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The international civil service: redefining its independence

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INTRODUCTION

I began writing this dissertation 12 years ago, not literally but figuratively, when I transitioned from the Canadian public service to the international civil service in the United Nations Secretariat. Soon after joining the United Nations Office of Administration of Justice as a Legal Officer, I became intrigued by why international organisations have a different understanding, interpretation, and application of the notion of independence of international civil service. I found it perplexing that widespread practices of some organisations were not permissible in others because they were regarded as infringing on the independence of their secretariats and staff. I became even more interested in this question when I transferred from the UN Secretariat to UNHCR – a subsidiary body of the United Nations – and noticed that essential differences existed not only between different international organisations but also within the United Nations System itself. However, my curiosity peaked when I left the United Nations System to join NATO. I was surprised by how different these two major international organisations were and how differently they interpreted and applied the notion of independence of their secretariats and officials. My subsequent interactions with legal counsel from other international organisations, including the EU, OSCE, and OECD, reinforced my belief that independence means something different in each international organisation except for a few commonalities.

An element of independence common to all international organisations is the multinational composition of their secretariats placed under the authority of a governing body composed of several member states. Typically, intergovernmental organisations understand independence as a prohibition for international civil servants to seek or receive instructions from individual member states in performing their official functions and a prohibition for individual member states to influence international civil servants. International secretariats are expected to implement policy decisions made by the governing bodies of international organisations and refrain from complying with the wishes of a specific nation. The latter expectation stems from the principle of sovereign equality of states enshrined in Article 2.1 of the United Nations Charter. One is hard-pressed to find any other element of independence of international secretariats and staff that is common to all international organisations.

As a legal practitioner with extensive experience in international organisations, I regularly witness acts and omissions by various actors that harm the independence of international secretariats and their staff. Many intergovernmental institutions that condone seemingly problematic practices do not even recognise that these practices adversely affect their secretariat and staff. This is unfortunate principally because

finding a solution requires one to acknowledge that there is a problem. An organisation unaware of practices harmful to the independence of its secretariat and staff is not likely to remedy the situation.

Some IGOs, including most UN entities, are acutely aware of practices that impede the independence of their secretariats because, throughout their existence, they have faced hundreds of attempts by member states to influence the decisions and activities of their staff. Nevertheless, these IGOs are not always willing or able to foil such attempts. In many cases, the inability to change the status quo may be attributable to well-established, long-standing, and deep-rooted practices that have been followed for decades and have become part of the IGO's institutional culture.¹

In other cases, IGOs may be unable to implement significant changes because their reliance on member states is so great that they might be fearful that any attempt to strengthen the autonomy and independence of the IGO's secretariat will lead to a loss of support. For instance, if a specific nation provides resources by seconding to the international secretariat national public servants, the IGO may be unable to refuse such support because it would deprive itself of an essential workforce. Similarly, suppose a member state makes its voluntary financial contributions contingent on fulfilling certain conditions that infringe on the independence of the secretariat (i.e. the requirement to recruit and employ its nationals). In that case, the IGO might not want to turn down the funds for fear of losing an opportunity to complete a project that it views as crucial to its success.

Due to these factors, international organisations do not consistently interpret and apply independence as it relates to their secretariats and staff. Practices that some international institutions regard as highly problematic may be seen as tolerable by others. Faced with such profoundly divergent views and understanding of independence, I wondered whether the independence of international secretariats and civil servants is an entirely flexible concept that can be adapted to the needs or types of individual organisations or whether it is a relatively static notion composed of well-defined characteristics and elements. On the one hand, if independence is variable or entirely in the eye of the beholder, each international organisation may be justified in allowing practices that it considers appropriate and avoiding or even prohibiting practices that it deems contrary to the independence of its secretariat and its staff. In such a case, independence would have as many meanings and definitions as there are intergovernmental organisations.

¹ Institutional or organisational culture has been defined as "the pattern of beliefs, values and learned ways of coping with experience that have developed during the course of an organization's history, and which tend to be manifested in its material arrangements and in the behaviours of its members." Andrew D Brown, *Organizational Culture*, 2d ed (London: FT Publishing International, 1998).

