Towards a universal law governing the international civil service: a coalescence of international administrative law amid a proliferation of tribunals

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TOWARDS A UNIVERSAL LAW GOVERNING THE INTERNATIONAL CIVIL SERVICE

A COALESCENCE OF INTERNATIONAL ADMINISTRATIVE LAW
AMID A PROLIFERATION OF TRIBUNALS

Jason Morgan-Foster

Towards a universal law governing the international civil service

A coalescence of international administrative law amid a proliferation of tribunals

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[1] Guide to obtaining a doctorate on the basis of articles; October 2019, available at https://www.staff.universiteitleiden.nl/binaries/content/assets/rechtsgeleerdheid/meijers-instituut/guidlines-obtaining-doctorate-on-basis-of-articles-eng-jan-2020.pdf (accessed 3 November 2024).

[2] A. Garrido Muñoz, J. Morgan-Foster, D. Peat and A-M Thévenot-Werner, *The Law and Practice of International Administrative Tribunals* (2025, Cambridge University Press). Although the work was co-authored, each author drafted and remained responsible for individual chapters; the author was individually responsible for the three chapters reproduced as part of this dissertation.

[3] J. Morgan-Foster, 'International Administrative Tribunals and Cross-Fertilization: Evidence of a Nascent Common Jurisprudence?', (2024) 24(2) *Chicago Journal of International Law* 339.

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Jason Morgan-Foster
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TABLE OF ABBREVIATIONS

ACHR	American Convention on Human Rights
AfCHPR	African Charter on Human and Peoples' Rights
AfDB	African Development Bank
AfDBAT	African Development Bank Administrative Tribunal
ADB	Asian Development Bank
ADBAT	Asian Development Bank Administrative Tribunal
AfDBAT	African Development Bank Administrative Tribunal
Art.	Article
ATBIS	Administrative Tribunal of the Bank for International Settlements
ATCE	Council of Europe Administrative Tribunal
AU	African Union
AUAT	African Union Administrative Tribunal
BIS	Bank for International Settlements
CARICOM	Caribbean Community and Common Market
CARICOMAT	Administrative Tribunal of the Caribbean Community and Common Market
CCJ	Caribbean Court of Justice
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	International Convention on the Convention of all forms of Racial Discrimination
CESG	Secretary-General of the Council of Europe
CGUNRWA	Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees
CJEU	Court of Justice of the European Union
CoE	Council of Europe
CSAT	Commonwealth Secretariat Arbitral Tribunal
EBRD	European Bank for Reconstruction and Development
EBRDAT	European Bank for Reconstruction and Development Administrative Tribunal
ECB	European Central Bank
ECE	Economic Commission for Europe
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECMWF	European Centre for Medium-Range Weather Forecasts
ECtHR	European Court of Human Rights
EMBL	European Molecular Biology Laboratory
EPO	European Patent Office
ESA	European Space Agency
ESAAT	European Space Agency Administrative Tribunal
ESCB	European Schools Complaints Board
ESM	European Stability Mechanism
ESMAT	Administrative Tribunal of the European Stability Mechanism
ESO	European Southern Observatory
EU	European Union
EUCST	European Union Civil Service Tribunal

EUMETSAT	European Organisation for the Exploitation of Meteorological Satellites
FAO	Food and Agriculture Organization of the United Nations
GCEDB	Governor of the Council of Europe Development Bank
GCESDF	Governor of the Council of Europe Social Development Fund
GCEU	General Court of the European Union
Global Fund	Global Fund to Fight AIDS, Tuberculosis and Malaria
Global Mechanism	Global Mechanism of the United Nations Convention to Combat Desertification
IACtHR	Inter-American Court of Human Rights
IAEA	International Atomic Energy Agency
IAT	International Administrative Tribunal
IDB	Inter-American Development Bank
IDBAT	Inter-American Development Bank Administrative Tribunal
IBRD or WB	International Bank for Reconstruction and Development (World Bank)
ICAO	International Civil Aviation Organization
ICC	International Criminal Court
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICSC	International Civil Service Commission
ICTY	International Criminal Tribunal for the former Yugoslavia
IFAD	International Fund for Agricultural Development
IFO	International Financial Corporation
IFRC	International Federation of the red Cross
IAICA	Inter-American Institute for Cooperation on Agriculture
ILC	International Law Commission
ILO	International Labour Organization
ILOAT	Administrative Tribunal of the International Labour Organization
IMF	International Monetary Fund
IMFAT	International Monetary Fund Administrative Tribunal
IMO	International Maritime Organization
IO	International Organization
ISA	International Seabed Authority
ITLOS	International Tribunal for the Law of the Sea
ITU	International Telecommunication Union
JIU	Joint Inspection Unit of the United Nations
LoN	League of Nations
LoNAT	League of Nations Administrative Tribunal
MERCOSUR	Southern Common Market (*Mercado Común del Sur*)
MERCOSUR TAL	Administrative Tribunal of the Southern Common Market
NATO	North Atlantic Treaty Organization
NATOAT	North Atlantic Treaty Organization Administrative Tribunal
OAS	Organization of American States
OASAT	Organization of American States Administrative Tribunal
OECD	Organisation for Economic Co-Operation and Development
OECDAT	Organisation for Economic Co-Operation and Development Administrative Tribunal
OIF	Organisation internationale de la francophonie
OIOS	United Nations Office of Internal Oversight Services

OLA	Office of Legal Affairs (United Nations)
OPCW	Organization for the Prohibition of Chemical Weapons
OPEC	Organization of the Petroleum Exporting Countries
PAHO	Pan American Health Organization
PCA	Permanent Court of Arbitration
SG	Secretary-General
SGOAS	Secretary-General of the Organization of American States
TAOIF	Tribunal d'appel de l'organisation internationale de la francophonie
TPIOIF	Tribunal de première instance de l'organisation internationale de la francophonie
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNAdT	United Nations Administrative Tribunal
UNAT	United Nations Appeals Tribunal
UNCC	United Nations Compensation Commission
UNCITRAL	United Nations Commission on International Trade Law
UNCLOS	United Nations Convention on the law of the Sea
UNDT	United Nations Dispute Tribunal
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGA	United Nations General Assembly
UNIDROIT	International Institute for the Unification of Private Law
UNJSPB	United Nations Joint Staff Pension Board
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UNRWADT	Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East
UNSG	United Nations Secretary-General
VCLT	Vienna Convention on the Law of Treaties
WBAT	World Bank Administrative Tribunal
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WMO	World Meteorological Organization
WTO	World Trade Organization

CHAPTER 1

INTRODUCTION

I. SETTING THE SCENE

It was one of those bright and clear summer days in Geneva, where the Alps are visible from the city. And it was hot, over 25° C. With Covid restrictions recently relaxed, the *bains des Pâquis* on the banks of *Lac Léman* was overflowing with people. Some were there for bathing, but many were holding cocktails from the *buvette*, enjoying the artificial rainbow created when the waters of the *jet d'eau* dispersed into droplets and the summer sun shined through.

But all was not well in paradise. Up the hill in the *Palais des Nations* complex, staff members of the UN Secretariat were huddled around their desks, trying to make sense of a new reality. It was 30 June 2020 and the United Nations Dispute Tribunal (UNDT) had just handed down its Judgment in the *Abd Al-Shakour et al.* case, upholding a pay cut for Geneva-based professional staff members resulting from a change to the Post Adjustment Multiplier by the International Civil Service Commission (ICSC).[4] The decision would result in upwards of 800 USD less in take-home pay per month for a mid-level professional staff member.

'I can't believe I just bought that new flat in the city and thought I could make it work,' Marie lamented, 'I won't be able to pay the mortgage now!'

'Just think of Ahmed,' Pedro offered, 'He has two kids starting university in the USA in the fall.'

'Nothing changes for him,' Felix explained, 'He works over at the International Labour Organization (ILO) Secretariat.'

[4] UNDT/2020/106, *Abd Al-Shakour et al.*; UNDT/2020/107. See also similar cases rendered soon thereafter affecting staff members of UNEP, UNCTAD, UNJSPF, ECE and INTRCEN: *Cardenas Fischer et al.*; UNDT/2020/133, *Abd Al-Shakour et al.*; UNDT/2020/154, *Aksioutine et al.*

‘What do you mean?!’ asked Marie, confused, ‘That is just across the street! I can literally see his office out my window!’

‘That may be true,’ explained Felix, ‘But the ILO is subject to the jurisdiction of the Administrative Tribunal of the International Labour Organization (ILOAT), which struck down this bloody Post Adjustment Multiplier last July. So nothing changes for him and all the other lucky ones working for UN agencies and international organizations subject to ILOAT jurisdiction.’

‘Well that’s good news for Jeremy over at the United Nations Environment Programme (UNEP) then,’ Marie interjected, ‘The poor guy already commutes 80 minutes each way to save money buying his groceries across the border in France!’

‘Nope, UNEP is subject to UNDT jurisdiction,’ replied Felix, ‘Jeremy is in the same boat as us.’

Marie’s phone binged and she checked her messages. Her closest friends — one worked at the WHO, another at the ITU and a third at the International Telecommunication Union (ITU) — had sent a selfie enjoying a drink at the *bains des Pâquis* with the text ‘Life’s too short…*Viens tout de suite!*’ All working at organizations subject to the ILOAT, they were blissfully ignorant of the divided city Geneva had just become.

‘What kind of a “UN Common system” is this?’ questioned Pedro, ‘Half of us make 1000 dollars more a month than the other half for doing exactly the same work? I might just take early retirement and go work in a regular sector with regular rules.’

‘You might not want to talk to the pension fund people now though,’ joked Felix, ‘They are also subject to the UNDT ruling…’

II. INTRODUCTION TO INTERNATIONAL ADMINISTRATIVE LAW AND INTERNATIONAL ADMINISTRATIVE TRIBUNALS

The present work concerns International Administrative Tribunals (IATs), the dispute-resolution bodies between staff members and the administration of international organizations. Since international organizations are immune from the jurisdiction of the host State,[5] when a dispute develops between an international civil servant and the employing organization, the staff member cannot simply haul the employer before a national court to resolve it. Thus, the international civil service needs a separate adjudicatory system where the organization is not immune, and IATs have come to fill this role. Beginning with the creation of the League of Nations Administrative Tribunal (LoNAT) in 1927, which continued as the Administrative Tribunal of the International Labour Organization (ILOAT) upon the dissolution of the League,[6] the number of IATs has now grown to almost thirty.[7] This is discussed in detail in Chapter 2.

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[5] C. F. Amerasinghe, 'International Administrative Tribunals', in 2014 *Oxford Handbook of International Adjudication* 316, at 318–19.

[6] H. G. Schermers and N. M. Blokker, *International Institutional Law: Unity Within Diversity* 487 (6th ed. 2018) (citing League of Nations, Official Journal, Special Suppl. No. 54, at 201, 478).

[7] At the time of this writing, the following international administrative tribunals are functioning: (1) Administrative Tribunal of the International Labour Organization; (2) Council of Europe Administrative Tribunal; (3) Organization of American States Administrative Tribunal; (4) European Space Agency Administrative Tribunal; (5) World Bank Administrative Tribunal; (6) Inter-American Development Bank Administrative Tribunal; (7) Administrative Tribunal of the Bank for International Settlements; (8) Organisation for Economic Co-operation and Development (OECD) Administrative Tribunal; (9) Asian Development Bank Administrative Tribunal; (10) International Monetary Fund (IMF) Administrative Tribunal; (11) Commonwealth Secretariat Arbitral Tribunal; (12) African Development Bank Administrative Tribunal; (13) African Union Administrative Tribunal; (14) Southern Common Market (MERCOSUR) Administrative Tribunal; (15) Administrative Tribunal of the European Bank for Reconstruction and Development (EBRD); (16) European Organisation for the Exploitation of Meteorological Satellites (EUMETSAT) Appeals Board; (17) United Nations Dispute Tribunal; (18) United Nations Appeals Tribunal; (19) *Organisation internationale de la francophonie, tribunal de première instance*; (20) *Organisation internationale de la francophonie, tribunal d'appel*; (21) United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) Dispute Tribunal; (22) North Atlantic Treaty Organization (NATO) Administrative Tribunal; (23) European Stability Mechanism Administrative Tribunal; (24) Court of Justice of the European Union (CJEU), General Court, having jurisdiction over administrative law cases; (25) Appeals Board of the European Centre for Medium-Range Weather Forecasts; (26) CARICOM (Caribbean Community) Administrative Tribunal; and (27) European Schools Complaints Board (ESCB), which has jurisdiction over staff cases as well as, for example, complaints by parents and students. Although the GAVI (Vaccine Alliance) Administrative Tribunal has been mentioned in the literature (*See* C. de Cooker, 'Proliferation of International Administrative Tribunals', (2022) 12 *Asian Journal of International Law* 232, at 238), no information on it is publicly available. Similarly, the proposed creation in 2022 of the Square Kilometer Array Observatory (SKAO) Administrative Tribunal has been mentioned (*Ibid.*), but no information is publicly available. The jurisprudence of the European Centre for Medium-Range Weather Forecasts is also not publicly available, although it does appear to exist (*See* G. Wettberg, 'Appeals Board: European Centre for Medium-Range Weather Forecasts (ECMWF)', 2019 *Max Planck Encyclopedia of International Procedural Law*, para. 16).

This dissertation is also about the special legal regime applied by IATs, known as international administrative law. This regime exists because IATs operate within a unique legal space, settling disputes between an international organization and an individual who is employed by that organization. Neither of the litigants are States, the traditional subjects of international law, and the legal issues arising within this regime are specific and unique, relating to employment disputes. Although national law contains substantive rules relating to employment matters, its application would raise questions about which national law to apply, international organizations being composed of staff members of many nationalities. If the national law of the staff member were applied, different staff members would be subject to different law based only on their nationality. If the national law of the host State were applied, then international civil servants, even those working in the same organization, would be subject to different rules based on their different duty stations. An autonomous set of rules was thus necessary to ensure that 'all employees — whatever their nationality, their place of recruitment, or their duty station — [were] subject to comparable conditions of service and offered the same legal guarantees.'[8] This set of rules is international administrative law. Although the precise nature of this body of law is difficult to categorize and open for debate,[9] it has been described by Amerasinghe as 'a breed of international law [that] may even, therefore, be regarded as a special branch of public international law.'[10]

The present work is very much about both of these things — IATs and the law applied by them, international administrative law — and in particular how the former are shaping the latter. The fact that each individual IAT has developed a jurisprudence is not surprising. This is what courts and tribunals do. This dissertation, however, looks for something more in the collective work of the growing number of IATs. It searches for a whole that is greater than the sum of its parts, aiming to discern a nascent common jurisprudence of international administrative law from among the rapidly growing number of tribunals.

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[8] S. Villalpando, 'The Law of the International Civil Service', in J.K. Cogan, I. Hurd and I. Johnstone, eds., *The Oxford Handbook of International Organizations* (2016), at 1070.

[9] See C.F. Amerasinghe, 'Sources of International Administrative Law', in *International Law at the Time of its Codification: Essays in Honour of Roberto Ago* (1987), vol. 1, at 68.

[10] *Ibid.* at 69.

