UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2016/057
Judgment No.: UNDT/2017/077
Date: 25 September 2017
Original: English

Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Morten Albert Michelsen, Officer-in-Charge

BUCKLEY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

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

Introduction

1. The Applicant, a Chief Supply Chain Management at the D-1 level, step 2, with the United Nations Organization Multidimensional Stabilization Mission in the Central Africa ("MINUSCA"), challenges the following decisions:

> [1] the Administration's decision [reference to annex omitted] not to recognize, implement and pay entitlements, following the evacuation of staff and the abandonment of Camp Faouar (Almet Al Faouar), Syria (the Headquarters of the United Nations Disengagement Observer Force – UNDOF) on 15 September 2015 which arose consequential to:
>
> (i.) The outbreak of anti-government/pro-democracy protests in Syria in March of 2011, and the progression of this resentment against the government into a full-scale civil war (which continues through date) and the corresponding impact of the larger conflict on the UNDOF mission and its staff;
>
> (ii.) The abandonment of Camp Faouar (Almet Al-Faouar), Syria, and the evacuation of all staff (military and civilian personnel) on 15 September 2014 to Camp Zouani in the Occupied Syrian Golan [reference to annex omitted];
>
> (iii.) The declaration by the International Civil Service Commission (ICSC) of a "Temporary Hardship Classification" for the Occupied Syrian Golan with a "C" hardship classification effective 23 March 2015, a fact, which appears not to have been communicated to the Mission by UN HQ NY, and which was certainly not known to the Applicant at the time of the submission of a Request for Management Evaluation to the MEU at UN HQ NY on 16 February 2016 [reference to annex omitted]. This fact, became known to the Applicant through tile response memorandum (Reference: MEU/066-16/R [YJK]) from the MEU dated 22 April 2016 [reference to annex omitted].
>
> [2] With regard to the above, the Applicant specifically contests the Administration's unlawful failure to properly implement the

following issuance, guidelines, statutory instruments, Rules and Regulations, etc., listed below:

(i.) The United Nations Security Management System, Security Policy Manual [reference to annex omitted], which was issued, on 08 April 2011, by the Under Secretary-General for the Department of Safety and Security (USG/DSS), in particular the provisions at Chapter IV. "Security Management," Section D: concerning Relocation, Evacuation and Alternate Work Modalities with corresponding payment of entitlements i.e. Daily Subsistence Allowance (DSA).

(ii.) The United Nations Security Management System, Security Policy Manual [reference to annex omitted], which was issued, on 08 April 2011, by the Under Secretary-General for the Department of Safety and Security (USG/DSS), in particular the provisions at Chapter VI. "Administrative and Logistics Support," Section A: concerning Remuneration of United Nations System Staff and Eligible Family Members on Relocation/Evacuation Status with corresponding payment of entitlements i.e. Security Evacuation Allowance.

(iii.) Administrative Instruction ST/AI/2011/7 of 28 June 2011 [reference to annex omitted] concerning Rest and Recuperation, and by extension Secretary-General's bulletin ST/SGB/2009/4 and Section C, paragraph 6 and 8, of General Assembly resolution 65/248, with corresponding payment of entitlements.

(iv.) Administrative Instruction ST/AI/2012/1 of 27 April 2012 [reference to annex omitted] concerning Assignment Grant, and by extension Secretary-General's bulletin ST/SGB/2009/4 and the provisions of staff rule 7.14, with corresponding payment of entitlements.

(v.) Staff Rule 107.1 (a) (iii), (vii).

(vi.) Administrative Instruction ST/AI/149/Rev 4 of 14 April 1993 [reference to annex omitted] concerning Compensation for Loss of or Damage to Personal Effects Attributable to Service, and

(vii.) Staff Rule 106.5

[3] The Applicant also challenges the Administration for:

(i.) Concealing material facts, and the delayed provision of incorrect information/guidance concerning the "Human Resources Entitlements for the A-Side" implying that the "Temporary Classification with the application of the post adjustment index Israel to the duty station was effective as of 14 August 2015" [reference to annex omitted] when in fact, the communication should only have informed of the International Civil Service Commissions (ICSC) decision confirming the non-family status of the duty station with effect from 14 August 2015 [reference to annex omitted]. Similarly, and of note through an attachment to the same Fax (UNHQ-FPD-Fax-1-2015-5439) the mission was informed that the Office of Human Resource Management (OHRM) had approved the designation of the duty station for purposes of Rest and Recuperation (R&R) effective 14 August 2015 with Amman, Jordan as the authorized R and R destination [reference to annex omitted].

(ii.) Not implementing the decision of the ICSC, which "Temporarily Classified" Camp Zouani/Occupied Syrian Golan as a Class "C" duty station on 23 March 2015 with effect from the date of approval.

(iii.) Not taking timely decisions, regarding entitlements, and particularly for ignoring the plight of staff who were first subjected to having their dependents "Evacuated" in August of 2011, and who were "Relocated" from their established duty station i.e. Damascus to the duty station of Almet AI-Faouar (Camp Faouar) on the Golan Heights (to shared and sub-standard accommodation), and to Camp Zoualli (which was not a recognized duty station at the time) in the Occupied Syrian Golan, in February 2012 [reference to annex omitted].

(iv.) Not taking timely decisions, regarding conditions of service, in respect of the those staff who were subsequently relocated/evacuated from Camp Faouar to Camp Zouani, under emergency conditions on 15 September 2014, and for not paying affected staff appropriate entitlements [reference to annex omitted].

(v.) Failing to timely complete review, and process settlement, of a Claim [reference to annex omitted] for

compensation for loss of personal effects (which resulted from the abandonment of Camp Faouar/UNDOF Headquarters under emergency conditions on the morning of 15 September 2014) in conformance with Administrative Instruction ST/ AI/149/Rev 4 of 14 April 1993; Subject: Compensation for Loss of or Damage to Personal Effects Attributable to Service [reference to annex omitted].

(vi.) Not complying with established policy of the UN Security Management System [reference to annex omitted] - recalling that the policy decision to "Relocate" staff, and the 'Relocation' which took place in February 2012 was initially approved and commended by the Under Secretary-General (USG) for the Department of Safety and Security (UNDSS) but which was subsequently overturned in July 2012 on the false premise that UNDOF International Staff "have Camp Faouar or Camp Zouani as their official duty station" and that "relocation is defined as the official movement of any personnel from their normal place of assignment or place of work" and therefore, the movement that had been previously approved and classified as "Relocation" should now be classified as the implementation of "Alternate Work Modalities" thus creating a pretense for deception of staff, which enabled the Administration to ignore the policy on payment of entitlements under such circumstance.

(vii.) Asserting informally, by-email on 08 October 2012, that "OHRM maintains that for purposes of entitlements the ICSC has decided that Damascus and Camp Faouar are one duty station due to their proximity" clearly another sham intended to misinform staff, and one that was geared toward avoiding payment of entitlements that would ordinarily be payable under such circumstance [reference to annex omitted].

(viii.) Failing to properly apply and correctly implement the policy on "Relocation" and "Evacuation" [reference to annex omitted], which are long-term risk avoidance measures and the policy on "Alternate Work Modalities," which is a temporary risk management strategy.

(ix.) Using the terms "Relocation" and "Evacuation" interchangeably as it suits, and couching the meaning and implications of "Evacuation" under the guise of "Relocation" and/or "Alternate Work Modalities" as and when it suits.

(x.) Failing to formally acknowledge and recognize that the professed "Relocation" of staff from Camp Faouar to Camp Zouani, under emergency conditions on 15 September 2014, was not a "Relocation" (which is defined as "the official movement of any personnel or eligible dependant from their normal place of assignment or place of work to another location within their country of assignment for purposes of avoiding unacceptable risk") rather an "Evacuation" (which is defined as "'the official movement of any personnel or eligible dependant from their place of assignment to a location outside of their country of assignment (safe haven country, home country. or third country) for the purpose of avoiding unacceptable risk" [reference to annex omitted].

(xi.) Failing to heed the appeals of staff and ignoring their plight throughout the entire period [reference to annex omitted], in particular post evacuation of staff from Camp Faouar Syria to Camp Zouani on the Occupied Syrian Golan on 15 September 2014, despite: (1) being fully apprised of the financial hardship ensuing from the relocation; (2) knowing that several of the affected staff had also lost their personal effects in consequence, and (3) understanding the economic realities of living in an area that is legally Syrian territory but which is occupied by Israel since 1967, and in which the economic realities are tied to the Israeli economy – a fact that was subsequently recognized by the ICSC when it decided to apply the post adjustment index for Israel to the duty station when it issued a "Temporary Hardship Classification" for the Occupied Syrian Golan on 23 March 2015, thereby establishing Camp Zouani as a duty station.

(xii.) Failing to protect the health and well-being of staff by arbitrarily abolishing, on 16 January 2015, the Rest and Recuperation (R&R) entitlement (ST/AI/2011/7 dated 28 June 2011, [reference to annex omitted]) for staff Who were assigned to Camp Zouani despite the extant

security threat, which was assessed as 'substantial' by the Mission at the time [reference to annex omitted]. A mistake, which was recognized and subsequently corrected by the ICSC and OHRM through the reintroduction of an R&R entitlement on an 8 week cycle with effect from 14 August 2015.

(xiii.) Failing to ensure that staff were remunerated with "equal pay for equal work," in particular those staff members who served in the Occupied Syrian Golan (Camp Zouani) from the date they were officially evacuated from their duty station in Almet Al-Faouar (Camp Faouar) i.e. 15 September 2014 until such time as they left the mission on reassignment elsewhere considering:

a. That all affected staff were left in an indeterminate state for an extended period of time;

b. That although staff were relocated from Camp Faouar) Syria to Camp Zouani on the Occupied Golan, which was not a recognized Duty Station, Israel Elsewhere entitlements were ordinarily applied to personnel in travel status at that location;

c. Affected staff incurred extraordinary costs as a consequence of the evacuation (rental of accommodation, replacement of lost personal effects etc.);

d. Salaries and entitlements (post adjustment etc.) continued to be paid at applicable Syrian rates, which did not reflect economic conditions in the Occupied Syrian Golan;

e. It took almost a year before UN HQ NY informed the issuance by the ICSC of a temporary classification i.e. on 25 August 2015 despite the fact that the ICSC had temporarily classified the duty station as early as 23 March 2015;

f. That upon notifying the Mission of the "Temporary Classification" by ICSC (albeit five (5) months later, i.e. on 25 August 2015 rather than on 23 March 2015 when the decision was formally communicated by ISCS), staff in location, were paid Assignment Grant with the application or the post adjustment index for

Israel, and in addition became entitled to Additional Hardship Allowance and an eight week R&R cycle;

g. That entitlements were not paid in line with the spirit and intent of Administrative Instruction, ST/AI 2012/1 of 27 April 2012 concerning Assignment Grant[reference to annex omitted] , and

h. That staff were left without a decision, denied entitlements and financially disadvantaged despite the fact that the concerned staff incurred the same costs in moving to the same place at the same time.

