Introduction

1.

12. T(e *ead' D3++' sent a memo)andum dated 16 June 201& to t(e *\$g(Comm\$ss\$one)' ent\$t#ed 0;o##o6 u" to t(e;)\$t? >nst\$tute 5e.\$e6 of t(e+u""#! C(a\$n1. >n t(at memo' t(e D\$)e%to)' D3++' noted fou) 0")\$o)\$t! a%t\$ons and de%\$s\$on ma<\$ng "o\$nts fo) %ons\$de)at\$on 7! t(e *\$g(Comm\$ss\$one)1. 4ne of t(em %on%e)ned 0t(e t)ansfo)mat\$on of ")o%u)ement \$nto a mo)e)o7ust se).\$%e 7!)e%onf\$gu)\$ng t(e se).\$%e \$nto a *F se%t\$on and a ;\$e#d se%t\$on1. To t(at memo)andum' t(e *ead' D3++' anne:ed fu)t(e) e:"#anat\$ons on t(e ")o"osed)est)u%tu)\$ng' \$n%#ud\$ng an o)gan\$g)am on t(e ")o"osed D3++ ne6 st)u%tu)e. T(e *\$g(Comm\$ss\$one) s\$gned t(e memo)andum off on 2& June 201&.

18. T(e *ead' P , C+' t(e A""# $\mbox{su"e}$). $\mbox{so'}$ $\mbox{nfo)med}$ t(e #atte) du) \mbox{ng} a

- 16. At t = 0 Ju#! 201& sess0 t(e udget Commt = 0.ed t(e ")o"osed P , C+)est)u%tu)\$ng' \$n%#ud\$ng t(e d\$s%ont\$nuat\$on of t(e "os\$t\$on 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%\$s\$on 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. 4n 28 August 201&' t(e A""#\$%ant f\$#ed a)e@uest fo) management e.a#uat\$on 6\$t(t(e De"ut! *\$g(Comm\$ss\$one) of t(e de%\$s\$on to a7o#\$s((\$s "ost6 \$n (\$s)e@uest' (e a#so as<ed to 7e ")o.\$ded 6\$t(a %o"! of t(e udget Comm\$ttee De%\$s\$on 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 %onta\$ned inter alia)at(e) st)ong statements 6\$t()es"e%t to t(e *ead' P, C+.; o) \$nstan%e' t(e A""#\$%ant)efe))ed to (\$m as a #\$a)' and t(at (e (ad d\$s"#a!ed 0se)\$ous 7)ea%(of et(\$%s and def\$%\$en%es \$n ")ofess\$ona# %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. 4n 27 August 201&' t(e .a%an%! announ%ement fo) t(e D91 "ost of *ead' + , -+' 6as "u7#\$s(ed 6\$t(an a""#\$%at\$on dead#\$ne of 17 +e"tem7e) 201&. T(e A""#\$%ant a""#\$ed fo) t(e "os\$t\$on.
- 20. >n t(e UN * C5 +e"tem7e) 201& %om"end\$um' t6o P9& "osts 6e)e "u7#\$s(ed \$n t(e ne6#! %a##ed P)o%u)ement +e).\$%e /0P+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#\$s(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. 4n 11 No.em7e) 201&' t(e D91 "ost of *ead' +, -+' 6as)e90"ened fo) a""#\$%at\$ons 6\$t(a ne 6 dead#\$ne fo) a""#\$%at\$on set fo) 17 No.em7e) 201&.

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

Case No. UNDT/GVA/2016/078

Judgment No. UNDT/2017/074

7.

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

C.

status as an ∞ on ∞ on ∞ on ∞ status as an ∞ on ∞ on

/he #ead0 P 1 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\$t.e o7se).e) 6 ou#d (a.e %on\$#uded t(at t(e *ead' P, C+' as t(e A""#\$%ant=s d\$)e\$t #\$ne manage)' (ad an a\$tua# o) "e)\$e\$t.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) f)om t(e Pane#' e:\$sted. At t(e

on t(e g)ounds t(at (e (ad not)e.\$e6ed t(em afte) t(e! (ad 7een unde))e.\$e6 7! t(e +en\$o) +u""#! 4ff\$e).

&8. *o6e.e)' at t(e (ea)\$ng' t(e *ead' P , C+' adm\$tted t(at (e (ad ")ofess\$ona# 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 #\$nes 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\$o) +u""#! 4ff\$%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.\$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 6 as \$m")o.ed o) u"(e#d. *e a#so unde)#\$ned t(at des"\$te t(ose ")ofess\$ona# 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 ")ofess\$ona#\$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. T(e T)\$7una# f\$nds t(at t(e a7o.e matte)s %onst\$tute me)e ")ofess\$ona# d\$sag)eements' and ma!7e "e)fo)man%e \$ssues' 6(\$%(\$n and of t(emse#.es %annot #ead to a)easona7#e %on%#us\$on of a%tua# o) "e)%e\$.ed 7\$as on 7e(a#f of t(e *ead' P, C+' aga\$nst t(e A""#\$%ant.