If, on the other hand, independence is a concept assessed objectively, then one must accept that independence either has only one meaning or at least certain essential and inherent characteristics. Consequently, problematic practices for one organisation must be equally problematic for all other organisations. In other words, practices that erode the independence of international secretariats and staff of some IGOs would be equally corrosive for all others.

The main question that animated this research is whether the independence of international secretariats is a flexible (dynamic) or unvarying (static) notion. A related question is whether defining or describing this independence is possible. Does independence in the context of international secretariats and civil servants have essential characteristics? If so, do these characteristics vary from one organisation to another? Suppose two international organisations interpret and apply the concept of independence differently. Does this necessarily imply that the secretariat and staff of one of these organisations are less independent than the secretariat and staff of the other?

The obvious starting point of this research is the history of international secretariats and civil servants. Chapter 1 traces the genesis of international secretariats and international civil servants back to multinational conferences. The reason for examining the practice of international conferences is to understand what preceded international secretariats. Chapter 1 then focuses on 100 years of evolution of international secretariats. The period from 1815 to 1919 is critical because it reveals tensions that made independence an essential consideration in establishing international secretariats. An in-depth review of diplomatic documents, including *procès-verbaux* and minutes of conference negotiations, shows when and why the concept of independence became a relevant factor in the eyes of member states.

How the independence of international civil service has evolved can be understood by comparing the institutional structure and composition of the first secretariats. A thorough analysis of various legal instruments establishing primitive forms of international organisations unveils the progression of secretariats from simple *protocolists* of international conferences composed almost exclusively of national public servants of the host nation to multinational bureaucracies of international public unions and bureaux placed under the authority of multinational governing bodies consisting of several or all member states. The progress from the most nascent form of secretariats to the most advanced configuration took time; it required several decades of experimenting with multinational institutions. Therefore, diplomatic documents and discussions that led to these gradual changes are essential.

Scholarly works used in this part of historical research included books by Satow,² Hill,³ Reinalda,⁴ Eagleton,⁵ and Siotis⁶ and articles by Baldwin,⁷ Reinsch,⁸ Kerr,⁹ Burns,¹⁰ and Sly.¹¹

Formal and explicit recognition of the independence of international civil service would have to wait until the establishment of the League of Nations. In May 1920, the Balfour report expressed the importance of recruiting staff members with a sense of ‘international allegiance’.¹² In 1922, the League promulgated its first Staff Regulations, reiterating that the “officials of the Secretariat of the League of Nations are international officials, responsible in the execution of their duties to the Secretary-General alone” and that they were not permitted to “seek or receive instructions from any other authority.” Chapter 1 describes the difficult negotiations that took place before the establishment of the League to equip the organisation with a truly international secretariat. It describes the instrumental role played by the first Secretary-General of the League of Nations – Sir Eric Drummond – in cementing the international nature of the League’s secretariat. It then examines the erosion of the independence of the League’s Secretariat under the leadership of the second Secretary-General of the League – Joseph Avenol. Scholarly works indispensable in

² Ernest Satow, *International Congresses* (London: H.M. Stationary Office, 1920).

³ Norman L Hill, *The Public International Conference: Its Function, Organization and Procedure* (Stanford University: Stanford University Press, 1929).

⁴ Bob Reinalda, *International Secretariats: Two Centuries of International Civil Servants and Secretariats* (London: Routledge, 2020).

⁵ Clyde Eagleton, *International Government* (New York: Ronald Press, 1948).

⁶ Jean Siotis, *Essai sur le Secrétariat International* (Geneva: Librairie Droz, 1963).

⁷ Simeon E Baldwin, “International Congresses and Conferences of the Last Century as Forces Working Toward the Solidarity of the World” (1907) 1:3 *Am J Int’l L* 565.

⁸ Paul S Reinsch, “International Unions and Their Administration” (1907) 1:3 *Am J Int’l L* 579.

⁹ Philip Kerr, “The Practical Organisation of Peace” (1919) 9:34 *The Round Table Journal* 217.

¹⁰ C Delisle Burns, “International Administration” (1926) 7 *Brit YB Int’l L* 54.

¹¹ John F Sly, “The Genesis of the Universal Postal Union: A Study in the Beginnings of International Organization Document No. 233” (1926) 11 *Int Concil* 395.

