



**Before:** Judge Alessandra Greceanu

**Registry:** New York

**Registrar:** Hafida Lahiouel

CHHIKARA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
Steven Dietrich, ALS/OHRM, UN Secretariat

## **Introduction**

1. By application filed on 25 July 2016, the Applicant, a Chief Aviation Safety Officer with a fixed-term appointment at the P-5 level, step 9, in the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (“MONUSCO”), contests the decision not to shortlist him for an interview during the selection process for the post of Chief of the Air Transport Section (“ATS”) at the D-1 level in the Department for Field Support (“DFS”) in New York (“the Post”). The Applicant requests the rescission of the selection decision for the Post and that the whole recruitment exercise be conducted anew in line with established procedures.

2. The Respondent contends that the application is without merit and should be dismissed.

## **Factual and procedural background**

3. The Post was advertised as Job Opening 15-LOG-DFS-42096-R-NEW YORK (“JO”) on the United Nations online jobsite, Inspira, from 20 April 2015 to 18 June 2015. A total of 49 candidates applied for the JO. Nine applicants were internal and 40 were external. The Applicant applied on 18 June 2015.

4. The following outline of facts regarding selection process were presented by the Respondent in his response to Order No. 246 (NY/2016) and its veracity has not been contested by the Applicant:

... [...] [F]ourteen (14) candidates were shortlisted and invited for a written assessment. Seven (7) candidates were internal and seven (7) candidates were external [...]. Two applicants (one internal and one external), that were invited for the written assessment, did not participate in the written assessment/test as they did not submit any test results.

... [...] [T]he written assessment was administered through an online testing platform called Verint/Vovici. It consisted of two

parts: 1. Situational judgements, and 2. constructive response, and it was taken for 2 hours and 30 minutes without interruption in one seating, at a time convenient for applicants, in an open online written assessment window of two days. According to the Recruitment Strategy for the JO, it was determined that only the candidates that would pass Part 1, would then be further assessed for Part 2. Part 1: The results of 25 Situational Judgement Items were assessed against the predefined key responses, provided to the Examination and Testing Section/OHRM prior to the administration of the written assessment. A copy of the 25 SJTs [unknown abbreviation] and the key response per each is attached [...].

... Part 2: Constructive response and the marking guide were also prepared before the administration of the written assessment. The scores for Part 1 - STJs for each short-listed candidate that took the written assessment/test is attached. Applicant JO42096 017 represents the Test Administrator with the pre-defined key response for each item/question. SJT Items/questions 6, 7, 10, 11 and 20 were eliminated from overall rating for displaying poor reliability and validity of psychometric properties [...].

... This test resulted in a pass mark for the applicants who had scored 60 points (60% over 100%) and above by giving positive responses as per the key response or the next response next to the key. Six candidates (including one candidate that was considered as “not-suitable” for not having a pilot licence, and not moved further in the assessment process) that scored 60% and above passed the Part 1: (5) external candidates and one (1) internal candidate.

... Part 2. The method of granting the grades/marks used by the Panel Members for the six candidates was based on the attached marking guide, which was also prepared before the administration of the written assessment [...].

... Part 2 - constructive responses of the six candidates were graded unanimously by the Panel Members. However, the Panel decided to expand the pool of candidates to be interviewed and invite all applicants that passed Part I - the Situational Judgement Items to the competency based interview. As such, the results of the grading of the Part 2 of written assessment were not taken into account.

... Part 2 - constructive responses of all short listed applicants that participated in the written assessment are attached [...]. Five (5) candidates were interviewed: Two (2) candidates (external) were concluded to meet the competencies, including the competency of professionalism, and were recommended for the position. Three (3) candidates (one employee, one candidate from UN Common System,

and one external) were concluded not to meet the competencies and therefore, they were not recommended for the position.

... In response to paragraph 11(f) of the Order, following the interviews and the recommendations by the Interview Panel, as per the DFS departmental procedure, on 20 November 2015 Director LSD [unknown abbreviation] submitted a recommendation for the selection for the position of Chief, ATS for the USG/DFS's approval pending the review and endorsement of the Central Review Body (CRB) [...]. USG/DFS granted the conditional approval on 30 November 2016 [...]. Subsequently, on 1 December 2015 the case was submitted to OHRM for review and transmission to the CRB for review and endorsement [...].

... The USG/DFS pre-approved conditional selection decision was implemented the same day on 27 January 2016. Upon recording the selection decision in [Inspira], the Inspira system then sent automated notifications to all the applicants that the recruitment process for this JO was completed, and the result of their application [...].

5. On 26 March 2016, the Applicant filed a request for management evaluation of the contested decision. On 26 April 2016, the Applicant received a response from the Management Evaluation Unit ("MEU") which upheld the decision.
6. On 25 July 2016, the Applicant filed the present application before the Dispute Tribunal in Nairobi, where it was registered under Case No. UNDT/2016/053.
7. On 28 August 2016, the Respondent filed his reply.
8. Following the Plenary of Dispute Tribunal's Judges held in May 2016, and to balance the Tribunal's workload, the present case was selected to be transferred to the Dispute Tribunal in New York.
9. On 8 September 2016, the Applicant filed a request to order the Respondent to provide certain evidence.

10. By Order No. 431 (NBI/2016) of 9 September 2016, the parties were instructed to express their views, if any, on the transfer of the present case by 16 September 2016.

11. By Order No. 440 (NBI/2016) of 21 September 2016, noting that neither party objected to the transfer of the case, pursuant to art. 19 of the Dispute Tribunal's Rules of Procedure, the Tribunal transferred the case to the Dispute Tribunal in New York, where it was registered under Case No. UNDT/NY/2016/045.

12. On 23 September 2016, the case was assigned to the undersigned Judge.

13. By Order No. 246 (NY/2016) of 20 October 2016, the Tribunal provided the following orders (emphasis omitted):

... The Applicant's request for evidence is granted.

... By 5:00 p.m. on Friday, 4 November 2016, the Respondent is to file:

a. A copy of the comments and accompanying documents submitted to the Management Evaluation Unit by the Executive Office of the Department of Peacekeeping Operations and the Department of Field Support in relation to the Applicant's management evaluation request;

b. The total number of the applicants (internal and external) for the Job Opening;

c. The number of all short-listed (internal and external) candidates invited for the written assessment;

d. The answers and the corresponding results/marks of each candidate (internal and external), including: (i) for the 25 situational judgment questions, including a list of all these questions; (ii) the correct answers and the method of evaluation for each question; and (iii) for the essay, including the method of granting the passing grade/mark;

e. The final results of the candidates selected for the interview;

f. A copy of the selection decision and the date of its implementation.

