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Before: !"# , % ,%)%

Registry: % -

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JUDGMENT

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Counsel for Applicant:

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Counsel for Respondent:

& - % ) &(4+5 3 / 5 4( & () &  
\*) & ( " \$ \$)% 5 3 / 5 4( & () &







inst&u\$t#on&s s\$ole of a!!"#\$at#on. d#d not. on\$e aga#n. e=\$"ude G\* staff #n  
m#ss#ons.

14.









e. The Guidelines / etc o/g/na"6 addressed to f#e"d m#ss#ons. a"t oug  
su\$ m#ss#ons needed to #m!"ement t em %6 / a6 of #nfo&mat#on \$#&\$u"a&.  
T e Guide"nes / etc addressed to s!e\$f#\$ ent#tes %6 name. un"#?e mote



2.: T e (es!ondent&s !&#n\$#!a" \$ontent#ons a&e<

receivability

a. T e #nstant a!!"#Sat#on #s !&ematu&e and t us #&&e\$e#2a%"e. A f#na" de\$#s#on as not %een ta?en #n t e \$ontested VA. T e dete&#nat#on t at t e A!!"#Sant #s #ne"#g#%"e fo& \$ons#de&at#on #s a !&e!a&ato&6 ste! and. as su\$ . not a!!ea"a%"e unde& t e T&#%una"8s \*tatute. T e A!!ea"s T&#%una" e"d #n Ivanov 2013+UNAT+37@ t at on"6 one adm#n#st&at#2e de\$#s#on \$om!"etes t e se"e\$#on !&o\$ess7 #.e.. t e se"e\$#on of t e su\$essfu" \$and#date. and t #s #s t e de\$#s#on t at ma6 %e \$ontested %6 ot e& \$and#dates. A"" ot e& de\$#s#ons /#t #n t e se"e\$#on !&o\$ess a&e !&e!a&#ng t e f#na" se"e\$#on and do not amount to a \$ontesta%"e adm#n#st&at#2e de\$#s#on7

%. G#2en t at !&e!a&ato&6 de\$#s#ons \$an on"6 %e d#s!uted #n "#g t of t e f#na" de\$#s#on. unt#" a f#na" se"e\$#on de\$#s#on as %een made. t e&e #s no adm#n#st&at#2e de\$#s#on \$a&&6ng "ega" \$onse;uen\$es fo& t e A!!"#Sant&s te&ms of a!!o#ntment7

!erits

\$. 5n g#2ng fu"" and fa& \$ons#de&at#on to \$and#dates. t e Adm#n#st&at#on #s %ound %6 t e te&ms of t e VA #n ;uest#on. T e Adm#n#st&at#on as %oad d#s\$&et#on #n se"e\$#on and a!!o#ntment de\$#s#ons and #ts a\$ts a2e a !&esum!t#on of &egu"a&#t6. 5t #s not fo& t e T&#%una" to su%st#tute #ts o/n >udgment fo& t at of t e \*e\$&eta&6+Gene&a"7 #t \$an \$ondu\$t a "#m#ted >ud#\$a" &e2#e / of t e se"e\$#on e=e&\$#se to 2e&#f6 #f a \$and#date / as fu""6 and fa&#6 \$ons#de&ed. / # \$ #n\$"udes a &e2#e / as to / et e& a \$and#date met t e s!e\$#f#ed e"#g#%"#t6 &e;u#&ements7

d. T e e"#g#%"#t6 &e;u#&ement \$onta#ned #n t e VA at #ssue / as "a / fu". T at / as \$onf&med #n se2e&a" >udgments f&om t e fo&me& Un#ted Nat#ons Adm#n#st&at#2e T&#%una" )3UNAdT4- )/rubant and \*ight , thers No. 3@: )1:@7-. 0ayyar No. 43@ )1:@@-. a/an No. : , : )2000--7



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Judgment No. UNDT/2015/075

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3,. T e (es!ondent su%mts t at t e A!!ea"s T&#%una" e"d #n Ivanov 2013+  
UNAT+37@ t at t e on"6 adm#n#st&at#2e de\$s#on / # \$ Som!"etes t e se"e\$#on  
!&o\$ess #s t e se"e\$#on of t e su\$\$essfu" \$and#date. and a"" ot e& de\$s#ons / #t #n  
t e !&o\$ess do not amount to \$ontesta%"e adm#n#st&at#2e de\$s#ons. ' o / e2e&. afte&  
\$a&efu" &ead#ng of t e Ivanov





43. K#t t #s #n m#nd. t e T&#%una" / #"" fo\$us on / et e& t e Gu#de"#nes. and #n !a&t#Su"a& t e t#me+#n+g&ade &e;u#&ement !&es\$&#%ed t e&e#n. / e&e 2a"#d. #n fo&Se and a!!"#a%"e to UN01 at t e t#me of t e \$ontested de\$#s#on.