¹² A J Balfour, “Procès-verbal of the Fifth Session of the Council of the League of Nations, Report relating to Staff of the Secretariat” (1920) 1:4 *League of Nations O J* 115 at 137.

discerning this period of history included books and articles by Howard-Ellis,¹³ Bastid,¹⁴ Rappard,¹⁵ Cecil,¹⁶ Walters,¹⁷ Van Ginneken,¹⁸ Barros,¹⁹ and MacFadyen & al.²⁰

In 1944 and 1945, the international community of states created several important organisations, including the United Nations and the Bretton Woods Institutions. For the first time, member states undertook in the UN Charter not to seek to influence the UN Secretary-General and his staff. However, the independence of international secretariats and civil servants remained a concept that needed to be clarified. Soon after the establishment of the United Nations, other international organisations followed with diverse institutional structures, secretariats, and compositions of staff. Whilst all international organisations recognised the importance of independence, they had different interpretations and applications of this idea. Authors whose writings about the formation of the United Nations were instrumental in writing the last part of Chapter 1 included Ranshofen-Wertheimer,²¹ Cohen,²² Eeek,²³ Lie,²⁴ Luard,²⁵ Russell,²⁶ and Gordenker.²⁷

Since the creation of the United Nations, the international community established dozens of new and significant intergovernmental institutions, such as the Organisation for the Prohibition of Chemical Weapons (OPCW) and the World Trade Organization (WTO). The rules applicable to these organizations refer to the independence of their international civil service. However, the concept of independence did not attract much attention or trigger much discussion. One would say there was no controversy at all surrounding this topic. Therefore, after a historical

¹³ Charles Howard-Ellis, *The Origin, Structure and Working of the League of Nations* (London: George Allen & Unwin, 1928).

¹⁴ Suzanne Bastid, *Les Fonctionnaires internationaux* (Paris: Gidel, 1931).

¹⁵ William E Rappard, "The Evolution of the League of Nations" (1927) 21:4 *Am Polit Sci Rev* 792.

¹⁶ Robert Cecil of Chelwood, *All the Way* (London: Hodder and Stoughton, 1949).

¹⁷ F P Walters, *A History of the League of Nations* (New York: Oxford University Press, 1952).

¹⁸ Anique H M Van Ginneken, *Historical Dictionary of the League of Nations* (Lanham, Maryland: The Scarecrow Press, 2006).

¹⁹ James Barros, *Betrayal from Within - Joseph Avenol, Secretary-General of the League 1933-1940* (New Haven, Conn: Yale University Press, 1969).

²⁰ David Macfadyen et al, *Eric Drummond and his Legacies: The League of Nations and the Beginnings of Global Governance* (Cham: Palgrave Macmillan, 2019).

²¹ Egon F Ranshofen-Wertheimer, "The International Civil Service of the Future" (1946) 24 *Int Concil* 60.

²² Maxwell Cohen, "The United States and the United Nations Secretariat: A Preliminary Appraisal" (1953) 1:3 *McGill Law J* 169; Maxwell Cohen, "The United Nations Secretariat--Some Constitutional and Administrative Developments" (1955) 49:3 *Am J Int Law* 295-319.

²³ Hilding Eeek, "The Secretariat as a Principal Organ of the United Nations" (1953) 23 *Nord Tidsskr Int Ret* 3-15.

²⁴ Trygve Lie, *In the Cause of Peace: Seven Years at the United Nations* (New York: Macmillan, 1954).

²⁵ Evan Luard, *A History of the United Nations* (London: Palgrave Macmillan UK, 1982).

²⁶ Ruth B Russell, *A History of The United Nations Charter: The Role of the United States 1940-1945* (Menasha, Wisconsin: The Brookings Institution, 1958).