III. THE PROLIFERATION OF TRIBUNALS AND THE QUESTION OF FRAGMENTATION

Almost sixty years ago when only a handful of IATs existed, Michael B. Akehurst, a commentator in the field, observed that '[i]nternational administrative tribunals behave *as if* the internal laws of different organizations formed part of a single system of law' and that it was 'clear that the internal laws of different organizations bear a remarkable resemblance to each other, and can therefore establish strong precedents for each other.'[11] The present work aims to take stock of whether Akehurst's statement remains true today, or if the proliferation of tribunals has instead led to divergences in jurisprudence.

Returning to our story of the Geneva-based *cadre* of international civil servants described above, while it may be difficult for some to feel too sorry for them, the legal divide they encountered is serious, and unacceptable. Staff members working in an organization which aims to uphold the rule of law should not be subject to two different legal regimes which lead to such different results. The handing down of these two differing judgments by the ILOAT and UNDT, therefore, was a critical moment in the growth and development of international administrative law. It was a moment which caused us to pause and reflect on the health of this rapidly growing area of law, to question whether the exponential proliferation of tribunals and consequent expansion of judgments was causing more growing pains than advantages. It was certainly a moment to question whether Akehurst's statement[12] had stood the test of time.

Public international law had this moment too. It is best captured by the concern in 1999 over the legal conclusion reached by the ICTY Appeals Chamber in the *Tadić* case relating to the level of control required for the attribution of acts of paramilitary forces, which specifically eschewed the test adopted by the ICJ in its 1986 Judgment in the *Nicaragua* case. While the ICJ had adopted an 'effective control' test in the *Nicaragua* case,[13] the ICTY Appeals Chamber found this unpersuasive and espoused a less stringent 'overall control' test.[14] Moreover, it did not simply do this in a vacuum but rather it overtly criticized the ICJ's test, claiming it '[w]ould

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[11] M. B. Akehurst, *The Law Governing Employment in International Organizations* (1967), 263 (emphasis added).

[12] See supra note 11 and accompanying text.

[13] ICJ, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 14 at p. 65, para. 115.

[14] ICTY, Appeals Chamber, *Prosecutor v. Tadić*, Judgment of 15 July 1999, IT-94-1-A, at paras. 115-145.

not seem to be consonant with the law of State Responsibility' and was 'at variance with judicial and State practice.'[15] The ICJ fired back in its 2007 Judgment in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro)*, calling the 'overall control' test 'unpersuasive' and 'unsuitable', lamenting that it 'stretches too far, almost to breaking point, the connection which must exist between the conduct of a State's organs and its international responsibility.'[16] The President of the ICJ at the time, Gilbert Guillaume, even brought up the issue in his address to the UN General Assembly, stating that '[r]egardless of what one might think of [the ICTY's] solution, the contradiction thus created gives clear evidence of the risks to the cohesiveness of international law raised by the proliferation of courts.'[17]

Other examples from around this time of the negative consequences of proliferating tribunals abound. There were discussions about the risk of 'forum shopping' between the ICJ and ITLOS in law of the sea disputes following the creation of the latter tribunal, which became operational in 1996.[18] There were concerns about the different interpretations regarding the extraterritorial application of human rights treaties by the ECtHR in the *Banković* case, the ICJ in its *Wall* advisory opinion and the Human Rights Committee in its General Comment No. 31.[19] There was the position taken by the ECtHR in *Loizidou v. Turkey* concerning the permissibility of attaching certain reservations to declarations accepting compulsory jurisdiction, which differed from the longstanding practice of the ICJ permitting such reservations.[20] There was the divergence between the IACtHR and the ICJ concerning whether

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[15] *Ibid.* at 47, subtitle (a) and 51, subtitle (b).

[16] *I.C.J. Reports 2007*, p. 210, paras. 404-406.

[17] Address by H.E. Judge Gilbert Guillaume, President of the International Court of Justice, to the United Nations General Assembly, 26 October 2000, available at www.icj-cij.org (accessed 5 November 2024), at 5.

[18] T. Treves, 'Conflicts between the International Tribunal for the Law of the Sea and the International Court of Justice', (1999) 31(4) *New York University Journal of International Law and Politics* 809, at 811; S. Oda, 'Dispute Settlement Prospects in the Law of the Sea', (1995) 44 *International and Comparative Law Quarterly* 863, at 864 (arguing that '[t]he creation of a court of judicature in parallel with the Intrenational Court of Justice … will prove to have been a great mistake').

[19] B. Simma, 'Universality of International Law from the Perspective of a Practitioner', (2009) 20(2) *European Journal of International Law* 265, at 281-282; R. Higgins, 'A Babel of Judicial Voices? Ruminations from the Bench', (2006) 55(4) *International and Comparative Law Quarterly* 791, at 795.

[20] J. Charney, 'Is international law threatened by multiple international tribunals?', (1998) 271 *Recueil des cours* 101, at 160-162; G. Guillaume, 'The proliferation of international judicial bodies: The outlook for the international legal order', speech by His Excellency Judge Gilbert Guillaume, President of the International Court of Justice, to the Sixth Committee of the General Assembly of the United Nations, 27 October 2000, available at www.icj-cij.org (accessed 5 November 2024), at 5.

a detained foreigner's right to have his consular post notified formed part of international human rights law, the IACtHR holding that it did[21] and the ICJ stating in the *Avena* Judgment that it found no support for this conclusion in the text or *travaux préparatoires* of the Vienna Convention on Consular Relations.[22] In international investment law, there was the case of *Lauder and CME v. Czech Republic*, in which one UNCITRAL arbitral tribunal — in a case brought by Lauder, the controlling shareholder of the parent company of CME — concluded that the Czech Government had not breached the investment treaty, while another UNCITRAL tribunal concluded eight days later that the Czech Government had done so and awarded more than 300 million USD in damages.[23] Reference could also be made to the 'MOX Plant' dispute, concerning environmental effects of a nuclear facility in the United Kingdom, which was brought before three separate institutions: an Arbitral Tribunal set up under Annex VII of UNCLOS, the compulsory dispute settlement procedure under the 1992 Convention on the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention) and before the ECJ.[24] The Annex VII Arbitral Tribunal observed in that case that it was not unlikely in such a scenario that even the same rules could be applied differently by these different bodies.[25]

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[21] IACtHR, *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*, Advisory Opinion OC-16/99, 1 October 1999, para. 141(2).

[22] ICJ, *Avena and Other Mexican Nationals (Mexico* v. *United Slates of America), Judgment, ICJ Reports 2004*, at 60-61, para. 124. (discussed in Simma, *supra* note 19, at p. 282; Higgins, *supra* note 19, at 796.

[23] M. Waibel, 'Fragmentation in International Investment Law', in J. Bédard and P. W. Pearsall, eds., *Reflections on international arbitration: essays in honour of professor George Bermann* (2022) 835, at 841.

[24] See discussion in 'Fragmentation of International Law: Difficulties arising from the diversification and expansion of international law, Report of the Study Group of the International Law Commission finalized by Martti Koskenniemi, UN document A/CN.4/L.682 (13 April 2006), at 12-13, paras. 10-13.

[25] See *ibid.* (citing ITLOS, *MOX Plant case, Order on Request for Provisional Measures (Ireland v. the United Kingdom*, 3 December 2001, para. 51).

A plethera of scholars began commenting on the risk of fragmentation in international law and the dangers looming due to a proliferation of international tribunals.[26] Three successive Presidents of the ICJ raised concerns about the issue in public speeches.[27] The International Law Commission began studying the question of the '[r]isks ensuing from fragmentation of international law', later recasting these 'risks' as 'difficulties' when it formally adopted the topic.[28]

With hindsight, we can now safely say that rumors of international law's demise due to fragmentation, or a proliferation of tribunals, were greatly exaggerated.[29] Thus, following the alarm bells raised by three successive Presidents of the ICJ, mentioned above, a much more

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[26] See, e.g., J. Charney, 'Is international law threatened by multiple international tribunals?', (1998) 271 *Recueil des cours* 101-382; J. Charney, 'The Impact on the International Legal System of the Growth of International Courts and Tribunals', (1999) 31(4) *New York University Journal of International Law and Politics* 697-708; T. Treves, 'Conflicts between the International Tribunal for the Law of the Sea and the International Court of Justice', (1999) 31(4) *New York University Journal of International Law and Politics*, 809-822; C. P. R. Romano, 'The Proliferation of International Judicial Bodies: The Pieces of the Puzzle', (1999) 31(4) *New York University Journal of International Law and Politics* 709-752; P.-M. Dupuy, 'The Danger of Fragmentation or Unification of the International Legal System and the International Court of Justice', (1999) 31(4) *New York University Journal of International Law and Politics* 791-808; H. Thirlway, 'The proliferation of international judicial organs: institutional and substantive questions: the International Court of Justice and other international courts', in N. Blokker and H. Schermers, eds., *Proliferation of international organizations: legal issues* (2001) 251-278; G. Hafner, 'Should One Fear the Proliferation of Mechanisms for the Peaceful Settlement of Disputes?', in L. Caflisch, *The Peaceful Settlement of Disputes between States: Universal and European Perspectives* (1998) 25-41; Koskenniemi, M. and Leino, P., 'Fragmentation of international law? Postmodern Anxieties', (2002) 15 *Leiden Journal of International Law* 553, at 553-579; K. Oellers-Frahm, 'Multiplication of International Courts and Tribunals and Conflicting Jurisdiction - Problems and Possible Solutions', (2001) 5 *Max Planck Yearbook of United Nations Law*, 67-104; Y. Shany, *The Competing Jurisdictions of International Courts and Tribunals* (2003); T. Buergenthal, 'Proliferation of International Courts and Tribunals: Is It Good or Bad?', (2001) 14 *Leiden Journal of International Law* 267, at 272.

[27] President Jennings and President Guillaume discussed the dangers of proliferation of tribunals at the fiftieth anniversary of the ICJ. President Schwebel addressed the issue in his 1999 speech to the General Assembly. President Guillaume raised it in his 2000 speech to the General Assembly and devoted his 2000 speech to the Sixth Committee to the issue. See Koskenniemi and Leino, *supra* note 26, at 553-555.

[28] This rebranding was an attempt to present the matter in a more positive light. See Report of the International Law Commission, fifty-fourth session (29 April-7 June and 22 July-16 August 2002), UN document A/57/10 (2002), at 239, para. 500. The ILC formally adopted the topic as 'The fragmentation of international law: difficulties arising from the diversification and expansion of international law'. *Ibid.* at 241, para. 511. See also B. Simma, 'Fragmentation in a Positive Light', (2003-2004) 25 *Michigan Journal of International Law* 845, at 846-47; P. S. Rao, 'Multiple International Judicial Forums: A Reflection of the Growing Strength of International Law or Its Fragmentation', (2004) 25(4) *Michigan Journal of International Law* 929, at 936.

[29] For a contrary view, see E. Benvenisti and G. W. Downs, 'The Empire's New Clothes: Political Economy and the Fragmentation of International Law', (2007) 60(2) *Stanford Law Review* 595 (arguing that 'the problem of fragmentation is more serious than is commonly assumed because it operates to sabotage the evolution of a more democratic and egalitarian international regulatory system' and that '[p]owerful states labor to maintain and even actively promote fragmentation because it enables them to preserve their dominance in an era in which hierarchy is increasingly viewed as illegitimate, and to opportunistically break the rules without seriously jeopardizing the system they have created').

positive prognosis was offered by a fourth, President Higgins, in her speech to the General Assembly in 2006:

> 'Th[e] growth in the number of new courts and tribunals has generated a certain concern about the potential for a lack of consistency in the enunciation of legal norms and the attendant risk of fragmentation. Y et these concerns have not proved significant. The general picture has been one of these courts seeing the necessity of locating themselves within the embrace of general international law. The authoritative nature of ICJ judgments is widely acknowledged. It has been gratifying for the International Court to see that these newer courts and tribunals have regularly referred, often in a manner essential to their legal reasoning, to judgments of the ICJ with respect to questions of international law and procedure. Just in the past five years, the judgments and advisory opinions of the ICJ have been expressly cited with approval by the International Tribunal for the Law of the Sea, the European Court of Human Rights, the European Court of Justice, the United Nations Commission on Human Rights, the Inter-American Commission on Human Rights, the International Centre for Settlement of Investment Disputes, the International Criminal Tribunal for the former Yugoslavia, and arbitral bodies including the Eritrea-Ethiopia Claims Commission. The International Court, for its part, has been following the work of these other international bodies closely.'[30]

Indeed, the creation and subsequent functioning of the ITLOS, even as the ICJ continues to handle maritime delimitations, has not led to mass confusion in the area of the law of the sea. To the contrary, the ITLOS has rendered useful decisions in numerous areas, such as prompt release, fisheries management, flags of convenience, detained vessels and crews, maritime delimitations, as well as responding to several requests for advisory opinions and requests for the indication of provisional measures.[31] The regional human rights courts and the human rights treaty bodies have continued developing their respective jurisprudences not to the detriment but rather to the advantage of the overall cohesiveness of international law as a

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[30] Speech by H.E. Judge Rosalyn Higgins, President of the International Court of Justice, to the General Assembly of the United Nations, 26 October 2006, available at https://www.icj-cij.org/files/press-releases/9/13149.pdf (accessed 18 March 2025), at 7. See also R. Higgins, 'The ICJ, the ECJ, and the Integrity of International Law', 52 (2003) *International and Comparative Law Quarterly* 1-20.

[31] See, e.g., Rao, *supra* note 28, at 946-949. See also the varied list of 33 concluded cases on the website of the ITLOS, www.itlos.org (accessed 11 November 2024).

whole, as evidenced by the multiple times the ICJ has relied on them in past years. Indeed, the ICJ has stated explicitly that it will take 'into account the practice of committees established under human rights conventions, as well as the practice of regional human rights courts, in so far as this [is] relevant for the purposes of interpretation' of the instrument in question.[32] For example, it cited to a decision of the Committee Against Torture when considering the temporal scope of the Convention Against Torture.[33] It cited to the work of the Human Rights Committee when analyzing the territorial scope of the ICCPR as well as the principle of proportionality as applied to the provisions of the ICCPR.[34] It corroborated its interpretation of Article 13 of the ICCPR by reference to a decision of the Human Rights Committee and a General Comment of the Committee, emphasizing that:

> 'Although the Court is in no way obliged, in the exercise of its judicial functions, to model its own interpretation of the Covenant on that of the Committee, it believes that it should ascribe great weight to the interpretation adopted by this independent body that was established specifically to supervise the application of that treaty.'[35]

In the same Judgment, the ICJ further supported its reasoning by reference to decisions of the African Commission on Human and Peoples' Rights, the ECtHR and the IACtHR.[36] In compensation cases, a new frontier for the Court, it has drawn on the practice of numerous other courts, tribunals and commissions, including the ITLOS, ECtHR, IACtHR, Iran-United States Claims Tribunal, Eritrea-Ethiopia Claims Commission, the UNCC, the ICTY, the

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[32] ICJ, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Preliminary Objections, Judgment, ICJ Reports 2021*, at 96, para. 77.

[33] ICJ, *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, ICJ Reports 2012*, at 457-458, para. 101.

[34] ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports 2004 (I)*, at 179, para. 109, and at 192-193, para. 136).