(xiv.) Ignoring advice from the CMS/UNDOF [reference to annex omitted] who apologized for the delay in responding to staff, and proffered: (1) that effected staff should receive the same compensation "It seems to me, very natural and obvious that since we all moved from CF to CZ at the same time and since we all incurred the same costs in moving to the same place at the same time, we should all receive the same compensation," and (2) that effected staff were being treated unjustly "I continue to believe that you have been treated unjustly and unfairly in this matter and will support any steps that you take to achieve the compensation which I think is your due."

2. As remedies, the Applicant states in his application that:

… The Applicant wishes to ensure institutional and personal accountability, therefore, in the context of the Secretary-Generals commitment to strengthening accountability in the United Nations (A/RES/64/259) the Applicant respectfully suggests that staff involved in decision making are held personally accountable, and that Secretariat staff undertake mandatory training, which upon successful completion should form the basis for issuance of Delegation of Authority (DOA), without which staff should not receive a DOA.

… The Applicant requests payment of "Security Evacuation Allowance" for the period of time, which was spent at the duty station (Camp Zouani) prior to the formal declaration of a temporary classification and the applicable conditions of service, by the International Civil Service Commission ["ICSC"], for the duty station i.e. for the period from 15 September 2014 through 23 March 2015.

… The Applicant seeks payment of Assignment Grant (i.e, Daily Subsistence Allowance for 30 days and Lump-Sum Portion prorated to the period of time - five (5) months - that was spent at the duty station - Camp Zouani - from the date the ICSC declared a "Temporary Classification" of the duty station (23 March 2015) through the date of his departure on Assignment to MINUSCA (07 July 2015) and implementation of other applicable allowances consequential to the classification by the ICSC of the duty station with effect from 23 March 2015.

… The Applicant seeks to have incorrectly paid allowances i.e. the incorrect Post Adjustment Index of Damascus, Syria (which was applied to the base salary from 15 September 2014 through the date of departure from UNDOF in July of 2015) recovered/adjusted and application of the Post Adjustment Index applicable to the duty station as "Temporarily Classified" by the ICSC (i.e. the post adjustment index for Israel), and payment or recovery of the difference in the monthly post adjustment index, if any, and as applicable, for the entire period.

… The Applicant seeks to have the decision/recommendations of [the United Nations Claims Board, "UNCB"] "rescinded" and the approval of the Controller to deny settlement of the Claim for Loss of Personal Effects "annulled" [reference to annex omitted].

… The Applicant seeks "settlement," of the Claim for Loss of Personal Effects, in the amount of USD 7,490 (seven thousand four hundred and ninety) representing the depreciated value of the items lost and as declared on the 01 October 2011 "Inventory of Personal Effects" on which the claim is based.

… The Applicant seeks compensation, in an amount of no less than three (3) months net base pay as restitution for the financial hardship incurred as a result of the Administrations omissions,

… The Applicant seeks compensation of no less than three (3) months net base pay in respect of the delays and lack of dealing in "good faith" as amends for the anxiety and the physical and emotional distress, and stress that has resulted from unreasonable delays and the Administrations non-compliance with the terms of his appointment.

… Finally, in light of the fact that certain details only came to light through the [Management Evaluation Unit's, "MEU"], response of 22 April 2016, the Applicant wishes to address the notion of the right to a fair trial, which espouses the principle of "balance in the rights of parts: (i.e. the Equality of Arms principle) but which does

> not seem to be respected through the current processes of the system of Administration of Justice. The Applicant notes in particular that a complainant has a limited time frame within which to submit a complaint through the MEU and that the complainant does not always have access to the totality of information required to support his/her case. For example, in this instance if the Applicant had knowledge of the fact that the ICSC had made a decision to "Temporary Classify" the Camp Zouani duty station as early as 23 March 2015 the formulation of his case submission would have been entirely different as would the arguments attaching thereto. If that information had been available to the Applicant when he prepared his submission to the MEU, in February of 2016, it is very possible that the MEU's analysis might not have upheld the decision but found in his favour. Similarly, had the Applicant not prepared for the day when a decision would arrive that would finally present him with an opportunity of challenging the decision he would not have had access to a single record that was required in support of his submission. The absence of same would have severely limited the Applicant's ability to present his case and thus he would have been at a disadvantage before the MEU and the [Dispute Tribunal/Appeals Tribunal]. The Applicant submits that in light of his experience, with the previous case (UNDT 2009-064) and the present case (MEU1066-16/R), that there is a need to review the processes that are in place with a view toward ensuring that any complainant with a sustainable case is provided with the tools that would enable him/her to bring forth their case on an even footing with the Administration (which seems to have unlimited and enviable resources at its disposal).

3. In response, the Respondent claims that, for various reasons, the application is not receivable and that, in any event, it is without merit.

Factual and procedural history

4. On 6 October 1973, Israeli and Syrian forces engaged in combat in the Golan Heights region of Syria. On 31 May 1974, the two countries entered into an agreement on disengagement ("the Agreement"), in which they agreed on a ceasefire and an area of separation between Israeli and Syrian forces. The Agreement created an area of separation defined on either side by two boundaries described as Line A and Line B. The Agreement requires Israeli forces to remain west of Line A (the A

side) and Syrian forces to remain east of Line B (the B side). The area in between Line A and Line B is the area of separation, which Syria administers.

5. On 31 May 1974, the Security Council established UNDOF to maintain the ceasefire between Israel and Syria, to supervise the disengagement of Israeli and Syrian forces, and to supervise the areas of separation, UNDOF operates in the area of separation and on both the A and B sides.

6. On 6 March 2011, the Applicant began his service with the UNDOF as a Chief, Integrated Support Services at the P-5 level.

7. On 15 September 2014, due to the deteriorating security situation, staff members serving in Camp Faouar located in the B-side of the mission , including the Applicant, were relocated to Camp Ziouani located on the A-side of the mission.

8. In early 2015, following an assessment of the security situation on the B-side, UNDOF determined that it would not be able to redeploy staff members back to Camp Faouar for the foreseeable future.

9. On 5 March 2015, UNDOF submitted a request to the [Field Personnel Division ("FPD")] to have Camp Ziouani classified as a duty station as it was not an active duty station for purposes of hardship or other related conditions of service at that time.

10. On 23 March 2015, the Office of Human Resources Management ("OHRM") submitted a request to the International Civil Service Commission ("ICSC") for the temporary classification of Camp Ziouani.

11. By memorandum dated 29 May 2015, the ICSC informed the OHRM that it had temporarily designated a duty station where Camp Ziouani was located and named it, "Katzrin", as a Class "C" duty station, effective 23 March 2015 and that the issue of its status as family or non-family duty station and the name of the duty

station were outstanding issues under consultation with the Department of Safety and Security ("DSS").

12. On 1 July 2015, the Applicant was appointed to the position of Chief, Supply Chain Management with MINUSCA at the D-1 level.

13. On 6 July 2015, the Applicant separated from UNDOF.

14. Effective 14 August 2015, the ICSC designated a new UNDOF duty station named, "the Occupied Syrian Golan", as a non-family duty station on the A side. Staff members serving in Camp Katzrin on the A side as of that date were reassigned to the new duty station Occupied Syrian Golan, and those meeting the required conditions became eligible for an assignment grant. Also the entitlements for that duty station became applicable to the reassigned staff members.

15. On 18 August 2015, the OHRM announced that an eight-week rest and recuperation ("R&R") cycle was applicable to the Occupied Syrian Golan effective 14 August 2015.

16. Following the Applicant's request dated 16 February 2016, in the management evaluation decision dated 22 April 2016, the USG/DM stated that:

> The Administration explained that the ICSC in its memorandum to OHRM dated 29 May 2015 referred to Camp Ziouani by the name of "Katzrin" and temporarily classified it as a C duty station effective 2[3] March 2015. The ICSC memorandum also indicated that its designation as a family or non-family duty station was being discussed with the DSS. The Administration observed that any implementation of the ICSC's initial classification decision would have resulted in all affected staff members' loss of the additional non-family hardship allowance (i.e., part of the B-side entitlements) from 2[3] March 2015 to 13 August 2015 given that it was only on 14 August 2015 that the ICSC made a separate decision to designate the Occupied Syrian Golan as a non-family duty station for which additional hardship allowance was payable. Accordingly, an earlier implementation of the ICSC classification as at 2[3] March 2015,

> besides generating political difficulties on account of its name, would have adversely affected the financial interests of staff members.

17. On 29 June 2016, the Applicant filed the present application with the Registry in Nairobi, and it was registered as Case No. UNDT/NBI/2016/046.

18. By Order No. 341 (NBI/2016) dated 11 July 2016, the case was assigned to Judge Agnieszka Klonowiecka-Milart.

19. By Order No. 397 (NBI/2016) dated 19 July 2016, the Tribunal took note that, on 10 July 2016, the Applicant retained the service of the Office of Staff Legal Assistance ("OSLA") to represent him in the present case and that on 17 July 2016, his Counsel filed a motion to amend his initial application. The Tribunal then ordered the Applicant to file an amended application no later than 1 August 2016 and the Respondent to submit a reply within 30 days of the date of receipt of the amended application. On 4 August and on 29 August 2016, the Applicant's Counsel requested the deadline to file the amended application be extended until 31 August and 14 September 2016, respectively.

20. On 31 August 2016, OSLA withdrew as Counsel from the present case and the Applicant requested the Tribunal to revert to the initial application on the merits that he submitted *pro se* on 29 June 2016.

21. On 7 October 2016, the Respondent filed the reply.

22. Following the decision taken at the Plenary of the Dispute Tribunal Judges held in May 2016, to balance the Tribunal's workload, the present case was selected to be transferred to the Dispute Tribunal in New York.

23. By Order No. 453 (NBI/2016) dated on 13 October 2016, the parties were instructed to express their views, if any, on the transfer of the present case by 21 October 2016.