²⁷ Leon Gordenker, *The UN Secretary-General and Secretariat*, 2nd ed (New York: Routledge, 2010).

overview, I investigate whether independence is still relevant today and, if so, whether states are incentivised to safeguard the independence of international secretariats and civil servants. Chapter 2 begins by arguing that the independence of the international civil service is the foundation of the trust nations place in international institutions as neutral go-betweens or intermediaries. Without such trust, international cooperation cannot be optimal. This chapter is mainly definitional; it attempts to deconstruct the notion of independence by answering such questions as (a) what is independence? (b) whose independence does the concept regulate? (c) from what should independence be? (d) from whom should independence be? The answers to these foundational questions may seem obvious; however, there are no accepted definitions of who can be regarded as a member of a group commonly known as 'international civil service' or what can be called an 'international secretariat'. Chapter 2 then canvasses the essential characteristics of an independent secretariat and independent international civil servants. It also explores links between independence and the international organisation's legal personality, privileges, and immunities. It investigates the connection between the independence of international civil servants and their functional immunities, fiscal privileges, impartiality, neutrality, and anonymity. The same chapter identifies member states, international organisations, and international civil servants as the three actors responsible for maintaining and nurturing the independence of international civil service.

Sources used in this chapter are too many to provide an exhaustive list. Nevertheless, those most relied on included books on international institutional law, namely those by Schermers and Blokker,²⁸ David,²⁹ Amerasinghe,³⁰ and Klabbers,³¹ books and articles on international secretariats including those by Chesterman,³²

²⁸ Henry G Schermers & Niels M Blokker, *International Institutional Law: Unity within Diversity*, 6th ed (Leiden: Martinus Nijhoff Publishers, 2018).

²⁹ Éric David, *Droit des Organisations Internationales* (Bruxelles: Bruylant, 2016).

³⁰ CF Amerasinghe, *Principles of the Institutional Law of International Organization*, 2d ed (New York: Cambridge University Press, 2005).

³¹ Jan Klabbers, *An Introduction to International Institutional Law*, 4th ed (New York: Cambridge University Press, 2022).

³² Simon Chesterman, *Secretary or General? The UN Secretary-General in World Politics* (New York: Cambridge University Press, 2007).

Reinalda,³³ Gordenker,³⁴ Graham and Jordan,³⁵ Jonah,³⁶ and Schwebel,³⁷ books on international civil service law, namely those by Langrod,³⁸ Ullrich,³⁹ Plantey and Loriot,⁴⁰ and Amerasinghe.⁴¹

Chapters 3, 4, and 5 focus on practices that corrode the independence of international secretariats and their staff. Chapter 3 addresses the practices of member states, whereas Chapters 4 and 5 deal with practices of international organisations and civil servants, respectively. All three chapters establish a link between independence and its constitutive elements identified in Chapter 2 through real cases.

Chapter 3 consists of two sections. The first section lists practices of member states that adversely affect the independence of international secretariats, including failure to recognise the jurisdictional immunity of international organisations and to respect the inviolability of their premises, assets, archives, and fiscal privileges. The second section examines practices of member states that undermine the independence of international civil servants. Topics discussed in section two include functional immunities and fiscal privileges of international officials as well as attempts by member states to influence decisions relating to personnel administration. Books and articles used in Chapter 3 deal primarily with the privileges and immunities of international organisations. Reinisch's impressive contribution to this area of law is a valuable source of information.⁴² Other excellent books and articles relied on in

³³ Bob Reinalda, "Institutional Development of the United Nations Secretariat" (2020) 26 *Global Governance* 325; Reinalda, *supra* note 4.

³⁴ Gordenker, *supra* note 27.

³⁵ Norman A Graham & Robert S Jordan, *The International Civil Service: Changing Role and Concepts* (New York: Pergamon Press, 1980).

³⁶ James O C Jonah, "Independence and Integrity of the International Civil Service: The Role of Executive Heads and the Role of States" (1982) 14:4 *NYU J Int'l L & Pol* 841; James O C Jonah & Amy Scott Hill, "The Secretariat: Independence and Reform" in Thomas G Weiss & Sam Daws, eds, *The Oxford Handbook on the United Nations* (Oxford University Press, 2018) 211.

³⁷ S M Schwebel, "The International Character of the Secretariat of the United Nations" (1953) 30 *Brit YB Int'l L* 71-115.

³⁸ Georges Langrod, *La fonction publique internationale* (Leiden: Sythoff, 1963).

³⁹ Gerhard Ullrich, *The Law of the International Civil Service: Institutional Law and Practice in International Organisations* (Berlin: Duncker & Humblot, 2018).

⁴⁰ Alain Plantey & François Loriot, *Fonction Publique Internationales*, 2d ed (Paris: CNRS Éditions, 2005).