[35] ICJ, *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, ICJ Reports 2010 (II)*, at 663-664, para. 66.

[36] *Ibid.*, at 664, paras. 67-68.

Committee Against Torture and the African Commission on Human and Peoples' Rights.[37] With the ICJ citing to this broad variety of other international adjudicatory bodies, which in turn have often regularly cited to it, and to each other, the international community of courts and tribunals is meeting the challenge, post proliferation, of coalescing and combining its shared understanding of international legal norms.

Perhaps even more interesting than the above examples, in which the ICJ followed the conclusions of these other courts, commissions and tribunals that it has referenced, there is the case where it does not. In particular, in its determination of whether 'national origin' in Article 1(1) of CERD included 'nationality', the ICJ reviewed the practice of the CERD Committee and regional human rights courts.[38] While these other bodies concluded that 'national origin' did encompass 'nationality' in the provisions of the respective instruments over which they had interpretive authority, the Court reached the contrary conclusion with respect to the CERD. Thus, with respect to the CERD in particular, the ICJ directly contradicted the CERD Committee. It would seem another *Tadić/Nicaragua* moment, but this time it passed almost without comment. There was no panic among commentators about fragmentation, no renewed concerns about a proliferation of tribunals. Perhaps the international community, a quarter century after *Tadić*, had finally come to accept that two adjudicatory bodies reaching different conclusions was not such cause for alarm, but could actually amount to a beneficial fleshing out of legal norms, an inter-judicial dialogue which could ultimately result in a better understanding of the law.

The argument to be made in the present work is that the same is proving true with respect to IATs: their proliferation has not led to the problems some foresaw; to the contrary, the advantages have greatly outweighed any disadvantages. Engaging in a thorough review of all current IAT jurisprudence, I will argue that indeed Akehurst's statement has proven correct,

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[37] ICJ, *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Compensation, Judgment, ICJ Reports 2012 (I)*, at 331, para. 13; at 334-335, para. 24; at 337, para. 33; and at 339-340, para. 40 (citing the ITLOS, ECtHR, IACtHR, Iran-United States Claims Tribunal, Eritrea-Ethiopia Claims Commission and the UNCC) at 52, para. 107; at 56, para. 123; at 68, para. 158; at 69-71, paras. 163-164; at 77-79, paras. 188-191; at 81-83, paras. 202-205; at 85, para. 214; at 95, para. 249; at 130-131, paras. 382-384; and at 133, para. 392 (citing the Eritrea-Ethiopia Claims Commission, the ICC, the UNCC, the ICTY, the Committee Against Torture and the African Commission on Human and Peoples' Rights).

[38] ICJ, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Preliminary Objections, Judgment, ICJ Reports 2021*, at 100-105, paras. 100-104.

perhaps beyond what he could have ever imagined. Far from the divergence and fractures that some have warned against as the number of IATs has grown,[39] there has been a convergence, as IATs have increasingly cited to a common set of international norms, general principles, and to each other, in an exercise of reciprocal growth, sharing the task of creating and developing an ever more universal international administrative law. Thus, I argue that the some thirty different IATs currently in existence are no longer functioning individually but rather are developing a common jurisprudence of international administrative law.

[39] See J. S. Powers, 'The Evolving Jurisprudence of the International Administrative Tribunals: Convergence or Divergence?', 2018 *Asian Infrastructure Investment Bank Yearbook of International Law* 68, at 70.

IV. RESEARCH QUESTION

Taking into account the context described in Section II above, I aim in the present work to answer the following research question:

> *What has been the result of the rapid proliferation of IATs? Has the law governing the international civil service become fragmented or have IATs developed a common jurisprudence of international administrative law?*

This research question is best answered by considering the following sub-questions in detail:

1. *To what extent are IATs referring to common principles or a common body of law in reaching their conclusions?*
2. *Can a common jurisprudence be deduced from the extent to which IATs refer to each other (cross-fertilization)?*
3. *Can a common jurisprudence be illustrated through an examination of references to a shared set of international human rights instruments?*

V. RESEARCH METHODOLOGY

I began by reviewing the doctrine on international administrative tribunals and international administrative law, in order to develop an appreciation of existing scholarship and analysis. In this regard, I collected all of the titles listed in the included bibliography and I have thoroughly reviewed them over the past years. From this review of the literature, it became apparent that no exhaustive attempts have been made to tie together the various jurisprudential strands developed by different administrative tribunals to determine whether the proliferation of tribunals is creating divergences or rather if the many tribunals are in fact coalescing around a common jurisprudence. For example, one of the only articles on this theme is a 2018 piece by Joan S. Powers, entitled 'The Evolving Jurisprudence of the International Administrative Tribunals: Convergence or Divergence', which offers a *tour d'horizon* of the question and concludes that '[t]his is a huge question that deserves a more comprehensive treatment.'[40] Another notable effort was made by Peter C. Hansen in articles published in 2007 and 2012.[41] While Hansen's study is exhaustive in its substantive scope, it is limited to to the practice of one tribunal: the WBAT. There has thus been no comprehensive study of the question of convergence or divergence of IATs following their proliferation which thoroughly treats all existing IATs. The present dissertation aims to fill that gap. In this regard, I have examined the question of cross-fertilization between IATs and the use of human rights instruments by IATs through an examination of the jurisprudence of each IAT. I believe that it is through such an analysis of primary source material that this dissertation can make a lasting contribution to the field.

[40] Powers, *supra* note 39, at 72.

[41] P. C., Hansen, 'The World Bank Administrative Tribunal's External Sources of Law: A Retrospective of the Tribunal's First Quarter-Century' (1981-2005), *The Law and Practice of International Courts and Tribunals*, vol. 6 (Martinus Nijhoff, Leiden/Boston, 2007), pp. 1-87; P. C., Hansen, 'The World Bank Administrative Tribunal's External Sources of Law: The Next Chapter (2006-2010)', *The Law and Practice of International Courts and Tribunals*, vol. 11 (Martinus Nijhoff, Leiden/Boston, 2012), pp. 199-251 (Part I) and pp. 449-497 (Part II).

VI. SOCIETAL AND SCIENTIFIC RELEVANCE

Beginning with just a handful of tribunals handling few cases, international administrative law has expanded exponentially, both in the number of tribunals now in existence and in the number of cases heard. As it has developed into its own sub-discipline of international law, much has been written about various aspects of international administrative law. The societal and scientific relevance of this dissertation is in its effort to uncover jurisprudential commonalities and divergences, especially though a detailed examination of primary sources (the decisions of the tribunals themselves).

VII. GENERAL STRUCTURE OF THE DISSERTATION

In order to answer the research question posed in Section IV above, a thorough understanding of IATs must first be established. Chapters 2 and 3 are dedicated to this task.

Chapter 2 traces the institutional evolution of international administrative tribunals. It explains that while IATs have become standard features of many international organizations, this was not always the case. For a long period, there existed only a handful of IATs, and in the time before this, the need for IATs was not even apparent, or at least widely accepted or acknowledged. The chapter elaborates on these issues and traces the institutional evolution of IATs in the international community. It begins with a discussion of the need for IATs and the legal basis for their establishment. It then looks at their proliferation as well as the long-running debates concerning their possible merger or the harmonization of their work. The chapter then discusses the review of tribunal judgments and the growth of appeals tribunals. After offering a brief description of the functioning of a typical IAT, the chapter then provides an overview of each of the various IATs in existence.

Chapter 3 examines the sources of law applied by IATs. These sources are grouped into two substantially different categories: ‘self-contained’ and ‘universalizing’ sources. The self-contained sources of international administrative law are those which are specific to a given organization, including the contract of employment; the staff regulations and staff rules; the bulletins, circulars, manuals and issuances of the organization; the constituent instrument of the organization; decisions and resolutions of the plenary organ of the organization or other decision-making body; and the practice of the organization. The chapter then examines the

'universalizing' sources of international administrative law, which are those sources, referred to with increasing frequency, which are 'outward-looking' and thus may be adopted in common by multiple IATs. These include general principles of law, international law and (I will argue) decisions of other international administrative tribunals. As a result of these 'universalizing' sources, the chapter concludes that a universal law governing the international civil service has begun to crystalize.

Having offered a thorough picture of IATs in Chapters 2 and 3, including their institutional development and the sources of law they apply, the second part of the dissertation is dedicated to answering the research question posed, namely: *What has been the result of the rapid proliferation of IATs? Has the law governing the international civil service become fragmented or have IATs developed a common jurisprudence of international administrative law?* It is recalled that this question contains three sub-questions: (1) To what extent are IATs referring to common principles or a common body of law in reaching their conclusions? (2) Can a common jurisprudence be deduced from the extent to which IATs refer to each other (cross-fertilization)? (3) Can a common jurisprudence be illustrated through an examination of references to a shared set of international human rights instruments? The dissertation begins to answer the first sub-question already in Chapter 3 with its discussion of 'universalizing' sources of law. In particular, it shows that IATs are referring to a common set of general principles and a common body of law (international law) in reaching their conclusions.

In light of their substantive breadth, the dissertation then dedicates full chapters to answering the second and third sub-questions of the research question. Chapter 4 addresses the phenomenon of 'cross-fertilization', i.e. the citation by one IAT in its reasoning to a decision of another IAT. Engaging in a systematic review of the jurisprudence of all IATs, its findings are presented beginning with those tribunals having most actively participated in cross-fertilization and progressing to those less willing to engage in it. It first reviews the jurisprudence of those tribunals most actively involved in cross-fertilization, including the World Bank Administrative Tribunal (WBAT), the International Monetary Fund Administrative Tribunal (IMFAT), the United Nations Dispute Tribunal (UNDT), the United Nations Appeals Tribunal (UNAT), the Asian Development Bank Administrative Tribunal (ADBAT), the Council of Europe Administrative Tribunal (ATCE), and the African Development Bank Administrative Tribunal (AfDBAT). It then reviews the jurisprudence of those tribunals which regularly practice cross-fertilization, including the NATO Administrative

Tribunal (NATOAT), the OECD Administrative Tribunal (OECDAT), the European Bank for Reconstruction and Development Administrative Tribunal (EBRDAT), the Commonwealth Secretariat Arbitral Tribunal (CSAT), the European Space Agency Administrative Tribunal (ESAAT), and the Bank for International Settlements Administrative Tribunal (ATBIS). Finally, it considers those that have been most hesitant to engage in this practice, including the International Labour Organization Administrative Tribunal (ILOAT), the Organization of American States Administrative Tribunal (OASAT), and the Inter-American Development Bank Administrative Tribunal (IDBAT). The second half of the chapter examines the question of cross-fertilization by reference to the most influential cases. The chapter concludes that as a result of this practice of cross-fertilization, a universal law governing the international civil service has begun to crystalize.

Chapter 5 considers the practice of IATs referring to international human rights instruments. It canvasses more than 400 decisions across some twenty IATs where references to international human rights instruments have appeared. Interestingly, it emerges that the vast majority of cases in which international human rights instruments are cited concern three substantive areas: non-discrimination, due process rights and economic rights. The chapter therefore devotes separate sections to these three areas. The chapter then goes on to address several other international human rights which have been referenced by IATs, including privacy rights, expression-related rights, the right not to be arbitrarily deprived of nationality and the right to just and favourable conditions of work. The chapter concludes that while IATs now regularly refer to international human rights instruments, their treatment of this body of law is inconsistent, ranging from some judgments refusing to acknowledge its direct applicability at all to other judgments considering it hierarchically superior to other sources of law.

Chapter 6 offers an answer to the main research question on the basis of the findings in Chapters 2 through 5. It then considers possible ways forward for international administrative law, drawing on the experience of public international law once it lived through the growing pains of fragmentation and proliferation. It ends by providing some recommendations for future research and concluding thoughts.

CHAPTER 2

THE INSTITUTIONAL EVOLUTION OF INTERNATIONAL ADMINISTRATIVE TRIBUNALS

I. INTRODUCTION

IATs have become standard features of many international organizations and those organizations that do not have their own IATs often provide their staff access to the IAT of another organization. But this was not always the case. For a long period, there existed only a handful of IATs, and in the time before this, the need for IATs was not even apparent, or at least widely accepted or acknowledged. This chapter will elaborate on these issues and trace the institutional evolution of IATs in the international community. It begins in the present Section with a discussion of the need for IATs and the legal basis for their establishment. It then looks in Section 2 at the institutional evolution of IATs, including their proliferation as well as the long-running debates concerning their possible merger or the harmonization of their work. In Section 3, the issue of the review of tribunal judgments is examined. Section 4 begins with a brief description of the functioning of a typical IAT and then provides an overview of the various IATs in existence. The chapter ends with several tables illustrating current and former IATs and comparing their relative levels of activity.

The principal and most often identified reason for the existence of IATs is the fact that international organizations, by their nature, are immune from the jurisdiction of the host State.[42] Therefore, when a dispute develops between a civil servant and the organization with which they work, they cannot simply haul their employer before a national court to resolve it. For this reason alone, the international civil service needs a separate, internal adjudicatory system where the organization is not immune.

[42] C.F. Amerasinghe, *The Law of the International Civil Service* (1994), vol. 1, at 8; C.F. Amerasinghe, 'International Administrative Tribunals', 2014 *Oxford Handbook of International Adjudication* 316, at 318-319.

A second, equally important reason for the establishment of IATs, and international administrative law, concerns the complicated issue of the law to be applied.[43] The application of national law raises the question: which national law? If the national law of the civil servant were applied (a situation which sometimes did occur in the first international organizations, when civil servants were seconded from their governments), different international civil servants would be subject to different law based only on their nationality. If the national law of the host State were applied, then international civil servants, even those working in the same organization, would be subject to different rules based on their different duty stations. By contrast, the adoption of autonomous rules for the international civil service 'ensure[s] that all employees—whatever their nationality, their place of recruitment, or their duty station—be subject to comparable conditions of service and offered the same legal guarantees.'[44] Such rules could not and would not be applied by national courts, however. A separate adjudicatory system, in the form of IATs, had to be created.

A third reason for the establishment of IATs can be found in the growth of and development of the international civil service itself. In this regard, even if it were legally possible to settle disputes in national courts, or according to national law, it may no longer be desirable. As mentioned at the outset, the international civil service has grown in scope and importance. It has been argued in this regard that 'the special position of the international civil servant referred to within international society does make it important that he have some independent system of law to protect him.'[45] Such a system has come into being in the form of IATs.

Finally, the development of IATs, and the law that they apply, can also be viewed as a product of the influence of human rights law on the creation of international institutional law. In this regard, a leading commentator has observed:

> 'A cogent reason for international organizations submitting to the jurisdiction of specially created administrative courts, it now has come to be realized, is related to respect for human rights. In 1980, when the World Bank

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[43] S. Villalpando, 'The Law of the International Civil Service', in J.K. Cogan, I. Hurd and I. Johnstone, eds., *The Oxford Handbook of International Organizations* (2016), at 1069-1071.

[44] *Ibid.*, at 1070.

[45] C.F. Amerasinghe, *The Law of the International Civil Service* (1994), vol. 1, at 8.