24. From Order No. 463 (NBI/2016) dated 26 October 2016 follows that neither party objected to the transfer and, pursuant to art. 19 of the Dispute Tribunal's Rules of Procedure, the case was transferred to the Dispute Tribunal in New York. The New York Registry has registered the case under Case No. UNDT/NY/2016/057.

25. On 26 October 2016, the case was assigned to the undersigned Judge.

26. By Order No. 14 (NY/2017) dated 20 January 2017, the Tribunal ordered (a) the Applicant to file a response to the receivability issues raised by the Respondent in his reply by 10 February 2017; (b) the Respondent to file a list of all benefits and entitlements received by the UNDOF members, including the Applicant, between 15 September 2014 and 30 June 2015 and a list of all benefits and entitlements received by the UNDOF staff members after 14 August 2015 by 10 February 2017; (c) the parties to file separate statements by 10 February 2017, informing the Tribunal if (i) additional evidence was necessary to be produced in the present case and, if so, stating its relevance, or if the case could be decided on the papers, and (ii) the parties were amenable for an informal resolution of the case either through the Office of the Ombudsman or through *inter partes* discussions. The Tribunal further instructed the parties that, in case they were not amenable to informal negotiations, they agreed that no further evidence was requested and the Tribunal could decide the case on the papers before it, they were to file their closing submissions by 3 March 2017.

27. On 25 January 2017, the Applicant filed his response to Order No. 14 (NY/2017) in which he stated, amongst other matters, that:

> [I]t should be noted that I have indicated a willingness to address the matter through informal negotiation from the very outset of submitting a request for "Management Evaluation" of the impugned decision, and throughout the process. However, to date the Respondent has given no indication that he is amenable to an attempt at informal resolution … Notwithstanding the foregoing, I am in no doubt that the [Dispute Tribunal] can decide the case on its merits, and in light of the papers before it.

28. On 10 February 2017, the Respondent filed his response to Order No. 14 (NY/2017), stating, *inter alia*, that the case "case may be decided on the papers… the Respondent considers that this case is not amenable for an informal resolution of this case".

29. On 12 February 2017, the Applicant filed a response to the Respondent's 10 February 2017 submission and appended some additional documentation.

30. By Order No. 36 (NY/2017) dated 21 February 2017, the Tribunal instructed the parties to file their closing submissions based exclusively on the written record of the case by 10 March 2017.

31. On 10 March 2017, the parties filed their closing submission as per Order No. 36 (NY/2017).

Applicant's submissions on the merits

32. The Applicant's substantive submissions may be summarized as follows:

a. The Applicant is in the employ of the United Nations Secretariat for over 32 years, having joined the service of the Organization in November 1984. His service record is exemplary and he has extensive experience in field missions, including assignments with: the United Nations Interim Force in Lebanon; the United Nations Iran-Iraq Military Observer Group; the United Nations Iraq-Kuwait Observation Mission; the United Nations Operation in Mozambique; the United Nations Angola Verification Mission; the United Nations Mission in Liberia; the United Nations Assistance Mission in Afghanistan; the United Nations Assistance Mission for Iraq; the United Nations Disengagement Observer Force; the United Nations Supervision Mission in Syria; the United Nations Multidimensional Integrated Stabilization Mission in Mali; and the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic. He has also

served for extended periods at the United Nation's Global Logistics Base at Brindisi, Italy, and at United Nations Headquarters in New York with the Logistics Support Division of the Department of Field Support. The Applicant is currently assigned as the Chief of Supply Chain Management, at the D-1 level, with MINUSCA;

b. Prior to this appointment in MINUSCA, the Applicant was assigned as the Chief of Integrated Support Services, at the P-5 level, with UNDOF, based in Damascus, Syria, from March of 2011 through 7 July 2015;

c. The Applicant has consistently pursued the issues at hand throughout the period, in light of the failure of the Administration to properly interpret and correctly implement policy guidance, and in consideration of established jurisprudence, which requires the Administration to act in an equitable way regarding staff members, referring to *Obdejin* UNDT/2011/032;

d. The failure of the Administration to properly understand and correctly implement approved Policy Guidance—in particular the approved provisions of the United Nations Security Management System's ("UNSMS") Security Policy Manual ("the SPM") of in the extant circumstance in Syria—as well as relevant Rules and Regulations of the United Nations, is and has been at issue since the Under-Secretary-General of DSS ("USG/DSS") first approved the "relocation" of UNDOF and United Nations Truce Supervision Organization personnel from the Damascus duty station to Camp Faouar (the designated location within the UNDOF Area of Operation) in February 2012. To the Applicant's knowledge, the Administration never answered the question concerning the status of UNDOF staff and correspondingly, when the worst possible situation emerged in September 2014, there was nothing to which United Nations Headquarters ("UNHQ") could refer to for precedent/guidance. The consequences of UNHQ's failure to answer this question is still having reverberations four years later and the continued

absence of a clear understanding, and standard operating procedure, of how to implement the provisions of the SPM will continue to plague the Organization for years to come, and until such time when there is a clearly defined understanding in relation to how to react and respond to any of the risk mitigation or risk avoidance measures outlined in the SPM, and in relation to the relationship between the UNDSS Policy and staff rule 7.1 (it is noted that the Applicant indicated staff rule 107.1, but no such numbering exist any longer, and the correct reference is staff rule 7.1 today);

e. The ICSC had "temporarily classified Camp Zouani as a 'Class C' duty station effective 23 March 2015". The argument that it was not implemented because it might generate "political difficulties" and that it "would have had adversely affected the financial interests of staff members" is preposterous since the implementation of such measures, once approved by the ICSC, is standard practice and beyond question. Decisions of the ICSC are never held in abeyance nor are they held hostage to "interpretation" of events on the ground. Nonetheless, in this instance, UNHQ did not inform the Mission of the ICSC's decision, therefore the "Temporary Classification" was implemented as of the effective date (23 March 2015) and contrary to the assertion that implementation "would have had adversely affected the financial interests of staff members", the non-implementation of the ICSC's decision did adversely affect the financial interests of staff members. Nothing can excuse the Administration for not implementing the decision of the ICSC since it is an independent body established by the General Assembly and it has the power and right to make decisions and to see these decisions enforced;

f. The USG/DM took the position that staff members serving in Camp Faouar located in the Syrian Golan Heights (the B side) were ordered to move to Camp Zouani, located on the Israeli Occupied Golan Heights (the A side) under the "Alternative Work Modalities" framework. This is incorrect—the

Designated Official ("DO") ordered the remaining military and civilian personnel (including the Applicant as Officer-in-Charge) to vacate and abandon Camp Faouar on the morning of 15 September 2014—both of these terms are equivalent to evacuation, which is what the departure of all military and civilian staff from Camp Faouar amounted to. This movement, out of Syria, was executed under armed military escort, and it was watched over by the Israeli Defence Force;

g. In this connection, the Applicant does not recall seeing any communication from UNHQ (and he was the second most senior Officer in the Division of Mission Support for the duration of his service in UNDOF, and ordinarily Officer-in-Charge in the absence of the Chief of Mission Support) regarding the ICSC having "temporarily classified Camp Zouani as a Class "C" duty station, effective 23 March 2015". This fact has only become evident through the management evaluation response dated 22 April 2016. Notwithstanding, noting that the USG/DM is categorical in stating that "an Assignment Grant is a prospective entitlement based on the expected likelihood of serving for at least one year in a new duty station", why then was the entitlement to assignment grant not implemented by the Administration when the decision of the ICSC was made known in March 2015 rather than five months later in August 2015 when DFS finally informed the Mission—incorrectly inferring that these had only just "Temporarily Classified Camp Zouani as a duty station" when in fact the ICSC had only designated the Camp Zouani duty station as Non-Family Status duty station with effect from 14 August 2015, and the OHRM had approved the designation of the duty station for purposes of R&R effective 14 August 2015 with Amman, Jordan as the authorized R&R destination;

h. The Administration failed to inform the Mission of a decision of the ICSC on 23 March 2015, which "Temporarily Classified" the duty station and

provided for the regularization of the status of staff and their conditions of service post "evacuation" from Syria on 15 September 2014. In doing so, the Administration:

i. Ignored the plight of staff;

ii. Contributed to the financial hardship that was being endured by staff;

iii. Failed to properly apply and correctly implement instruction;

iv. Did not perform in accordance with its duty and requirements to act fairly; transparently, and justly in its dealings with staff;

v. Failed to address the issues at hand in a timely manner thereby impacting the rights of staff as well as causing anxiety and stress, indicating a lack of dealing in good faith with the affected staff members;

vi. Failed to ensure institutional and personal accountability in compliance with all resolutions, regulations, rules, ethical standards and fundamental principles;

vii. Breached the terms of appointment/contracts of employment, and

viii. Concealed information that was relevant and which had a huge bearing on staff rights and entitlements.

i. The USG/DM's contention that the Applicant was "not entitled to a Security Evacuation Allowance" is also refuted in so much as his movement from Camp Faouar to Camp Zouani was effectively a movement from his place of assignment to a location outside the country of assignment, i.e., to the