⁴¹ CF Amerasinghe, *The Law of the International Civil Service: As Applied by International Administrative Tribunals*, 2nd ed (Oxford: Clarendon Press, 1994).

⁴² August Reinisch, *International Organizations Before National Courts* (Cambridge: Cambridge University Press, 2000); August Reinisch, *The Privileges and Immunities of International Organizations in Domestic Courts* (Oxford: Oxford University Press, 2013); August Reinisch, "To What Extent Can and Should National Courts Fill the Accountability Gap" (2014) 10:2 *Int'l Org L Rev* 572; August Reinisch, "Immunity of Property, Funds and Assets (Article II Section 2 General Convention)" in August Reinisch, ed, *Convention on the Privileges and Immunities of the United Nations and Its Specialized Agencies: Commentary* (Oxford: Oxford University Press, 2016) 63; August Reinisch & Ulf Andreas Weber, "In the Shadow of Waite and Kennedy - The Jurisdictional Immunity of International Organizations, the

Chapter 3 include those authored by Ahluwalia,⁴³ Chukwuemeke Okeke,⁴⁴ Blokker,⁴⁵ Bonafe,⁴⁶ De Brabandere,⁴⁷ Bradlow,⁴⁸ Kunz,⁴⁹ and many others. Doctrinal works were supplemented by international and domestic jurisprudence and the United Nations Juridical Yearbook.

Chapter 4 discusses practices of international organisations that erode the independence of their secretariats and staff. It analyses acts and omissions that lead to breaches of their jurisdictional immunities, fiscal privileges, and inviolability of premises and archives. It then examines acts and omissions of international organisations that undermine the independence of their staff, such as failure to assert privileges and immunities and failure to investigate and sanction misconduct. The last section of Chapter 4 deals with failures of international organisations to shield staff members from attempts by member states to intervene in decisions pertaining to selections, promotions, separations from service, and performance appraisals of staff members. The main sources used for Chapter 4 are decisions and judgements of the Permanent Court of International Justice, the International Court of Justice, the European Court of Human Rights, and international administrative tribunals of several international organisations, including those of the United Nations, the International Labour Organization, and the North Atlantic Treaty Organization. Other primary sources of information used in Chapter 4 are reports and resolutions of deliberative organs, staff rules and regulations of IGOs, and conventions regulating the privileges and immunities of international organisations and their staff. Books and articles that are a major source of inspiration and information are de Guttry's

Individual's Right of Access to the Courts and Administrative Tribunals as Alternative Means of Dispute Settlement" (2004) 1 *Int'l Org L Rev* 59.

⁴³ Kuljit Ahluwalia, *The Legal Status, Privileges and Immunities of the Specialized Agencies of the United Nations and Certain Other International Organizations* (The Hague: Martinus Nijhoff, 1964).

⁴⁴ Edward Chukwuemeke Okeke, *Jurisdictional Immunities of States and International Organizations* (Oxford: Oxford University Press, 2018); Edward Chukwuemeke Okeke, "Jurisdictional Immunity of International Organizations in the United States in the Wake of the Supreme Court Decision in *Jam v. IFC*" (2020) *Intergovernmental Org In-house Counsel J* 1; Edward Chukwuemeke Okeke, "The Tension between the Jurisdictional Immunity of International Organizations and the Right of Access to Court" in Peter Quayle, ed, *The Role of International Administrative Law at International Organizations* (Leiden: Brill Nijhoff, 2020) 25.

⁴⁵ Niels Blokker, "International Organizations: The Untouchables" (2014) 10:2 *Int'l Org L Rev* 259.

⁴⁶ Beatrice I Bonafe, "Italian Courts and the Immunity of International Organizations" (2014) 10:2 *Int'l Org L Rev* 505.

⁴⁷ Eric De Brabandere, "Immunity of International Organizations in Post-Conflict International Administrations" (2010) 7:1 *Int'l Org L Rev* 79-120; Eric De Brabandere, "Belgian Courts and the Immunity of International Organizations" (2014) 10:2 *Int'l Org L Rev* 464.

⁴⁸ Daniel D Bradlow, "Using a Shield as a Sword: Are International Organizations Abusing Their Immunity" (2017) 31:1 *Temple Int Comp Law J* 45.