... By 5:00 p.m. on Friday, 4 November 2016, the parties are further instructed to file separate statements informing the Tribunal, if:

a. Any additional evidence is necessary to be produced in the present case and, if so, stating its relevance, or if the case may be decided on the papers;

b. If the parties are amenable for an informal resolution of the case either through the Office of the Ombudsman or through *inter partes* discussions.

... In case the parties agree that no further evidence is requested and the Tribunal can decide the case on the papers before it, the parties are instructed to file their closing submissions by 5:00 p.m. on Friday, 11 November 2016.

14. On 4 November 2016, in response to Order No. 246 (NY/2016), the Applicant filed a submission stating that he did not seek any further evidence in the case and that he was amenable to informally resolve the case either through the Office of the Ombudsman or through *inter partes* discussions.

15. On 4 November 2016, also responding to Order No. 246 (NY/2016), the Respondent filed the documents requested by the Tribunal and stated that he did not wish to produce any additional evidence in the case and that he would file and serve his closing submission on 11 November 2016.

16. On 8 November 2016, the Applicant filed a submission in which he stated, *inter alia*, that, based on the evidence produced by the Respondent on 4 November 2016, many new questions arose about the entire selection process, that he requested additional evidence be considered relevant to the case and that, after the receipt of this evidence, he would requested an additional two weeks to file his closing submissions.

17. On 11 November 2016, the Respondent filed his closing submissions in compliance with Order No. 246 (NY/2016).

18. By Order No. 259 (NY/2016) of 14 November 2016, the Tribunal rejected the Applicant's request for additional evidence having found that sufficient evidence had been submitted for the Tribunal to determine the case. The Applicant was instructed to file a closing submission on 21 November 2016.

## **Applicant's submissions**

19. The Applicant's main contentions, in his application, are reproduced below (emphasis in the original) :

... The Applicant became aware that besides himself, many qualified, experienced UN Staff at P-5 level had applied for this Job Opening. The Applicant also learnt that many such internal candidates had appeared in the written Assessment. However, almost all internal candidates failed to qualify the written Assessment stage to make it to the interview stage! This, in itself, is indicative of the fact that the written Assessment exercise had grave shortcomings.

... The first notable shortcoming of the Assessment was that the candidates shortlisted for the written exercise were not informed prior to or during the examination that the two parts of the written Assessment would be evaluated separately and that a minimum of 60 percent pass marks in situational judgement part of the Assessment exercise was a prerequisite for evaluation of the second part of the Assessment (Essay Type question). Without this vital information, Applicants were under the impression that the two parts of the written Assessment, being a part of the same examination, would be scored individually and the cumulative marks obtained would be the criteria for determining pass - fail in the written Assessment. Additionally, due to this serious lacuna, candidates were not able to apportion appropriate additional time in the examination for the situational judgement part of the Assessment.

... While 60 percent was set as the minimum pass mark for situational judgement part of the assessment, there was no such minimum pass mark probably set for the essay type question. This assumption is based on the fact that the essay type question dealt exclusively with the manner in which Aviation operations are conducted and managed within Department of Field Support in the UN. Hence, external candidates, being unfamiliar with conduct of Aviation operations in DFS, could not have scored even bare minimum marks in this part of the assessment. Such an essay type question was biased and blatantly unfair to all the external candidates and thus, should not have been asked the Assessment. However, the result of the Assessment exercise indicates that the internal candidates too, were also victims of such a biased Assessment exercise, as almost all of the internal candidates failed to qualify in the written Assessment.

... ST/AI/2010/3 is the Administrative Instruction governing the Staff Selection System in the UN. In this Administrative Instruction, in Section 1 (**Definitions**), *evaluation Criteria* is defined

as: *criteria used for the evaluation of Applicants for a particular position. Evaluation criteria must be objective and related to the functions of the generic job profile or the individually classified job description and must reflect the key competencies that will be assessed* (bold added).

... In Section 4, under **Job Openings**, Paragraph 4.5 of the same Administrative Instruction reads: The Job Opening shall reflect the functions and the location of the position and shall include the qualifications, skills and competencies required (bold added). In Section 7, under **“Pre-screening and assessment”**, paragraph 7.5 reads: *“Shortlisted candidates shall be assessed to determine whether they meet the technical requirements and **competencies** of the job opening”* (bold added).

... For this particular Job Opening, there were five Competencies specified. The Applicants were therefore, required to be evaluated against these five Competencies. The Competencies specified were *“Professionalism”*; *“Communication”*, *“Planning and Organizing”* and two Managerial Competencies of *“Leadership”* and *“Vision”*. However, the 25 situational judgement questions asked in the written Assessment (in which the Applicant and most other internal candidates were failed) did not correspond to any of the five competencies that were required to be assessed for this job opening. Instead, the situational judgement questions were related to the Competency of *“Judgement and Decision Making”*, which was not one of the Competencies supposed to be evaluated.

... MEU’s response to Applicant’s request for Management Review confirms the above. MEU’s response reads: *‘the situational judgement questions did not aim at assessing factual information/knowledge, but rather at **assessing applicants’ behavior and ability to make managerial decisions/or a D-level position**’* (bold added). Neither did the Job Opening state that Applicant’s *“behavior and ability to make managerial decisions for a D-level position”*, would be assessed during the selection process, nor was *‘Judgement and Decision Making’* one of the competencies mentioned in the Job Opening and therefore, such situational judgement questions should not have been an *“Evaluation Criteria”* in the first place.

... For any situational judgement question, there can be many possible responses. For this particular Assessment, the candidates were required to select the most appropriate sequence of options for dealing with specific situations. The question therefore arises is on what basis was the correct answer chosen by the examiner(s)? Was the correct answer based on some internationally recognized Management principle, or was it based on any UN core value / competency / document, or on any research on behavior by a reputed university like Harvard / MIT or was the *‘desired sequence of options’* simply the opinion of the examiner? This question is especially relevant as

almost all internal P-5 Applicants for this job opening probably failed to give the “desired” answers to these questions.

... The Applicant would also like to know if there is a stated “behavior and ability to make managerial decisions for a D-1 level position”, mentioned anywhere in any UN document/policy/guideline about which almost all internal candidates seemed to be ignorant?

... Based on the above, it is evident that objective criterion was not used to evaluate the situational judgement part of the Assessment. It also appears that irrelevant evaluation criteria was applied when the candidates were required to answer ‘situational judgement’ questions (which corresponded to the competency of “Judgement and Decision Making”, which was not one of the competencies required to be assessed during the evaluation). Use of arbitrarily decided pass marks for only one part of the Assessment and probably no such pass marks for the second part of the same Assessment exercise, was another glaring procedural discrepancy of the selection process.