Israeli controlled Occupied Syrian Golan territory, which is legally recognized as an integral part of Syria but which is effectively beyond Syrian state control since the end of the 1967 Arab/Israeli War. The Applicant's movement, though couched as "Alternate Work Arrangements" and "Relocation" by the USG/DM was, in fact, an "evacuation" as defined in the SPM and, as such, security evacuation allowance should have been paid. The fact that the Applicant was paid 30 days of daily subsistence allowance ("DSA") is not disputed, however, he along with all others, who were extracted from Camp Faouar on 15 September 2014, should have been paid security evacuation allowance until such time as their status was regularized, in this instance as of 23 March 2015—the date on which the ICSC temporarily classified the Camp Zouani duty station;

j. The argument for payment of security evacuation allowance or, alternatively, the continued payment of DSA is supported by the provision of staff rule 7.1(a)(vii) concerning "Official Travel of Staff members", which specifically states that the United Nations shall pay the travel expenses of a staff member in travel status, i.e., "[o]n travel for medical, safety or security reasons or in other appropriate cases, when in the opinion of the Secretary-General, there are compelling reasons for paying such expenses";

k. Any attempt on the part of the Administration to link conditions of service in the Occupied Syrian Golan with those in Syria is indefensible, unprincipled and amoral, since the peculiarity of the status of the Occupied Syrian Golan, in terms of official entitlements authorized by the United Nations (such as DSA whilst on official travel) has never reflected the Syrian economy or the rates applicable in Syria, rather the economic reality of Israel and the rates of allowances applicable in Israel;

l. Under the heading, "Comments from the Administration" in the management evaluation response, there is a suggestion that the movement,

which took place on 15 September 2014 from the B side to the A side was made under the "Alternate Work Modalities" framework—an assertion that is inconsistent with the definition of "Alternate Work Modalities" as described in the SPM. There is also a statement to the effect that "implementation of the initial classification would have resulted in all affected staff members' loss of the additional non family hardship allowance", which was not an entitlement in location (Camp Zouani) but which continued to be paid incorrectly. Implicit in this argument is the notion that it is alright to ignore applicable entitlements and the Staff Regulations and Rules, on the basis that some other entitlement is being paid, albeit incorrectly. This is a ludicrous argument and all incorrectly paid allowances should be recovered and applicable allowances enforced;

m. The fact that staff members "continued to receive B-Side entitlements" whilst serving in Camp Zouani, i.e., on the A side, did not compensate for the financial losses suffered by the staff who were affected by the move. The Applicant most certainly incurred financial losses not only in terms of the entitlements, which should have been paid, but also in respect of the costs of reestablishing himself on the A side, having lost all his personal effects and having crossed from Syria with nothing more than a run-bag containing his passport and other essential items. Therefore, it is disingenuous of the USG/DM to suggest otherwise and purely supposition on his part;

n. Under the heading of "Management Evaluation", the USG/DM recognizes that the Applicant argued that the "movement from the B-Side to the A-Side of UNDOF should have been treated as a Security Evacuation" and he further noted "that a staff member is entitled to a Security Evacuation Allowance only to the extent that a Security Evacuation had been ordered";

o. In this connection, a "Security Evacuation" had been ordered as the DO instructed all military and civilian staff to vacate and abandon the Camp

Faouar facility. The security situation was critical at the time and unfortunately, the staff did not have the time or the opportunity to recover their personal belongings—these were lost in consequence. In addition, millions of USD worth of equipment was abandoned, subsequently looted and then written-off the United Nations inventory. The Applicant left the Camp Faouar facility under duress—to his great shame, abandoning members of the National Staff who had stayed with the team through the most difficult and darkest hours of UNDOF's history;

p. The terms "vacate" and "abandon" equate to "evacuate", and if the existing security situation at the time and the circumstance of the movement out of Syria are not understood as an evacuation—the definition of which is "the immediate and urgent movement of people away from the threat or actual occurrence of a hazard" according to "Oxford English Dictionary"—then one is all at a loss to understand what constitutes an evacuation. The fact that subsequent correspondence from the Mission to UNHQ referred to the "action taken" as an activity under the "Alternate Work Modalities" framework or as "relocation" does not negate, annul or change the fact that UNDOF evacuated from Camp Faouar on the B side to the relative safety of Camp Zouani on the A side on 15 September 2014. The movement of staff, and the order to vacate and abandon that was issued by the DO was not a matter of the exercise or discretion nor was it unreasonable; it was a sensible reaction on the part of the DO that was directly attributable to an imminent threat against the lives of United Nations staff members and against the presence of the UNDOF mission in Syria, as well as an action taken on the advice of the Chief Security Adviser and the Crisis Management Team;

q. The Administration argues that the Applicant was "paid the correct entitlements applicable to [his] 15 September movement" on the basis that the temporary classification did not apply until 14 August 2015. This is not

correct since the fact is that the ICSC temporarily classified Camp Zouani as a class "C" duty station, effective 23 March 2015 (a fact that has only recently come to light);

r. In his submission to the MEU, the Applicant did not argue that Camp Zouani was an established duty station with its own set of entitlements as of 15 September 2014. What he did proffer was an alternate to the payment of Security Evacuation Allowance, i.e., the possibility of considering the effective date of the "Temporary Classification" of the duty station as of 15 September 2014, the day on which the staff relocated from Camp Faouar. Obviously, the Applicant was not aware at the time of presenting his case submission to the MEU that the ICSC had already approved the "Temporary Classification" of the duty station as of 23 March 2015. So this proposed alternate possibility is now moot. The correct solution would see security evacuation allowance being paid from 15 September 2014 through 23 March 2015 and the application of the "Temporary Classification" from then onwards with payment of entitlements accordingly, including recovery of overpayments if any, and the introduction of the R&R entitlement, and non-family status with effect from 14 August 2015;

s. The Administration failed to conform to the Standards of Conduct which apply to all staff members. In *Haroun* UNDT/2016/058, the Dispute Tribunal is very clear regarding the question of "accountability" of individuals who have responsibility for making decisions and in respect of decisions made by these individuals on behalf of the Administration/Organization. Recalling that the Applicant had addressed this particular issue in his MEU submission, the referenced Judgment is particularly noteworthy in so much as it does not excuse "feigned ignorance" on the part of officials or instances where officials "deliberately ignore the principles governing the actions of those who are

charged with implementing the Staff Rules and Regulations". The MEU submission detailed several instances where the Administration:

i. Failed to correctly implement approved Policy Guidance;

ii. Failed to ensure institutional and personal accountability;

iii. Denied staff members their entitlements; and

iv. Failed to act in a timely manner.

t. "Alternative Working Modalities", "relocation" and "evacuation" are notions clearly defined in the SPM. It is inconceivable that any official could deviate from the promulgated definition, in interpreting and making a decision regarding the meaning and stated definition, unless the actions of tile official were improperly motivated or an alarming level of obliviousness, lack of knowledge or ignorance, inspired the interpretation/decision;

u. In addressing the complaint concerning the arbitrary withdrawal of R&R entitlement, with effect from 1 January 2015, the USG/DM simply referred to a management evaluation response to a previous MEU submission from UNDOF staff dated 11 February 2015, noting that the decision was "not a decision that was taken by the Administration of the Organization. Rather, it is a decision properly taken by the lCSC" and further advising that the complaint was "not receivable" for that reason;

v. Notwithstanding the non-receivability of the complaint, contrary to standard practice, the ICSC decision was not the result of a normal well-informed process involving a review and/or a survey of conditions of service, but rather a response to uninformed input from the Field Personnel Division of the Department of Field Support, which sought to remove the entitlement—

tfurther confirming a lack of dealing in "good faith" with the affected staff members;

w. With regard to the outstanding "Claim for Loss of Personal Effects", the Applicant received notification, by email, on 12 June 2016, from the UNCB, through the UNDOF Human Resource Office, that UNCB had decided at its 346th meeting held on 24 March 2016 to deny the claim, and that the recommendations of the board were approved by the Controller on 31 May 2016. When the Applicant met with the UNCB Secretary at UNHQ in October 2015, in order to determine the status of the claim, he was advised to submit additional information in support of it. The requested information/documentation was compiled and submitted on 7 December 2015. The Applicant had a subsequent meeting with an Administrative Assistant in the Advisory Board and Compensation Claims Unit, at UNHQ in February 2016, concerning the matter.

Respondent's submissions

33. The Respondent's submissions may be summarized as follows:

Receivability

a. A staff member must present his claims with specificity and in precise terms. As the Dispute Tribunal stated in *Simmons* UNDT/2011/085, "even where a staff member is self-represented, the Tribunal is not obligated to accept applications that are imprecise, vague, and ambiguous";

b. The Application fails to specify the contested administration. The application states the contested administrative decision as the decision "not to recognize, implement and pay entitlements, following the evacuation of staff and the abandonment of Camp Faouar" on 15 September 2014, but goes on to list a myriad of other contested acts of the Administration. Neither

the Dispute Tribunal nor the Respondent may adjudicate a case where the staff member has not clearly identified the contested issue. Clear identification of the administrative decision is a basic requirement (*Lex* UNDT/2011/17). The Application is not receivable because this requirement has not been met;

c. The application challenges the outcome of the management evaluation rather than a specific administrative decision. The majority of the substantive allegations in the application, as well as the request for remedy relate to the outcome of the management evaluation. It is settled law that the outcome of a management evaluation does not constitute a reviewable administrative decision. The Dispute Tribunal may review only the underlying administrative decision that is alleged to be in non-compliance with the staff member's employment contract. Accordingly, the application is not receivable under *Kalashnik* UNDT/2015/087;

d. The Applicant's claim for loss of personal effects is not receivable because the remaining allegations that do not challenge the outcome of the management evaluation relate to the Applicant's claim for loss of personal effects following his movement from Camp Faouar on the B side to Camp Ziouani on the A side. This claim has not been the subject of management evaluation in this case. Therefore, the Dispute Tribunal lacks jurisdiction to adjudicate it in accordance with staff rule 11.2, and this claim is the subject of another case currently before the Dispute Tribunal (Case No. UNDT/2016/067 (Buckley));

On the merits

e. The Applicant is not entitled to any of the payments he seeks in the application. He served in UNDOF from 6 March 2011 until 30 June 2015, when he left UNDOF, having accepted a promotion to the D-1 level as Chief,

Supply Chain Management with the United Nations Multidimensional Integrated Stabilization Mission in MINUSCA;

f. The Applicant received the same benefits and entitlements as all other staff members who moved from Camp Faouar on the B side to Camp Ziouani on the A side because of the deteriorating security situation on the B side. In fact, the Applicant received greater entitlements while he served on the A side and was paid the entitlements applicable to the B side than he would have had the A side been designated prior to 14 August 2015. The B side is classified as a Class "E" hardship duty station, while the new Occupied Syrian Golan duty station on the A side is classified as a Class "C" hardship duty station with a lower hardship allowance. Following the Applicant's move to MINUSCA on 1 July 2015, UNDOF entitlements no longer applied to him;

Security evacuation allowance

g. The Applicant is not entitled to the payment of a security evacuation allowance. The movement of staff members from Camp Faouar on the B side to Camp Ziouani on the A side was neither an official relocation nor an evacuation. Chapter IV, sec. D, para. 12, of the SPM defines an "evacuation" as "the official movement of any personnel or eligible dependent from their place of assignment to a location outside of their country of assignment (safe country, home country, or third country) for the purpose of avoiding unacceptable risk". The SPM provides that a security evacuation allowance is payable in the event of a move outside the country. A relocation or evacuation also requires a request to the Secretary-General through the USG/DSS. Upon approval of the recommendation, the USG/DSS distributes an "all agency communique" to the entire United Nations System announcing the details of the relocation/evacuation. That is not what happened in this case. Here, the Applicant did not move from his place of assignment to a location outside his

country of assignment. He moved from one location in the territory to another location in the same territory. Moreover, the DO never requested an official relocation or evacuation. Although the Applicant argues that the move should have been deemed an evacuation, it is not for the Applicant to substitute his judgment for that of the officials responsible for making such decisions. UNDOF's force commander applied the alternate work modalities based on consultation with Chief Security Officer and the Crisis Management Team. Chapter IV, sec. D, para. 7 of the SPM defines "Alternate Work Modalities" as "measures that limit or totally remove the number of personnel or family members at a specific location(s), short of official relocation or evacuation, with the view to limit or remove their exposure to a sudden situation that creates unacceptable residual risk". This was a decision within his purview and consistent with Chapter VI, sec. D, para. 15, of the SPM;

