



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2010/082

Judgment No.: UNDT/2011/142

Date: 12 August 2011

Original: English

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**Before:** Judge Thomas Laker

**Registry:** Geneva

**Registrar:** Víctor Rodríguez

GEHR

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Ingeborg Daamen, UNOV/UNODC

## **Introduction**

1. By an application filed on 27 April 2010, the Applicant challenges the decisions to abolish his post and to reassign him to the position of Senior Legal Adviser.

2. By way of relief, the Applicant requests the Tribunal to rescind these decisions and order that he be reinstated in his former post. He seeks compensation for the harassment, stress, anxiety, humiliation, unequal treatment and moral injury he suffered and for the breach of his right to due process.

## **Facts**

3. The Applicant joined the United Nations Office on Drugs and Crime (“UNODC”) in 2002. With effect from 12 November 2003, he was appointed as Project Coordinator of the Office for Prevention of International Terrorism, under an appointment governed by the 200 series of the Staff Rules which was subsequently extended.

4. With effect from 1 November 2007, the Applicant’s appointment was converted into a one-year fixed-term appointment under the 100 series of the Staff Rules. Also, as at that date, the Applicant was appointed to the post of Senior Terrorism Prevention Officer, at level P-5, in the Terrorism Prevention Branch (“TPB”), within the Division of Treaty Affairs (“DTA”). His appointment was extended twice, until 31 January 2010.

5. Following a restructuring of TPB in April 2008, his functional title was changed to that of Chief of the Counter-Terrorism Legal Services Section I. In this capacity, he was the First Reporting Officer of five staff members.

6. In the fall of 2009, the Chief of TPB and the Officer-in-Charge of DTA announced to TPB staff that the Branch was to be reorganized.

7. On 1 October 2009, seven out of around 45 TPB staff members were notified of the decision not to renew their appointments beyond their expiry.

8. On 8 December 2009, the Applicant was informed orally by the Chief of TPB and the Officer-in-Charge of DTA that his post would be abolished and that he would be reassigned, at the same level, to the position of Senior Legal Adviser which was to be created within the Office of the Chief of TPB. In the exchange which ensued with the Chief of TPB, the Applicant pointed out that the position of Senior Legal Adviser would not involve any supervisory functions, and he asked to be provided with a written “proposal ... [in order for him to] make a fully informed decision”. The Chief of TPB responded in an email of 11 December 2009, confirming that he was to be laterally reassigned to the position of Senior Legal Adviser, whose functions were “in line with the overall restructuring of TPB”.

9. On 7 January 2010, the Chief of TPB distributed to TPB staff draft terms of reference for the new structure as well as a document entitled “Timeline for implementation of the new structure for TPB” which reflected the following schedule:

07/01/2010	Draft [terms of reference] of TPB given to staff
07/01/2010	Revision of [terms of reference] for posts initiated – ongoing discussion with staff
15/01/2010	... DTA [t]erms of reference ... to [the Executive Director] for approval
22/01/2010	[F]inal revision of inputs provided to Chief of TPB
29/01/2010	Finalization of all [terms of reference] for TPB posts to be submitted to M[anagement, Human Resources Management Section] for approval
01/02/2010	New structure [u]nofficially implemented and worked by

10. On 12 January 2010, the Chief of TPB sent an email to TPB staff, attaching the draft terms of reference for the new structure and asking for their input. The Applicant replied on 14 January, suggesting that someone else develop the terms of reference concerning the position of Senior Legal Adviser since he had never aspired to this position.

11. With effect from 1 February 2010, the Applicant’s appointment was extended until 31 January 2011.

12. By an email of 20 January 2010, the Officer-in-Charge of DTA invited the Applicant to promptly express his reservations, if any, and sought confirmation that he wished to take on the position of Senior Legal Adviser. In response to these queries, the Applicant stated that he maintained the view which he had previously conveyed in writing to the Chief of TPB and asked whether any administrative decision had been or was to be taken concerning his role in UNODC.

13. Further exchanges ensued between the Chief of TPB, the Chief of the Human Resources Management Service (“HRMS”) and the Applicant, in which the latter enquired whether an administrative decision had already been taken with respect to his reassignment.