... The Applicant believes that above-mentioned procedural errors, bias and shortcomings nullified the fairness, lawfulness of the whole Assessment exercise which adversely and affected his chance to be selected for the [P]ost.

### **Respondent’s submissions**

20. The Respondent’s contentions, submitted in his reply, are as follows (footnotes aside from Judgment Nos. and references to annexes omitted):

#### *Standard of review*

... The United Nations Charter vests the Secretary-General with broad discretion in matters of appointment and promotion (*Charles* [2013-UNAT-2013]; *Fröhler* [2011-UNAT-141]; *Abassi* [2011-UNAT-110]). Article 101(1) of the Charter provides: “The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.” Staff Regulation 4.1 confirms that “the power of appointment of staff members rests with the Secretary-General.” Staff Regulation 1.2(c) provides further that “[s]taff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations.”

... There is a presumption that official acts have been regularly performed (*Rolland* [2011-UNAT-122]). Following a minimal showing by the Administration that the candidacy of a staff member was given full and fair consideration, the burden of proof shifts to

the applicant who must be able to show through clear and convincing evidence that he or she was denied a fair chance of appointment. It is not the Dispute Tribunal's function to consider the correctness of the selection decision made by the Secretary-General amongst the various job applicants recommended for selection, including the Applicant (*Sanwidi* [2010-UNAT-084], *Solanki* [2010-UNAT-44]).

*The Applicant was given full and fair consideration*

... The recruitment of staff is governed by ST/AI/2010/3, *Staff selection system* (Staff Selection AI). Sections 7 to 9 of the Staff Selection AI set out the procedures in the selection process, from evaluation of the minimum requirements to the final selection decision made by the head of department or office.

... Initially, job applicants are pre-screened based on the information contained in their applications to determine whether they meet the minimum requirements of the job opening. Following their release to the hiring manager, he or she evaluates all job applicants released prepares a shortlist. Thereafter, the shortlisted job applicants shall be assessed to determine if they meet the technical requirements and competencies of the job opening.

... Based on the Applicant's academic qualifications, work experience and language proficiency as presented in his application, he was considered to meet the minimum qualifications for the position and his name was released to the hiring manager for further consideration. The hiring manager shortlisted the Applicant and the twelve other shortlisted job applicants for further assessment in the form of the written assessment. The Applicant did not pass the written assessment.

... The Applicant was lawfully screened out following the written assessment. Section 7.5 of the Staff Selection AI expressly provides that the hiring manager may convoke shortlisted candidates to assess both the technical requirements and the competencies of the job opening. The administration of a written test is a lawful and a common means of assessing the technical skills of candidates in a selection process (*Krioutchkov* [UNDT/2016/041]). "The only applicable requirement is that the methodology of the tests be fair and reasonable, and not designed deliberately to confer an advantage on a preferred candidate or, alternatively, to disadvantage a particular candidate[.]"

... The Applicant was treated the fairly and the same as all other shortlisted job applicants who took the written assessment. He took the same written test as all other shortlisted job applicants. The same grading scheme of a passing score of 60 out of 100 was applied to all applicants. All other applicants who did not earn a passing score were

also screened out from further assessment. Moreover, ETS/OHRM did not release the names of the job applicants to the hiring manager until after they had scored the tests. Therefore, the evidence demonstrates that there was no bias against the Applicant (*Simmons* [2013-UNAT-425]).

... The Applicant has presented no evidence of procedural irregularities. The Applicant's claim that he should have been informed of the passing score and the grading methodology in advance, is without merit. He has pointed to no staff regulation or rule that requires the hiring manager to share that information with job applicants in advance, or at all. The Inspira Manual for the Hiring Manager on the Staff Selection System lists information that a hiring manager might normally include in the invitation to take a written assessment ... Although the manual is not legal authority, it does provide hiring managers technical guidance and it does not suggest the test convocation message provide the job applicants with information regarding the grading of the test.

... The written assessment was designed to be fair to both external and internal job applicants. There was no bias for or against external job applicants as the Applicant suggests. The situational judgment section of the test assessed the job applicants' behavior and ability to make managerial decisions in the capacity of Chief of Air Transport Section at the D-1 level. While the knowledge of the internal organization of the UN may have been beneficial to an internal job applicant, an external job applicant's knowledge and experience may have been just as beneficial to him or her. The key responses were not related to specific internal factual information. Rather, the key responses reflected whether a job applicant demonstrated the ability to take the most appropriate decision/course of action in the given scenario. Therefore, whether a job applicant was internal or external did not bear on the test outcome. All three of the external shortlisted job applicants who took the test, passed the situational judgment section. Of the eight internal shortlisted job applicants who took the test, two passed.

... Contrary to the Applicant's contention, the written assessment did not assess competencies that were not listed in the job opening. The Staff Selection AI permits a written assessment of the technical requirements as well as the competencies. The competencies stated in the job opening were professionalism, communication, planning and organizing, and the managerial competencies of leadership and vision. The situational judgment scenarios were developed to assess these competencies, which include assessing how the job applicant would respond in given situations. For example, the competency of Professionalism includes demonstration of whether the job applicant

“shows persistence when faced with difficult problems or challenges” or “remains calm in stressful situations.” The competency of Communication reflects, among other things, whether the job applicant “listens to others, correctly interprets messages from others and responds appropriately.” The assessment created scenarios in which the job applicants’ responses indicated whether their behavior would reflect these competencies.

.... The Applicant has failed to meet his burden to show that there was any bias or that there were any procedural irregularities in the contested decision (*Simmons* [2013-UNAT-425]). Nor has he produced clear and convincing evidence that he was denied a fair chance of appointment.

## **Consideration**

### *Receivability framework*

21. As established by the United Nations Appeals Tribunal, the Dispute Tribunal is competent to review *ex officio* its own competence or jurisdiction *ratione personae*, *ratione materiae*, and *ratione temporis* (*Pellet* 2010-UNAT-073, *O’Neill* 2011-UNAT-182, *Gehr* 2013-UNAT-313 and *Christensen* 2013-UNAT-335). This competence can be exercised even if the parties do not raise the issue, because it constitutes a matter of law and the Statute of the Dispute Tribunal prevents it from considering cases that are not receivable.