> Administrative Tribunal (WBAT) was being established, one of the reasons given by the President of the World Bank for establishing a tribunal was one of principle. It was a principle accepted in many national legal systems and reaffirmed in the Universal Declaration of Human Rights. This principle required that where administrative power was exercised, there should be available machinery, in the event of disputes, to accord fair hearing and due process to the aggrieved party. Hence, there was a need for an independent *judicial* body to decide complaints relating to the exercise of administrative power.'[46]

The influence of human rights law on the creation of and continued strengthening of international administrative law has been made clear in multiple cases before regional human rights courts, in particular the ECtHR, as well as domestic courts, in which it has been found that the host State of an international organization could be found in breach of the ECHR if the IAT of that organization did not meet certain due process standards. The foundational case in this respect was the *Waite and Kennedy* judgment by the ECtHR[47]. In that case, the ECtHR considered whether a decision of a German court upholding the immunity from jurisdiction of the ESA in a suit brought by two staff members regarding non-renewal of their contracts violated the individuals' rights to a hearing by a tribunal guaranteed in art. 6.1 of the ECHR.[48] The ECtHR stated that while 'the attribution of privileges and immunities to international organisations is an essential means of ensuring the proper functioning of such organisations free from unilateral interference by individual governments[, …] a material factor in determining whether granting ESA immunity from German jurisdiction is permissible under the Convention is whether the applicants had available to them reasonable alternative means to protect effectively their rights under the Convention.'[49] While the ECtHR in *Waite and Kennedy* went on to conclude that the ESA Joint Appeals Board did satisfy this requirement,[50] the case established the 'reasonable alternative means' test for internal justice mechanisms and raised the possibility that an international organization in the territory of a member State of the

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[46] C.F. Amerasinghe, 'International Administrative Tribunals', 2014 *Oxford Handbook of International Adjudication* 316, at 319.

[47] ECtHR, *Waite and Kennedy v. Germany*, Application No. 26083/94, 18 February 1999.

[48] *Ibid.*, paras. 3-8, 27-30.

[49] *Ibid.*, paras. 47, 52.

[50] *Ibid.*, paras. 53-58.

ECHR could have its immunity stripped and be hauled before a domestic court in an employment dispute if its internal justice mechanism was not found to provide a reasonable alternative means of protecting due process rights under the ECHR.[51]

National courts in member States of the ECHR now systematically apply the 'reasonable alternative means' test,[52] and in certain cases this has led to denial of immunity. For example, in *Western European Union v. Siedler*, the Belgian Court of Cassation rejected the Western European Union's immunity defence on the grounds that the Union's internal appeals commission failed to meet the requirements of due process and independence guaranteed by art. 6.1 of the ECHR.[53] Similarly, in *Banque Africaine de développement v. MA Degboe*, the French Court of Cassation refused the AfDB's immunity because it lacked an internal mechanism to deal with disputes between staff members and the Bank.[54] Other examples continue to multiply.[55]

The reasons for the establishment of IATs, therefore, are numerous, and indeed they are mutually reinforcing. Viewed together, it can be said that IATs exist because the international civil service, which has grown into a cogent and permanent workforce, requires independent, specialized fora for the resolution of employment disputes, where immunities will not block suits and due process will be respected. While IATs are perhaps not the only solution to fulfil these needs — indeed arbitration is used in some organizations[56] or has been proposed for

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[51] A. Reinisch and U.A. Weber, 'In the Shadow of Waite and Kennedy: The Jurisdictional Immunity of International Organizations, the Individual's Right of Access to the Courts and Administrative Tribunals as Alternative Means of Dispute Settlement', (2004) 1 *International Organizations Law Review* 59, at 79.

[52] A. Reinisch, ed., *The Privileges and Immunities of International Organizations in Domestic Courts* (2013), at 61-69 (Belgium), 118-119 (France), 252-267 (Switzerland).

[53] Belgian Court of Cassation, *Western European Union v. Seidler*, jugement d'appel, Cass No S 04 0129 F (21 December 2009).

[54] French Court of Cassation, *Banque Africaine de développement v. MA Degboe*, Bull. civ. V, No. 04-41.012 (25 janvier 2005).

[55] For a detailed analysis of *Waite and Kennedy* and subsequent jurisprudence, see works cited in S. Villalpando, 'Managing International Civil Servants', in S. Cassese, ed., *Research Handbook on Global Administrative Law* (2016) 65, at 66 n. 4. See also A. Thévenot-Werner, 'The Right of Staff Members to a Tribunal as a Limit to the Jurisdictional Immunity of International Organisations in Europe', in A. Peters et al., eds., *Les Acteurs à l'Ère du Constitutionalisme Global* (2014), at 111-139.

[56] See R. Gulati and T. John, 'Arbitrating Employment Disputes Involving International Organizations', in P. Quayle, ed., *The Role of International Administrative Law at International Organizations* (AIIB Yearbook of International Law, vol. 3) (2021), at 141-157.

certain stages of the process[57] or categories of staff members[58] — there can be no doubt that IATs now play the principal role in the resolution of employment disputes in international organizations, and a great many IATs have come into being.

Having established a need for IATs, the next question which arises is what legal basis exists for their creation. As noted by Amerasinghe, when the constitutive instrument of the organization expressly provides for an administrative tribunal then the issue is clear, but in the great majority of cases the constituent instrument makes no such explicit reference.[59] The extent of the implied powers of international organizations thus arises, a question on which the ICJ pronounced as early as 1949 in its advisory opinion in the case concerning *Reparation for Injuries Suffered in the Service of the United Nations*, when it concluded that '[u]nder international law, the Organisation must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties.'[60]

This doctrine of implied powers was tested in the specific context of establishing an IAT a few years later in the ICJ's 1954 Advisory Opinion on the *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal*. In that case, the UNGA requested the Court to give an advisory opinion on whether the UNGA was required to give effect to an award of compensation made by the UNAdT. One of the arguments made for why the UNGA should be able to refuse to give effect to such an award was that the UN Charter contained no express provision for the establishment of the UNAdT. In considering whether an implied power to do so existed, the ICJ observed that it was inevitable that there would be disputes between the Organization and staff members as to their rights and duties.[61] Observing that the Charter contained no provision authorizing any of the principal organs of the UN to adjudicate

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[57] See A. Zack, 'The Step Below: Can Arbitration strengthen Administrative Tribunals?', in O. Elias, ed., *The Development and Effectiveness of International Administrative Law: On the Occasion of the Thirtieth Anniversary of the World Bank Administrative Tribunal* (2012), at 265-270.

[58] For a detailed discussion about the proposed use of arbitration to resolve disputes concerning non-staff personnel in the UN system, see Garrido Muñoz et al., *supra* note 2, Chapter 10.

[59] C.F. Amerasinghe, *Statutes and Rules of Procedure of International Administrative Tribunals* (1983), vol. 1, at i.

[60] ICJ, *Reparation for injuries suffered in the service of the United Nations,* Advisory Opinion, *ICJ Reports 1949*, at 182.

[61] ICJ, *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal*, Advisory Opinion, *ICJ Reports 1954*, at 57.

such disputes, the ICJ concluded, in a foundational passage for the development of international administrative law, that:

> 'It would, in the opinion of the Court, hardly be consistent with the expressed aim of the Charter to promote freedom and justice for individuals and with the constant preoccupation of the United Nations Organization to promote this aim that it should afford no judicial or arbitral remedy to its own staff for the settlement of any disputes which may arise between it and them.
>
> In these circumstances, the Court finds that the power to establish a tribunal, to do justice as between the Organization and the staff members, was essential to ensure the efficient working of the Secretariat, and to give effect to the paramount consideration of securing the highest standards of efficiency, competence and integrity. Capacity to do this arises by necessary intendment out of the Charter.'[62]

The power of international organizations to establish IATs, and the power of such tribunals to render decisions binding on those organizations, has never seriously been questioned since.

[62] *Ibid.*

II. The institutional evolution of International Administrative Tribunals

A. The establishment and proliferation of Administrative Tribunals

The very earliest international organizations were composed almost exclusively of national civil servants seconded by their governments and who remained subject to the jurisdiction of their home countries.[63] This situation began to change in the beginning of the twentieth century, when Italy, as host country of the International Institute of Agriculture, established in 1905, granted international status to the civil servants of that organization.[64] Nevertheless, organizations continued in this early period to exist without a forum for the resolution of disputes between staff members and the administration. When the LoN was established in 1920, its Covenant also did not foresee a formal system for the resolution of staff disputes.[65] In December 1920, the Council of the LoN passed a resolution whereby civil servants engaged for five years or longer could submit disputes to it or to the Governing Body of the LoN.[66] On the sole occasion when this procedure was invoked, in the 1925 *Monod* case involving a staff member claiming unilateral breach of his contract, the Council put the question of the legality of the administration's actions with respect to Monod's contract to a group of experts and ultimately adopted their recommendation.[67]

The practice of having recourse to the Council, a political body, for the resolution of legal disputes with staff members was subject to significant criticism and, in 1925, in the course of the *Monod* affair, a rapporteur of the Supervisory Commission of the LoN was tasked with producing a report on the possible creation of a judicial body to handle staff disputes.[68] The

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[63] S. Villalpando, 'Managing International Civil Servants', in S. Cassese, ed., *Research Handbook on Global Administrative Law* (2016) 65, at 67.

[64] *Ibid.*

[65] S. Villalpando, 'International Administrative Tribunals', in J.K. Cogan, I. Hurd, I. Johnstone, eds., *The Oxford Handbook of International Organizations* (2016) 1085, at 1087.

[66] S. Bastid, 'Les tribunaux administratifs internationaux et leur jurisprudence', (1957) 92 *Recueil des Cours* 343, at 368 (citing LoN Council resolution of 17 December 1920, Actes de la première assemblée, séances plénières, at 663).

[67] *Ibid.*, at 369-370. The recommendation was to grant Mr. Monod 750 pounds as compensation. The Council of the LoN passed a resolution on 5 September 1925 adopting the conclusions of the expert committee and instructing the Secretary-General to take the necessary action. No question was raised in the Assembly of the LoN concerning the propriety of making this payment. See Memorandum of the International Labour Office submitted in the case concerning *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal*, *ICJ Pleadings 1954*, at 48-51.

[68] Memorandum of the International Labour Office submitted in the case concerning *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal*, *ICJ Pleadings 1954*, at 51-52.

rapporteur considered such a body beneficial not only to the staff members but to the administration; this became the foundation upon which the draft statute was prepared.[69] The LoNAT was established by a resolution adopted by the Assembly of the LoN on 26 September 1927.[70] This same resolution put an end to the system of recourse to the Council.[71]

The LoNAT functioned between 1927 and 1946, during which time it rendered thirty-seven judgments.[72] While the initial judgments concerned routine questions such as the right to join the pension fund or the question whether a staff member was internationally recruited, the final thirteen judgments rendered by the tribunal dealt with the same issue and set off the first major 'legitimacy crisis' in international administrative law.[73] The issue arose out of a budget crisis in the LoN brought on by the outbreak of Second World War. The Assembly of the LoN took measures to reduce the staff of the Secretariat and the International Labour Office, adopting amendments to the staff regulations in December 1939. According to these amendments, staff members were offered a choice of resigning with a large separation payment or having their contracts suspended and receiving a smaller *ex gratia* payment. The amended staff regulations also provided that staff members who rejected both of these options would have a reduced period of notice of termination and their termination indemnity would be made in instalments instead of by lump sum. Thirteen staff members who were terminated according to these latter conditions brought complaints in the LoNAT, arguing that the new conditions violated their acquired rights.[74] In a series of judgments rendered in February 1946, the LoNAT found for the complainants.[75] Before the amounts awarded by the LoNAT were paid, the matter was considered by, in turn, the Secretary-General, the Supervisory Commission of the LoN, the Second (Finance) Committee of the LoN and a specially appointed sub-committee.

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[69] *Ibid.*, at 52. Between February 1926 and February 1927, a series of drafts of the statute were considered by the Supervisory Commission of the LoN and in February 1927 a text was submitted to the Eighth session of the Assembly. *Ibid.*, at 52-54. See also Bastid, *supra* note 66, at 371.

[70] LoN, Assembly resolution entitled 'Establishment of an Administrative Tribunal', Eighth Ordinary Session, 26 September 1927, Official Journal (May 1928), at 751.

[71] *Ibid.* While the 1927 resolution established the tribunal on a temporary basis, giving the 1931 Assembly the power to 'abrogate or amend' its statute, the Assembly confirmed the LoNAT as a permanent tribunal without further changes to its statute in 1931. Bastid, *supra* note 66, at 371.

[72] See the history of the ILOAT and its predecessor the LoNAT, available at https://www.ilo.org/tribunal/lang--en/index.htm (accessed 20 April 2024).

[73] Bastid, *supra* note 66, at 373.

[74] Memorandum of the International Labour Office submitted in the case concerning *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal*, *ICJ Pleadings 1954*, at 59-60.

[75] *Ibid.*, at 60-61.

Ultimately, a majority of the Finance Committee recommended that the awards not be paid, concluding that it was not open to the LoNAT to question the validity of a legislative act of the Assembly, a conclusion which gave rise to a vigorous dissent in the Committee.[76] The report of the Finance Committee was adopted by the Assembly over the reservation of seven governments, and the awards ordered by the LoNAT were thus never paid.[77] Although less known than the situation confronted by the ILOAT which led to the Advisory Opinion of the ICJ in *Effect of Awards*,[78] the above episode before the LoNAT bore much in common with it, and ultimately lead to the establishment of the review procedure by the ICJ over ILOAT judgments.[79]

Given this cold reception offered to the LoNAT, it is somewhat ironic that the resolution dissolving the LoN maintained its administrative tribunal, reinstituting it (with the same composition) within the ILO as the ILOAT.[80] The newly created UN itself had no mechanism for the settlement of staff disputes since the ILOAT initially served only the officials of the ILO, as well as pensioners of the LoN and the Registry of the Permanent Court of International Justice. The Preparatory Commission of the UN recommended the creation of an administrative tribunal, but several governments which considered it an interference with the powers of the Secretary-General opposed this. It was thus not until 1949 that the UNGA established the UNAdT.[81] This delay ultimately proved very significant for the overall development of IATs: during that period, the WHO was established (in 1948) and needed an administrative tribunal.

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[76] Bastid, *supra* note 66, at 374-375; Memorandum of the International Labour Office submitted in the case concerning *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal*, *ICJ Pleadings 1954*, at 61-69.

[77] Memorandum of the International Labour Office submitted in the case concerning *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal*, *ICJ Pleadings 1954*, at 69-70.

[78] See *supra* notes 61-62 and accompanying text.

[79] In subsequent discussions in the Governing Body of the International Labour Office, the Chairman observed that there was nothing it could do except take note of the Assembly's decision to disregard the awards of the LoNAT, but he went on to suggest that provision be made for 'a court of appeal' such as the ICJ to be put in place in the future to reconsider the Tribunal's decisions from a judicial standpoint and avoid the situation of the Assembly taking matters into its own hands. This was taken up by the International Labour Office and an amendment to the statute establishing the ICJ review procedure was approved by the Staff Questions Committee and the Governing Body. Memorandum of the International Labour Office submitted in the case concerning *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal*, *ICJ Pleadings 1954*, at 71-73. This procedure is discussed in detail below in Section III.A.