Assignment grant

h. The Applicant seeks payment of an assignment grant (i.e. 30 days DSA and a prorated lump sum payment) for the period from 23 March 2015, when he claims the ICSC declared a temporary duty station, through 7 July 2015 when he left UNDOF for MINUSCA;

i. There is no basis for the Applicant's claim. An assignment grant is payable only upon initial appointment, assignment or transfer to a new duty station. The location of Camp Ziouani on the A side did not become an official duty station until 14 August 2015, not on 23 March 2015 as the Applicant claims. The OHRM made the initial request to the ICSC on 23 March 2015, but the designation of the new duty station on the A side was not effective until 14 August 2014. Therefore, no staff member, including the Applicant, could have been appointed, assigned or transferred there and eligible for an assignment grant until 14 August 2015;

j. On 14 August 2015, when Camp Ziouani on the A side became an official duty station under the name Occupied Syrian Golan, the Applicant had already moved to MINUSCA. As such, UNDOF entitlements did not apply to him;

Post adjustment

k. The Applicant also seeks retroactive payment of the post adjustment now applicable to the A side. He is not entitled to this payment for the same reasons he is not entitled to an assignment grant or any other benefits and entitlements related to service in a mission in which he did not serve;

Remedies

l. The Applicant is not entitled to any of the relief he seeks. He was paid all of the entitlements he was due following his movement from Camp Faouar on the B side to Camp Ziouani on the A side and during his tenure with UNDOF. There is no basis for paying a staff member benefits and entitlements applicable to a duty station in which the staff member does not serve;

m. The Applicant has also failed to show any economic loss. When he moved to MINUSCA, he received an assignment grant for his assignment to the mission where he was actually serving. Similarly, he has produced no evidence of harm to support his claim for moral damages (*Marcussen* et al. 2016-UNAT-682);

Applicant's submissions on receivability

34. Applicant's submissions regarding the receivability issues raised in the Respondent's reply may be summarized as follows:

a. The Respondent's contention that "the Application does not specify the administrative decision it contests" is contradicted in the introductory paragraph of the reply, wherein the Respondent concedes that the Applicant has challenged "the decision not to pay him entitlements related to his movement from Camp Faouar, in UNDOF to Camp Zouani in the same mission as well as other actions and inactions of the Organization". In doing so the Respondent has, in effect, acknowledged the decision;

b. The Respondent had previously addressed the "administrative decision" in responding to the Applicant's request for management evaluation, confirming his intent to "uphold the contested decision" thereby acknowledging the decision. In *Teferra* UNDT/2009/090, the Dispute Tribunal found that that "given the nature of the decisions taken by the administration, there cannot be a precise and limited definition of such a decision. What is or is not an administrative decision must be decided on a case by case basis and taking into account the specific context of the surrounding circumstances when such decisions were taken";

c. The Applicant's submission to the Dispute Tribunal is in absolute conformance with the requirements of art 8.1(c) of the Statute of the Dispute Tribunal, which, when read in conjunction with staff rule 11.2(a), clearly states that an applicant wishing to contest an administrative decision, other than a decision taken by a technical body, must first submit a request for management evaluation of the contested decision. The Applicant sought a Management Evaluation of the impugned decision on 16 February 2016 and the Respondent replied to the Applicant's submission on 22 April 2016;

d. The Applicant's submission satisfies all the requirements of art. 8.1 of the Statute of the Dispute Tribunal. There is, therefore, no basis for the Respondent to argue "procedural failure" with a view toward estopping the Dispute Tribunal from considering the substantive issues raised;

e. The Dispute Tribunal has full authority to hear and render judgment on the application in conformance with staff regulation 11.1, and therefore, the submission is receivable;

f. The administrative decision relates to the Applicant's contract of employment, and therefore, the submission is receivable;

g. The suggestion, by the Respondent, that the outcome of a management evaluation cannot be challenged is irrational bearing in mind that the process of management evaluation, in and of itself, is only the first in the formal system of Administration of Justice. In this regard, whereas all applicants presume that the management evaluation process will entail an objective and reasoned assessment as to whether the contested decision was made in accordance with the rules, and, whereas if it is determined that an improper decision has been made, management will ensure "that the decision is changed or that an appropriate remedy is provided", there is nevertheless the possibility that the management evaluation process will uphold an incorrect decision, as in this case, or that it may not provide an appropriate or acceptable remedy; therefore, in order for justice to prevail, the Applicant must have recourse to the system of Administration of Justice. In this instance, in the Applicant's submission to the Dispute Tribunal, he has provided evidence that renders the "Summary of Evidence" and "Arguments" as presented by the USG/DM as "facts" as being "incapable of belief", and a "distortion of the truth";

h. The Applicant's submission did not challenge the outcome of a claim before the UNCB as inferred by the Respondent. However, the Applicant did refer to the outstanding claim in his 29 June 2016 submission to the Dispute Tribunal simply because: (i) of its relevancy to the issue in dispute, particularly with regard to timeliness of action and non-conformance with the terms of his employment; (ii) the Administration was applying double standards; (iii) it pointed toward a pattern, whereby, once more the

Administration had failed to properly implement applicable Staff Regulations and Rules, in particular, the provisions of ST/AI/149/Rev. 4 (Compensation for loss or damage to personal effects attributable to service); and (iv) it gave a further indication of how the Administration was dealing, in bad faith, with the staff member. In fact, the particular issue of the UNCB's "denial of the Claim" was referred to the MEU on 14 June 2016, and in the absence of a response from the MEU, by the established deadline of 29 July 2016, the Applicant filed a submission with the Dispute Tribunal on 9 September 2016. Similarly, the Applicant cannot accept the Respondent's contention that "the UNCB's assessment of negligence with respect to your [his] valuable items was not manifestly unreasonable". Whilst no single comprehensive definition of these terms exist, it is generally accepted that a decision is 'manifestly unreasonable' when it is shown, clearly and unmistakable that the decision went beyond what was reasonable, is irrational, wrong in principle, logically flawed, or if the decision depends on findings that are unsupported by evidence, which is clearly the case in this instance. Through its response to the Applicant's MEU submission, the MEU informed the Applicant: (i) that "the Secretary-General decided to reverse the contested decision in significant part," and (ii) that "The MEU recommended that you be granted compensation for your loss of personal effects in the amount of USD 5,390." In addition, in its response to the Applicant's Dispute Tribunal submission, the MEU informed the Dispute Tribunal that, "The Secretary-General has decided that the Applicant's negligence with respect to the small valuables did not warrant denial of the Applicant's entire claim", and that, "The Secretary-General has accepted the MEU recommendation to award the Applicant 5390 USD in compensation" in respect of his claim for loss of personal effects. The acceptance of the settlement, as proposed, would provide for the "white-washing" and "suppression" of an unsubstantiated opinion of the UNCB, which incorrectly declared that the Applicant was "negligent"; therefore the Applicant refuses to accept the proposed settlement in deference to: (i) the

legitimacy of his claim; (ii) the robustness of the submission before the Dispute Tribunal; (iii) failure of the Administration to perform in accordance with its duty and requirements to act fairly, transparently and justly in dealing with staff members; (iv) failure of the Administration to address the matter in a timely manner, indicating a lack of dealing in good faith; (v) the applicable law; and (vi) the competency of the Dispute Tribunal to pass judgement on the merits of his application.

Consideration

Receivability framework

35. As established by 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-293 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.

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

a. The application is receivable *ratione personae* if 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 requested (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;

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

37. The Tribunal further notes that the Applicant filed the present application individually, however, he is making reference to all UNDOF staff members allegedly affected by the contested decisions. The Tribunal underlines that, pursuant to art. 3 of the Dispute Tribunal's Statute, an application before the Tribunal can only be filed by the individual effected, meaning by a current of former staff member or in the name of an incapacitated or deceased staff member.

Receivability *ratione personae*

38. The Applicant is a staff member having a permanent appointment, serving currently with MINUSCA and, in accordance with art. 3.1 of the Dispute Tribunal's Statute, the application is receivable *ratione personae*. However, the application is not receivable as regards any other current or former UNDOF staff members.

Receivability *ratione materiae*

39. Under the heading, "Specify the decision you are requesting us to evaluate", in his request for management evaluation dated 16 February 2016, the Applicant stated as follows:

> The decision pertains to a refusal by the Administration to recognize, implement, and pay entitlements, which arose consequential to:
>
> (i). The relocation/evacuation of staff from Camp Faouar, Syria on 15 September 2014 to Camp Zouani in the occupied Syrian Golan, and
>
> (ii). The declaration by the International Civil Service Commission (ICSC) of a "Temporary Hardship Classification" for the Occupied Syria. Golan with a "C" hardship classification with the application of the Post Adjustment Index for Israel to the duty station.

40. It results that the contested decisions numbered by Applicant under "[3](i.)-(iv.)" and "[3](vi.)-(xiv.)" in the application (as quoted above in para. 1) were not part of the request for management evaluation. Consequently, the Tribunal is to reject the appeal against these decisions as not receivable because they were not subject to the mandatory management evaluation review as part of his 16 February 2016 request, and he did not file a separate management evaluation request concerning them, which he only did for the Controller's 31 March 2016 decision, which he refers to in the application under the number, "[3](v.)" (as also quoted in para. 1).