22. The Dispute Tribunal’s Statute and the Rules of Procedure clearly distinguish between the receivability requirements as follows:

a. The application is receivable *ratione personae* if it is filed by a current or a former staff member of the United Nations, including the United Nations Secretariat or separately administered funds (arts. 3.1(a)–(b) and 8.1(b) of the Statute) or by any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including the United Nations Secretariat or separately administered funds and programmes (arts. 3.1(c) and 8.1(b) of the Statute);

b. The application is receivable *ratione materiae* if the applicant is contesting “an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment” (art. 2.1 of the Statute) and if the applicant previously submitted the contested administrative decision for management evaluation, where required (art. 8.1(c) of the Statute);

c. The application is receivable *ratione temporis* if it was filed before the Tribunal within the deadlines established in art. 8.1(d)(i)–(iv) of the Statute and arts. 7.1–7.3 of the Rules of Procedure.

23. It results that, in order to be considered receivable by the Tribunal, an application must fulfil all the mandatory and cumulative requirements mentioned above.

*Receivability ratione personae*

24. The Applicant is a current staff member (Chief Aviation Security Officer) at the P-5 level in MONUSCO and therefore the application is receivable *ratione personae*.

*Receivability ratione materiae*

25. The Applicant is challenging the decision not to shortlist him for an interview during the selection process for the Post, which is also the administrative decision that was subject to the management evaluation request. The Applicant filed a management evaluation request before the MEU on 26 March 2016 within 60 days from the date of notification (28 January 2016) and, therefore, the application is receivable *ratione materiae*.

*Receivability* *ratione temporis*

26. The Tribunal notes that the Applicant filed the present application on 25 July 2016, within 90 days from the date the MEU's response was notified to the Applicant on 26 April 2016, thereby rendering the application receivable *ratione temporis*.

*Applicable law*

27. Article 101.3 of the United Nations Charter provides:

The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

28. ST/SGB/2014/1 (Staff Regulations) provides, in relevant parts:

**Regulation 4.2**

The paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity of securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

**Regulation 4.3**

In accordance with the principles of the Charter, selection of staff members shall be made without distinction as to race, sex or religion. So far as practicable, selection shall be made on a competitive basis.

29. ST/AI/2010/3 (Staff selection system), issued on 21 April 2010, provides:

**Section 1**

**Definitions**

...

(b) *Assessment*: the substantive process of evaluating applicants to determine whether they meet all, most, some or none of the requirements of the position under recruitment;

(c) *Assessment panel*: a panel normally comprised of at least three members, with two being subject matter experts at the same

or higher level of the job opening, at least one being female and one being from outside the work unit where the job opening is located, who will undertake the assessment of applicants for a job opening.

(f) *Evaluation criteria*: criteria used for the evaluation of applicants for a particular position. Evaluation criteria must be objective and related to the functions of the generic job profile or the individually classified job description and must reflect the key competencies that will be assessed;

(m) *Hiring manager*: the official responsible for the filling of a vacant position. The hiring manager is accountable to his/her head of department/office to ensure the delivery of mandated activities by effectively and efficiently managing staff and resources placed under his or her supervision and for discharging the other functions listed in section 6 of ST/SGB/1997/5 (as amended by ST/SGB/2002/11);

...

(x) *Selection decision*: decision by a head of department/office to select a preferred candidate for a particular position up to and including the D-1 level from a list of qualified candidates who have been reviewed by a central review body taking into account the Organization's human resources objectives and targets as reflected in the departmental human resources action plan, especially with regard to geography and gender ...

## **Section 2**

### **General provisions**

2.1 The present instruction establishes the staff selection system (the "system"), which integrates the recruitment, placement, promotion and mobility of staff within the Secretariat.

...

2.3 Selection decisions for positions up to and including the D-1 level are made by the head of department/office/mission, under delegated authority, when the central review body is satisfied that the evaluation criteria have been properly applied and that the applicable procedures were followed. If a list of qualified candidates has been endorsed by the central review body, the head of department/office/mission may select any one of those candidates for the advertised job opening, subject to the provisions contained in sections 9.2 and 9.5 below.

...

2.6 This instruction sets out the procedures applicable from the beginning to the end of the staff selection process. Manuals will be issued that provide guidance on the responsibilities of those concerned

focusing on the head of department/office/mission, the hiring manager, the staff member/applicant, the central review body members, the recruiter, namely, the Office of Human Resources Management (OHRM), the Field Personnel Division of the Department of Field Support, executive offices and local human resources offices as well as the occupational group manager and expert panel. Should there be any inconsistency between the manuals and the text of the present instruction, the provisions of the instruction shall prevail.

...

## **Section 4**

### **Job Openings**

...

4.5 The job opening shall reflect the functions and the location of the position and include the qualifications, skills and competencies required. Job openings, to the greatest extent possible, shall be based on generic job profiles approved by OHRM, a previously published job opening or a previously classified individual job description reflecting the actual functions of the position. The evaluation criteria of job openings created on the basis of individually classified job descriptions require approval by a central review body.

4.6 Each job opening shall indicate the date of posting and specify a deadline date by which all applications must be received. The job opening, including the evaluation criteria, shall be approved by OHRM, the local human resources offices or the Department of Field Support prior to posting.

4.7 Pre-screening questions should be prepared as part of the job opening to assist in determining an applicant's suitability for the job opening to which he/she applied. The pre-screening questions must be related to the responsibilities of the position and the experience and professionalism required to undertake the functions, as reflected in the job opening.

...

## **Section 6**

### **Eligibility requirements**

...

6.3 Staff members in the Professional category shall have at least two prior lateral moves, which may have taken place at any level in that category, before being eligible to be considered for promotion to the P-5 level, subject to the following provisions:

...

(d) The requirement for lateral moves is waived for staff serving against language positions that are subject to the provisions of the administrative instruction setting out special conditions for recruitment or placement of candidates successful in a competitive examination for positions requiring special language skills when applying for another such language position.

...

## **Section 7**

### **Pre-screening and assessment**

...

7.5 Shortlisted candidates shall be assessed to determine whether they meet the technical requirements and competencies of the job opening. The assessment may include a competency-based interview and/or other appropriate evaluation mechanisms, such as, for example, written tests, work sample tests or assessment centres.

7.6 For each job opening, the hiring manager or occupational group manager, as appropriate, shall prepare a reasoned and documented record of the evaluation of the proposed candidates against the applicable evaluation criteria to allow for review by the central review body and a selection decision by the head of the department/office.

...

## **Section 8**

### **Central review bodies**

8.1 The central review bodies shall review proposals for filling a position-specific job opening or for placing candidates on the roster following a generic job opening, made by the department/office or mission concerned, to ensure that applicants were evaluated on the basis of the corresponding evaluation criteria and that the applicable procedures were followed ...

...

## **Section 9**

### **Selection decision**

...