[80] Bastid, *supra* note 66, at 376 (citing LoN, *Resolution for the Dissolution of the League of Nations*, 18 April 1946, 194 *Journal official, Supplément special* 281, at 282-283, para. 15).

[81] S. Villalpando, 'International Administrative Tribunals', in J.K. Cogan, I. Hurd, I. Johnstone, eds., *The Oxford Handbook of International Organizations* (2016) 1085, at 1088.

It approached the ILO seeking what was then an interim solution, to submit its staff disputes to the ILOAT. This led the International Labour Conference to amend Article II of the ILOAT statute, extending jurisdiction of the ILOAT to other international organizations under certain conditions.[82] As we now know, the WHO was only the first of a great many international organizations to submit to the jurisdiction of the ILOAT. At the time of this writing, 59 organizations have done so, giving the ILOAT jurisdiction over some 58,000 staff members.[83] From this point forward, international organizations thus have all confronted the choice between joining a multijurisdictional tribunal such as the ILOAT which accepts outside organizations into its ambit or creating a new tribunal.[84]

In establishing the UNAdT, the UNGA also included a provision in its statute by which the tribunal's jurisdiction could be extended to other bodies beyond the UN Secretariat, but in contrast to the ILOAT, the UNAdT statute provision was quite limited, applying only to UN specialized agencies. Only two such agencies accepted the UNAdT's jurisdiction: the ICAO in 1960 and the Inter-Governmental Maritime Consultative Organization (which became the IMO) in 1964.[85] Following an amendment to the UNAdT Statute in 1997, the tribunal's competence was also recognized by the ICJ Registry, as well as two organizations of the UN common system: the ISA and the ITLOS.[86]

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[82] *Ibid.* For the text of the provision, see ILOAT Statute, art. 2.5. See also 'The Tribunal', available at https://www.ilo.org/tribunal/about-us/lang--en/index.htm (accessed 20 April 2024).

[83] 'ILO Administrative Tribunal: Organizations recognizing the jurisdiction', available at http://www.ilo.org/tribunal/membership/lang--en/index.htm (accessed 7 March 2025). For a list of the first adopters of ILOAT jurisdiction, see de Cooker, *supra* note 7, at 235.

[84] For a full analysis of this choice and the various considerations it entails, see K. Meighan and G. Rodríguez-Rico, 'To Join or Not to Join: A Comparative Analysis of Joining or Creating an International Administrative Tribunal', in P. Quayle, ed., *The Role of International Administrative Law at International Organizations* (AIIB Yearbook of International Law, vol. 3) (2021), at 119. An excellent summary of the various tribunals established can be found in de Cooker, *supra* note 7, at 234-238.

[85] S. Villalpando, 'International Administrative Tribunals', in J.K. Cogan, I. Hurd and I. Johnstone, eds., *The Oxford Handbook of International Organizations* (2016) 1085, at 1089.

[86] *Ibid.*

The 'Co-ordinated Organisations',[87] established in 1958 in an effort to harmonize rules and practices on remuneration, entitlements and pensions,[88] began with separate appeals boards. Despite repeated calls to establish a single administrative tribunal for all coordinated organisations,[89] these separate appeals boards, rather than merging, were ultimately converted into separate IATs, with the establishment of the OECDAT in 1992, the ATCE in 1994, the NATOAT in 2013 and the ESAAT in 2020.[90] Amerasinghe has noted that while problems can occur in the Co-ordinated Organisations due to conflicting judgments of its various IATs, 'this happens infrequently' and 'there has been no desire to have a "common" court.'[91] In 2014, the ATCE Statute was amended to allow other organizations to accept its jurisdiction.[92] As of this date, four such organizations have done so.[93]

Ultimately, the international financial institutions, like the Co-ordinated organizations, each formed their own IAT, beginning with the WBAT in 1980. This was a major development for international administrative law, the WBAT being the first IAT to set high qualifications

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[87] The Co-ordinated Organisations are a group of six international organizations headquartered in Europe, initially made up of the CoE, ESA, NATO, OECD and WEU. The latter ceased to exist in 2011. ECMRWF joined the co-ordinated organisations in 1988 and EUMETSAT joined in 2012. See de Cooker, *supra* note 7, at 242; G. Ullrich, *The Law of the International Civil Service: Institutional Law and Practice in International Organisations* (2018), 45; W. Fürst and H. Weber, 'Uniformity in service law and judicial remedies for staff members of the European coordinated organisations', in C. de Cooker, ed., *International Administration: Law and Management Practices in International Organisations* (1990), at 1-31.

[88] See Fürst and Weber, *supra* note 87, at 2-3.

[89] See *infra* notes 160-163 and accompanying text.

[90] While the ECMWF retains an 'Appeals Board' in name, its procedural rules were substantially revised and extended in 2017. See G. Wettberg, 'Appeals Board: European Centre for Medium-Range Weather Forecasts (ECMWF)', 2019 *Max Planck Encyclopedia of International Procedural Law*, para. 16. Similarly, the EUMETSAT Appeals Board, despite its name, functions as an administrative tribunal issuing binding decisions. See EUMETSAT Staff Rules, last amended 1 July 2023, art. 38 and Annex VIII (available at www.eumetsat.int).

[91] C.F. Amerasinghe, 'The Future of International Administrative Law', (1996) 45 *International and Comparative Law Quarterly* 773, at 777.

[92] de Cooker, *supra* note 7, at 239.

[93] These include the Council of Europe Development Bank, the Central Commission for the Navigation of the Rhine, the Hague Conference on Private International Law and the Intergovernmental Organisation for International Carriage by Rail. See 'Bodies and organisations subject to the jurisdiction of the Tribunal' at https://www.coe.int/en/web/tribunal/bodies-and-organisations-subject-to-the-jurisdiction-of-the-tribunal (accessed 20 April 2024).

for judges,[94] mirroring the requirements for ICJ Judges,[95] and which quickly established itself as a leading IAT with its pathbreaking *de Merode* decision.[96] The establishment of the WBAT was soon followed by that of the IDBAT in 1981.[97] The ATBIS was then established in 1987,[98] the ADBAT in 1991,[99] the IMFAT in 1994,[100] the AfDBAT in 1997[101] and the EBRDAT in 2007.[102]

There has also been a steady growth of IATs in regional organizations, such as the creation of the OASAT in 1971,[103] the MERCOSUR Administrative Tribunal in 2003,[104] the EUCST in 2004 (abolished in 2016),[105] the AUAT in 2010[106] and the CARICOM Administrative Tribunal in 2019.[107]

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[94] WBAT Statute, art. IV.1 (stipulating that members of the Tribunal 'shall be persons of high moral character and must possess the qualifications required for appointment to high judicial office or be jurisconsults of recognized competence in relevant fields such as employment relations, international civil service and international organization administration').

[95] ICJ Statute, art. 2. Indeed, it has been noted that the WBAT has seen three former presidents of the ICJ among its judges, as well as several former Judges of the ICJ. See Opening Remarks delivered by Jan Paulsson to the symposium on the Development and Effectiveness of international Administrative law (Washington D.C., 23 March 2010), in O. Elias, ed., *The Development and Effectiveness of International Administrative Law: On the Occasion of the Thirtieth Anniversary of the World Bank Administrative Tribunal* (2012), at 4.

[96] See discussion in Chapter 4, Section III.A.1. See also C.F. Amerasinghe, 'The Implications of the *de Merode* Case for International Administrative Law', (1983) 43 *Heidelberg Journal of International Law* 16-34.

[97] See 'World Bank Administrative Tribunal', available at https://tribunal.worldbank.org/ (accessed 20 April 2024); 'IDB: Administrative Tribunal', available at https://www.IDB.org/en/who-we-are/transparency/administrative-tribunal/administrative-tribunal-frequently-asked-questions (accessed 20 April 2024).

[98] See website of the Tribunal at https://www.bis.org/about/at_bis.htm (accessed 20 April 2024).

[99] See introduction to the annual report of the Tribunal, available at https://www.adb.org/documents/administrative-tribunal-annual-report-2022 (accessed 20 April 2024).

[100] See C. Goldman, 'The International Monetary Fund Administrative Tribunal: Its First Six Years', (1994-1999) 1 *International Monetary Fund Administrative Tribunal Reports* (2000), 1.

[101] 'Terms of Reference of the African Development Bank Administrative Tribunal', available at https://www.afdb.org/fileadmin/uploads/afdb/Documents/Administrative-Tribunal/Administrative%20Tribunal%20-%20Terms%20of%20Reference.pdf (accessed 20 April 2024).

[102] See *infra* note 345.

[103] See information on the website of the Tribunal at https://www.oas.org/ext/en/main/oas/our-structure/agencies-and-entities/tribad/ (accessed 20 April 2024).

[104] MERCOSUR, Grupo Mercado Común resolution 54/03, 'Tribunal Administrativo-Laboral del Mercosur', Doc. MERCOSUR/GMC/RES N°54/03, 10 December 2003, available at https://www.tprmercosur.org/es/tal.htm (accessed 20 April 2024).

[105] See *infra* note 290 and accompanying text.

[106] See *infra* notes 300-304 and accompanying text.

[107] See 'Press Release on the Caribbean Community Administrative Tribunal (CCAT)', available at https://caricom.org/press-release-on-the-caribbean-community-administrative-tribunal-ccat/ (accessed 20 April 2024). See also de Cooker, *supra* note 7, at 238.

International organizations focused on other specific areas also have gradually established administrative tribunals, such as the CSAT in 1995[108] and the ESMAT in 2013.[109] The OIF set up a two tier-system, composed of the TPIOIF established in 2010 and the TAOIF established in 2014.[110]

It is also worth noting that several organizations have carried out significant reforms of their IATs. In a major development for international administrative law, dissatisfaction with the UNAdT brought about a full-scale reform of the UN internal justice system,[111] leading to the creation of the UNDT and UNAT in 2009.[112] Another significant reform occurred in the EU, with staff cases moving from the European Court of Justice to the newly-established EUCST in 2004, followed by another reform in 2016 with the abolition of the EUCST and the handling of staff cases returning to an enlarged GCEU.[113] This reform was undertaken in conjunction with an expansion of the GCEU from 40 Judges in December 2015 to 47 judges on 1 September 2016 and ultimately to two judges per Member State as from 1 September 2019.[114] Thus, the seven-judge EUCST was dissolved, while the GCEU was increased by seven members and given jurisdiction over administrative law matters previously handled by the EUCST. Other smaller organizations have also reformed their administrative tribunals,

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[108] See CSAT Statute, art. I.

[109] 'Administrative Tribunal ESMAT', available at https://www.esm.europa.eu/how-we-work#administrative_tribunal_(esmat) (accessed 20 April 2024).

[110] The *Règlement* of the *Tribunal de première instance* entered into force on 28 September 2010. The *Règlement* of the *Tribunal d'appel* entered into force on 20 January 2014.

[111] For the official report that triggered the reform, see 'Report of the Redesign Panel on the United Nations System of Administration of Justice', 28 July 2006, UN Doc. A/61/205. For additional scholarly commentary, see A. Reinisch and C. Knahr, 'From the United Nations Administrative Tribunal to the United Nations Appeals Tribunal – Reform of the Administration of justice System within the United Nations', (2008) 12 *Max Planck Yearbook of United Nations law* 447-483; P. Hwang, 'Reform of the Administration of Justice System at the United Nations', (2009) 8 *Law and Practice of International Courts and Tribunals*, 181-224; L. Otis and E.H. Reiter, 'The Reform of the United Nations Administration of Justice System: The United Nations Appeals Tribunal after One Year', (2011) 10 *Law and Practice of International Courts and Tribunals* 405-428.

[112] UNGA resolution A/RES/63/253, 24 December 2008, *Administration of justice at the United Nations*, paras. 26-27.

[113] See *infra* note 290 and accompanying text.

[114] Regulation 2015/2422 of the European Parliament and of the Council of 16 December 2015, amending Protocol No 3 on the Statute of the Court of Justice of the European Union.

including the EBRD[115] and the Commonwealth Secretariat.[116] Still others have carried out extensive reviews of their internal justice mechanisms without necessarily triggering a reform.[117]

Finally, mention should be made of the trend in recent years for international organizations having opted to submit disputes to the ILOAT to withdraw from that arrangement, either to establish their own dispute resolution mechanism or to join a different multijurisdictional tribunal, frequently out of dissatisfaction with a prior judgment of the ILOAT, creating a potentially dangerous trend of 'forum shopping.'[118] For example, the IFAD left the ILOAT in March 2020, having joined the UNAT in December 2019.[119] It cited three reasons for this departure: (1) 'lack of jurisprudential consistence and foreseeability, as well as appropriate weight of proportionality of decisions'; (2) dissatisfaction with the 'beyond a reasonable doubt' standard employed by the ILOAT in disciplinary cases; and (3) the length of time it took the ILOAT to render decisions.[120] The Universal Postal Union left the ILOAT in 2021, following an ILOAT decision reinstating several staff members whose posts had been abolished due to budgetary constraints.[121] The Technical Centre for Agricultural and Rural Cooperation left the ILOAT in 2018 to establish its own tribunal, the organization ceasing operations in 2020.[122] De Cooker comments that 'It is rather obvious that the actions of the [Technical Centre's] management were a reaction to the ILOAT's jurisprudence regarding

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[115] N. Seiler, 'Evolution of the Grievance System of the European Bank for Reconstruction and Development: Lessons Learnt and Way Forward' in P. Quayle, ed., *The Role of International Administrative Law at International Organizations* (AIIB Yearbook of International Law, vol. 3) (2021), at 172-187.

[116] A. Lacourt, 'The Commonwealth Secretariat Arbitral Tribunal: The Evolution and Explanation of Changes to the Tribunal's Statute', in P. Quayle, ed., *The Role of International Administrative Law at International Organizations* (AIIB Yearbook of International Law, vol. 3) (2021), at 191-212.

[117] See 'External Panel of Experts' Review of the IMF's Dispute Resolution System', *IMF eLibrary*, 9 June 2022, available at https://www.elibrary.imf.org/view/journals/007/2022/032/article-A002-en.xml (accessed 20 April 2024).

[118] For a useful commentary on this issue, see de Cooker, *supra* note 7, at 239-241; see also 'Initial review of the jurisdictional set-up of the United Nations common system: Report of the Secretary-General', 15 January 2021, UN Doc. A/75/690, para. 17.

[119] de Cooker, *supra* note 7, at 240.

[120] *Ibid.* (citing *IFAD's Withdrawal from the Jurisdiction of the Administrative Tribunal of the International Labour Organization (ILOAT) and its Submission to the Jurisdiction of the United Nations Appeals Tribunal (UNAT) based on the Assessment and Recommendations Outlined in EB 2019/126/R.35*, IFAD EB 2019/126/C.R.P.1/Rev.2 (6 May 2019); *IFAD's Appeals Process: Assessment and Recommendations*, IFAD EB 2019/126/R.35 (6 May 2019)).

[121] de Cooker, *supra* note 7, at 240-241.