5na!!"#a%"#t6 of t e Gu#de"#nes to UN01

44. T e Gu#de"#nes do not \$onta#n an6 !&o2#s#on de"#m#t#ng t e& s\$ole of a!!"#Sat#on #n te&ms of ent#t#es \$o2e&ed. ' o/e2e&. t e& t#t'eDas / e"" as t e t#t'e of t e Te&ms of (efe&en\$e and t e suggested #nfo&mat#on \$&Su"a& #ssued toget e& / #t t emD !u&!o&ts t at t e6 a!!"6 to 3esta%"#s ed m#ss#ons4.

45. No def#n#t#on of 3esta%"#s ed m#ss#on4 #s found #n t e te=t of t e Gu#de"#nes. o& an6/ e&e #n #ts a\$Som!an6#ng do\$uments. 5nstead. t e Gu#de"#nes enume&ate f#2e esta%"#s ed m#ss#ons< UNT\*9. UND9B. UNB5CAP. UNA9G5P. UNB50. T ese a&e #ndeed t e on"6 f#2e ent#t#es to / ose CA9s t e Gu#de"#nes / e&e \$&Su"ated #n 1: : ,.

46. 5t #s not#\$ea%"e t at UN01 / as not on t #s "#st. a"t oug #t / as a"lead6 #n e=#sten\$e fo& mo&e t an a 6ea& / en t e Gu#de"#nes / e&e \$&Su"ated. T e T&#%una" 2#e / s t #s as a st&ong #nd#\$at#on t at t e aut o&#t6 f&om / # \$ t e Gu#de"#nes emanated d#d not #ntend at t at t#me to a2e t em a!!"6 to UN01.

47. Aan6 6ea&s "ate&. Adm#n#st&at#2e 5nst&u\$#on \*T/A5/2003/3 )\* !e\$a" !ost a""o / an\$e fo& f#e"d m#ss#on staff- !&o2#ded a def#n#t#on of 3esta%"#s ed m#ss#on4. As !en%"a\$""nd""e\*s"e"s. nd #nns5-3.66523 (a)-3.17732 (5892 (n)9.69228.0755 f D14.18721s)-5.3



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peacekeeping operations; special political missions and other field presences.

sonf&med %6 se\$. :.2)\$- of \*T/\*G1/2010/2. / # \$ des\$&#%es UN01 as !a&t of t e  
3\*e\$&eta&#at8s g"o%a" te"e\$ommun#Sat#ons #nf&ast&u\$tu&e t at unde&!#ns f#e"d  
o!e&at#ons4. F2en t e #nd#Sat#2e ma! on t e DB\* /e%#te s o/s DPC9  
o!e&at#ons. on t e one and. and s!e\$a" !o"#t#\$a" m#ss#ons. on t e ot e&. / #e #t  
ma&?s UN01 se!a&ate"6 f&om %ot .

57. Ne#t e& #s UN01 a f#e"d !&esen\$. A\$\$o&d#ng to Anne= 5 of \*T/5C/2014/4.  
5ta"6 #s a \$ount&6 / e&e dut6 stat#ons a&e \$"ass#f#ed #n t e 'ead;ua&te&s )' -  
\$atego&67 t at #s. "o\$at#ons 3 / e&e t e Un#ted Nat#ons as no de2e"o!menta" o&

headquarters duty stations such as the United Nations Logistics Base;   
 <revised> of the United Nations Peacekeeping Budget.   
 C61.us. )em! as added-