9.2 The selection decision for positions up to and including at the D-1 level shall be made by the head of department/office on the basis of proposals made by the responsible hiring managers (for position-specific job openings) and occupational group managers (for

generic job openings) when the central review body finds that the candidates have been evaluated on the basis of approved evaluation criteria and the applicable procedures have been followed.

...

9.3 When recommending the selection of candidates for posts up to and including at the D-1 level, the hiring manager shall support such recommendation by a documented record. The head of department/office shall select the candidate he or she considers to be best suited for the functions.

...

### **Section 13**

#### **Final provisions**

13.1 The present administrative instruction shall enter into force on 22 April 2010.

13.2 Administrative instructions ST/AI/2006/3/Rev.1, entitled “Staff selection system”, ST/AI/297 and Add.1, entitled “Technical cooperation personnel and OPAS officers”, and ST/AI/360/Rev.1 and Corr.1, entitled “Movement of staff from the Field Service category to the Professional category”, are hereby abolished.

13.3 The provisions of the present administrative instruction shall prevail over any inconsistent provisions contained in other administrative instructions and information circulars currently in force.

30. The relevant provisions from the Hiring Manager’s Manual, issued in April 2012 (updated in October 2012), and from the Recruiter’s Manual updated on 23 March 2015, which are applicable to the selection process for the JO, are incorporated into the considerations where relevant.

#### *Scope of the judicial review*

31. As consistently held by the Appeals Tribunal, staff members do not have a right to promotion, they only have a right to full and fair consideration (*Andrysek* 2010-UNAT-070).

32. In *Ljungdell* 2012-UNAT-265 (recalled in *Scheepers* 2015-UNAT-556), the Appeals Tribunal stated:

30. ... Under Article 101(1) of the Charter of the United Nations and Staff Regulations 1.2(c) and 4.1, the Secretary-General has broad discretion in matters of staff selection. The jurisprudence of this Tribunal has clarified that, in reviewing such decisions, it is the role of the UNDT or the Appeals Tribunal to assess whether the applicable Regulations and Rules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner. The Tribunals' role is not to substitute their decision for that of the Administration [footnote: *Schook* 2012-UNAT-216, quoting *Sanwidi* 2010-UNAT-084].

33. In *Abbassi* 2011-UNAT-110 (recalled in *Scheepers* 2015-UNAT-556), the Appeals Tribunal stated:

23. In reviewing administrative decisions regarding appointments and promotions, the UNDT examines the following: (1) whether the procedure as laid down in the Staff Regulations and Rules was followed; and (2) whether the staff member was given fair and adequate consideration.

24. The Secretary-General has a broad discretion in making decisions regarding promotions and appointments. In reviewing such decisions, it is not the role of the UNDT or the Appeals Tribunal to substitute its own decision for that of the Secretary-General regarding the outcome of the selection process.

34. In *Aliko* 2015-UNAT-540, the Appeals Tribunal summarized its jurisprudence on the judicial review of selection decisions as follows:

30. “[I]t is not the function of the Dispute Tribunal [...] to take on the substantive role with which the interview panel was charged” [footnote: *Fröhler* 2011-UNAT-141, para. 32]. Rather, the Dispute Tribunal reviews the challenged selection process to determine whether a “candidate[] ha[s] received fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration” [footnote: *Rolland* 2011-UNAT-122, para. 20]. The burden is on the candidate challenging the selection process to “prove through clear and convincing evidence” that he or she did not receive full and fair consideration of his or her candidacy, the applicable procedures were not followed, the members of the panel exhibited bias, or irrelevant material was considered or relevant material ignored [footnote: *Ibid.*, para. 21].

35. In *Korotina* UNDT/2012/178 (not appealed), the Tribunal stated as follows:

31. As the Tribunal stated in *Villamorán* UNDT/2011/126, at the top of the hierarchy of the Organization's internal legislation is the Charter of the United Nations, followed by resolutions of the General Assembly, staff regulations, staff rules, Secretary-General's bulletins, and administrative instructions. Information circulars, office guidelines, manuals, memoranda, and other similar documents are at the very bottom of this hierarchy and lack the legal authority vested in properly promulgated administrative issuances.

32. Circulars, guidelines, manuals, and other similar documents may, in appropriate situations, set standards and procedures for the guidance of both management and staff, but only as long as they are consistent with the instruments of higher authority and other general obligations that apply in an employment relationship (*Tolstopiatov* UNDT/2010/147, *Ibrahim* UNDT/2011/115, *Morsy* UNDT/2012/043).

33. Just as a staff rule may not conflict with the staff regulation under which it is made, so a practice, or a statement of practice, must not conflict with the rule or other properly promulgated administrative issuance which it elaborates (Administrative Tribunal of the International Labour Organization, Judgment No. 486, *In re Léger* (486)). It is also important to highlight that a distinction must be made between matters that may be dealt with by way of guidelines, manuals, and other similar documents, and legal provisions that must be introduced by properly promulgated administrative issuances (*Villamorán, Valimaki-Erk* UNDT/2012/004).

36. Section 2.1 of ST/AI/2010/3 states:

The present instruction establishes the staff selection system (the "system") which integrates the recruitment, placement, promotion and mobility of staff within the Secretariat.

37. Section 2.6 of ST/AI/2010/3 states:

This instruction sets out the procedures applicable from the beginning to the end of the staff selection process. Manuals will be issued that provide guidance on the responsibilities of those concerned focusing on the head of department/office/mission, the hiring manager, the staff member/applicant, the central review members, the recruiter, namely, the Office of Human Resources Management (OHRM), the Field Personnel Division of the Department of Field Support, executive offices and local human resources offices as well as the occupational group manager and expert panel. Should there be any inconsistency

between the manuals and the text of the present instruction, the provisions of the instruction shall prevail.

38. ST/AI/2010/3 establishes the procedures applicable to the staff selection process (sec. 2.6). The staff selection system manuals for “the Applicant”, “the Hiring Manager”, “the Recruiter”, “the Department Head” and “the Central Review Bodies” were first issued in March 2011 in accordance with sec. 2.6 of ST/AI/2010/3. The Tribunal is of the view that the issuance of these manuals was mandatory under sec. 2.6 of ST/AI/2010/3, which states that “[m]anuals *will* be issued that provide guidance” (emphasis added), and that the steps set out in these manuals are therefore binding and form part of the procedures applicable from “the beginning to the end” of the staff selection process. The Tribunal considers that the guidelines provided in these manuals must be respected during the entire staff selection process, except where there is an inconsistency between the text of the manuals and the text of ST/AI/2010/3. In these circumstances, the text of ST/AI/2010/3 will prevail.