[122] de Cooker, *supra* note 7, at 239-240.

it.'[123] The WMO left the ILOAT in 2017 to join the UNAT.[124] De Cooker states that '[t]here is not much information in the public domain concerning the reasons behind the withdrawal, but it was most likely prompted by some judgments from the ILOAT.'[125] Additional examples include the PCA (left the ILOAT in 2016 and established its own arbitration mechanism to resolve staff disputes)[126] and the Organisation for International Carriage by Rail (left the ILOAT in March 2018, having joined the ATCE in December 2017).[127]

B. Proposals to merge or harmonize the work of the Tribunals

Ever since IATs began to proliferate, there have been voices trying to reverse this trend, calling for their merger, or at least the coordination of their work. Such calls have been particularly acute among organizations which form part of a coordinated system, such as the UN Common System, the Co-ordinated organizations and the EU.[128] Already in 1958, Bedjaoui wrote that the division of competence *ratione personae* between two tribunals was a sort of historical accident and the creation of a common tribunal for the UN and all its specialized agencies 'remained the end goal.'[129] In 1973, Lachs in a declaration appended to the Advisory Opinion on *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal*, called for the creation of a new appellate tribunal, both to remedy weaknesses he saw in the review procedure by the ICJ and to avoid divergent jurisprudence between the ILOAT and UNAdT on common questions.[130]

In 1978, following an advisory opinion requested by the ILO and issued by three ILOAT judges in their individual capacity, which concluded that the introduction of a new salary scale

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[123] *Ibid.* at 240.

[124] Initial review of the jurisdictional set-up of the United Nations common system: Report of the Secretary-General, *supra* note 118, para. 17.

[125] de Cooker, *supra* note 7, at 239.

[126] 'Initial review of the jurisdictional set-up of the United Nations common system: Report of the Secretary-General', *supra* note 118, para. 17.

[127] de Cooker, *supra* note 7, at 239.

[128] For a description of these coordinated systems, see Ullrich, *supra* note 87, at 43-46.

[129] M. Bedjaoui, *Fonction publique internationale et influences nationales* (1958), 573.

[130] ICJ, *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal*, Advisory Opinion of 12 July 1973, Declaration of President Lachs, *ICJ Reports 1973*, at 214. See also his further reflections on this question in M. Lachs, 'The Judiciary and the International Civil Service: Some Suggestions', in *Liber amicorum honouring Ignaz Seidl-Hohenveldern* (1988), 301 at 310-313.

in Geneva required prior negotiation with the staff union,[131] the UNGA expressed concern about the discordant responses of several organizations and requested the UNSG 'to study the feasibility of establishing a single administrative tribunal for the entire common system'[132]. Working papers on the possibility of a joint tribunal were prepared by the UN Office of Legal Affairs, the International Labour Office and by an external consultant.[133] Taking stock of this research and comments at an *ad hoc* meeting of Legal Advisers, the UNSG took the position that 'over the nearly 30 years that the two Tribunals have operated side by side, no real divergence in jurisprudence has arisen.'[134] He thus called for efforts to be concentrated on harmonizing the statutes, rules and practices of the two tribunals.[135]

In 1984, following inter-agency and staff consultations, the Secretary General revisited the issue, publishing a report on the feasibility of establishing a single administrative tribunal. In it, he proposed replacing review by the ICJ with a review by a grand panel of senior judges of the UNAdT and the ILOAT, or judges of other administrative tribunals such as the WBAT.[136] The proposal was reiterated by the UNSG in subsequent reports and in 1988 the UN Legal Counsel chaired fourteen consultative meetings on the topic, bringing together stakeholders from both the UNAdT and the ILOAT.[137] However, when discussions reached the Fifth Committee, States were reticent to change the status quo, noting that 'for historical reasons, the administrative tribunals of the International Labour Organisation and of the rest of the United Nations system had remained separate.'[138] The UNGA '[d]ecided to retain, pending

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[131] UNGA, 'Report of the International Civil Service Commission', UN Doc. A/33/30 (Supp), paras. 21-25.

[132] UNGA resolution A/RES/33/119, 19 December 1978, *Report of the International Civil Service Commission*, para. I.2.

[133] 'Initial review of the jurisdictional set-up of the United Nations common system: Report of the Secretary-General', *supra* note 118, paras. 44-45.

[134] 'Feasibility of establishing a single administrative tribunal: Report by the Secretary-General', 9 November 1979, UN Doc. A/C.5/34/31, para. 6.

[135] *Ibid.*, para. 13. For a detailed doctrinal description of this episode and analysis of the possibility of merger or harmonization, arguing firmly in favour of the latter, see P. Tavernier, 'La fusion des tribunaux administratifs des Nations Unies et de l'O.I.T. : nécessité ou utopie ?', (1979) 25 *Annuaire Français de Droit International* 442-459.

[136] 'Administrative and Budgetary Co-ordination of the United Nations with the Specialized Agencies of the International Atomic Energy Agency: Feasibility of Establishing a Single Administrative Tribunal, Report of the Secretary-General', 20 September 1984, UN Doc. A/C.5, 39/7, para. 75.

[137] 'Feasibility of establishing a single administrative tribunal: Report by the Secretary-General', *supra* note 134, paras. 51-52.

[138] UNGA, Fifth Committee, Summary record of the 43rd meeting held on 17 November 1989, UN Doc. A/C.5/44/SR.43 (24 November 1989), para. 15 (intervention of the Federal Republic of Germany).

further consideration, the existing statute of the Administrative Tribunal of the United Nations' and '[r]equested the Secretary-General to revert to this matter, when appropriate, taking into account … comments of Members States.'[139]

In 2000, a report of the JIU recommended that closer working relationships be encouraged between the UNAdT and the ILOAT, with a view to rationalizing their competence and harmonizing their jurisprudence.[140] In 2001, the UNGA took note of the intention of the JIU to continue to examine this question,[141] and in 2002, a JIU report recommended the establishment of an *ad hoc* panel that would review judgments of the ILOAT and UNAdT, or a future single tribunal.[142] The President of the UNAdT strongly opposed this recommendation, stating that the UNAdT was 'itself, in effect, a court of appeal from lower-level quasi-judicial bodies and, as such, satisfies the need for such a review.[143] In 2003, the UNGA noted 'that the staff of the United Nations Secretariat and the specialized agencies are subject to two different systems of administration of justice, and in this regard requests the Joint Inspection Unit to continue to study the possibility of harmonizing the statutes of the United Nations Administrative Tribunal and the International Labour Organization Administrative Tribunal.'[144]

In its 2004 report, the JIU backed away from any notion of merger towards the firm position that the statutes of the UNAdT and the ILOAT should be harmonized. It stressed that while it considered 'that a single internal justice system [was] a desirable future goal of the

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[139] UNGA Decision 44/413, *Harmonization of the statutes, rules and practices of the administrative tribunals of the International Labour Organisation and of the United Nations*, paras. (a)-(b), published in Resolutions and Decisions adopted by the General Assembly during its Forty-Fourth Session, Volume I, 19 September – 29 December 1989, UN Doc. A/44/49, at 335. See also discussion of the matter in 'Feasibility of establishing a single administrative tribunal: Report by the Secretary-General', *supra* note 134, paras. 49-54.

[140] 'Report of the Joint Inspection Unit on the administration of justice at the United Nations', prepared by Fatih Bouayad-Agha and Homero L. Hernández, UN Doc. JIU/REP/2001/1 (annexed to 'Report of the Joint Inspection Unit on the administration of justice at the United Nations: Note by the Secretary-General', 12 June 2000), UN Doc. A/55/57), Recommendation 5.

[141] UNGA resolution A/RES/55/258, 14 June 2001, *Human resources management*, Part XI, para. 10.

[142] JIU, 'Reform of the Administration of Justice in the United Nations System: Options for Higher Recourse Instances', prepared by F. Bouayad-Agha and H. L. Hernández, June 2002, UN Doc. JIU/REP/2002/5 (annexed to 'Report of the Joint Inspection Unit on Reform of the Administration of Justice in the United Nations System: Options for Higher Recourse Instances: Note by the Secretary-General', 27 September 2002, UN Doc. A/57/441), Recommendation 5.

[143] Letter dated 8 November 2002 from the President of the United Nations Administrative Tribunal addressed to the Chairman of the Fifth Committee, 20 November 2002, UN Doc. A/C.5/57/25, at 3, para. 9.

[144] UNGA resolution A/RES/57/307, 15 April 2003, *Administration of justice in the Secretariat*, para. 15.

United Nations system', unification of the two tribunals did 'not appear to be achievable in the short term for a number of reasons, including the strong opposition to it by staff of both the United Nations and the ILO,' adding that '[n]either would such unification achieve, as has been stressed in previous reports, any significant benefits or efficiency gains.'[145] In 2005, the UNGA stressed 'the importance of the eventual harmonization of the statutes of the United Nations Administrative Tribunal and the International Labour Organization Administrative Tribunal.'[146] It was at this point that the UNGA created the 'redesign panel' and mandated it with proposing an entirely new model for internal justice within the United Nations.[147] In its 2006 report, the redesign panel observed that while 'complete harmonization [was] not possible', it considered that 'there should be harmonization of jurisprudence, powers and status so as to ensure, so far as is practicable, equal treatment of the staff members of specialized agencies and those of the United Nations itself.'[148]

Most recently, discussions on merging or at least coordinating the work of the ILOAT and the UNDT/UNAT surfaced yet again in the context of conflicting decisions by those tribunals relating to a decision of the ICSC to change the Post Adjustment Multiplier for staff members in Geneva, leading to a reduction in their salary. Geneva-based staff members of organizations within the UN common system who were subject to the ICSC decision contested it in the ILOAT and the UNDT (depending on which tribunal had jurisdiction over their respective organization). The ILOAT annulled the decision, holding that the ICSC did not have the power to establish post adjustments.[149] Even while the matter was still pending before the UNDT, the UNGA was already weary of a conflict. In December 2019, it expressed 'concern at the application of two concurrent post adjustment multipliers in the United Nations common system at the Geneva duty station' and noted 'with concern that the organizations of the United Nations common system face the challenge of having two independent administrative tribunals

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[145] JIU, 'Administration of Justice: Harmonization of the Statutes of the United Nations Administrative Tribunal and the International Labour Organization Administrative Tribunal', prepared by W. Münch, Victor V. and M. D. Wynes, 2004, UN Doc. JIU/REP/2004/3, para. 10.

[146] UNGA resolution A/RES/59/283, 13 April 2005, *Administration of justice at the United Nations*, para. 45.

[147] *Ibid.*, paras. 47-50.

[148] 'Report of the Redesign Panel on the United Nations System of Administration of Justice', 28 July 2006, UN Doc. A/61/205, para. 96.

[149] ILOAT Judgment No. 4134 (2019), *B. and others v. ILO*; ILOAT Judgment No. 4135 (2019), *K. A. and others v. WHO*; ILOAT Judgment No. 4136 (2019), *A., G., P. and R. v. IOM*; ILOAT Judgment No. 4137 (2019), *C.B. (No. 2), d. A.-P., M. and R. v. ITU*; ILOAT Judgment No. 4138 (2019), *G. and others v. WIPO*.

with concurrent jurisdiction among the organizations of the common system'[150]. Accordingly, it requested the UNSG to conduct a review of the jurisdictional setup of the common system and submit the findings of the review and recommendations to the General Assembly as soon as practicable.[151] In mid-2020, the UNDT handed down its judgments on the same question, reaching the opposite conclusion as the ILOAT, i.e. that the ICSC had the power to establish post adjustments.[152] These judgments were upheld by the UNAT.[153]

In response to the UNGA's request, the UNSG's initial report proposed various options for harmonizing the jurisprudence, ranging from maintenance of the status quo to the abolition of the current tribunals and creation of a new single tribunal.[154] While the creation of a new tribunal did not find favour among any of the stakeholders, there was some support for a proposal to establish a joint chamber of the ILOAT and UNAT to issue interpretative, preliminary and/or appellate rulings in cases involving ICSC recommendations and decisions.[155] While less drastic options — such as facilitating submissions by the ICSC during litigation on matters relevant to it before either tribunal and facilitating the provision of guidance by the ICSC on how best to implement such decisions — gained even more favour among stakeholders, the idea of establishing a joint chamber was further pursued in subsequent reports of the UNSG, which went so far as to offer detailed suggestions as to its composition, competence, procedure, costs and implementation,[156] as well as to provide draft amendments to the statutes of the ILOAT, UNDT and UNAT in order to establish the joint chamber.[157] However, the proposal was not well-received by the ICSC, UNAT or ILOAT.[158] Ultimately,

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[150] UNGA resolution A/RES/74/255(B), 27 December 2019, *United Nations common system*, paras. 7-8.

[151] *Ibid.*, para. 8.

[152] UNDT/2020/106, *Abd Al-Shakour et al.*; UNDT/2020/107, *Cardenas Fischer et al.*; UNDT/2020/133, *Abd Al-Shakour et al.*; UNDT/2020/154, *Aksioutine et al.*

[153] See, e.g., 2021-UNAT-1107 (en banc), *Abd Al-Shakour et al. Aksioutine et al. v. UNSG*, paras. 48-49.

[154] 'Initial review of the jurisdictional set-up of the United Nations common system: Report of the Secretary-General', *supra* note 118, paras. 94-132.

[155] 'Review of the jurisdictional set-up of the United Nations common system: Report of the Secretary-General', 5 August 2022, UN Doc. A/77/222, paras. 97-105.

[156] 'Review of the jurisdictional set-up of the United Nations common system: Report of the Secretary-General', 4 August 2023, UN Doc. A/78/154, paras. 25-53.

[157] *Ibid*., Annex I.

[158] *Ibid.*, Annexes II-IV.

both the Governing Body of the ILO and the UN Fifth Committee decided not to pursue the matter further.[159]

A strong case for a single IAT could be made with respect to the 'Co-ordinated Organisations',[160] since the very purpose of that co-ordination, when established in 1958, was to harmonize rules and practices on remuneration, entitlements and pensions.[161] Calls to establish a single administrative tribunal for all Co-ordinated organisations were made as early as 1962, just four years after the creation of the co-ordinated system. They were revived again in 1978 in the context of coordination of pension scheme rules and in the 1980s following diverging decisions of the organisations' appeals boards relating to a crisis levy and abatement on salaries. The legal advisors of the Co-ordinated organisations discussed the idea of a common appeals board in 1977, 1978, 1980, 1981 and 1986.[162] Ultimately, however, the separate appeals boards within each of the Co-ordinated organisations, rather than merging, were generally converted to separate IATs.[163]

One may also have expected that the international financial institutions could have adopted a common tribunal but, as discussed above, they also established individual IATs.[164]

Ultimately, these various false starts appear to prove Amerasinghe's earlier pronouncement that '[t]he idea of 'unification … is really not generally accepted and is not likely to become a reality in the foreseeable future' and — as he put it perhaps more bluntly — 'would seem to be impractical, unwelcome and, therefore, a lost cause.'[165]

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[159] See 'Conclusion of the review of the jurisdictional set-up of the United Nations common system', 2 February 2024, ILO Doc. GB.350/PFA/INF/11, paras. 4, 6.

[160] For a description of the Co-ordinated Organisations, see *supra* notes 87-93 and accompanying text.

[161] See Fürst and Weber, *supra* note 87, at 2-3.

[162] *Ibid.*, at 11. See also de Cooker, *supra* note 7, at 242.

[163] See *supra* notes 87-90 and accompanying text.

[164] See *supra* notes 97-102 and accompanying text.