41. Regarding this latter decision (the Controller's 31 March 2016 decision), the Tribunal notes that the Applicant refers to his claim for compensation for loss of personal effects as a result of abandonment of Camp Faouar in the morning of 15 September 2014. The Applicant indicated that, at its meeting held on 24 March 2016, the UNCB made the recommendation to deny his claim and this recommendation was approved by the Controller on 31 March 2016. As part of the relief, the Applicant sought to have the decision/recommendations of the UNCB "rescinded" and the approval of the Controller to deny settlement of the Claim for Loss of Personal

Effects "annulled". The Tribunal notes that, in the management evaluation request filed on 16 February 2016, the Applicant challenged the Administration's failure to timely complete review and process settlement of a claim for compensation for loss of personal effects. The request did not cover the decision made by the Controller on the Applicant's claim for compensation, which was to be made only on 31 March 2016. Furthermore, the Tribunal notes that, as result from the documents, on 14 June 2016, the Applicant filed a separate request for management evaluation of the Controller's 31 March 2016 decision. Following the management evaluation of this decision, on 17 October 2016, the Applicant filed a separate appeal registered under Case No. UNDT/NBI/2016/067, which was later transferred to New York and registered under Case No. UNDT/NY/2016/065. The sitting Tribunal concludes that, in the present case, lacks jurisdiction to adjudicate this part of the present application, which is subject of another case currently before the Tribunal, namely Case No. UNDT/NY/2016/065.

42. The Tribunal further considers that, as results from the consistent jurisprudence of the Appeals Tribunal (see, for instance, *Kalashnik* 2016-UNAT-661 and *Nwuke* 2016-UNAT-697), the outcome of the management evaluation review, its considerations and/or the staff member's interpretations, views or critics in relation to it are not administrative decisions subject to legal review by the Dispute Tribunal. This Tribunal therefore has no competence to analyze any grounds of appeal referring to such aspects, as otherwise requested by the Applicant as part of his application.

Receivability *ratione temporis*

43. The Tribunal notes that the present application was filed on 29 June 2016, and within 90 days from the date of notification of the management evaluation decision on 22 April 2016, and it is receivable *ratione temporis*.

44. The Tribunal will further analyze the legality of the of the following contested decisions, which are receivable, namely:

The decision pertains to a refusal by the Administration to recognize, implement, and pay entitlements, which arose consequential to:

(i). The relocation/evacuation of staff from Camp Faouar, Syria on 15 September 2014 to Camp Zouani in the occupied Syrian Golan, and

(ii). The declaration by the International Civil Service Commission (ICSC) of a "Temporary Hardship Classification" for the Occupied Syria. Golan with a "C" hardship classification with the application of the Post Adjustment Index for Israel to the duty station.

On the merits

Applicable law

45. ST/AI/2012/1 (Assignment grant) provides, as relevant, the following (emphasis in the original):

Purpose

1.1 The purpose of the assignment grant (the "grant") is to provide eligible staff members with a reasonable cash amount for relocation on initial appointment, assignment or transfer to a duty station. It is the total compensation payable by the Organization for costs incurred by the eligible staff member and his or her family members as a result of an appointment, assignment or transfer involving relocation, as well as any pre-departure expenses that the staff member may incur as a result.

Elements

1.2 The grant consists of:

(a) A daily subsistence allowance (DSA) portion, payable in accordance with the provisions and criteria detailed in section 2; and

(b) A lump-sum portion, payable in accordance with the provisions and criteria detailed in section 3. The conditions of payment of each portion of the grant are summarized in annex I to the present instruction.

[…]

1.5 An eligible staff member shall be entitled to payment of the grant when he or she has been authorized to proceed on travel involving relocation on initial appointment, assignment or transfer, and when the period of service at the new duty station is expected to be for at least one year.

[…]

1.7 Pursuant to section 1.6 above, a staff member shall be eligible for payment of the grant when he or she has been authorized to proceed on travel involving relocation from beyond commuting distance and necessitating a change of accommodation, when the travel is within the same country.

1.8 When the assignment to a new duty station is for less than one year and the Secretary-General, under staff rule 3.7 (c) (ii), has decided to apply the post adjustment applicable to the duty station and related entitlements such as the assignment grant, the grant shall be paid in accordance with the provisions of section 6.2.

Categories of duty stations

1.9 The amount of the grant may vary depending upon the classification of the duty station to which a staff member is appointed or assigned, in accordance with section 3 and as shown in annex I to the present instruction. All duty stations are placed by the International Civil Service Commission (ICSC) in one of six categories of duty stations, i.e., H and A to E. The H category comprises headquarters duty stations and other duty stations having similar conditions of life and work. The A to E categories comprise all other duty stations, classified by order of difficulty of conditions of life and work. The categories of all duty stations may be accessed at present from: http://icsc.un.org/secretariat/hrpd.asp?include=mah.

[…]

2.1 The DSA portion of the grant shall normally consist of subsistence allowance for 30 days:

(a) At the daily rate applicable at the duty station in respect of the staff member; Lump-sum portion

[…]

3.1 In addition to any amount of grant paid under section 2 above, a lump sum calculated on the basis of the staff member's net salary and, where appropriate, post adjustment at the duty station of assignment may be paid under the conditions established in the present instruction.

3.2 Entitlement to the lump-sum portion of the grant and its amount depend on the ICSC classification of the duty station according to conditions of life and work, the duration of the assignment, and the existence of an entitlement to payment of removal costs of personal effects and household goods under staff rule 7.16 ("Removal and non-removal").

[…]

Category A to E duty stations

3.6 A staff member who is appointed or reassigned for one year or longer to a category A to E duty station, and has a removal entitlement, shall receive a lumpsum payment of one month's net salary and, where appropriate, post adjustment at the duty station of assignment, as defined in sections 3.9 and 3.10.

3.7 A staff member who is appointed or reassigned for one year or longer to a category A to E duty station, and does not have a removal entitlement, shall receive a lump-sum payment equivalent to:

(a) One month's net salary and, where appropriate, post adjustment at the duty station of assignment if the duration of the assignment is expected to be of one year or longer but less than three years; or

(b) Two months' net salary and, where appropriate, post adjustment at the duty station of assignment if the assignment is expected to be for three years or longer.

3.8 If the staff member has a removal entitlement and is appointed or assigned to a category A to E duty station, he or she will receive a lump-sum payment equivalent to only one month's net salary and, where appropriate, post adjustment at the duty station of assignment.

[…]

Timing of payment of the grant

5.1 The DSA portion of the grant in respect of the staff member and the lump-sum portion are normally payable on the actual date of arrival at the duty station, or on the date of recruitment to an appointment giving rise to payment of the grant.

[…]

Advance against lump-sum portion

5.3 An advance of 80 per cent of the lump-sum portion of the grant, as computed at the time the advance payment is made, may be paid up to three months in advance of travel of a staff member assigned or transferred to a new duty station.

[…]

Return to the same duty station

6.1 When a change of official duty station or a new appointment involves a return to a place at which the staff member was previously stationed, and where an assignment grant had been paid, the full

amount of the grant (composed of both the DSA and lump-sum portions, where applicable) shall be paid only when the staff member has been absent from that place for at least one year. In the case of a shorter absence, the amount payable shall normally be that proportion of the full grant that the completed months of absence bear to 12 months.

Assignment of less than one year

6.2 When the assignment to a new duty station is for less than one year and the Secretary-General has decided to pay post adjustment and related entitlements, including assignment grant, as provided in section 1.8, and pursuant to staff rule 3.7 (c) (ii):

(a) The DSA portion of the grant shall be paid in full;

(b) The lump-sum portion, where payable in accordance with section 3, shall be prorated in the proportion that the number of months of appointment bears to 12 months. Should the appointment or assignment be subsequently extended to one year or longer at the same duty station, the staff member shall receive the balance of the lump-sum portion which would have been paid had the initial appointment been for one year or longer.

6.3 Pursuant to staff rule 7.10, staff members shall receive an appropriate daily subsistence allowance for periods of duty away from their official duty station, provided that such period does not exceed six months, or in the case of staff members assigned to a United Nations field mission from a headquarters duty station for a period not exceeding three months. Any extension of such assignment, in accordance with staff rule 4.8, shall result in a change of duty station and payment of the post adjustment and related entitlements, notwithstanding staff rule 3.7 (c). The change in duty station may also result in the payment of an assignment grant (both DSA and lump-sum portion, where applicable), provided the following conditions are met:

(a) The total expected period of service at the duty station, including the period during which the staff received the subsistence allowance, is at least 12 months;

(b) The extension occurs at least six months prior to the expected end of the appointment or assignment at the duty station. However, when subsistence allowance has been paid for a period not exceeding six months, or in the case of staff members assigned to a United Nations field mission from a Headquarters duty station for a period not exceeding three months, and the assignment is extended to reach a total period of less than 12 months, including the period during which the staff received the subsistence allowance, the staff member

ST/AI/2012/1 8 12-32543 is not entitled to the DSA portion of the grant. Only the lump-sum portion of the grant shall be paid in accordance with sections 3 and 6.2 (b).

Reduction in period of service at the duty station

6.4 In cases where the staff member has not completed the period of service, for reasons as noted in section 6.7, in respect of which the assignment grant has been paid, the grant shall be adjusted proportionately and recovery made according to the provisions of section 6.6.

6.5 The DSA portion of the grant paid on arrival at the duty station shall normally not be recoverable.

6.6 The lump-sum portion of the grant shall be adjusted or recovered as follows when the staff member has not completed the period of service in respect of which the lump-sum portion of the assignment grant has been paid:

(a) When a one-month lump sum has been paid and the completed period of service at the duty station is less than one year, the lump-sum portion of the grant shall be prorated and recovered or adjusted in the proportion that the period of service at the duty station bears to one year. No recovery shall be made if the staff member completes his or her first year of service at the duty station.

[…]

46. ST/AI/2011/7 (Rest and recuperation), sec. 1.2(c), states that:

(c) Assignment: a staff movement to a department, office or mission, with or without a change in duty station, for a limited period of time, during which the releasing department or office remains responsible for reabsorbing the staff member.

47. The Report of the Secretary-General on UNDOF for the period from 4 September to 19 November 2014 (S/2014/859) provides, in relevant parts, as follows (bold in the original and italics added):

[…]

II. Situation in the area and activities of the Force

2. During the reporting period, the ceasefire between Israel and the Syrian Arab Republic generally was maintained, albeit in an increasingly volatile and deteriorating security environment

attributable to the ongoing conflict in the Syrian Arab Republic and despite a number of significant violations of the Disengagement of Forces Agreement of 1974 by Israeli and Syrian forces, which are set out below. The heavy fighting in the area of limitation and in the area of separation between the Syrian Arab armed forces and armed members of various armed groups, including the Nusra Front — which had started late in August as detailed in my last report (S/2014/665) — intensified during the reporting period. The significant deterioration of the security situation necessitated the temporary relocation, between 13 and 15 September, of UNDOF personnel and military observers and equipment of Observer Group Golan of the United Nations Truce Supervision Organization (UNTSO) from a number of the remaining positions in the area of separation to the Alpha side. The Syrian armed forces carried out military activities and security operations against armed groups, often in response to offensives carried out by the armed groups. Inside the area of separation, the presence of the Syrian armed forces and military equipment, as well as any other armed personnel and military equipment, is in violation of the Disengagement of Forces Agreement. As underscored by the Security Council in its resolution 2163 (2014), there should be no military activity of any kind in the area of separation.