39. Section 1.1 of the Recruiter’s Manual (23 March 2015 version) and sec. 1.1 of the Hiring Manager’s Manual (October 2012 version), both applicable in the present case, state that the manuals serve as “a comprehensive step-by-step guide on the staff selection process”. A similar provision is included in the manuals for the Department Head and the Central Review Bodies.

40. In accordance with the above-mentioned provisions, the manuals for the Hiring Manager, Recruiter, Department Head and Central Review Body are all “comprehensive step-by-step guides on the staff selection process”, which means (in accordance with the definition of the word “comprehensive” in the *Oxford English Minidictionary* (Oxford University Press, 1995) and the *Webster’s New World College Dictionary* (Wiley Publishing, Inc., 2010)) that they are including/dealing with all or many of the relevant details of the staff selection process. Further, once adopted and published on Inspira, the provisions from these manuals, which must be in accordance with and consolidate with the ones from ST/AI/2010/3 (see *Asariotis*

2015-UNAT-496), establish in detail the steps to be followed in the selection process, and must be respected by the Administration.

41. In *Gordon* UNDT/2011/172, para. 24 (not appealed), the Tribunal reiterated that, when the Administration chooses to use a procedure, it is bound to fully comply with it (see also *Mandol* UNDT/2011/013, para. 39 (not appealed); *Applicant* UNDT/2010/211, para. 28 (not appealed); *Eldam* UNDT/2010/133, para. 50 (not appealed)).

42. Paragraph 1 of sec. 9.2—“Evaluating Applicants”—of the Hiring Manager’s Manual states that the standards set out under that section “must be adhered to organization-wide in order to avoid variance in how evaluations and assessments are conducted and recorded”.

#### *Preliminary evaluation*

43. The Tribunal notes that it is uncontested that, based on the Applicant’s academic qualifications, work experience and language proficiency as presented in his application, the Applicant was considered to meet the minimum qualifications for the Post. He was shortlisted together with thirteen applicants for further assessment in the form of the written examination.

#### *Composition of the interview panel and its impact on the assessment exercise*

44. The definition of “assessment panel” in sec. 1(c) of ST/AI/2010/3 (Staff selection system) states that a panel shall normally be comprised of at least three members, with two being subject matter experts at the same or higher level of the job opening. Section 9.3.3 of the Hiring Manager’s Manual states that the Hiring Manager must ensure that the selected interview panel members fulfil the following requirements:

- a. Professional knowledge and experience:
  - i. Years of professional work and intrinsic knowledge of the subject area or work in the job family;

- ii. Relevant occupational experience/employment for the previous five years is desirable.
- b. Personal qualities:
  - Self-responsibility, ability to listen, ability to express him/herself clearly, patience, reliability and flexibility to handle changing circumstances, sense of humour, persistence, judgment and ability to quickly recognize and understand a situation and to be able to think analytically.
- c. Freedom from outside pressure:
  - There is no appearance of a conflict of interest.
- d. Competency-based selection and interviewing skills and follow-up programme:
  - Training module has been completed prior to serving on the panel.
- e. Training in Inspira:
  - Completion of Inspira self-study training.

45. Section 7.5 of ST/AI/2010/3 states that short-listed candidates “shall be assessed” to determine whether they meet the “technical requirements and competencies of the job opening”. The assessment “may” include a competency-based interview “and/or other appropriate evaluation mechanisms”.

46. The “Assessment” section in the JO stated “evaluation of qualified candidates may include an assessment exercise which may be followed by competency based interview”, reflecting the sample phrase indicated in the last paragraph of sec. 5.5.1.8 from the Hiring Manager’s Manual. In the present case, the shortlisted candidates were to be assessed through a written assessment exercise established by the assessment panel and those who passed the assessment exercise were to be invited to the United Nations Secretariat competency-based interview. It is clear that only the short-listed candidates that passed the test were to be interviewed and that two different assessment methods were to be used.

47. The test requirement as stated in sec. 6.4.1.6 of the Hiring Manager’s Manual reflects the assessment method that will be used to evaluate a shortlisted applicant’s

*substantive knowledge* in line with the requirements of the position and where an assessment was indicated, the short-listed applicants must successfully pass the test for further consideration. As results from secs. 5.4.5.1 to 5.4.5.7 of the Hiring Manager's Manual, the assessment exercise can be: written exercise, case study, presentation, simulation exercise, technical test, essay exercise, or any exercise to measure a particular set of skills.

48. Section 9.5.1 from the Hiring Manager's manual ("What is a Competency-Based Interview?") defines a competency-based interview, sometimes also referred to as a behavioral or a criterion-based interview, as a particular type of structured interview in which the assessor's questioning is directed at ascertaining the Applicant's *qualities or capabilities* on a number of *job-related dimensions of behavior* (competencies) as defined in the job opening. This section also indicates that questions from the interviewing panel, which must be the same for every applicant, usually focus on eliciting specific examples from the applicants in which they describe situations where they might (or might not) have demonstrated the required behaviors. These are to be probed in a systematic way by the assessors to build up a picture of the relative strengths and weaknesses of the applicant on the specific competencies.

49. Section 9.5, para. 3, of the Hiring Manager's Manual states that some competencies *will* be covered in the interview, while others will be tested in another assessment method commensurate with the functions of the position.

50. Section 9.3, para. 2, of the Hiring Manager's Manual indicates that, ideally, all applicants for one job opening are to be assessed and/or interviewed by the same assessors. It results that both assessment methods—assessment exercise and competency-based interview—are to be conducted by the same panel in order to evaluate the shortlisted candidates' substantive knowledge for the Post and their capabilities on a certain number of job-related dimensions of behavior.

51. As results from sec. 5.4.5.5 from the Hiring Manager's Manual, the technical tests are used to determine if the candidate has the technical skills and/or knowledge required for the position and they can be written knowledge tests or written exercises, case studies and simulations.

52. According to sec. 7.5 from ST/AI/2010/3, the panel has the obligation ("shall") to assess the shortlisted candidates and to determine whether they meet the technical requirements and competencies for the job. Consequently, to respect this mandatory provision, at least two different assessment methods are necessary for the panel after the launch of Inspira, or at least starting from March 2011 when the first edition of the manuals on the staff selection system (Inspira) was published, as indicated in sec. 5.1.2.5 ("Determining Assessment Methodologies") in the Hiring Manager's Manual published in March 2011 and reiterated in the same manual republished in October 2012 (sec. 5.4.5, para. 6). The assessment panel cannot exercise any discretion to decide that only one of the two elements mentioned above (technical requirements and competencies) will be assessed and determined. On the contrary, the same panel must assess and determine both of them using the appropriate assessment methods.