,0. The "una" is mandatorily at the \*9P on 9n+o&d#ng of staff for UN !ea\$e  
 o!e&at#ons e="#\$#"6 \$#tes UNOP among the 3esta%"#s ed m#ss#ons4. 'o/e2e&.   
 / #e t #s \*9P #n\$udes UN01 #n #ts enume&at#on )\*e\$#on F-. #t \$ont&ad#\$ts #tse"f  
 %6 \$&\$ums&#%#ng at the same time the meaning of 3m#ss#ons4 to UN  
 !ea\$e?ee!#ng o!e&at#ons and s!e\$a" !o"#t#\$a" m#ss#ons )\*e\$#on A-. / #\$. as  
 demonstr&ated #n the ana"6s#s a%o2e. a&e d#st#n\$t f&om UN01. 5n an6 \$ase. the \*9P  
 \$annot !&e2a#" o2e& adm#n#st&at#2e #nst&u\$#ons and ot e& %#nd#ng #ssuan\$es of  
 su!e&#o& "ega" fo&\$e. su\$ as \*T/A5/2010/3.<sup>2</sup>

,1. 'a2#ng dete&mined that UN01 is not an 3esta%"#s ed m#ss#on4. #t fo"o/s  
 t at the Guide"nes Sou'd not %e a!"#\$a%"e to UN01.

!" "#\$%"&

,2. It is the Adm#n#st&at#on&s !os#on t at the Guide"nes /e&e a!"#ed #n the  
 !esent se"e\$#on e=e&\$#se as the se"e\$#on s&stem esta%"#s ed %6 \*T/A5/2010/3  
 does not \$o2e& G\* staff #n UN01. t e&e%6 \$&eat#ng a lacuna of "a/ t at  
 ne\$ess#tated to %e f#"ed !&o2#s#ona"6. unt#" t e &e;u#&ed no&mat#2e ad#stments  
 /e&e made.

,3. \*e\$. 3.1 of \*T/A5/2010/3 sets the #nst&u\$#on&s s\$o!e to<

the se"e\$#on and a!!o#ntment of a" staff mem%e&s to / om t e  
 9&gan#Jat#on as g&anted o& !&o!oses to g&ant an a!!o#ntment of  
 one 6ea& o& "ong& unde& t e \*taff (u"es at the G+5 and a%o2e  
 "e2e"s #n the Gene&a" \*e&2#e \$atego&6

/ e&eas se\$. 3.2s!e\$#f#\$a"6 e=\$"udes. among ot e& \$atego&#es of &e\$&u#tments<

) - A!!o#ntment and se"e\$#on of staff #n the Gene&a" \*e&2#e  
 \$atego&6 #n !ea\$e?ee!#ng o!e&at#ons and s!e\$a" !o"#t#\$a" m#ss#ons.

<sup>2</sup> (efe& to !&ag&a! s @4 to @7 %e"o/.

,4. In examining / et al UN01 facts under the e=se!t#on !o2#ded for #n  
se\$. 3.2) - of \*T/A5/2010/3. the T&#%una" &e\$a""s t at an6 e=se!t#on #s to %e  
\$onst&ued st&#t"6 and na&o/"6 )7asmani 2010+UNAT+011. 3ran 0guyen  
UNDT/2015/002-. K#t t #s #n m#nd. #t ta?es note of the Adm#n#st&at#on&s

esta% "s ment of a 3su%#d#a&6 !ane"4 fo& t e a!!o#ntment and !&omot#on of G\*  
staff7 !a&ag&a! 5 #nst&u\$ts t at t e m#ss#on&s Pe&



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70. The staff's election at the end of 2002. Administration's decision under article 5.3 of the Staff Regulations and Conditions of Service of the United Nations Secretariat at New York was set aside by the Tribunal in its judgment of 13 June 2003. The Tribunal found that the staff's election was valid and that the Administration's decision was null and void. The Tribunal also found that the staff's election was not subject to any challenge under article 5.1 of the Staff Regulations and Conditions of Service of the United Nations Secretariat at New York.

71. No election was held in 2003. The Tribunal found that the Administration's decision to hold an election in 2003 was not subject to any challenge under article 5.1 of the Staff Regulations and Conditions of Service of the United Nations Secretariat at New York.

72. The Tribunal found that the Administration's decision to hold an election in 2003 was not subject to any challenge under article 5.1 of the Staff Regulations and Conditions of Service of the United Nations Secretariat at New York.

\*T/A5/200, /3 and / e&e not &e#nstatement. An6 su\$ &e#nstatement / ou"d a2e to %e \$"ea& and !&e\$#se. \*u\$ #s not to %e found.