[165] C.F. Amerasinghe, 'The Future of International Administrative Law', (1996) 45 *International and Comparative Law Quarterly* 773, at 776.

III. REVIEW OF TRIBUNAL JUDGMENTS

While the growing number of IATs share many common features, one noticeable area of divergence concerns the question of review of tribunal judgments, with the statutes of many tribunals stating clearly that the judgments are 'final and without appeal',[166] while some internal justice systems include a full-fledged appellate body.[167] This difference can partly be explained by the evolution of the tribunals themselves: while it used to be the common and accepted practice that the IAT was itself a sort of 'court of last resort' in an internal justice system which already included a recommendation by a joint appeals board followed by a decision by the head of the administration, some newer systems — most notably those put in place in the UN and the OIF — have embraced a two-level judicial procedure.[168] In the meantime, longstanding tribunals such as the ILOAT continue to work with a number of organizations maintaining appeals boards,[169] and other tribunals coming onto the scene have been established without an appeals instance,[170] perhaps modelled on this more traditional structure. Rather than attempt to hypothesize on the reasons for these differences, which no doubt vary from one organization and tribunal to the next, the present section will examine two different solutions for the review of tribunal judgments which have been implemented during the continuing evolution of IATs: first, the former review procedure by the ICJ and, secondly, the growing number of appeals tribunals.

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[166] See, e.g., ILOAT Statute, art. VI.1.

[167] See *infra* Section III.B.

[168] On the issue whether appeals boards can still today be considered to constitute a neutral first-instance process, see, 2019-UNAT-949, *Sheffer v. Secretary-General of the International Maritime Organization*; 2019-UNAT-952, *Rolli v. Secretary-General of the World Meteorological Organization*; 2019-UNAT-957, *Spinardi v. Secretary-General of the International Maritime Organization*; 2019-UNAT-958, *Dispert and Hoe v. Secretary-General of the International Maritime Organization*; 2020-UNAT-983, *Webster v. Secretary-General of the International Seabed Authority*. See also the comparative analysis of several joint appeals boards in international financial institutions offered in Omari, 'Should an appeal mechanism be introduced against ruling by the courts of International Financial Institutions? Multilateral Development Banks: The Good, the Bad and the Ugly', in V. Ranaldi, ed., *Le droit d'appel dans le cadre de la justice administrative internationale* (2020) 43, at 44-70.

[169] For example, a number of organizations which provide access to the ILOAT appear to maintain a joint appeals board as a precondition to seizing that tribunal, including: EPO, FAO, IAEA, ICC, INTERPOL, IMO, OPCW, UNESCO, UNIDO, WHO, WIPO and WTO.

[170] For example, the EBRDAT established in 2007 and the NATOAT established in 2013. For a discussion of these mechanisms, see C. de Cooker, 'Pre-Litigation Procedures in International Organisations', in *International Administration: Law and Management Practices in International Organisations* (2009), 784.

A. The former review procedure by the International Court of Justice

Two major IATs, the ILOAT and the UNAdT, had for a period the rather novel arrangement providing for the possibility of judicial review of their judgments by way of an advisory opinion of the ICJ.[171] With respect to the ILOAT, the procedure was introduced in 1946, when the former LoNAT was converted into the ILOAT, through inclusion of Article XII in the ILOAT statute.[172] As discussed above, this was due in no small part to a 'legitimacy crisis' for international administrative law during the period of the LoN, in which amounts awarded to thirteen staff members by the LoNAT were not paid after the Second (Finance) Committee of the LoN concluded that it was not open to the LoNAT to question the validity of a legislative act of the Assembly.[173] The procedure with respect to the UNAdT had an equally colourful beginning: although its statute adopted in 1949 provided for no such review, stating that judgments of the tribunal were 'final and without appeal', in 1953 it awarded a relatively large sum to staff members from the United States of America who had been dismissed for 'subversive' activities.[174] Disappointment of certain UN Member States over these awards led to the request for an advisory opinion of the ICJ on whether the UNGA could refuse to honour them.[175] When the Court concluded that the UNGA could not refuse, those same Member States were doubly disappointed. The representative of the United States of America in the Fifth Committee raised the importance of judicial review of the UNAdT's judgments to avoid 'miscarriages of justice' in the future.[176] A Special Committee was established and, on its recommendation, after a lengthy and sometimes lively discussion among Member States in the

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[171] For a full treatment of this former practice, see C.F. Amerasinghe, 'Cases of the International Court of Justice relating to employment in international organizations', in *Fifty Years of the International Court of Justice: Essays in honour of Sir Robert Jennings* (1996), at 193-209; W. Choi, 'Judicial review of International Administrative Tribunal judgments', in *Contemporary issues in international law: essays in honour of Louis B. Sohn* (1984), at 347-370; J. Gomula, 'The International Court of Justice and Administrative Tribunals of International Organizations', (1991) 13(1) *Michigan Journal of International Law* 83-121; J. Gomula, 'The Review of Decisions of International Administrative Tribunals by the International Court of Justice', in O. Elias, ed., *The Development and Effectiveness of International Administrative Law: On the Occasion of the Thirtieth Anniversary of the World Bank Administrative Tribunal* (2012), at 349-373; K.H. Kaikobad, *The International Court of Justice and judicial review : a study of the Court's powers with respect to judgments of the ILO and UN Administrative Tribunals* (2000); R. Ostrihansky, 'Advisory Opinions of the International Court of Justice as Reviews of Judgments of International Administrative Tribunals', (1988) 17 *Polish Yearbook of International Law* 101-122.

[172] Ostrihansky, *supra* note 171, at 102.

[173] See *supra* note 79.

[174] Choi, *supra* note 171, at 347.

[175] *Ibid.*

[176] UNGA, Fifth Committee, summary record of the 474th meeting, 3 December 1954, UN Doc. A/C.5/SR.474, at 271, paras. 52-54.

Fifth Committee,[177] a new Article 11, providing for review by the ICJ, was included in the UNAdT statute as part of the UNGA's resolution 957(X).[178]

According to (former) Article XII of the ILOAT statute, the Governing Body of the International Labour Office or the Administrative Board of the pensions Fund could challenge before the ICJ an ILOAT decision confirming its jurisdiction or argue that the decision was 'vitiated by a fundamental fault in the procedure followed' and '[t]he opinion given by the Could shall be binding.'[179] Under (former) Article 11 of the UNAdT statute, applications for review of UNAdT judgements could be submitted by Member States, the UNSG or the person in respect of whom a judgement had been rendered, to a Committee on Applications for Review of Administrative Tribunal Judgements, which was specially created for this purpose.[180] There were four grounds for applying for review: (a) the UNAdT exceeded its jurisdiction or competence, (b) it failed to exercise jurisdiction vested in it, (c) it erred on a question of law relating to the provisions of the UN Charter, or (d) it committed a fundamental error in procedure which occasioned a failure of justice.[181] The Committee, a political body, could decide (in closed session) whether or not to forward requests for review on to the ICJ, which had a major chilling effect on the procedure as a whole: of the ninety-six requests for review filed with the Committee between 1955 and 2016, only three were submitted by the Committee to the ICJ and resulted in a review by the ICJ.[182]

Thus, the system of review at the ILOAT and UNAdT differed quite substantially, including who could request review (at the ILOAT, notably, this possibility was not open to the staff member), how that review was requested (at the UNAdT in particular, requests had to be channeled through the Committee on Applications for review of Administrative Tribunal

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[177] See UNGA, Fifth Committee, summary record of the 493rd-501st and 505th meetings, UN Docs. A/C.5/SR.493-501 and 505 (17-31 October 1955 and 4 November 1955).

[178] Choi, *supra* note 171, at 348; Ostrihansky, *supra* note 171, at 103.

[179] Former art. XII of the ILOAT statute, reprinted in *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development*, Documents transmitted to the Court by the IFAD, Annex III. By virtue of an Annex to the ILOAT Statute, the same procedure applied with respect to the Executive Board of an organization having accepted the jurisdiction of the ILOAT. *Ibid.*

[180] Ostrihansky, *supra* note 171, at 103. The Committee was composed of States the representatives of which had served on the General Committee of the most recent regular session of the General Assembly. *Ibid.*

[181] *Ibid.*

[182] H. Thierry, 'Some Changes in International Administrative Justice', (1996) 90 *ASIL Proceedings* 331.

Judgements), and on what grounds such a request could be made (the ILOAT having two limited grounds and the UNAdT having four different grounds).

In the life of this procedure, the ICJ reviewed judgments of the ILOAT and UNAdT on five occasions, beginning in 1956 with an application for review concerning the ILOAT, then considering three applications for review of the UNAdT (in 1973, 1982 and 1987) and, twenty-five years later, considering in 2012 another application for review emanating from the ILOAT. In all cases the ICJ affirmed the judgment of the tribunal in question.

In the 1956 case concerning *Judgments of the Administrative Tribunal of the ILO upon Complaints Made against UNESCO*, the ILOAT upheld the complaints of four UNESCO staff members whose fixed-term appointments had not been renewed. UNESCO challenged these judgments before the ICJ, contending that the staff members concerned had no legal right to renewal. The Court found in favour of the staff members, concluding that an administrative memorandum which had announced that all holders of fixed-term contracts would, subject to certain conditions, be offered renewals, might reasonably be regarded as binding on the Organization and that it was sufficient to establish the jurisdiction of the ILOAT.[183]

After that first case, the procedure was not invoked again for almost twenty years. There then followed three applications for review of Judgments of the UNAdT during the 1970s and 1980s. The 1973 *Application for Review of Judgment No. 158 of the United Nations Administrative Tribunal*, initiated by the staff member, concerned the *Fasla* decision of the UNAdT upholding the UNSG's decision not to renew the staff member's fixed-term appointment. In its advisory opinion, the ICJ upheld the UNAdT judgement, finding that the Tribunal had not failed to exercise the jurisdiction vested in it and had not committed a fundamental error in procedure having occasioned a failure of justice.[184] Perhaps the most notable aspect of this advisory opinion is not the ICJ's treatment of Judgment No. 158 itself, but the lengthy analysis it engages in before reaching that review, in which it addresses overarching questions concerning the review procedure, including the legitimacy of the Committee on Applications for Review of Administrative Tribunal Judgments, as well as the

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[183] ICJ, *Judgments of the Administrative Tribunal of the ILO upon Complaints Made against UNESCO*, Advisory Opinion, *ICJ Reports 1956*, at 95-97.

[184] ICJ, *Application for Review of Judgment No. 158 of the United Nations Administrative Tribunal*, Advisory Opinion, *ICJ Reports 1973*, at 213.

position of the individual staff member in the process and challenges concerning equality of the parties.[185]

The 1982 *Application for Review of Judgment No. 273 of the United Nations Administrative Tribunal* concerned a case before the UNAdT in which a former staff member of the UN Secretariat had challenged the UNSG's refusal to pay him a repatriation grant. The UNAdT having found in favour of the staff member, the United States Government addressed an application for review of this judgment to the Committee on Applications for Review of Administrative Tribunal Judgements, which in turn requested an advisory opinion of the ICJ. The latter concluded that the UNAdT had not erred on a question of law relating to the provisions of the UN Charter, since it had only applied what it had found to be the relevant Staff Regulations and Staff Rules made under the authority of the UNGA. It further concluded that the UNAdT had not exceeded its jurisdiction or competence, since its jurisdiction included the scope of the Staff Regulations and Rules.[186]

The 1987 *Application for Review of Judgment No. 333 of the United Nations Administrative Tribunal*, initiated by the staff member, concerned a UNAdT judgement upholding the UNSG's decision not to renew the appointment of a staff member of the Secretariat beyond the date of expiry of his fixed-term contract. In its Advisory Opinion, the ICJ found that the UNAdT had established that there had been 'reasonable consideration' of the applicant's case and that it had committed no error on a question of law relating to the provisions of the Charter.[187]

The procedure for review of UNAdT judgements was discontinued in 1995 by virtue of UNGA Resolution 50/54, which deleted Article 11 from the UNAdT statute.[188] Another two decades passed before the ICJ reviewed one last judgment of the ILOAT. The 2012 case concerning *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural*

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[185] *Ibid.*, at 170-183, paras. 11-40.

[186] ICJ, *Application for Review of Judgment No. 273 of the United Nations Administrative Tribunal*, Advisory Opinion, *ICJ Reports 1982*, at 364-366.

[187] ICJ, *Application for Review of Judgment No. 333 of the United Nations Administrative Tribunal*, Advisory Opinion, *ICJ Reports 1987*, at 48 and 72.

[188] UNGA resolution A/RES/50/54, 11 December 1995, *Review of the procedure provided for under Article 11 of the Statute of the Administrative Tribunal of the United Nations*, para. 1.a).

Development arose out of a dispute between IFAD, a UN specialized agency, and a former staff member of the Global Mechanism, which is housed by IFAD. Following a judgment by the ILOAT ordering IFAD to pay the staff member monetary compensation, as well as moral damages and costs, on account of the abolition of her post and refusal to renew her contract, IFAD requested review by the ICJ, arguing that the Global Mechanism was not an organ of IFAD and consequently that its acceptance of the jurisdiction of the ILOAT did not give the staff member access to that tribunal. The ICJ found in favour of the staff member, concluding that she was an official of IFAD and that the ILOAT was therefore competent *ratione personae* to consider her complaint. It also considered that her complaint concerned allegations of non-observance of her terms of appointment or of the provisions of the staff regulations and rules of the Fund, thus confirming the ILOAT's competence *ratione materiae.*[189]

The review procedure was criticized for creating a situation of inequality between the parties, including both equality of access to the Court and equality before the Court. The Court in its advisory opinion noted that 'questions may now properly be asked whether the system established in 1946 meets the present-day principle of equality of access to courts and tribunals.[190] Concerning equality before the Court, the ICJ acknowledged that 'the process was not without its difficulties', such as that the individual could only submit information to the Court through the Organization, i.e. the adverse party, and the Organization had initially failed to transmit such communications.[191] Judge Greenwood in his declaration appended to the Advisory Opinion was even more forceful in his criticisms, calling the problem of equality of access 'a fundamental flaw in the system created by Article XII' which is 'at odds with contemporary concepts of due process and the integrity of the judicial function.'[192] Concerning the potential inequality in the proceedings, he considered them 'incompatible with modern notions of justice and due process', which 'amounted to treating Ms Saez García as a spectator rather than a participant in proceedings whose outcome would have a direct and substantial

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[189] ICJ, *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, *ICJ Reports 2012*, at 43-47.

[190] ICJ, *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, *ICJ Reports 2012*, at 29, para. 44.

[191] *Ibid.* at 30, para. 46.

[192] ICJ, *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, *ICJ Reports 2012*, Declaration of Judge Greenwood, para. 3.

effect on her.'[193] Similar critiques had been raised in the scholarly literature.[194] As a direct result of these concerns, Article XII of the ILOAT Statute was repealed in June 2016[195] and the system of review of IAT judgments by the ICJ came to a decisive conclusion.