⁴⁹ Josef L Kunz, "Privileges and Immunities of International Organizations" (1947) 41:4 *Am J Int L* 828-862.

handbook on the duty of care owed by IGOs to their staff,⁵⁰ Morlino's treatise on procurement in IGOs,⁵¹ and articles on the independence, impartiality, and neutrality of international civil servants.⁵²

Chapter 5 surveys practices of international civil servants that erode their independence and the independence of their secretariats. The first question addressed in this chapter is to whom international civil servants owe the duty to preserve their independence. It then examines the constitutive elements of this duty by drawing inspiration from the Code of Conduct developed in the 1950s by the International Civil Service Advisory Board (present-day International Civil Service Commission). This document contains four fundamental standards of conduct or values. However, recognising that this Code of Conduct was developed for the United Nations System, Chapter 5 tests the hypothesis that these standards of conduct may have become universal. The primary sources consulted are multilateral treaties and conventions on privileges and immunities, staff rules and regulations, and codes of conduct of dozens of IGOs, reports, and resolutions of UN bodies. Secondary sources are scholarly writings, news articles, and archives.

The last part of this work summarises the findings of this research and draws conclusions on the current state of independence of international secretariats and civil servants. It provides recommendations to member states, international organisations, and international functionaries for strengthening the independence of the international civil service.

In addition to primary and secondary sources of information, I use my personal observations and knowledge acquired through many years of legal practice in the United Nations Secretariat, UNHCR, and NATO. I worked on a wide range of issues central to the independence of international secretariats and civil servants. More specifically, I provided legal advice and representation to international civil servants

⁵⁰ Andrea de Guttry et al., eds, *The Duty of Care of International Organizations Towards Their Civilian Personnel: Legal Obligations and Implementation Challenges* (The Hague: T.M.C. Asser Press, 2018).

⁵¹ Elisabetta Morlino, *Procurement by International Organizations* (Cambridge University Press, 2019).

⁵² Derek W Bowett, "Tenure, Fixed Term, Secondment from Governments: The United Nations Civil Service and the European Civil Service Compared" (1982) 14:4 *NYU J Int'l L & Pol* 799; Bradlow, "Using a Shield as a Sword", *supra* note 48; Martina Buscemi, "The Duty of States to Ensure Respect of the Duty of Care through Their Membership in International Organizations" in Andrea de Guttry et al, eds, *The Duty of Care of International Organizations Towards Their Civilian Personnel* (Berlin: Asser Press, 2018) 127; G Kitson Clark, "'Statesmen in Disguise': Reflexions on the History of the Neutrality of the Civil Service" (1959) 2:1 *Hist J* 19; Renuka Dhinakaran, "Law of the International Civil Service: A Venture into Legal Theory" (2011) 8:1 *Int'l Org L Rev* 137; Genowefa Grabowska, "Independence of the International Civil Servants" (1988) 17 *Polish YB Int'l L* 61; Jonah, *supra* note 36; David M Levitan, "The Neutrality of the Public Service" (1942) 2:4 *Public Administration Review* 317; Michael W Manulak, "Leading by design: Informal influence and international secretariats" (2017) 12:4 *Rev Int Organ* 497-522; Theodor Meron, "Status and Independence of the International Civil Service" (1980) 167 *Recueil des Cours de l'Académie de Droit International* 289, etc.

and international organisations. I provided assistance and representation to victims of misconduct and whistle-blowers. I prosecuted staff facing misconduct allegations, arguing over one hundred cases before international administrative and arbitral tribunals. I negotiated and prepared legal instruments regulating the privileges and immunities of IGOs and their staff and asserted privileges and immunities enjoyed by IGOs and their staff before domestic courts. I also advised member states through governing bodies of international organisations. During these 12 years, I have witnessed first-hand how suboptimal policy decisions affecting international organisations may have long-term repercussions on the independence of their secretariats and staff. I share this experience and knowledge with two objectives in mind.