14. By an email of 27 January 2010 to the Applicant, the Chief of TPB stated:

[T]he managerial decision to laterally reassign you ... was taken as part of the restructuring of TPB, as requested and approved by the [UNODC] E[xecutive] D[irector] ... [T]he administrative implementation of the decision will be part of the formal implementation of the new TPB structure, once new Terms of Reference and detailed structure of the Branch have been elaborated.

15. On the same day, the Applicant sought further clarifications as to whether or not the Executive Director’s approval constituted the administrative decision to reassign him.

16. Meanwhile, on 25 January 2010, the Applicant had met with the Regional Ombudsman to discuss his situation, following which the latter had requested the Administration to suspend any administrative action in relation to the Applicant’s case.

17. Responding to a request from the Chief of TPB, the Applicant sent on 29 January 2010 a draft work plan for the new position of Senior Legal Adviser.

18. On 2 February 2010, the Chief of TPB distributed to TPB staff a chart dated 1 February 2010 which reflected the new structure for the Branch. On 5 February, she sent an amended version of the same chart, which was also dated 1

February 2010, together with terms of reference, advising that those documents had just been submitted to the Officer-in-Charge of DTA for review and would thereafter be submitted to the Executive Director for approval.

19. By memorandum dated 11 February 2010, the Officer-in-Charge of DTA sent to the Executive Director an amended version of the chart together with the terms of reference for TPB, recommending that the new structure be effective retroactively as from 1 February 2010.

20. On 12 February 2010, the Chief of TPB informed TPB staff that the Executive Director had formally approved the new structure and the next step would be the drawing up of the terms of reference for individual positions within the structure. Shortly thereafter, she sent to the Applicant draft terms of reference for the position of Senior Legal Adviser and asked for his comments and suggestions. The terms of reference specified:

[T]he incumbent leads the elaboration and implementation of a strategic vision and a related programme of work of UNODC/TPB in the field of nuclear, chemical and biological terrorism and related and emerging topics. The incumbent's work assignments also include, upon request by management, provision of legal advice, including advisory services to assist states to establish a legal framework to fully implement the international legal regime against terrorism and to train those responsible for its application.

More specifically, the incumbent, within the delegated authority, is responsible for the following duties:

- Develop, in close consultation with the Specialized Terrorism Prevention Unit, a programme of work for UNODC/TPB in the area of nuclear, chemical and biological terrorism;
- Lead the mobilization of extra-budgetary resources necessary for the implementation of the programme of work including by ... elaborating funding proposals in the area of nuclear, chemical and biological terrorism, by undertaking substantive consultations with representatives of possible donor countries and by continuous follow up regarding funding opportunities;
- Contribute ... to integrating activities in the area of countering nuclear, biological and chemical terrorism in the development of UNODC's regional and country-specific programmes;

- Initiate, maintain and develop partnerships and undertake joint activities in the area of countering nuclear, biological and chemical terrorism with relevant organizations and other stakeholders...;
- Design, organize and execute expert working group meetings on specific subjects in the area of nuclear, biological and chemical terrorism;
- Provide continuous advice to the Chief of the Branch relating to UNODC/TPB activities in the area of countering nuclear, chemical and biological terrorism;
- Provide, upon request, specialized policy, strategy, programme and legal advice and technical input to UNODC senior management and the Chief of TPB upon management request more broadly on complex legal and related substantive issues of terrorism prevention, for setting and guiding policy approaches, programme content and implementation strategies, including advice on and interpretations of the universal instruments against terrorism, other international treaties governed by the public international law and United Nations resolutions for the prevention and suppression of terrorism, including UNGA and Security Council resolutions; and on legal provisions, draft legal provisions, resolutions and draft resolutions on thematic areas relevant to countering terrorism;
- Provide, upon management request and in consultation with the Specialized Terrorism Prevention Unit and the Regional and National Terrorism Prevention Unit, specialized policy, strategy, programme and legal advice to Government officials for setting and guiding national policies, strategies and implementation plans for fulfilling the international legal obligations in counter-terrorism and facilitating related cooperation among countries in the light of public international and constitutional law and in the context of comparative criminal law;
- Contribute, upon management request and in consultation with the Specialized Terrorism Prevention Unit and the Regional and National Terrorism Prevention Unit, to the delivery of technical assistance to requesting countries, in particular in the area of nuclear, chemical and biological terrorism and other topics as assigned;
- Contribute ... to the development of new capacity building initiatives with regard to the area of nuclear, biological and chemical terrorism...

