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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2014/04

Case No.: UNDT/2014/04

Date: 4 September, 2014

Originals: English

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Before: Judge Tamas La0e,

Registry: Geneva

Registrar: René Vanegas

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SECRETARY GENERAL

Case No. UNDT/GVA/2014/049

Judgment No. UNDT/2015/078

7. "# inte(o &'e memo(andum dated 10 ;e.(ua(# 2012/ t\*e C\*e / 1\$a'e A\$\$k'attons 1e'tton/ 001A/ &n o(med t\*e Aead o 0 &'e/ 001A "ek</ t\*at t\*e UN=1P>D@ - "ek</ 0 &'e &nan'ta% oSe(attons )ou'd .e s\*k ted to UNDP C\*na/ to a%%o ) t\*e "ek</ 0 &'e g(eate( &nde\$enden'e and %e7%.&t# &n &ts )o(,.
8. "# ema% o 22 Janua(# 201!/ t\*e C\*e / 1\$a'e A\$\$k'attons 1e'tton/ 001A/ &n o(med t\*e Aead o 0 &'e/ 001A "ek</ and t\*e A\$\$k'ant t\*at s&n'e t\*e &nte(o &'e memo(andum o 10 ;e.(ua(# 2012/ .# ) \*k' t\*e "ek</ oSe(atton \*ad .een '\*anged &n 201!/ \*ad 3'(eated a %ot o 'on us&on &n 8t\*ek(9 )o(, not on% &n "ek</ .ut also &n Vienna t\*(oug\* 20124/ \*e \*ad de'dded to )t\*d(a) said memo(andum. Ae u(t\*e( noted t\*at t\*ks meant t\*at t\*e "ek</ 0 &'e ) as going to oSe(ate as &t \*ad &n 2011.
9. As su'\*/ and a%t\*oug\* &ntta%%# UN=1P>D@ - "ek</ \*ad .een oSe(ating unde( UNDP -u%es and P(o'edu(es/ 001A de'dded &n Janua(# 201! t\*at UN=1P>D@ - "ek</ oSe(attons .e s\*k ted .a', to t\*e United Nations 0 &'e at Vienna 2UN0V5/ and t\*at &t )o(,s unde( t\*e %atte(Cs >?>1 s#stem. At t\*e same %tme/ t\*e unding agreement )&t\* t\*e C\*inese Go:e(nment 'ame to an end and 001A/ Vienna sta(ted to \$e( o(m some o UN=1P>D@ - "ek</ oSe(attona% a't&:&tes) additona%%/ t\*e \$ost en'um.e(ed .# t\*e A\$\$k'ant )as do)ng(aded and a <o. oSening o( a Team Ass&stant 21C=45 )as ad:e(tised to (e %e't t\*e de'(eased (es\$ons&. &%%tes.
10. @mak% 'ommun&'attons (om 2012 and 201! .et) een t\*e A\$\$k'ant and \*(e ;k(st -e\$ot(ing 0 &'e( 23; - 045 s\*o) some tens&ons .et) een t\*em) t\*e 'ommun&'attons (e e( / to t\*e A\$\$k'antCs ePA1 and to \*(e ; - 0Cs 'on'e(ns a.out a' 'om\$%s\*ment o some tas,s .# t\*e A\$\$k'ant/ as )e%% as to \*(e 'ommun&'ation )&t\* t\*e ; - 0. >n an ema% o 20 June 201! to \*(e ; - 0/ t\*e A\$\$k'ant noted t\*at s\*e )as ee(ing un)e%% 3&n :ke) o t\*e (e'ent tu(.u%en'es so 8s\*e \*ad) to go \*ome o( (est4.
11. >n \*(e \$(e:tous ePA1es E.k.e. '#%es 2009=2010 and 2010=2011 E and t\*ose o( 2011=2012 and 2012=201! ) \*en t\*e A\$\$k'ant )as )o(,ing as P(og(amme Asso'tate/ G=6/ at UN=1P>D@ -/ t\*e A\$\$k'ant )as (ated 3 (eBuent%# e7'eeds \$(e o(man'e e7\$e'tattons4. T\*e %atest ePA1/ name%# t\*at o( t\*e \$(e(od

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The Geneva Convention (1948) as amended under Case No. UNDT/GVA/2014/049 and assigned to the undersigned Judge.

