#ement t)e J a%t\$ons and 'e%ommendat\$ons of t)e ;C/C and t)e Gene'a# Assem-#!. \$.e. t)e un#a(fu# a%t\$on of t)e Adm\$n\$st'at\$on t)at 'esu#ted \$n den!\$ng staff mem-e's -ased \$n Ne(*o'+. t)e "a!ment of "ost ad2ustment %a#%u#ated on t)e -as\$ of t)e mu#t\$"#e' 8a#ue of 38.0 fo' t)e "e'sod f'om 1 August 2012 to 1 <e-'ua'! 2013I.

13. 4n 18 9 a%) 2013. t)e 9 anagement @8a#uat\$on Un\$t 'es"onded to t)ose A""#%ants ()oad 'e: uested management e8a#uat\$on. (\$t) a %o' '\$gendum \$ssued on 20 9 a%) 2013I. not\$ng t)at t)e matte' (as not a""ea#a-#e unde' C)a"te' K of t)e /aff , u#es and t)at \$t)ad no %om"eten%e to e8a#uate t)e 'e: uest.

! "

17. T)e A""#%antsI "'\$n%\$"a# %ontent\$ons a'eA

a. ;n 8\$e(of t)e 'es"onse of t)e 9 @U. and \$n #g)t of staff 'u#e 11.25-6. a""#%at\$ons sou#d -e %onsde'ed 'e%e\$8a-#e ()et)e' o' not t)e A""#%ants)ad f\$#ed a 'e: uest fo' management e8a#uat\$on "'\$o' to t)e a""#%at\$on to t)e T'\$-una#=-

-.

%. The (e'e ent#ed to a "ost ad2ustment mu#t\$"#Se' of 38.0 fo' t)e "e'sod 1 August 2012 to 31 Janua' ! 2013. t)e'efo'e. t)e de%ss\$on affe%ts t)e A""#\$%ants! %ond\$t\$ons of se'8\$e and %onst\$tutes a 8\$o#at\$on of t)e '\$g)t\$ t)e! deta\$n f'om t)e\$' #ette' of a""o\$ntment and /taff ,u#es and ,egu#at\$ons=

d. The! do not %ontest t)e aut)o'\$t! of t)e Gene'a# Assem-#! to a#te' %ond\$t\$ons of se'8\$e fo' t)e futu'e. \$n%#ud\$ng t)e met)od of %a#%u#at\$on of t)e "ost ad2ustment. 'at)e'. t)e\$' %a\$m \$s #sm\$ted to t)e 'emune'at\$on fo' se'8\$es a#ead! 'ende'ed. \$n a%%o'dan%e (\$t) t)e a""#\$%a-#e 'u#es \$n fo'%e at t)e t\$me= t)at \$s. t)e!)a8e not %ontested t)e defe''a# of t)e \$n%'ease - ! t)e ;C/C o' t)e Gene'a# Assem-#! 'e:uest of De%em-e' 2012 to sus"end t)e no'ma# o"e'at\$on of t)e "ost ad2ustment s!stem. -ut 'at)e' t)e amount of 'emune'at\$on "a\$d to t)em - ! t)e /e%'eta' !0Gene'a# \$n Janua' ! 2013=

te' ms of t) e A " " # \$ % a n t s ! % o n t ' a % t s a n d t) e " ' \$ n % \$ " # e o f n o n 0 ' e t ' o a % t \$ 8 t ! a n d
) a d a d \$ ' e % t \$ m " a % t o n t) e A " " # \$ % a n t s ! # e g a # ' \$ g) t s =

). T) e T ' \$ - u n a # s) o u # d f o # # o (t) e s a m e 2 u ' \$ s d \$ % t \$ o n a # \$ n t e ' ' ' e t a t \$ o n a s
t) e f o ' m e ' A d m \$ n \$ t ' a t \$ 8 e T ' \$ - u n a # a " " # \$ e d t o s \$ m \$ # a ' % a s e s =

\$. A s s u %). t) e d e % \$ s \$ o n t) e ! a ' e % o n t e s t \$ n g % o n s t \$ t u t e s a n a d m \$ n \$ t ' a t \$ 8 e
d e % \$ s \$ o n u n d e ' t) e t e ' m s o f a ' t . 2 o f t) e T ' \$ - u n a # 1 s / t a t u t e a n d t) e
a " " # \$ % a t \$ o n s a ' e ' e % e \$ 8 a - # e r a t o n e # a t e r a e =

2. 4 n t) e m e ' \$ t s . t) e d e % \$ s \$ o n \$ s f # a (e d . - o t) " ' o % e d u ' a # # ! a n d
s u - s t a n t \$ 8 e # ! =

+

adjustment. at least for (or) a head! "reformed and the ;C/C. In the
these provisions into account outside the auto!

n. The depositions constitute a violation of the: used 'rights. and as such) of
staff 'regulation 12.1- the Geneva# Assem-#! cannot 'refuse to make
"arrangements ()\$) are due under the estab-#ed 'rules-

o. The /e'eta'!0Geneva# and the ;C/C 'an on#! at In the 'dan%e (\$t)
the 'regulation adopted -! the Geneva# Assem-#!. \$n%ud\$ng the /aff
, 'regulations and the 'rules a ""'oed -! the Geneva# Assem-#! (\$t) 'es"e%t to
the "ost adjustment-