21. On 22 February 2010, the Applicant submitted a request for management evaluation of the decisions of 12 February to abolish the post of Chief of the

Counter-Terrorism Legal Services Section I and to laterally reassign him to the position of Senior Legal Adviser.

22. By a letter dated 22 April 2010, the Applicant was informed that the Secretary-General had found that the decision to abolish the litigious post had been duly motivated and taken in accordance with the relevant rules. He further considered that the decision to reassign the Applicant to the position of Senior Legal Adviser constituted a proper exercise of discretion and decided to uphold the decision, subject to a reclassification exercise.

23. On 27 April 2010, the Applicant filed his application with the Tribunal.

24. In April and May 2010, draft generic job profiles for all individual positions within the new TPB structure were sent for approval to HRMS.

25. On 15 March 2011, a classification notice was issued for the post of Senior Legal Adviser and sent to the Applicant. The notice stated that the classification had taken effect retroactively as from 1 April 2010.

26. On 7 June 2011, a hearing was held on the merits in the present case, to which the Applicant and Counsel for the Respondent attended. During the hearing, three witnesses were heard, namely the Chief of TPB, the Officer-in-Charge of DTA, and a Senior Coordinator within TPB.

### **Parties' contentions**

27. The Applicant's contentions are:

- a. The contested decisions are tainted with procedural irregularities. The abolition of post within the framework of a restructuring ought to be justified by real needs. In the present case, there was no real need for the creation of the position of Senior Legal Adviser, nor did such creation allow for savings to be made, and the number of staff working in TPB has not been reduced. The restructuring and the financial crisis are two distinct matters, and the restructuring does not constitute an objective and valid ground for the abolition of the Applicant's post;

b. The Applicant's reassignment to a non-existing position of Senior Legal Adviser is a subterfuge in order to marginalize him. The post did not appear in any document before 2 February 2010;

c. The Applicant's reassignment to the position of Senior Legal Adviser constitutes a *de facto* demotion. The new position is limited to advisory functions and entails no supervisory functions. Neither its terms of reference, nor its title are clear, and some of its functions, to wit developing a work programme and raising funds, are not those of a Legal Adviser. The new position is thus an artificial one, and the Applicant's demotion constitutes an affront to his dignity and seriously damaged his career;

d. The decision to reassign him to the position of Senior Legal Adviser without giving him a job description constitutes a procedural flaw. Further, the new position was filled without advertisement or open competition;

e. The contested decisions are tainted with extraneous considerations, bias and bad faith. A staff member who is affected by a restructuring is entitled to be informed of the reasons for his reassignment. However, in the Applicant's case, he was only told that he would "better fit" the new position. The reassignment decision is motivated by the desire to remove him from the post of Chief of the Counter-Terrorism Legal Services Section I, and to transfer his functions to another staff member with a view to promoting that staff member without advertising the post. The bad faith and arbitrariness displayed by the Chief of TPB and the Officer-in-Charge of DTA, respectively the Applicant's First and Second Reporting Officers, are evidenced by their attempt to distort his 2009-2010 performance evaluation, and their unsubstantiated criticisms concerning his managerial skills, in spite of the fact that his performance while in service with UNODC had always been satisfactory and praised by the TPB external stakeholders. The inconsistent ratings he received for his 2009-2010 performance are further indicative of the harassment he has been subjected



to. Bad faith on the part of the Chief of TPB and the Officer-in-Charge of DTA is also exemplified by their efforts to discredit the Applicant before senior managers as well as one Member State, thereby constituting abuse of authority;

f. The contested decisions were preceded by harassment and humiliation on the part of the Chief of TPB and the Officer-in-Charge of DTA. In particular, they did not authorize the Applicant to take part in an experts committee meeting and technical assistance missions and decided to send junior staff members instead of him, even though the presence of a senior official was expected, and he was excluded from TPB technical assistance activities;

g. In his email of 20 January 2010, the Officer-in-Charge of DTA improperly linked the extension of the Applicant's appointment to his agreeing to the contested reassignment. This constitutes a threat of discontinuation which amounts to duress;

h. Even if the classification procedure was properly conducted, which it was not, the terms of reference for the position of Senior Legal Adviser could not come into effect before 1 April 2011;