My primary objective for conducting this research is to contribute to the existing body of scholarship. My review of the literature revealed a significant gap in this field. Specifically, I could not find books or articles exploring the notion of independence in the context of international civil servants. The existing scholarly works focus on the institutional structures of international secretariats and the law applicable to the employment relationship between IGOs and their staff. Most books, book chapters, and articles explore the notion of independence through the prism of privileges and immunities.⁵³ One scholarly work that provides a somewhat holistic overview of independence is Meron's piece in the *Recueil des Cours* of the Hague Academy of International Law.⁵⁴ However, besides being outdated, this article is intended to be more descriptive than analytical; it does not propose a framework for understanding the concept of independence.

A similar gap exists in the jurisprudence of national and international courts and tribunals. The International Court of Justice dealt with cases related to international civil service on nine occasions.⁵⁵ The *Reparation for Injuries* advisory opinion concerned

⁵³ See, for instance, Ahluwalia, *supra* note 43; Graham & Jordan, *supra* note 35; Jonah & Hill, *supra* note 36; Blokker, *supra* note 45; Edwin H Fedder, "The Functional Basis of International Privileges and Immunities: A New Concept in International Law and Organization" (1960) 9:1 *Am U Rev* 60; Kunz, *supra* note 49; Anthony J Miller, "Privileges and Immunities of United Nations Officials" (2007) 4:2 *Int'l Org L Rev* 169–258; Ranshofen-Wertheimer, *supra* note 21.

⁵⁴ Meron, *supra* note 52.

⁵⁵ *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, Advisory Opinion, [1999] I.C.J. Rep. 62; *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*, Advisory Opinion, [1989] I.C.J. Rep. 177; *Effect of awards of compensation made by the UN Administrative Tribunal*, Advisory Opinion, [1954] I.C.J. Rep. 47; *Reparation for injuries suffered in the service of the United Nations*, Advisory Opinion, [1949] I.C.J. Rep. 174; *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development*, Advisory Opinion, [2012] I.C.J. Rep. 10; *Application for Review of Judgment No. 333 of the United Nations Administrative Tribunal*, Advisory Opinion, [1987] I.C.J. Rep. 18; *Application for Review of Judgment No. 273 of the United Nations Administrative Tribunal*, Advisory Opinion, [1982] I.C.J. Rep. 325; *Application for Review of Judgment No.*

the obligation of a member state to compensate the IGO for injuries caused to the organisation's officials. The *Effects of Awards of Compensation* advisory opinion dealt with the obligation of the IGO to comply with an order of its internal administrative tribunal directing the organisation to pay damages to its staff members for unlawful termination of contracts. The advisory opinions on *Difference Relating to Immunity from Legal Process* and the *Applicability of Article VI, Section 22, of the General Convention* focused on jurisdictional immunities of international officials. The remaining five cases were appeals from judgments of international administrative tribunals. Although some ICJ pronouncements help to clarify a few fundamental characteristics of independence, none defines or describes in detail what independence means or consists of. National courts and international administrative tribunals also occasionally consider cases where the independence of international secretariats and staff was a critical point. Nevertheless, they, too, have stopped short of defining and describing the notion.

The jurisprudence of international administrative tribunals can also be very helpful in describing the notion of independence. The difficulty with this source of information is its episodic and anecdotal nature. The mandate of international administrative tribunals is to adjudicate specific employment disputes between IGOs and their staff. To the best of my knowledge, no scholar or practitioner has thus far attempted to compile and analyse all judgments of international administrative tribunals that pertain to the independence of international secretariats and civil servants. This work aims at filling this gap.

The second purpose of this research is to demonstrate that it is in the best interest of states and IGOs to nurture and protect the independence of international secretariats and civil servants. Having worked in national and international bureaucracies, I could not agree more with Reinalda's view that, unlike national administrations, international ones are fragile and expendable, being legally and financially dependent on their member states.⁵⁶

This manuscript is intended for a diverse audience. Scholars, researchers, delegates of member states, governmental officials dealing with international organisations, international civil servants, diplomats, and legal practitioners working with IGOs will likely find this research helpful. The documents consulted, and relevant developments noted are those up to and including September 2023.

158 of the United Nations Administrative Tribunal, Advisory Opinion, [1973] I.C.J. Rep. 166; *Judgements of the Administrative Tribunal of the I.L.O. upon complaints made against the UNESCO*, Advisory Opinion, [1956] I.C. J. Rep. 77.

⁵⁶ Reinalda, *supra* note 4 at 9.