T(e A""#\$%ant=s %om"#a\$nt fo) (a)assment

61. T(e T)\$7una# notes t(at on 8 De\$em7e) 2014' t(e A""#\$%ant f\$#ed a (a)assment %om"#a\$nt aga\$nst t(e *ead' P , C+' 6\$t(t(e >G4' %o"\$ed to t(e 3t(\$%s 4ff\$%e. U"on t(e T)\$7una#=s \$n@u\$)! at t(e (ea)\$ng' t(e A""#\$%ant \$onf\$)med t(at soon t(e)eafte)' (e as<ed t(e >G4 to "ut t(e \$om"#a\$nt on (o#d 7e%ause (e t(oug(t t(at t(e matte)s 6 ou#d 7e)eso#.ed t()oug(manage)\$a# a\$t\$ons. *e a#so adm\$tted t(at (e d\$d not' at an! "o\$nt \$n t\$me')e@uest t(e >G4 to ta<e t(e matte) u" aga\$n' and t(at t(e \$om"#a\$nt 6as su7se@uent#! 0o.e)ta<en 7! e.ents1' name#! t(e)est)u\$tu)\$ng and t(e d\$s%ont\$nuat\$on of (\$s "ost. T(e *ead' P , C+' %onf\$)med on

(ad)e@uested)e%usa#' \$t 6 ou#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\$t(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 .\$e6 t(at t(e ")esent %ase (as to 7e d\$st\$ngu\$s(ed f)om 2134holy UNDT/2016/101.
- 67. Un#\$<e 2134holy' \$n t(e %ase at (and' t(e A""#\$%ant)efused to unde)go t(e \$nte).\$e6. 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).\$e6. >ndeed' t(\$s \$s a <e! e#ement fo) t(e a"")e%\$at\$on of t(e ")esent %ase' s\$n%e t(e A""#\$%ant=s)efusa# to

a)efe)ee 6 (en a""#!\$ng fo) t(\$s "os\$t\$on. As su%(' t(e T)\$7una# notes t(at des"\$te t(e\$) d\$ffe)ent ")ofess\$ona# .\$e 6s 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 6as su\$ta7#e fo) t(e ne6#! %)eated P9& "osts' and' (ad (e a""#\$ed fo) an! of t(em' (e 6ou#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 6as as

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

78. Ne.e)t(e#ess' t(e D\$)e%to)' D3++' a#so st)essed t(at' f)om a manage)\$a# "o\$nt of .\$e6' s(e su""o)ted t(e)est)u%tu)\$ng ")o%ess \$n t(e %onte:t of t(e ;)\$t? 5e"o)t' as)ef#e%ted \$n t(e memo)andum of 16 June 201&' to t(e *\$g(Comm\$ss\$one)' UN*C5.

7A. T(e T)\$7una# \$s fu)t(e) \$on.\$n%ed t(at t(e A""#\$%ant=s)efe)en%e to t(e D\$)e%to)' D3++' (a.\$ng g)eeted (\$m 06\$t(d\$sda\$n1' and (e) #a%< of)es"ons\$. eness to some of t(e ema\$#s (e sent a)e not suff\$%ent e\$t(e) to meet t(e test of 7\$as unde) Finniss.

80. ; o) t(e) easons out#\$ned a7o.e' $t \le t(e T)$ 7una#=s .\$e6 t(at t(e fa%ts %on%e)n\$ng t(e \$n.o#.ement of t(e D\$)e%to)' D3++' \$n t(e)est)u%tu)\$ng ")o%ess do not a##o6 an!)easona7#e %on%#us\$on to esta7#\$s(t(e e:\$sten%e of an a%tua# o)

\$\text{snte} .\\$e6. +(e fu)t(e) e: "#a\text{sned } 6(! t(e d\text{s})e\text{st manage}) of t(e "ost /D\text{s})e\text{sto})' \\ D3++2' as 6e\text{## as } t(e t60 te\text{sna## sen}\text{so}) manage)s (ad to)ema\text{sn on } t(e Pane\text{#.} ;\text{sna##!' s(e \text{snfo})med } t(e A"\text{"#\$\text{mant of } t(e "oss\text{\$75\text{#}\text{\$t}}! to \text{\$\text{sa}\text{\$se } 6\text{\$t}(t(e -ega\text{\$t\$}) \text{sho} /0-A+12' \text{UN*C5'} and to \text{\$\text{sons}\text{\$t\$}} as<\text{\$sng fo) } t(e \text{ attendan}\text{\$te } of one of t(e\text{\$t}) \text{\$ta} 6!e)s at t(e \text{\$te}) .\text{\$te} 6s.

88. T(e T)\$7una# \$s sat\$sf\$ed 6\$t(t(e)easons t(at t(e Adm\$n\$st)at\$on ga.e to t(e A""#\$%ant fo) \$ts de%\$s\$on 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).\$e6. 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).\$e6.

78 ral hearing 9 with the 5 eputy #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 .\\$e6'\\$t 6ou\#d (a.e 7een a good management ")a\\$t\\$se