i. UNODC had no authority to classify the position of Senior Legal Adviser. In accordance with administrative instruction ST/AI/388 (Personnel arrangements for the United Nations International Drug Control Programme (UNDCP)), the Secretary-General delegated his authority only for the Fund for Drug Abuse Control. Additionally, ST/AI/388 is based on an issuance which has been abolished;

j. According to the guidelines on generic job profiles, managers are not entitled to modify generic job profiles in any way. In the present case, the Administration intended to circumvent the requirement for the Headquarters' endorsement of the generic job profiles and failed to base the reclassification process on previously approved generic job profiles. Instead, it "tailored" and used new generic job profiles, in breach of

section 2.2 of administrative instruction ST/AI/1998/9. The generic job profile for the position of Senior Legal Adviser does not reflect the generic job profile for the post of “Senior Legal Officer – P5”;

k. The classification process was not a collective exercise, as shown by the fact that a TPB P-4 staff member had his post classified with effect from 1 October 2009.

28. The Respondent’s contentions are:

a. The post of Chief of the Counter-Terrorism Legal Services Section I was abolished in terms of its functions but the budgeted post remains under the new TPB structure. It was foreseen that the Applicant would be reassigned to the budgeted post he previously held after a classification exercise and a review of the terms of reference for the position of Senior Legal Adviser would be undertaken. Therefore, his reassignment does not result in any demotion;

b. The restructuring constitutes a proper exercise of administrative discretion. It took place in the overall context of the restructuring of UNODC, which was warranted by the critical need to meet the dire financial constraints due to the turndown in Member States’ contributions to its budget. The proposal to realign DTA, of which TPB forms part, was endorsed by the UNODC governing bodies in December 2009 and cleared by the Office of the Controller at the United Nations Headquarters in New York. Further, the Executive Director approved the new TPB structure and its terms of reference in February 2010;

c. The position of Senior Legal Adviser in the new TPB structure is a function of key importance and high visibility, and it requires specialized skills, which the Applicant has. The fact that it entails no supervisory functions does not exclude that he could discharge such functions in the future, provided that sufficient funds are secured to recruit staff to assist him. Further, it is a position which requires extensive interaction with other staff members in terms of substantive leadership and guidance. The

Applicant had shown an interest in the new position until his appointment was extended for a year only, which could be construed as an act of bad faith;

d. The Applicant was invited to take part in the developing of the terms of reference for the new position and thus had an opportunity to influence the final determination of the functions of the position. However, he declined to do so;

e. The restructuring of TPB was still ongoing at the time when the Respondent submitted his reply;

f. The generic job profiles had to be approved before terms of reference could be issued for each individual position. This procedure is in line with section 2.2 of ST/AI/1998/9;

g. Once the classification review is completed, the staff members concerned will be duly notified of their lateral reassignments against the posts which they previously held. The application is therefore premature;

h. The Applicant's allegations of harassment, humiliation and abuse of authority are unfounded. Further, he failed to avail himself of the relevant procedures to have his allegations investigated and properly addressed;

i. The UNOV Administration did have the authority to classify the position of Senior Legal Adviser by virtue of a delegation of authority;

j. There was no intention to circumvent the requirement for the Headquarters' endorsement of the generic job profile as such endorsement was unnecessary. The generic job profile for the post of "Senior Legal Officer – P5" was not appropriate in the present case as some of its responsibilities did not apply to the position of Senior Legal Adviser. Further, the Applicant was invited to provide comments on the generic job profile for the position of Senior Legal Adviser but he declined to do so.

## Issues

29. According to article 2.1(a) of its Statute, the Tribunal is competent to hear and pass judgment on applications filed by staff members contesting an administrative decision that is alleged to be in non-compliance with their terms of appointment or contract of employment.

30. In this case, the Applicant challenges in his application the abolition of his post of Chief of the Counter-Terrorism Legal Services Section I and his reassignment to the position of Senior Legal Adviser. These decisions of 12 February 2010 define and limit the scope of the Tribunal's review.

31. The Applicant puts forwards several pleas. He first questions the effectiveness of and motivation for the restructuring. He also submits that the abolition of his former post and the decision to reassign him to the position of Senior Legal Adviser are tainted by irregularities and improper motives. Lastly, he claims that he has been subjected to harassment, discrimination and humiliation. The Tribunal will examine each issue in turn.