". 4n#! the Geneva# Assem-#!)as the auto! to %ange the
methodology for 'a%u#at\$ng "ost adjustment. and ()\$e the ;C/C
'recommends the methodology to the Geneva# Assem-#!. \$t)as no auto!
to modify! \$t o' d's%'et\$on \$n "'omugat\$ng \$n%'eases due- fo##o (\$ng \$ts
'requests to the ;C/C to 'e8\$e (the methodology!. the Geneva# Assem-#!)ad
made no %ange (\$t) 'es"e%t to the 'rules goe'n\$ng the "ost adjustment-

.. The 'request of the Geneva# Assem-#! to 'resume no'ma# o'e'at\$on of
the "ost adjustment system as of 1 <e-'ua'! 2013 ne8e' (ent -a%+ to the
fu## ;C/C as 'e:u\$ed under the /tute of the ;C/C. and the C)a\$'man does
not)a8e the auto! to act on -e)a#f of o' %ange ea'#\$e' de\$ss\$ons of the
fu## Commission-

'. The depositions to a""#! a un8e'sa# system of 'om"ensat\$on to some
"rofessiona# staff for \$n%'eases \$n %ost of #8\$ng and at the same time to den!
the same to "rofessiona# staff mem-e's stationed \$n Ne(*o'+ \$s
d's%'m\$nat'! and 'constitutes a 8\$otat\$on of the "'\$n%'#e of e:ua#
treatment-

s. The A""#s\$ants Ovcharenko et al. 'request the T'\$-una# to o'de' t)at
the depositions -e ent\$e#! o8e'tu'ned- a#te'nat\$8e#!. the! 'request the T'\$-una#
to o'de'A

rate of 38.7 percent on the basis of 1 January 2013. The C/C (as rounded to the nearest integer) is

g. Under the Statute, the C/C is independent of the United Nations/Article 17 and cannot take instructions from any organ of the Common System. The provisions of the Charter of the United Nations and the Charter of the United Nations Economic and Social Council, as well as the Charter of the United Nations Educational, Scientific and Cultural Organization, do not require the C/C to be independent of the United Nations/Article 17. The Charter of the United Nations does not require the C/C to be independent of the United Nations/Article 17.

Under Article 2536 of the Statute, the C/C must be a permanent member of the Common System from the date determined by the C/C. The Charter of the United Nations does not require the C/C to be independent of the United Nations/Article 17. The Charter of the United Nations does not require the C/C to be independent of the United Nations/Article 17. The Charter of the United Nations does not require the C/C to be independent of the United Nations/Article 17. The Charter of the United Nations does not require the C/C to be independent of the United Nations/Article 17.

2. The duties of a Judge "so" to taking a decision include the adequate interpretation and communication of the arbitrators' su-mitted -! the arbitrators' names. (ods. st'utu'e o' content the! assign to them. as the judgment must necessarily 'efe' to the scope of the arbitrators' contentions. 4the' (sse. the decision made' (ould not -e a-#e to fo##o (the 'o'iet "o%ess to a%om"#s))s o')e' tas+. ma+ng u")s o')e' m\$nd and e#a-o'at\$ng on a judgment motivated \$n 'easons of fact and #a ('e#ated to the "arbitrators' submissions.

3. Thus, the authority to 'ende' a judgment gives the Judge an \$ne'ent "o(e' to \$nd\$\$dua#De and define the adm\$nst'at\$e decision \$m"ugned -! a "a't! and \$dentf! ()at \$s \$n fact -e\$ng %ontested and so. su-2e%t to 2ud\$%a# 'e8\$e (()\$%)%ou#d #ead to g'ant o' not to g'ant the 'e: uested judgment.

22. The T'\$-una# notes that on the arbitrators' form, the Arbitrators stated that the contested decision (as the H'efusa# to "a! "ost adjustment -ased on the mu#t"\$#e' 38.0 ()\$%) -e%ame due fo' Ne (*o'+ on 1 August 2012I. as 'ef#e%ted \$n the\$' statements of ea'n\$ngs and dedu%t\$ons fo' Janua'! 2013. The T'\$-una# fu't)e' 'e#a##s that the Arbitrators \$n the\$' arbitrators' statements stressed that the (e'e \$n fact %ontest\$ng the

admission at the decession. In the Judgment, the Applicant's T-una# found that the C's'ua' #ontained Ha# the necessity! #omponents 'efe'ed to In An/ronov to g#e 'se to #ega# #onse: uen#es fo' the st'+\$ng staff and that the #ontained \$nfo'mation ()%) affected the 'g)ts of the staff mem-e's \$n : uest\$on. g#en that \$t (as -e\$ng #ea'#! #ommun\$ated to the 'e#e#ant staff mem-e's that dedu%t\$ons (e'e go\$ng to -e made f'om the \$' sa#a'\$esI.)en#e. H8\$SON08\$ the st'+\$ng staff mem-e's \$t)ad \$nd\$8\$dua# a""#\$%at\$onI.