17. The Order No. 121/GVA/2015 of 16 June 2015/ No. 115/GVA/2015 of 29 June 2015 and No. 151/GVA/2015 of 14 August 2015/ the Tribunal, as amended, the Parties to the Order, additional information and to the

\$(e: &lous \$(a't&'e esta. %&s\*ed .# t\*e A\$\$&'ant )o(,ed mu'\* .ette( t\*an t\*e  
'e(t& &'at&on .# \*eadBua(te(s/ .ut V&enna (e used to o%%o) \*e( ad:&'e)

d. 1\*e \*ad not (e'e&:ed an# )a(n&ng o( t\*e s\*o(t'om&ngs (e%at&ng to  
>?>1 t\*at )e(e u&t&mate%# (e %e'ted &n \*e( 2012-201! ePA1D at a meeting  
) &t\* \*e( ; - 0 on 2! ? a# 201! to d&s'uss \*e( ePA1/ \*e &n o(med \*e( t\*at \*e  
) ou&d \$ut a negat&:e 'omment &n \*e( ePA1D s\*e t\*&n,s t\*at .# t\*at ePA1/  
s\*e )as .%amed/ &n )(&t&ng/ o( a%% t\*e d& &'u&t&es &n o\$(e(at&ons) as a  
'onseBuen'e/ s\*e e%% s&' ,D

e.



\*. The Administration disposes of road dis'ection in de'iding on its st'utu(e and on \*o) it 'ondu'ts its o\$e(ations) in t'e a.sen'e o a(.it(a(kness o( ot\*(e( k%ega% 'onside(ations o( t'e :kO%at%on o \$(o'edu(a% (u%es/ su' \* e7e('ase o d%is'et%on &s not su.<e't to <ud&' &a% 'ont(o%&D

&. The on%# 3'(k&'a%4 'omment in \*e( 2012=1! ePA1 ) as a need o( u(t\*(e t(a&n&ng &n > ? > 1D t'e A\$\$%k 'ant (e e(en'e to 3un ak( t(eatment4 &s not su\$\$o(ted .# an# e:den'e/ and s\*e ne:e( \$u(sued (e%e:ant (ed(ess \$(o'edu(es) t'e on%# a:a%a.%e e:den'e (e%ates to disag(eements o:e( ) o(, &ng \$(o'esses/ and &t &s t'e \$(eogat%:e o t'e O(gan&Gat%on to de'&de \*(o) &t )ants to 'ondu't its o\$e(ations)

<. The a\$\$%k'at%on s\*ou%&.e (e<e'ted &n &ts ent&(et%#.

20. A%t\*oug\* not su.m&tted .# t'e -es\$ondent/ t'e T(k.una% &s .ound to &(st (a%se/ on &ts o)n mot%on/ t'e &ssue o t'e (e'ek:a.&%&t# o t'e a\$\$%k'at%on 2' . UNDT/2011/005D UNDT/2011/0065.

21. 1ta (u%e 11.2 2 ? anagement @:a%uat%on5 \$(o:desF

2a5 A sta mem.e( ) &s\*k%ng to o(ma%# 'ontest an adm&n&st(at%:e de'&sk%on a%geg&ng non='om\$%an'e ) &t\* \*%s o( \*e( 'ont(a't o em\$%o#ment o( te(ms o a\$\$o&ntment/ &n'%ud&ng a%\$e(t%nent (egu%at%ons and (u%es \$u(suant to sta (egu%at%on 11.1 2a5/ s\*a%#/ as a &(st ste\$/ su.m&t to t'e 1e'(eta(#=Gene(a% &n ) (k&ng a (eBuest o( a management e:a%uat%on o t'e adm&n&st(at%:e de'&sk%on.

I

2'5 A (eBuest o( a management e:a%uat%on s\*a%# not .e (e'ek:a.%e .# t'e 1e'(eta(#=Gene(a% unless &t &s sent ) &t%&n 60 'a%enda( da#s (om t'e date on ) \*k' \* t'e sta mem.e( (e'ek:ed not& &'at%on o t'e adm&n&st(at%:e de'&sk%on to .e 'ontested. T\*k% dead%&ne ma# .e e7tended .# t'e 1e'(eta(#=Gene(a% \$end&ng e o(ts o( &n o(ma% (esol%ution 'ondu'ted .# t'e 0 &'e o t'e 0m.udsman/ unde( 'ond&t%ons s\$e' & &ed .# t'e 1e'(eta(#=Gene(a%.



22. The Appellant has consistently maintained that the commitments made to the Ombudsman and the Ombudsman's 2015-UNAT-557/ 2015-UNAT-495) 2014-UNAT-4705 and that the (eBust of management evaluation leads to the assessment being (e'ek:a.e/ 2' . 2014-UNAT-402) 2015-UNAT-5575.

21. The Tribunal understands the Appellant's (using that 3 statements made to ensure that the (a(e a) a(e o lta -egulations and -ules and the Appellant's (o'edu(es in the 'onte7t o the admnstr(aton o <ust'e in the United Nations (ntena <ust'e s#stem and that (gn(an'e o the %a) is no e7' use o( mssng deadnes4 2 2015-UNAT-546/ 2015-UNAT-5215.