## Consideration

### *Restructuring of TPB*

32. In *Rosenberg* UNDT/2011/045, the Tribunal identified a general principle of law according to which “[a]n employer is entitled to re-organise the work or business to meet the needs and objectives set by the employer at a particular time”. The Tribunal further set out the standard of review for restructuring decisions as follows:

The Tribunal will consider whether the decision ... was a valid exercise of the Respondent's discretionary authority and in line with what the Respondent genuinely believed was an appropriate management decision to meet its needs and obligations as defined at the time. A further point to bear in mind is that even if the restructuring decision was a valid exercise of managerial authority, staff members are entitled to be treated fairly in the steps taken to give effect to that decision. Above all, the manager concerned has a duty to bear in mind that reorganising and restructuring the work

or the workplace is bound to induce a high level of anxiety. Staff members detrimentally affected by a decision are entitled to fair dealing and to be treated with sensitivity and respect, particularly if their jobs/functions may be at risk.

33. In *Megerditchian* UNDT/2010/035, *Applicant* UNDT/2010/115 and *Deng Deng* UNDT/2011/093, the Tribunal also affirmed the Administration's discretionary authority to restructure its services.

34. These rulings are in line with the case law well established by the former UN Administrative Tribunal which recognized in a series of judgments the Administration's broad discretion to reorganize its offices and departments (see Judgments Nos. 117, *Van der Valk* (1968); 350, *Raj* (1985); 412, *Gross* (1988); 719, *Kartsev* (1995) and 1217, *Loriot* (2004)). In particular, it held in Judgment No. 639, *Leung-Ki* (1994):

Unless the Applicant can demonstrate that the reorganization was tainted by prejudice or some other improper motive, the reorganization of an office falls within the discretionary powers of the Administration. The Tribunal will not examine whether a given office should be organized in any particular way or whether better results would be obtained if a reorganization took or failed to take place.

35. Lastly, the Tribunal recalls that, when a justification is given by the Administration for the exercise of its discretion, it must be supported by the facts (*Islam* 2011-UNAT-115).

36. In light of the written evidence, it appears that, at the latest since mid-2009, there had been discussions within TPB, particularly in the context of weekly senior staff meetings, about a possible restructuring. It was at that time that it became apparent that there might be a significant reduction in the TPB funding in 2009 and that a series of measures were implemented in order to deal with such reduced funding:

- In May 2009, it was decided to recommend contract extensions of six months only for TPB staff;
- Towards mid-2009, main TPB donors were approached to explore the possibility of additional funding;

- In August 2009, the Officer-in-Charge of DTA asked managers to draw up a staff reduction plan;
- In September 2009, it was decided to recommend contract extensions for three months only;
- In October 2009, seven TPB staff members were informed that their contracts would not be renewed upon their expiry.

37. An undated document entitled “Reprofiling UNODC’s Terrorism Prevention Program” submitted by the Officer-in-Charge of DTA lists, among the “measures to strengthen TPB’s field presence and adjust its [headquarters] structure”, the adoption of a new TPB structure.

38. The Officer-in-Charge of DTA testified that, although in December 2009 an unexpected contribution had been received from a Member State, the UNODC Executive Director had decided to create a new structure for TPB in order to anticipate future financial crises.

39. The evidence on file also shows that less than 10% of the UNODC funding came from regular budget resources and that almost 90% of the TPB funding came from voluntary donor contributions.

40. Both the Officer-in-Charge of DTA and the Chief of TPB explained that the restructuring of TPB was undertaken with a view to cutting costs in the context of the 2009 financial crisis and anticipating the development of the TPB programme. They also explained that the restructuring mainly consisted in shifting responsibility for technical assistance delivery from headquarters to field based staff.

41. In his memorandum of 11 February 2010 to the Executive Director, the Officer-in-Charge of DTA explained that the proposed TPB structure was intended to “optimize the distribution of resources and the possibilities for collaboration and synergies”, “based on an enhanced presence of and responsibilities for staff placed in the field”. It should be noted in this respect that,

in the context of the restructuring, one of the three TPB section chiefs was assigned to the UNODC Regional Centre in Bangkok.

42. In the report of the Joint Inspection Unit on “Review of Management and Administration in ... UNODC” issued in 2010, it was noted:

UNODC has implemented an organizational restructuring in April 2010 that was triggered not only by financial difficulties requiring some streamlining of the structure but also by previous oversight recommendations that pointed out duplications, overlaps/gaps of substantive or administrative functions as well as a lack of coordination and the existence of internal competition. The guiding principle of the realignment exercise was to consolidate thematic expertise to increase substantive integration of themes by redeploying sections and units of two divisions, namely the Division for Operations and the Division for Treaty Affairs.