53. The Recruiter's Manual states in sec. 5.4 ("The Evaluation criteria"); sec. 5.4.5 ("Assessment methodologies"), sec. 5.4.7 ("Screening questions"), sec. 5.7.2 ("Review of the Evaluation Criteria"), and sec. 9.3 ("Advising on Composition of the Assessment Panel") the following:

a. The evaluation criteria against which the applicants are assessed must be in line with the requirements stated in the job opening. The requirements listed as part of the evaluation criteria are identical to those in the published job opening and the criteria that are not mentioned in the JO must not be included in the evaluation criteria;

b. The requirements stated in the evaluation criteria are used in the automatic screening process conducted by Inspira, and the first screening

and evaluation of the applicants against these requirements is done based on the application submitted, including the personal history profile, cover letter and the answers to questions;

c. The evaluation criteria consist of: required years of work experience; required field of work and, where applicable, area of specialty; required education qualifications; required knowledge of languages, assessment methodology, competencies and screening questions;

d. When creating the job opening, the Hiring Manager also prepares a knowledge-based test or other qualification exercises which may be essay questions, technical tests and/or other assessment techniques (such as competency-based interviews) to assist in the evaluation of the applicants. Additional tests may be applied primarily for senior positions that involve managerial positions or for technical functions. The assessment methods chosen are part of the evaluation criteria. The following elements need to be taken into consideration by the Hiring Manager when building the framework for assessments(s): duration of the assessment, rating system, location, assessment time, assessment panel;

e. For each job opening a series of questions (between 1 and 15) are selected from the question library that are associated to the requirements of the job opening. For all job openings, the Hiring Manager is encouraged to include an eliminating question about the experience at that level of the job family. Where a Hiring Manager wants to have question(s) included in the questions library he/she should submit it to the Chief of the local human resources office or the applicable executive office who will direct the question(s) to the applicable Executive Office or recruiter for approval and inclusion into the question library;

f. The Hiring Manager should choose from a combination of interviews and one of many other assessment methods that simulate the work

environment, and no single method should be used to assess more than at least three relevant competencies plus two managerial competencies;

g. Each method usually carries a weight as either a primary or secondary source of evidence for particular competency;

h. Usually the written exercise is the primary source of evidence, with the interview format as a secondary source of evidence;

i. Written exercises typically require the Applicant to assume the role of the position under recruitment and may take up to three hours;

j. The Hiring Manager must furnish job posting information and evaluation criteria, including assessments and prescreening questions that meet the requirements of the staff selection system;

k. The screening questions applicable to the job opening can be maximum 15 and must be reviewed and approved by the central review bodies for individually created job opening;

l. When inviting the applicants to participate in an assessment process, the Hiring Manager must inform the applicants invited to participate of the anticipated date of the assessment method(s) as announced in the JO, at least five working days in advance and provide them with sufficient information on the exercises, including the nature of the assessment and the scoring and ratings to be used;

m. The simulation exercises are designed to imitate a particular task or skill(s) needed for the target of the job and they should be clear as to the type of skills being assessed.

54. Professional posts at D-1 level are not exempted from the above-mentioned demands regarding the assessment of the technical requirements (substantive knowledge) and competencies. The methods elected to be used for assessing

the shortlisted candidates are having a decisive role in the selection process because each higher level implies a control of the previous level's functions and accuracy.

55. The Tribunal notes that, in the present case, as assessment methods, the JO published in Inspira on 20 April 2016 mentioned a written test and an interview. As results from the evidence on the record, the written exercise included two parts: the first part consisted of 25 situational judgment questions where the candidate had to select the most appropriate sequences of options for dealing with the specific situations (Part 1) and the second part was an essay type of question (Part 2).

56. Having reviewed the evidence of the present case, the Tribunal considers that the Applicant, as a qualified candidate, was not fully and fairly considered for the post for the reasons stated below.

57. The Tribunal considers that, since the first part of the written test (Part 1) was used to filter the candidates by eliminating the ones graded with a score lower than 60 percent from having the second part of the test (Part 2: essay) evaluated by the assessment panel, the 25 situational judgmental questions constituted eliminating/pre-screening questions. These questions should have formed part of the JO and been approved by OHRM or by DFS prior to the posting as required in secs. 4.6 and 4.7 of ST/AI/2010/3.

58. On 3 September 2016, the Chair of the assessment panel issued a confidential document stating that "the technical written assessment will consist of two parts: Part1, (a) situational judgment items (developed by ETS/OHRM and the hiring manager); and Part 2, an essay question (developed by the hiring manager). It was further stated that the applicants that pass the situational judgment test section should be further assessed for the constructive response question section. On 28 September 2015, the Chair of the assessment panel was informed by the Administrative Officer, Logistic Support Division, DFS what was the scoring methodology for the tests, namely (a) the number of correct responses as per key of response, and (b) the number of responses which were either one higher or one lower to the key

response. On 16 and 17 September 2016, the invitation to participate in the online written assessment/test provided the time period during which participation was required, namely between 23 September 2016, 11:00 a.m. and 25 September 2016, 11:00 a.m. The details of the assessment consisting of two parts were sent to the candidates, but no essential information was included in the message regarding the eliminatory nature of the first part of the test (Part 1), the scoring/ratings to be used for each question, and/or the required rate of 60 percent out of 100 percent to have the second part, essay, evaluated by the assessment panel (Part 2). Furthermore, the candidates were not clearly informed that only the successful candidates at the written test were to be invited for an interview, which of the required competencies included in the JO were to be evaluated in each part of the written test, and the scoring/ratings to be used for each part of the written test and for the interview together with samples of the scoring sheets for the written test and the interview. Therefore, the scoring/rating methods were not established as required before the posting of the JO on 20 April 2016, but only on 28 September 2016, after the written test took place.

59. The first part of the written test (Part 1) consisting in 25 questions was assessed/evaluated by ETS/OHRM and the Hiring Manager, and not by all the members of the assessment panel, who are required to assess the entire written test. The assessment panel only evaluated the essays of the candidates previously filtered by ETS/OHRM and only by one of the panel members (the Hiring Manager).

60. The number of eliminating/pre-screening questions included in the written test in the present case, notably 25 questions, exceeded the maximum of 15 questions indicated in the Recruiter's manual and there is no evidence on record that they were part of the question library after being approved either by OHRM or DFS as part of the evaluation criteria prior the posting of the JO as required ("shall") by sec. 4.6 of ST/AI/2010/3.

61. The scoring/rating method for the first part of the test was not established as required before the publication of the JO on 20 April 2016, but only on 28 September 2016, after the written test took place.