3. In the context of the clashes between the Syrian armed forces and armed groups, there were several incidents of firing from the Bravo side across the ceasefire line. On 4 September, United Nations personnel at a temporary observation post on the Alpha side observed several impacts on the Alpha side; the point of origin was not observed. The Israel Defense Forces (IDF) informed UNDOF that two rounds had impacted on the Alpha side. On 14 September, personnel at United Nations position 22 reported fire, which was assumed to have been a tank round originating from the Bravo side, landing north-west of their position on the Alpha side. On 23 September, in the morning, IDF informed UNDOF that it had shot down a Syrian air force aircraft, alleging that it had crossed the ceasefire line. United Nations personnel did not observe the fighter aircraft over the area of separation or crossing the ceasefire line but saw a mid-air explosion followed by debris falling to the ground in an area east of Jaba in the area of limitation on the Bravo side. On 3 October, UNDOF observed an explosion two to three kilometres from United Nations observation post 73 close to the technical fence, at the time that an IDF patrol was moving nearby on the patrol path. IDF did not report any casualties or damage to the vehicle.

[…]

6. On 12 September, armed groups, including members of the Nusra Front, using two tanks, artillery and heavy mortars, launched an attack against Syrian Arab armed forces positions along the main road connecting Camp Faouar and Camp Ziouani, inside the area of separation as well as in New Hamidiyeh. The Syrian armed forces retreated from their positions towards Al Baath, heavily bombarding the positions they vacated. The armed groups in turn took control of the area up to the western outskirts of Al Baath. At this stage, UNDOF activated its *temporary relocation* plan for the Force's personnel and assets. The plan foresaw that all military and civilian personnel and essential assets would be relocated in a phased manner, from 12 to 17 September, to the Alpha side. As a first step in the relocation, UNDOF *temporarily relocated* personnel from United Nations positions 25, 32 and 62 and observation post 72 to Camp Faouar; the following morning, the personnel *relocated* to Camp Ziouani. On 15 September, heavy fighting broke out between the Syrian Arab armed forces and armed groups north of the main supply road in the area of separation. During the course of the day, the Syrian armed forces conducted a number of airstrikes in the areas of Jabbata, Ufaniyah and Tal al-Kurum in the area of separation. During the morning of that day, the armed groups took control of observation post 72 and attacked Terese Hill, to which the Syrian armed forces responded with heavy artillery, mortar and tank fire. As the fighting threatened to isolate Camp Faouar, UNDOF decided to advance the final stage of its *relocation* plan by two days and vacate Camp Faouar that day. During the relocation on 15 September, all personnel from Camp Faouar as well as United Nations positions 10, 16, 31 and 37 and observation post 71 were relocated temporarily to the Alpha side. One day prior, the Force Commander had briefed the Senior Syrian Arab Delegate about the UNDOF plans to vacate Camp Faouar. The relocation took place without incident and all UNDOF personnel safely reached the Alpha side.

[…]

19. Further to the Security Council presidential statement of 19 September 2014, the Department of Peacekeeping Operations, in coordination with UNDOF, held consultations with the parties to the Disengagement of Forces Agreement on the necessary steps to maintain the ability of UNDOF to carry out its mandate. The consultations included options for monitoring the ceasefire and the separation of forces even under circumstances when security conditions constrain UNDOF from fully operating on the Bravo side. The Department held consultations with the Permanent Missions of Israel and the Syrian Arab Republic in New York on the

reconfiguration and activities of UNDOF. A senior delegation from the Department visited the Syrian Arab Republic and Israel from 28 September to 4 October to undertake further consultations with respective officials. In addition, a planning team comprising officials from the Department of Peacekeeping Operations and the Department of Field Support visited the UNDOF base on the Alpha side, Camp Ziouani, in support of these efforts. Troop-contributing countries were kept informed of these consultations.

[…]

21. UNDOF has continued discussions with the parties on some of the practical arrangements to be put in place, including the establishment of the mission headquarters in Damascus, crossing procedures between the Alpha and the Bravo sides in the absence of the established crossing at Quneitra, and the use of technology to offset the loss of situational awareness in the area of separation, as well as additional locations required, including a logistics hub on the Bravo side and positions for observing the ceasefire line on the Alpha side.

22. In considering the way forward, the Department and UNDOF were informed by the situation on the ground as well as consultations with the parties. With the ultimate aim of returning to the area of separation when the security situation allows and based on the key assumption that the security situation on the Bravo side, in the foreseeable future, would continue not to permit UNDOF to return fully to the area of separation, the option being pursued would entail a short-term temporary reduction of the UNDOF troop strength to 750 military personnel and redeployment of up to 200 personnel. In addition, further to the currently manned positions of UNDOF and Observer Group Golan, there would be a requirement to establish new United Nations positions west of the ceasefire line. This interim configuration would allow UNDOF to continue to monitor, verify and report on violations of the Disengagement Agreement and exercise its critical liaison functions with the parties, particularly in preventing escalation of incidents. The UNDOF headquarters would be established in Damascus and the operational base in Camp Ziouani. A Force reserve company, four UNDOF positions on Mount Hermon and position 80 in the southern part of the area of separation and position 22 on the Alpha side would be maintained. In addition, Observer Group Golan observation posts along the ceasefire line and in its vicinity would be maintained, and the functions of the military observers optimized. The establishment of an UNDOF logistics hub on the Bravo side is under consideration.

[…]

30. I am gravely concerned about the developments in the area of separation that forced UNDOF to take the decision to temporarily relocate from the Bravo to the Alpha side. As reported in my last report to the Security Council (S/2014/665) these developments saw armed groups, including members of the listed terrorist organization, the Nusra Front, enter into direct confrontation with UNDOF, abducting 45 of its peacekeepers and confining 72 others in two United Nations positions. In the two weeks following those events, sustained heavy fighting between the Syrian armed forces and armed groups came so close to the UNDOF headquarters in Camp Faouar and other positions in the central area of separation that UNDOF had to relocate its personnel, thereby significantly reducing its ability to carry out its mandate as agreed by the parties to the 1974 Disengagement of Forces Agreement. Any hostile act against United Nations personnel on the ground, including threatening their physical safety and restricting their movement and the direct and indirect firing at United Nations personnel and facilities by anyone, is unacceptable.

31. Armed opposition groups and other armed groups have expanded the area under their control in the area of separation, and remain present along the section of the main road connecting the two UNDOF camps. The crossing between the Alpha and the Bravo sides remains closed. It is critical that countries with influence continue to strongly convey to the armed groups in the UNDOF area of operations the need to cease any actions that jeopardize the safety and security of United Nations personnel on the ground, including firing at peacekeepers, threatening and detaining them, and to accord United Nations personnel the freedom to carry out their mandate safely and securely.

32. The primary responsibility for the safety and security of United Nations personnel in the areas of separation and limitation on the Bravo side rests with the Government of the Syrian Arab Republic. I welcome the assistance provided by both parties in the safe and successful temporary relocation of UNDOF personnel. I note the assistance provided by the Government of the Syrian Arab Republic in facilitating the provision of essential supplies in support of the Force to ensure that it continues implementing its mandate safely and securely. It is imperative that respect for the privileges and immunities of UNDOF and its freedom of movement be preserved. The safety and security of UNDOF personnel and Observer Group Golan military observers must be ensured.

[…]

> 35. Both parties have stated their continued commitment to the Disengagement of Forces Agreement and the presence of UNDOF. It remains critical that both sides work through UNDOF to contain any incidents that occur along or across the ceasefire line. The mandate of UNDOF remains an important element in ensuring the stability of the region. UNDOF is undergoing a reconfiguration to adjust the structure and size of the mission as necessary to the current circumstances while at the same time maintaining the required strength and capabilities to return to vacated positions when the security situation allows. In accordance with its mandate, UNDOF will continue to use its best efforts to monitor the ceasefire between Syrian and Israeli forces and see that it is observed, albeit in increasingly challenging and difficult circumstances.[…]

48. Of relevance to the present case, the SPM (i.e., the UNSMS Security Policy Manual), Chapter IV, sec. D, provides as follows (emphasis in the original):

> […]
>
> **B. Purpose:**
>
> 2. The purpose of this policy is to lay out the parameters of measures to avoid risk as part of Security Risk Management, including alternate work modalities, relocation and/or evacuation, and to clarify the roles and responsibilities of relevant United Nations Security Management System actors in these decisions.
>
> **C. Application/Scope:**
>
> 3. The policy is applicable to all individuals covered by the United Nations Security Management System, as defined in Chapter III of the Security Policy Manual ("Applicability of United Nations Security Management System").
>
> **D. Conceptual Framework:**
>
> 4. Security Risk Management is the fundamental United Nations tool for managing risk. The Security Risk Assessment assesses the level of risk of specific threats to the United Nations. Based on the Security Risk Assessment, different security measures may be implemented to reduce the level of risk to acceptable levels and enable the UN to continue operations.
>
> 5. One security risk management option is to avoid risk by temporarily removing persons or assets from a situation of unacceptable residual risk by using alternate work modalities,

relocation or evacuation (or their combination). Indeed, until proper measures to control and lower risks are put in place, avoiding risk is the only option when residual risks are deemed unacceptable (See "Guidelines for Acceptable Risk", paragraph 6).

6. Any decision to avoid risk must take into consideration the impact of the removal of personnel and/or eligible family members on United Nations programmes and activities, including security and/or business continuity plans. Avoiding risk can be a cost-effective way to manage risk, and it is best suited for situations when resource limitations prevent the implementation of proper risk controls or when there has not been enough time to implement proper risk controls (for details on "risk control", see Security Policy Manual, Chapter IV, "Policy and Conceptual Overview of the Security Risk Management Process", paragraph 13b).

[…]

8. Alternate Work Modalities include, but are not limited to, temporarily limiting or removing the number of personnel at a United Nations premise, ordering school aged family members to stay out of school temporarily, or creating "no-go" areas in urban areas where personnel and family members cannot visit at certain times.