43. Among the several recommendations made in the report, it was suggested that UNODC “redefine the strategic approach of its field presence and reconfirm its deployment principles, in particular the strategy to strengthen its regional presence and/or its country deployment”.

44. From the foregoing, it is clear to the Tribunal that the restructuring of TPB was undertaken in the broader context of the reorganization of UNODC and that it was warranted by the need to allow greater cost-effectiveness and fund mobilization by redistributing TPB staff and responsibilities from headquarters to the field. Therefore, in the view of the Tribunal, the restructuring of TPB constituted a valid exercise of the Respondent’s discretionary authority, in line with what he genuinely believed was an appropriate management decision to meet its needs and obligations in a context of financial crisis.

*Abolition of the Applicant’s post*

45. In identifying the “[a]bolition of post (position)” as one of the contested decisions, the Applicant challenges the abolition of the post of Chief of the Counter-Terrorism Legal Services Section I.

46. The Tribunal first observes that there was no provision in the Staff Regulations, Staff Rules, or Secretary-General’s bulletins applicable at the

material time defining a “post”. However, some provisions do provide relevant elements to clarify the notion.

47. Paragraph 2.2 of administrative instruction ST/AI/1998/9 (System for the classification of the posts) states, *inter alia* (emphasis added):

2.2 [R]equests [for classification of posts] shall include:

...

(c) A valid and available post number *confirming the existence of a post approved at the appropriate level in the budget*, unless the request is submitted for advice prior to a budget submission...

48. In addition, section 1.2(b) of administrative instruction ST/AI/1999/17 (Special post allowance) and section 1 of administrative instruction ST/AI/2006/3/Rev.1 (Staff selection system) define in very close terms what a vacant post is:

a post approved for one year or longer which is not blocked for the return of a staff member...

49. According to the International Civil Service Commission (“ICSC”), a “post represents financial authorization given for the job to be performed” (see the ICSC website). The Tribunal accepts this definition and considers that a “post” may be defined as the financial authorization given for a job to be performed, irrespective of the fact that it may be funded through budgetary or extra budgetary sources.

50. Applying this framework to the instant case, the Tribunal observes that the Applicant’s post was not abolished. The Respondent explained—and the Applicant recognized—that, even though the abolition of the post of Chief of the Counter-Terrorism Legal Services Section I had initially been contemplated, the Applicant was in fact reassigned against the same budgeted post, and that his functional title and responsibilities were eventually changed to those of Senior Legal Adviser. The Tribunal accordingly dismisses the Applicant’s plea in respect of the abolition of his post.



*Applicant's reassignment*

51. The Applicant claims that his new duties as Senior Legal Adviser are unclear and do not match those of a Legal Adviser, that he was not consulted prior to, nor informed of the reasons for his reassignment, and that the latter was motivated by improper motives.

52. At the outset, it should be noted that the TPB restructuring was implemented within the legal framework of ST/AI/1998/9. As a result of the reclassification process, on 15 March 2011 a classification notice was issued for the post of Senior Legal Adviser.

53. Insofar as, on 15 May 2011, the Applicant sent to the Tribunal another application, registered with case number UNDT/GVA/2011/024, which deals predominantly, if not exclusively, with the classification process, the Tribunal considers it appropriate for a fair disposal of the case to deal with these allegations when addressing the regularity of the classification process through its adjudication of case number UNDT/GVA/2011/024.

54. It must be recalled that, in accordance with provisional staff regulation 1.2(c), “[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”.

55. In *Allen* UNDT/2010/009, the Tribunal held:

It is widely recognized that the Organization enjoys broad discretion in assigning its employees to different functions as deemed appropriate ... There is no requirement to obtain the consent of the concerned staff member or his/her direct supervisor. The obligation of staff to accept such assignments in the interest of the Organization has been consistently upheld by UNAT, provided the decision was not improperly motivated. In general, it is for the Organization to determine whether a measure of this nature is in its interest or is not. Nonetheless, this broad discretion should not be abused, such as in cases where a decision is arbitrary or based on improper motives, or taken in violation of mandatory procedures.