62. The content of the 25 situational questions/scenarios, the correct answers, and/or the score used for each question were not presented by the Respondent as part of the evidence in order to justify which competencies were assessed on this part of the written exercise. In the management evaluation response issued on 11 April 2016, the Administration stated that “the situational judgment questions were intended to assist managerial decision-making ability and not factual knowledge or experience of United Nations aviation operations”. As a result, it is clear that these questions were used to assess the candidates’ suitability for the JO, but it is unclear which competencies were evaluated in Part 1 of the written assessment and if these questions were strictly related to the responsibilities of the position and the experience and professionalism required to undertake the functions reflected in the JO, according to the mandatory provisions (“must”) included in sec. 4.7 of ST/AI/2010/3.

63. As results from the evidence, five questions were eliminated from the overall rating, for displaying poor reliability and validity of psychometric properties. Furthermore, after scoring the essay for the candidates which received 60 percent or more in Part 1 (the situational questions), the panel decided to eliminate Part 2 of the written assessment by not taking into consideration the scoring of the essay and invited all of them to the interview, therefore ignoring an important part of the written assessment. Consequently, the remaining part of the written exercise taken into consideration during the selection process, namely the 20 situational judgment questions, was not evaluated as required by the assessment panel.

64. The Tribunal concludes that required procedures were not respected and the Applicant’s fundamental right to be fully and fairly considered for the Post was breached, because he was unlawfully filtered out based on unapproved eliminating

(pre-screening) questions and he was not directly evaluated by the assessment panel as required by section 7.5 of ST/AI/2010/3.

65. Furthermore, the Tribunal notes that the “selection decision” is defined in sec. 1(x) of ST/AI/2010/3 as follows:

*(x) Selection decision:* decision by a head of department/office to select a preferred candidate for a particular position up to and including the D-1 level from a list of qualified candidates who have been reviewed by a central review body taking into account the Organization’s human resources objectives and targets as reflected in the departmental human resources action plan, especially with regard to geography and gender ...

It results that only the head of the department must (“will”, “shall”) exercise the discretion to decide the preferred candidate, who becomes the selected candidate, from the list of proposed qualified candidates only after the CRB finds that the evaluated criteria and the applicable procedures have been followed.

66. According to secs. 1(x) and 9.3 of ST/AI/2010/3, the head of the department/office must select the candidate he or she considers to be best suited for the functions taking into account the Organization’s human resources objectives and targets as reflected in the departmental human resources action plan, especially with regard to geography and gender. It clearly results that the selection decision must include all the reasons why a certain recommended candidate was selected and do not represent a simple act of approval of the preferred candidate indicated by another person involved in the assessment of the candidates. The hiring manager and/or the panelists have no competence to decide the preferred candidate(s), but only to recommend the best candidate(s). Even if the selection decision of the head of the department coincides with the proposal made by the hiring manager, the head of the department always has to justify his/her selection decision.

67. The Tribunal also observes that a “conditional” selection decision was actually made on 28 November 2015 before the CRB’s mandatory review of the results of the selection process as required in the mandatory provisions entailed in

secs. 1(x), 8.1, 9.2 and 9.3 of ST/AI/2010/3. The documentation was sent to the CRB on 1 December 2015 for review and endorsement and the pre-approved conditional selection decision was endorsed and implemented on 27 January 2016.

## **Relief**

68. The Applicant requests the selection decision be rescinded and the whole exercise be conducted anew. In his closing submissions, he mentioned that he lost the chance to be appointed to a higher level post (D-1 level) with a more stable tenure than his current position.

69. The Tribunal notes that the Appeals Tribunal stated at para. 48 of *Onana* 2015-UNAT-533 that the direct effect of an irregularity will only result in the rescission of the decision not to promote a staff member when he or she would have had a significant chance for promotion.

70. Regarding the written exercise, the Tribunal considers that all the candidates participating in the selection procedure were equally subject to some of the procedural irregularities—they were not informed of: (a) the eliminatory nature of the first part of the written exercise (Part 1), (b) the required passing score of 60 percent of Part 1 to have the second part of written exercise (Part 2) evaluated by the panel, or (c) the elimination of five questions from the overall rating. Furthermore, after the assessment of the essay, the panel decided not to take it into consideration when deciding to invite candidates to the interview. Therefore, the Applicant did not suffer any disadvantage from not having had his essay evaluated by the panel, and the effects of the procedural violation of his right to be fully and fairly considered for the post was limited by these mitigating factors. In addition, the Tribunal observes that the interviews seem to have been conducted in accordance with all relevant procedural requirements.

71. Furthermore, the Tribunal underlines that, being interviewed by an assessment panel does not give candidate(s) the right to be recommended and/or selected for

the post. In the present case, the procedural violation did not lead to any discrimination among the candidates and, even if the Applicant had been interviewed, he had no right to be recommended and/or selected for the Post.

72. The Appeals Tribunal has held that “while not every violation of due process rights will necessarily lead to an award of compensation, damage in the form of neglect and emotional distress, is entitled to be compensated. The award of compensation for non-pecuniary damage does not amount to an award of punitive or exemplary damages designed to punish the Organization and deter future wrongdoing” (*Benfield-Laponte* 2015-UNAT-505).

73. Taking into consideration the particular circumstances of the present case and, in light of the above mentioned considerations, according to art. 10.5(b) of the Statute of the Dispute Tribunal, as interpreted by the Appeals Tribunal in a similar case (*Savadago* 2016-UNAT-642), the Tribunal concludes that a rescission of the contested decision would be disproportionate and that the present judgment— together with a compensation of USD4,000 to be paid to the Applicant to compensate for the damage in the form of neglect—constitutes a reasonable and adequate relief for the procedural violation which resulted in him not being fully and fairly considerate for the Post.

### **Conclusion**

74. In the light of the foregoing The Tribunal DECIDES:

- a. The application is granted in part;
- b. The Tribunal’s finds that the Applicant was not fully and fairly considered for the Post;
- c. The Respondent is to pay to the Applicant the sum of USD4,000 as compensation for the procedural violations which resulted in him not being fully and fairly considered for the Post;

d. The sum above shall bear interest at the U.S. Prime Rate effective from the date this Judgment becomes executable until payment of said award. An additional five per cent shall be applied to the U.S. Prime Rate 60 days from the date this Judgment becomes executable.

*(Signed)*

Judge Alessandra Greceanu

Dated this 6<sup>th</sup> day of March 2017

Entered in the Register on this 6<sup>th</sup> March day of 2017

*(Signed)*

Hafida Lahiouel, Registrar, New York