[…]

F. Evacuation and Relocation

11. Relocation is defined as the official movement of any personnel or eligible dependant from their normal place of assignment or place of work to another location within their country of assignment for the purpose of avoiding unacceptable risk. Relocation is a risk avoidance measure that can be applied to all personnel and eligible family members.

12. Evacuation is defined as the official movement of any personnel or eligible dependant from their place of assignment to a location outside of their country of assignment (safe haven country, home country, or third country) for the purpose of avoiding unacceptable risk. Except in the situations as outlined in paragraph 13 below, evacuation is a risk avoidance measure that can be applied only to internationally-recruited personnel and their eligible family members. The evacuation of eligible family members of internationally-recruited personnel is governed by the same eligibility conditions as for the payment of evacuation allowances as per Security Policy Manual, Chapter VI, Section A, "Remuneration of United Nations System Staff and Eligible Family members on Relocation/Evacuation Status."

[…]

49. The SPM, Chapter VI, sec. A, para. 8, further provides that (emphasis in the original):

> 8. If the staff member is evacuated to the destination authorized by the Under-Secretary General for Safety and Security (USG DSS), the security evacuation allowance will be paid at the rates specified in paragraph 4(a) above.

Security evacuation allowance

50. The Tribunal notes, as clearly follows from Code Cable No. 112 dated 24 October 2014 from UNDOF to "UNATIONS", New York, titled, "Temporary relocation of UNDOF personnel from B-side to A-side", the Report of the Secretary-General on UNDOF, and facsimile dated 11 January 2016 from the Chief of Mission Support of UNDOF, Camp Faouar, to the Chief of Human Resources of UNDOF, the UNDOF staff members, including the Applicant, were relocated from Camp Faouar (the B side) to Camp Ziouani (the A side) on 15 September 2014.

51. The Tribunal further notes that, in the SPM, the terms "relocation" and "evacuation" are defined as follows:

> 11. Relocation is defined as the official movement of any personnel or eligible dependant from their normal place of assignment or place of work to another location within their country of assignment for the purpose of avoiding unacceptable risk. Relocation is a risk avoidance measure that can be applied to all personnel and eligible family members.
>
> 12. Evacuation is defined as the official movement of any personnel or eligible dependant from their place of assignment to a location outside of their country of assignment (safe haven country, home country, or third country) for the purpose of avoiding unacceptable risk. Except in the situations as outlined in paragraph 13 below, evacuation is a risk avoidance measure that can be applied only to internationally-recruited personnel and their eligible family members. The evacuation of eligible family members of internationally-recruited personnel is governed by the same eligibility conditions as for the payment of evacuation allowances as per Security

> Policy Manual, Chapter VI, Section A, "Remuneration of United Nations System Staff and Eligible Family members on Relocation/Evacuation Status."

52. It results that the movement from Camp Faouar (the B side) to Camp Ziouani (the A side) was a relocation, and the Applicant was therefore not entitled to a security evacuation allowance pursuant to the SPM in Chapter VI, sec. A, para. 8, as such allowance is only paid to staff members who are evacuated and not to those who are relocated.

Assignment grant

53. The Tribunal notes that, as clearly results from ST/AI/2012/1, secs. 1.1 and 1.2, the assignment grant consists of two elements: a daily subsistence allowance ("DSA") and a lump-sum portion. As follows from the evidence, on 23 March 2015, the OHRM requested the ICSC to classify Camp Ziouani on the A side on a temporary basis.

54. By memorandum dated 29 May 2015, the ICSC informed the OHRM that it had temporarily designated a duty station where Camp Ziouani (the A side) was located. Effective 23 March 2015, this duty station was named, "Katzrin" and was classified as a temporary duty station category "C". The ICSC indicated that it was still consulting with the DSS regarding the duty station's family/non-family status. Another outstanding issue was the name of the duty station. Discussions concerning the classification decision as a family or a non-family duty station continued between the United Nations and the ICSC into July 2015.

55. Effective 14 August 2015, the ICSC designated a new UNDOF duty station named, "the Occupied Syrian Golan", as a non-family duty station on the A side and the staff members serving in duty station Camp Katzrin (on the A side where Camp Ziouani was located) were reassigned to this new duty station. As of 14 August 2015, the entitlements for Occupied Syrian Golan duty station became applicable to them

and a as a result of the reassignment, the eligible staff members were entitled also to receive assignment grant.

56. The Tribunal is of the view that, pursuant to secs. 3.1, 3.2, 3.6 and 5.1-6.1 of ST/AI/2012/1, the Applicant was to be considered as reassigned to a new temporarily duty station category "C", named "Camp Katzrin", on 23 March 2015 and therefore entitled to receive also the lump-sum portion even if his assignment to this duty station was less than one year which was to be calculated on a prorated basis in accordance with sec. 6.2 of of ST/AI/2012/1. The Tribunal takes note that the Applicant received a DSA of 30 days upon his relocation from the B side to the A side, but not the lump-sum portion after the establishment and recognition of the A side as a temporary duty station effective 23 March 2015. Consequentially, the Applicant's claim in this regard is to be granted in part and the Respondent is to pay the Applicant the unpaid part of the assignment grant consisting of the lump-sum portion (calculated in accordance with sec. 3.1 of ST/AI/2012/1, namely on the basis of the Applicant's net salary and the relevant post adjustment) equivalent to the period of 23 March to 7 July 2015.

Post adjustment

57. The following is stated in the Respondent's 10 February 2017 response to Order No. 14 (NY/2017) and the Applicant has not contested this information:

> […]
>
> (a) International staff, including the Applicant, who were present in UNDOF between 15 September 2014 and 13 August 2015 received the following benefits and entitlements:
>
> - One Time - 30 days DSA for Security Change of Work modalities allowance.
> - Salary
> - Post Adjustment
> - Dependency allowance (where applicable)

- Mobility element of Mobility Hardship Allowance (MHA) (where applicable)
- Hardship Allowance
- Non-removal allowance
- Non-family allowance (where applicable)
- Rest and Recuperation (R&R)
- Education Grant/Reverse Education grant (where applicable)
- Home Leave
- Family visit (where applicable)

(b) International staff of UNDOF received the following benefits and entitlements after 14 August 2015:

- One Time - Assignment Grant (30 days DSA, one month salary and one month post adjustment)
- Salary
- Post Adjustment
- Dependency allowance (where applicable)
- Mobility element of MHA (where applicable)
- Hardship Allowance
- Non-removal allowance
- Non-family allowance (where applicable)
- R & R
- Rental Deduction (for those assigned to Damascus duty station)
- Danger Pay (for those assigned to Damascus duty station)
- Education Grant/Reverse Education grant (where applicable)
- Home Leave
- Family visit (where applicable)

58. It results that the Applicant received post adjustment for the entire period worked on the A side, including from 23 March to 7 July 2015 at the level established for the B side, which was classified a category "E" duty station, even if the ICSC

categorized the A side as a temporary duty station, category "C". In this regard, the Tribunal agrees with the Respondent's position, stated in his 10 February 2017 closing statement, that:

> … […] [T]he Applicant is not entitled to the retroactive payment of a higher rate of post adjustment. Once Camp Ziouani was classified as an official duty station on 14 August 2015, the Applicant had left UNDOF to serve with MINUSCA. In addition, while the Applicant served with UNDOF in Camp Ziouani, he continued to be remunerated at the rate applicable to Camp Faouar, a category "E" duty station. This was to his advantage. Granted, the post adjustment multiplier for Camp Faouar was lower than the post adjustment multiplier for Camp Ziouani, once it was designated as a category "C" duty station on 14 August 2015. However, the higher hardship and non-family hardship allowances applicable to Camp Faouar, a category "E" duty station, resulted in an overall higher salary for the Applicant.

59. The Applicant's claim regarding post adjustment is therefore to be rejected.

Financial hardship and emotional distress

60. Regarding compensation for financial hardship and emotional distress, the Applicant states as follows in his application:

> … The Applicant seeks compensation, in an amount of no less than three (3) months net base pay as restitution for the financial hardship incurred as a result of the Administrations omissions.
>
> … The Applicant seeks compensation of no less than three (3) months net base pay in respect of the delay's and lack of dealing in "good faith' as amends for the anxiety and the physical and emotional distress, and stress that has resulted from unreasonable delays and the Administrations non-compliance with the terms of his appointment.

61. The Tribunal considers that, pursuant to art. 10.5(b) of the Dispute Tribunal's Statute, any compensation claim for financial hardship and/or emotional distress must be substantiated by evidence (see also the Appeals Tribunal in, for instance, *Kallon* 2017-UNAT-742). In this regard, the Tribunal considers that the Applicant has not

submitted any specific evidence regarding his claim for financial hardship, and this claim is to be rejected.

62. Regarding the Applicant's claim for emotional distress, the Tribunal considers, taking into consideration all the circumstances of the case, that the present judgment together with the payment of the lump-sum for the period 23 March 2015-7 July 2015 represents a sufficient and reasonable remedy for the emotional distress caused by any procedural delay related to his right to receive assignment grant for the mentioned period.

Conclusion

63. In light of the foregoing, the Tribunal DECIDES that:

a. The appeal against the decisions numbered as "[3](i.)-(iv.)" and "[3](vi.)-(xiv.)" in the application is rejected as not receivable;

b. The sitting Tribunal lacks jurisdiction regarding the appeal against decision numbered as "[3](v.)" in the application, namely the Applicant's claim for compensation for loss of personal effects as a result of abandonment of Camp Faouar in the morning of 15 September 2014, since the Applicant filed a separate request for management evaluation of the Controller's 31 March 2016 decision on 14 June 2016 and, following the management evaluation of this decision finalized on 17 October 2016, a separate appeal against it, which was registered under Case No. UNDT/NBI/2016/067 and later transferred to New York and registered under Case No. UNDT/NY/2016/065 (a currently pending case);

c. The Applicant's claim for assignment grant is granted in part and the Respondent is to pay the Applicant the unpaid part of the assignment grant consisting in the lump-sum portion (calculated in accordance with sec. 3.1 of ST/AI/2012/1, namely on the basis of the Applicant's net salary and the

relevant post adjustment) equivalent to the period of 23 March 2015 to 7 July 2015. The amount 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;

d. The remaining substantive claims of the Applicant are rejected, namely those with regard to: security evacuation allowance; post adjustment; and compensation for financial hardship.

(Signed)

Judge Alessandra Greceanu

Dated this 25th day of September 2017

Entered in the Register on this 25th day of September 2017

(Signed)

Morten Albert Michelsen, Registrar, New York, Officer-in-Charge