56. In the same vein, the Tribunal stated in *Mbatha* UNDT/2011/096:

[T]he Secretary-General enjoys broad discretion in the organization of work and the assignment of tasks to staff members. Such discretion is not unfettered but is subject to limited control by the Tribunal.

57. In addition, in *Guimaraes* UNDT/2011/116, the Tribunal found:

55. The Respondent enjoys a broad discretion with regard to assigning his workforce, both in location and in function, in the best interests of the Organization.

56. The Dispute Tribunal will give due deference to such relocation and reassignment decisions, unless they are illegal, irrational or procedurally flawed, or in exceptional cases, where a measure is disproportionate (*Doleh* 2010-UNAT-025, para. 20; *Hallal* UNDT/2010/046, para. 59).

57. The Tribunal will only interfere where the Applicant meets his burden with regard to such decisions being based on a mistake of fact, a lack of due process, or if it is arbitrary or motivated by prejudice or other extraneous factors...

58. Concerning the Applicant's contention that his functions as Senior Legal Adviser are unclear and he was not provided with a job description, the Tribunal observes that, in her email of 11 December 2009, the Chief of TPB explained:

Your main functions would be to develop an expanded TPB programme of work in the area of nuclear, chemical and biological terrorism. In addition to the substantive development of such programme, including through partnerships with other organizations, you would be tasked with raising the extra-budgetary resources needed to support the programme of activities and related staff costs. As Senior Legal Adviser, you would report to the Branch Chief and provide, as needed and requested, inputs and advice relating to all aspects of the Branch's mandate and activities. I should underline that these functions are in line with the overall restructuring of TPB...

59. On 2 February 2010, a chart reflecting the new structure of TPB was distributed to the staff and, on 12 February, the Chief of TPB informed them that the structure had been approved and that terms of reference for individual positions within the structure would now be prepared. Also on 12 February 2010, the Applicant received draft terms of reference for the position of Senior Legal

Adviser. According to these terms of reference, the duties of the Senior Legal Adviser included the elaboration and implementation of a programme of work in the field of nuclear, chemical and biological terrorism, the provision of legal advice, specialized expertise and technical assistance to UNODC and TPB management and countries, the mobilization of extra-budgetary resources, the development of partnerships and the organization of working group meetings in the field of nuclear, chemical and biological terrorism.

60. The Tribunal considers that the description of the duties of the position of Senior Legal Adviser as contained in the above draft terms of reference is sufficiently precise.

61. The Applicant submits that the decision to reassign him to the position of Senior Legal Adviser contravened his right to be heard. But it is sufficient to recall that there is no requirement to obtain the consent of the concerned staff member to reassign him/her to different functions. Moreover, the Tribunal notes that the Applicant was invited on 12 February 2010 to provide suggestions and comments in relation to the draft terms of reference for the position of Senior Legal Adviser, which he declined to do.

62. As to the Applicant's allegation that he was not duly informed of the reasons for his reassignment, the Tribunal notes that, in her email of 11 December 2010, the Chief of TPB stated that the functions of Senior Legal Adviser were in line with the overall restructuring of TPB (see paragraph 58 above). In addition, as a TPB senior manager, the Applicant was well aware of the overall context of the UNODC restructuring, if nothing else because he took part in the weekly senior staff meetings. Lastly, the communication of the Chief of TPB on 12 February 2010 made it clear that there was a connection between the adoption of the new structure and the reassignment of staff members. Therefore, the Tribunal considers that the Applicant was aware that the reason for his reassignment was the restructuring of TPB.

63. In spite of the fact that the position of Senior legal Adviser is at the same level as that of Chief of the Counter-Terrorism Legal Services Section I, the Applicant contends that his new duties as Senior Legal Adviser entail no

supervisory responsibilities and that two of them, namely developing a work programme and raising funds, are not the “usual functions of a Legal Adviser”. In his view, his reassignment constitutes a “*de facto* demotion”.

64. As the Tribunal held in *Bye* UNDT/2009/083:

52. [T]he level of the position proposed is not the only relevant consideration in verifying the appropriateness of an offer. In other terms, it is not sufficient that the post offered be at the same grade than that previously held by the staff member. It is equally necessary to examine whether the functions the concerned one will be called upon fulfilling correspond to the latter’s skills, qualifications, and professional experience.

...