24. At the same time/ ) (esSe't to the Buestion o ) \*et\*e( an Appellant (led a (eBust of management evaluation ) (t\* the 'omSetent aut\*(t# / the Dispute Tribunal stressed in UNDT/2011/052 that

However the Appellant is entitled to argue that the Administration should not be essential# o(ma'st' and (nsst that e:e(# (eBust o( (e:ke) must ) (t\*out (e add(essed to the 1e'(eta(#-Gene(a in o(de( to be treated as su'\*/ the (eBust must/ on the o'te( \*and/ .e su (k'ent# 'lea( o( (ts (e 'k\$ent to see that (t (s in a't a (eBust

Case No.

UNDT/GVA/2014/049

and \$o'edu(es t\*at a(e unam.&guous and su.<e't to \$u.%&' announ'ement. T\*e do'uments \$(o:&d ed .# t\*e -es\$ondent to s\*o) t\*at t\*e aut\*(&t# o( eBuests o( management e:a%uation \*as .een de%egated to t\*e UNDP Adm&n&st(ato( a(e a( too gene(a% )&t\* (es\$e't to t\*e aut\*(&t# o t\*e UNDP Adm&n&st(ato( &n t\*e adm&n&st(at&n o t\*e (egu%at&n and (u%es o UNDP sta mem.e(s/ and do not ment&n t\*e &nte(na% <ust&'e s#stem. ? o(eo:e(/ t\*e on%# (e%e:ant do'ument/ &. e. t\*e &nte(o &'e memo(andum on t\*e de%egation o aut\*(&t#/ \*as not .een \$u.%&s\*ed.

!2. >n 'ont(ast/ t\*e T(&.una% notes t\*at )&t\*&n t\*e Un&t ed Nat&n s A&g\*

15. A non-(ene) a% de'&skon 'an .e '\*a%%enged &n 'ase t\*e Adm&n&st(at&tion does not a't a&(#/ <ust%# o( t(ans\$a(ent%# o( & t\*e de'&skon &s mot&:ated .# .&as/ \$(e<ud&'e o( &m\$(o\$(e( mot&:e against t\*e sta mem.e(D t\*e %atte( \*as t\*e .u(den o \$(o:&ng t\*at su'\* a'to(s \$%a#ed a (o%e &n t\*e adm&n&st(at&:e de'&skon 2' . 2015=UNAT=500/ (e e((&ng to 2011=UNAT=15!D) & ' 2012=UNAT=201D) 2010=UNAT=0215.

16. T\*e A\$\$eas T(&.una% \*as 'ons&stent%# \*e&d t\*at an &nte(nationa% o(gan&Gat&ion \*as t\*e \$(o) e( to (est(u'tu(e some o( a% o &ts de\$a(ments o( un&ts/ ) \*&'\* &n'%udes t\*e a.o&t&on o \$osts/ t\*e '(eat&on o ne) \$osts and t\*e (ede\$o#ment o sta 2( 2014=UNAT=471D) 2012=UNAT=2!65.

17. ;u(t\*e/ t\*e A\$\$eas T(&.una% 'on &(med t\*at ) \*e(e t\*e Adm&n&st(at&tion \$(o:&des a (eason o( t\*e non-(ene) a% o a &7ed=te(m a\$\$o&ntment/ t\*at (eason must .e su\$\$o(ted .# t\*e a'ts 2\* 2011=UNAT=1155.

18. >n t\*e \$(esent 'ase/ t\*e (eason o( t\*e non-(ene) a% o t\*e A\$\$&&'antCs a\$\$o&ntment ) as t\*e (est(u'tu((&ng o t\*e 001A "e&&ng 0 &'e %ead&ng to t\*e a.o&t&on o t\*e A\$\$&&'antCs \$ost/ unded t\*(oug\* 'ont(&.ut&ons (om t\*e C\*&nese Go:e(nment. T\*e A\$\$&&'ant/ ) \*&e e710.7446(u) - 0.98176(n) - 02( ) ] TJD - 230.722 - 3166653(n) .

40. As stated in the Tribunal's decision, the Applicant's G-6 constituted a significant portion of the total amount of the Applicant's commitment. The fact that the Applicant's commitment is suspended does not mean that the Applicant's commitment is suspended. The Applicant's commitment is suspended.

41. The Tribunal notes that the Applicant did not provide any evidence to support its allegations that the decision is motivated by a desire to punish the Applicant. The Tribunal's decision is based on the evidence presented. The Tribunal's decision is based on the evidence presented. The Tribunal's decision is based on the evidence presented.