27. The situation in the 'esent #ase d#ffe's f'om the #ase of Al Jurkh et al. ;n the #atte' #ase. the C's'ua' (as addressed and a""#\$ed to a #e'ta#n and #ea'#! def\$na-#e g'ou" of staff mem-e's ()o)ad -een on st'+e on t (o o' t)'ee s"e#f\$% da!s. and ()o. t)'efo'e. - ! t)'es' o (n #on%'ete a%t\$on. (e'e su-2e%ted to a #e'ta#n de%ss\$on - ! t)'e Adm\$st'at\$on ? to (\$t. a dedu%t\$on f'om "a!'o##/annua# #e#e on the -as\$ of the "'\$n%#\$e of no "a! fo' da!s not (o'+ed. T)us. the de%ss\$on. t)oug) #o##e#t\$e. (as of \$nd\$8\$dua# a""#\$%at\$on. and \$ts a""#\$%at\$on (as #ea'#! def\$ned \$n s#o'e and t\$me. ;n the 'esent #ase.)o (e#e'. the "ost ad#ustment mu#t'#\$e' 35.5 \$instead of 38.0 (as a""#\$ed fo' the "e'\$od f'om 1 August 2012 to 31 Janua'! 2013 to a g'ou" of staff mem-e's def\$ned e>#us\$e#! - ! t)'es' status and #atego'! (\$t)\$n the 4'gan\$Dat\$on. ;n 8#e(of the fo'ego\$ng. and \$n #ont\$nuat\$on of \$ts 2u'\$s"'uden#e T ntukas r et al.. the T-una# #on#udes that \$n a""#!\$ng the test of An/ronov 0.04 -20.76 T d D [(de)3.84766 (%)3.84766 (\$) -2.16797 (16.99219 (

5%6 A##o (an%es and -enef\$ts of staff ()\$%) a'e dete'm\$ned - !
t)e Gene'a# Assem-# !=

5d6 / taff assessment.

A't\$%#e 11

T)e Comm\$ss\$on s)a## esta- #s)A

5a6 T)e met)ods -! ()\$%) t)e "'\$n%\$"#es fo' dete'm\$n\$ng
%ond\$ts\$ons of se'8\$%e s)ou#d -e a""#sed=

5-6 , ates of a##o (an%es and -enef\$ts. ot)e' t)an "ens\$ons and
t)ose 'efe''ed to \$n a't\$%#e 10 5%6. t)e %ond\$ts\$ons of ent\$#ement
t)e'eto and standa'ds of t'a8e#=-

5%6 T)e %ass\$f\$%at\$on of dut! stat\$ons fo' t)e "u""ose of
a""#!\$ng "ost ad2ustments.

32. Pu'suant to a't. 25. "a'a.3 of \$ts /tatute. de%ss\$ons of t)e ;C/C s)a## -e
a""#sed - ! ea%) 4'gan\$Dat\$on %on%e'ned (\$t) effe%t Hf'om a date to -e dete'm\$ned
- ! t)e Comm\$ss\$onI.

33. ;t 'esu#ts f'om t)ese "'o8\$ss\$ons t)at ()\$#e t)e ;C/C \$s %#ea'#! \$nde"endent
f'om t)e /e%'eta'\$at and %annot ta+e an! \$nst'u%t\$ons f'om t)e /e%'eta'\$at of an
4'gan\$Dat\$on \$n t)e Un\$ted Nat\$ons %ommon s!stem. \$t \$s ans(e'a-#e and
a%ounta-#e to t)e Gene'a# Assem-#!. T)e T'\$-una# notes t)at \$t fu't)e' 'esu#ts
f'om Gene'a# Assem-#! 'eso#ut\$on 37/241 and t)e a-o8e0:uoted "'o8\$ss\$ons of t)e
/tatute of t)e ;C/C. t)at t)e /e%'eta'!0Gene'a#)as not -een 8ested (\$t) an!
d\$ss%'et\$ona'! aut)o'\$t! (\$t) 'es"e%t to t)e \$m"#ementat\$on of t)e de%ss\$ons - ! t)e
;C/C. as d\$'e%ted - ! t)e Gene'a# Assem-#!. and t)at)e (as t)us dut! -ound to
\$m"#ement t)e de%ss\$on to a""#! t)e mu#t\$"#e' of 35.5 t)'oug) 31 Janua'! 2013.
\$n a%o'dan%e (\$t) de%ss\$on 37/551 of t)e Gene'a# Assem-#!. as 'ef#e%ted \$n ;C/C
C\$'u#a' ;C/C/C; , C/PAC/457.

34. ;n 8\$e(of t)e fo'ego\$ng. and s\$ne t)e #ega#t! of t)e de%ss\$on of t)e
Gene'a# Assem-#! \$tse#f does not fa## (\$t)\$n t)e "u'8\$e(of t)e T'\$-una#. \$t \$s not
ne%essa'! fo' t)e T'\$-una# to e>am\$ne an! of t)e ot)e' a'guments of t)e
A""#\$s\$ants.