55. It should be recalled in this connection that, in accordance with staff regulation 1.2(c) and staff rule 101.2(b), it falls within the Administration’s discretionary power to assign every staff member where he or she is more needed, provided that the functions attributed are not at odds with his or her skills and qualifications, not being bound by the preferences of the employee. Otherwise, the effective functioning of the Organization could not possibly be ensured.

65. Furthermore, the Tribunal stated in *Allen* UNDT/2010/212:

While being aware that the final decision was at the opposite of the Applicant’s expressed preference, the Tribunal notes that the degree of adherence to the Applicant’s preferences is not a criterion against which the correctness of the resulting decision should be measured.

66. During the hearing of 7 June 2011, the Senior Coordinator whom the Applicant had called to give evidence explained that she felt that the Applicant was fully competent to perform the duties of Senior Legal Adviser but that his skills were not used optimally in this position.

67. In her written statement appended to the Respondent’s reply, the Chief of TPB stated that the functions of Senior Legal Adviser required highly specialized skills and extensive interaction with all TPB staff members, and included providing senior level leadership in the technical assistance to the field. She also insisted on the key importance of the post in relation to external representational functions.

68. The Tribunal is of the view, based on the evidence on file, that the Applicant has not shown that the functions of the position of Senior Legal Adviser did not match his skills, qualifications and experience. It further observes that, when comparing these functions to the duties of the post of Chief of the Counter-Terrorism Legal Services Section I, it is clear that, in both positions, the Applicant was mainly entrusted with providing advisory services and specialized expertise to the UNODC and TPB management, assisting in programme planning and delivering technical assistance to requesting countries.

69. With particular respect to the contention that the raising of funds does not correspond to the usual functions of a Legal Adviser, the Tribunal notes that the Applicant does not rely on any provision or rule. It also notes, incidentally, that the Applicant points out in his observations to the Respondent's Reply that he "had been removed from fundraising activities ... in spite of fundraising successes". Additionally, in an email exchange on 20 January 2010, the Applicant expressed agreement with the assertion of the Officer-in-Charge of DTA that "it w[ould] be necessary to raise the funds to support the post and programme after the first year. Playing a larger role in fundraising for the Branch is something you have several times said to me you were willing and happy to do". It results from the foregoing that, by the Applicant's own admissions, he felt competent and disposed to take up fund-raising activities.

70. The Applicant's allegation that his reassignment resulted in a demotion since he lost his supervisory functions fails to convince the Tribunal. No provision could be found according to which P-5 positions necessarily include supervisory functions.

71. His allegations that he was subjected to unequal treatment must also fail. In this respect, the Tribunal observes that the Applicant was not the only P-5 staff member who no longer had supervisory responsibilities. Another P-5 staff member was also assigned to non supervisory duties following the restructuring.

72. As for the Applicant's contention that the decision to reassign him was based on improper motives, the Tribunal recalls its finding that the need to allow greater cost-effectiveness and fund mobilization by redistributing TPB staff and

responsibilities from headquarters to the field constituted a legitimate reason for the restructuring of TPB. Based on the preceding paragraphs, the Tribunal is satisfied that the Applicant's reassignment was justified by the restructuring of TPB, which entailed a redistribution of functions.

*Alleged harassment and discrimination*

73. The Applicant submits that he was subjected to harassment and discrimination on the part of the Chief of TPB and the Officer-in-Charge of DTA. The Tribunal holds the view that these allegations are unrelated to the contested decisions of 12 February 2010 which are the only matters properly before this Tribunal.

74. First, his allegations that the Chief of TPB and the Officer-in-Charge of DTA did not authorize him to take part in an experts' committee meeting and technical assistance missions and that he was excluded from TPB technical assistance activities do not have any connection to the contested decision to reassign him.

75. Second, the Tribunal is of the view that, insofar as his harassment allegations in relation to his 2009-2010 performance appraisal have also been raised in the context of yet another application, which was registered under case number UNDT/GVA/2011/004, it is in the interests of judicial economy to deal with those when examining that other case.

**Conclusion**

76. In view of the foregoing, the Tribunal DECIDES:

The application is rejected in its entirety.

*(Signed)*

Judge Thomas Laker

Dated this 12<sup>th</sup> day of August 2011

Entered in the Register on this 12<sup>th</sup> day of August 2011

*(Signed)*

Víctor Rodríguez, Registrar, Geneva