@3. K #e t e t#me+#n+g&kade &e;u#&ements set out #n t e Gu#de"#nes ma6 a2e %een #n "#ne / #t t e adm#n#st&at#2e #ssuan\$e go2e&n#ng se"e\$#on !&o\$edu&es #n fo&\$e f&om 1::, unt#" 2002. #t #s no / a%undant"6 \$"ea& t at su\$ &e;u#&ements a2e %een a%o"#s ed %6 t e a%o2e+&efek&n\$ed adm#n#st&at#2e #nst&u\$#ons. To t #s e=tent. t e Gu#de"#nes a2e %een. and st#" a&e. at odds / #t t e &e"e2ant adm#n#st&at#2e #nst&u\$#ons su\$ess#2e"6 !&omu" gated s#n\$e 2002.

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Requirements of section 5 of the Transparency Act have been met at least as



remedies

:2. 'a2#ng \$on\$"uded t at t e #m!ugned de\$#s#on /as un"a/fu". #t #s a!&#ate to &es\$#nd su\$ de\$#s#on. 1ea&#ng #n m#nd t at t e &e\$&#tment !&#ess as not 6et \$ome to an end. as #t /as !ut on o'd as #nte&#m &e"#ef o&#ded %6 t e T&#%una". t #s &es\$#ss#on #m!"#es t at. "a\$?ng an6 2a"#d &eason fo& t e A!!"#\$ant to %e deemed #ne"#g#%"e. e must %e fu&t e& Sons#de&ed fo& se"e\$#on to t e !ost ad2e&#sed unde& VA+13+14 )04,- on e;ua" foot#ng /#t ot e& \$and#dates.

:3. G#2en t at t e A!!"#\$ant /#" no/ %e fu""6 Sons#de&ed fo& se"e\$#on. e as not suffe&ed an6 "oss of o!!&#tun#t6 o& an6 ot e& demonst&a%"e damage t at s ou"d t&#gge& \$om!ensat#on.

:4. Bu&t e&mo&e. t #s #s not a \$ase / e&e t e T&#%una" #s unde& an o%"#gat#on to set \$om!ensat#on as an a"te&nat#2e to &es\$#ss#on !u&suant to a&t. 10.5 of #ts \*tatute. as t e \$ontested adm#n#st&at#2e de\$#s#on does not \$on\$e&n 3a!!o#ntment. !&#omot#on o& te&m#nat#on4. T e T&#%una" #s /e"" a / a&e t at t e de\$#s#on at #ssue #s "\$ose"6 &e"ated to a !otent#a" !&#omot#on. 'o/e2e&. t #s 2e&6 de\$#s#on. #e.. de\$"a&#ng t e A!!"#\$ant #ne"#g#%"e fo& VA+13+14 )04,-. #s not one to a!!o#nt and/o& !&#omote anot e& \$and#date to t e "#t#g#ous !ost. o& not to se"e\$#t/a!!o#nt t e A!!"#\$ant. %ut &at e& one !&e2ent#ng t e A!!"#\$ant f&om \$om!et#ng as a \$and#date fo& t e !ost. / # \$ #s d#ffe&ent #n natu&e and s\$o!e. 5n t #s &ega&d. t e e=\$"us#on of t ese s!e\$#f\$ \$atego&#es of \$ases \$onst#tutes an e=\$e!t#on to t e mo&e gene&a" !o/e& \$onfe&ed on t e T&#%una" to o&#de& un\$ond#t#ona" &es\$#ss#on of de\$#s#ons and. as su\$ . #t must %e #nte&!&eted &est&#t#2e"6 )see 7asmani 2010+UNAT+011. Abu- /a@aila 2011+UNAT+11@. . remades 2012+UNAT+271-.

:5. T e T&#%una" /#" t us not a / a&d an6 f#nan\$#a" \$om!ensat#on.

:. 5n 2#e/ of t e fo&ego#ng. t e T&#%una" DFC5DF\* <

a. T e \$ontested de\$#s#on #s un"a / fu" #n "#g t of t e a!!"#a%"e &u"es and !&#n\$#!"es7

%. The contested decision is hereby annulled, and the Applicant must reimburse the costs incurred and grant a further sum to compensate for the foregoing loss and

\$. No financial compensation is awarded.

)Signed-

Judge (of the Division)

Dated this 24<sup>th</sup> day of August 2015

Entered in force (effective) on this 24<sup>th</sup> day of August 2015

)Signed-

(Eno A. Vargas A. (effective) Gene2a