B. The growth of appeals tribunals

It is generally accepted that, outside criminal proceedings, there is no requirement that legal systems include an appellate procedure in order to comply with international law.[196] Thus, the fact that an IAT has no possibility of appeal to a higher tribunal does not in itself violate international law. Nevertheless, there is a widespread view that such recourse to an appellate mechanism in international administrative law is desirable.[197]

Beginning even before the dissolution of the ICJ review procedure, calls for a *bona fide* appellate procedure for the major IATs were sometimes raised. In this context, the majority of organizations accepting the jurisdiction of the ILOAT and the UNAdT provided a first level of review by means of an appeals board composed of staff members of the organization, who could make only non-binding recommendations to the head of the organization.[198] Thus, the ILOAT or UNAdT was the first and last truly judicial instance for the resolution of a dispute, a situation viewed by some as unsatisfactory. For example, during a symposium held in 1976 by the Federation of International Civil Service Associations on Recourse Procedures in the

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[193] *Ibid.*, para. 4.

[194] See, e.g., Gomula, *supra* note 171, at 105; Ostrihansky, *supra* note 171, at 114-117; Choi, *supra* note 171, at 349-353.

[195] International Labour Conference, *Resolution concerning the Statute of the Administrative Tribunal of the International Labour Organization*, 7 June 2016 (stating in its first preambular paragraph that the General Conference of the ILO was '[c]onscious of the need to repeal article XII of the Tribunal's Statute and article XII of its annex in order to ensure equality of access to justice for employing institutions and official alike'). See also International Labour Office, Governing Body, 'Matters relating to the Administrative Tribunal of the ILO: Proposed amendments to the Statute of the Tribunal', ILO Doc. GB.326/PFA/12/1 (18 February 2016).

[196] See, e.g., Human Rights Committee, General Comment No. 32 (2007), para. 46 (referring to the right of appeal in criminal proceedings under Art. 15.5 of the International Covenant on Civil and Political Rights and stating that 'Article 14, paragraph 5 does not apply to procedures determining rights and obligations in a suit at law or any other procedure not being part of a criminal appeal process, such as constitutional motions'); ECtHR Registry, 'Guide on Article 6 of the European Convention on Human Rights, Right to a Fair Trial' (updated August 2022), para. 63 (referring to the rights to a fair trial guaranteed in art. 6 of the ECHR and stating that 'Article 6 does not compel the contracting states to set up courts of appeal or of cassation').

[197] Ullrich, *supra* note 87, at 517-518.

[198] As Chris de Cooker observed in 2009, '[a]lmost every international organisation has a joint body, composed of staff members appointed by management and staff representatives, which gives advice to the appointing authority concerning complaints lodged by staff members.' See de Cooker, *supra* note 170, at 784.

Organization of the United Nations, 'there was a large degree of agreement that there would be considerable merit in having two degrees of jurisdiction.'[199] One of the recommendations made at that symposium was the establishment of two instances of appeals jurisdiction, either by the conversion of the joint appeals boards into full-fledged tribunals issuing binding decisions or by the establishment of a supreme tribunal to rule on appeals from the existing tribunals[200]. The JIU in 1986 took the position that a 'system of two-stage judicial appeals is one of the basic principles of democratic law and is established in most countries. It is, therefore, natural that "such a system should be desired by the United Nations staff for their claims against their employer."'[201] In 1994, the UNSG proposed reforms to the UN internal justice system, including the transformation of joint appeals boards into independent 'arbitration boards' with an external chairperson and with the possibility of issuing binding decisions.[202] He further elaborated this proposal the following year, even providing a draft Statute of a new 'United Nations Arbitration Board', as well as consequent changes to the Statute of the UNAdT, the UN Staff Regulations and the UN Staff Rules.[203] His proposal, however, did not garner the necessary support in the UNGA.[204]

Following the discontinuation of the ICJ review procedure with respect to the UNAdT in 1995, calls for an appellate body intensified. For example, during the General Conference of UNESCO in 1997, the Director-General of that organization submitted proposals to reform the internal justice system that would offer staff and the administration the possibility of appealing a decision of the ILOAT.[205]

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[199] JIU, 'Report of the Joint Inspection Unit on the administration of justice in the United Nations', prepared by E. Ferrer-Vieyra, UN Doc. document JIU/REP/86/8 (annexed to 'Administration of justice in the United Nations: Note by the Secretary General', 23 September 1986, UN Doc. A/41/640), para. 57.

[200] *Ibid.*, para. 58.

[201] *Ibid.*, para. 57 (quoting Report of the Consultant to the Administrative Management Service, G. Wattles, 'Review of Methods and Procedures for Administrative Reviews, Appeals and Processing of Cases for the Administrative Tribunal', November 1981, at 3, para. 5).

[202] 'Reform of the internal system of justice in the United Nations Secretariat: Report of the Secretary-General', 8 November 1994, UN Doc. A/C.5/49/13, paras. 10-13.

[203] 'Reform of the internal system of justice in the United Nations Secretariat: Report of the Secretary-General', 18 March 1995, UN Doc. A/C.5/49/60, paras. 14-33 and Annexes I-III.

[204] JIU, 'Report of the Joint Inspection Unit on the administration of justice at the United Nations', prepared by F. Bouayad-Agha and H. L. Hernández, UN Doc. JIU/REP/2001/1 (annexed to 'Report of the Joint Inspection Unit on the administration of justice at the United Nations: Note by the Secretary-General', 12 June 2000), UN Doc. A/55/57), para. 12.

[205] *Ibid.*, paras. 160-162.

Beginning in 1998, the Legal Advisers of the UN discussed the advisability of introducing a second-tier appellate mechanism for the ILOAT and UNAdT on several occasions, the Legal Adviser of UNESCO arguing particularly strongly in favour of such an appellate body.[206] Although the Legal Advisers as a whole were not inclined to pursue the matter further, the Administrative Committee on Coordination, after examining the report of the Legal Advisers in 1999, requested them to elaborate their views on expanding the existing procedures for review by the Administrative Tribunals themselves through the introduction of an 'extraordinary appeal' process.[207] The President of the UNAdT, in contrast, clearly opposed such a development, stating in a letter to the Chairman of the Fifth Committee that the UNAdT 'strongly believes that there is no need for an additional layer in the appellate machinery.'[208]

The question of an appellate mechanism for IAT judgments was again raised in a 2002 report of the JIU, which observed 'that the elimination of the recourse against [UNAdT] decisions before the International Court of Justice (ICJ) has had the perhaps unintended effect of suppressing the only existing remedy against any possible flaws in the decisions of the Tribunal.'[209] Accordingly, the JIU included as one of its recommendations the establishment of an *ad hoc* panel that would be responsible for reviewing the judgments of the UNAdT and ILOAT.[210] Neither the UNAdT nor the International Labour Office were favourable to the proposal, which ultimately was not pursued.[211]

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[206] JIU, 'Reform of the Administration of Justice in the United Nations System: Options for Higher Recourse Instances', *supra* note 142, paras. 50-55.

[207] Summary of conclusions of the Administrative Committee on Coordination at its second regular session of 1999, 19 November 1999, UN Doc. ACC/1999/20, at 5-6.

[208] Letter dated 8 November 2002 from the President of the United Nations Administrative Tribunal addressed to the Chairman of the Fifth Committee, 20 November 2002, UN Doc. A/C.5/57/25, Annex I, para. 9.

[209] JIU, Reform of the Administration of Justice in the United Nations System: Options for Higher Recourse Instances, *supra* note 142, p. vii.

[210] *Ibid.*, recommendation 5.

[211] See discussion and references in 'Initial review of the jurisdictional set-up of the United Nations common system: Report of the Secretary-General', 15 January 2021, UN Doc. A/75/690, para. 58.

There are currently seven organizations providing for the possibility of appeal in their respective IATs:

1) The UN (decisions of the UNDT and UNRWADT subject to appeal on points of law to the UNAT;

2) The EU (decisions of the GCEU subject to appeal on points of law to the CJEU);

3) The OAS (decisions of the OASAT subject to appeal to a review panel of the OASAT on questions of whether the OASAT exceeded its authority in relation to its jurisdiction, competence or procedures);

4) The OIF (decisions of the TPIOIF subject to appeal on any point to the TAOIF);

5) The Commonwealth Secretariat (decisions of the CSAT original three-judge panel subject to appeal on points of law to a panel of five CSAT Judges different from the original three-judge panel);[212]

6) The African Union (decisions of the African Union AT subject to appeal to the African Court of Justice and Human Rights).[213]

7) The CARICOM (decisions of the CARICOMAT subject to appeal to the CCJ).[214]

Mention should also be made of the former two-tier system at the European University Institute, operational from 2006 to 2022, in which decisions of a single-judge organ of first instance were subject to appeal on points of law to a three-judge organ of appeal.[215] This

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[212] See *Common Focus and Autonomy of International Administrative Tribunals: International Colloquy, 50th anniversary of the establishment of the Council of Europe Administrative Tribunal*, *Proceedings* (19-20 March 2015), at 111-114.

[213] See A. Babington-Ashaye, 'Some Observations on the Jurisdiction of the African Court of Justice and Human Rights over International Administrative Law', in *The African Court of Justice and Human and Peoples' Rights in Context* (2019), at 1035-1053. See also *infra* note 302 and accompanying text.

[214] CARICOMAT Statute, Article XIV.

[215] See 'European University Institute, Decision No. 8/06 of the High Council of 8 December 2006 establishing an Organ of First Instance within the Appeals Board of the European University Institute', available at https://www.eui.eu/Documents/ServicesAdmin/PersonnelService/ComplaintsAppeals/HCD2006-08OrganFirstInstanceEN.pdf (accessed 20 April 2024).

procedure was abolished in December 2022 and replaced by direct appeal of decisions of the President of the Institute to the CJEU.[216]

Thus, while there are a fair number of systems in which an appeal is possible, there are also multiple systems which lack such a possibility, including notably the ILOAT,[217] all of the IATs operating within the Co-ordinated organizations[218] (e.g. ATCE, ESAAT, OECDAT, NATOAT, EUMETSAT, ECMWF) and all of the IATs operating within international financial institutions[219] (e.g. WBAT, IMFAT, ADBAT, IDBAT, ATBIS, AfDBAT, EBRDAT).

Even in systems without a formal appeals tribunal, some possibilities for review exist. For example, while the ILOAT has no appeals tribunal and art. VI.1 of its statute explicitly states that its judgments 'shall be final and without appeal', it may and has on a number of occasions admitted review of its own judgments.[220] When the ICJ review procedure was being repealed in 2016, the ILO Governing Body formalized the practice of internal review through the addition of a sentence to Article IV.1 to the effect that '[t]he Tribunal shall nevertheless consider applications for interpretation, execution or review of a judgment.'[221] It emphasized, however, that such power of review was exercised only in exceptional circumstances and on

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[216] See European University Institute, Decision No. 5/2022 of the High Council of 2 December 2022 regarding the designation of the Court of Justice of the European Union as the body settling disputes between the Institute and its administrative and teaching staff, available at https://www.eui.eu/Documents/web2021/high-council-decision-5-2022-eu-court-of-justice-jurisdiction-transfer.pdf (accessed 20 April 2024).

[217] See L. Germond, 'Faudrait-il introduire un mécanisme d'appel des jugements du Tribunal administratif de l'Organisation Internationale du Travail (TAOIT) ?' in V. Ranaldi, ed., *Le droit d'appel dans le cadre de la justice administrative internationale* (2020), at 79-89 (arguing against the creation of an appeals mechanism for the ILOAT).

[218] See L. Levi, 'Faudrait-il introduire un mécanisme d'appel des jugements des Organisations coordonnées ?', in V. Ranaldi, ed., *Le droit d'appel dans le cadre de la justice administrative internationale* (2020) 91, at 102-113 (describing a case of conflicting decisions between the ATCE and the former NATO Appeals Board which could have been resolved if an appeals machanism for the Co-ordinated Organisaitions existed).

[219] See J. Omari, 'Should an appeal mechanism be introduced against ruling by the courts of International Financial Institutions? Multilateral Development Banks: The Good, the Bad and the Ugly', in V. Ranaldi, ed., *Le droit d'appel dans le cadre de la justice administrative internationale* (2020), at 43-78 (engaging in a comparative study of the IADBAT, the WBAT and the EBRDAT, and setting out an alternative model internal justice system including appellate review).

[220] Ullrich, *supra* note 87, at 518.

[221] See ILO Governing Body, 'Matters relating to the Administrative Tribunal of the ILO: Proposed amendments to the Statute of the Tribunal', 18 February 2016, ILO Doc. GB.326/PFA/12/1, paras. 6-9.

strictly limited grounds.[222] Similar provisions exist in the statutes of the WBAT, IMFAT, ADBAT and AfDBAT.[223] Thus, while lacking a formal appellate body, these tribunals have found a sort of compromise solution, creating the possibility of review in exceptional circumstances, albeit by the same tribunal making the decision under review.

[222] The following grounds were specified: failure to take account of material facts, a material error involving no exercise of judgment, an omission to rule on a claim, or the discovery of new facts which the complainant was unable to rely on in the original proceedings while such pleas must be likely to have a bearing on the outcome of the case. See *Ibid.* para. 8.

[223] *Ibid.*, para. 9, note 4 (citing IMFAT Statute, arts. XVI and XVII, WBAT Statute, art. XIII; AfDBAT, art. XII; ADBAT Statute, art XI).

IV. OVERVIEW OF INTERNATIONAL ADMINISTRATIVE TRIBUNALS

The present section begins with a brief description of the functioning and operation of IATs. It then goes on to provide a description of each of the currently-functioning administrative tribunals.[224]

A. The functioning of Administrative Tribunals

IATs are created by the governing body of the organization that they serve[225] and operate according to a statute drawn up by that governing body at the time of the tribunal's creation. In most cases, the tribunal's statute will also provide for the drawing up of rules of procedure to further detail its operations.[226]

Judges of IATs must be highly qualified international jurists. Although formal requirements concerning qualifications for judges were not strict in initial tribunals,[227] they have become stricter throughout the years, providing for example that judges possess the qualifications required for appointment to high judicial office and be jurisconsults of recognized competence in the international civil service.[228] They are generally chosen by the governing body of the organization from a list drawn up by the head of the administration[229]

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[224] Other useful overviews of existing administrative tribunals can be found in: O. Elias and M. Thomas, 'Administrative Tribunals of International Organizations', in C. Giorgetti, ed., *The Rules, Practice and Jurisprudence of International Courts and Tribunals*, (2012), 162; H. Schermers and N. Blokker, *International Institutional Law: Unity within Diversity* (6th edn 2018), at §§544 and 642-647. A helpful compilation has also been made on the website of the Council of Europe. See 'Other Courts', available at https://www.coe.int/en/web/tribunal/other-courts (accessed 20 April 2024).

[225] For example, the UNGA in the case of the UNDT and UNAT, the International Labour Conference in the case of the ILOAT, the Board of Governors of the World Bank in the case of the WBAT, the IMF Board of Governors in the case of the IMFAT, the Committee of Ministers of the CoE in the case of the ATCE and the North Atlantic Council in the case of the NATOAT.

[226] See, e.g., ADBAT Statute, art. VI; AfDBAT Statute, art. IX.2; EBRDAT Statute, art. 2.05; IDBAT Statute, art. VII; OASAT Statute, art. XIII; OECDAT Statute, art. 2; UNDT Statute, art. 7; UNAT Statute, art. 6; WBAT Statute, art. VII.

[227] S. Villalpando, 'International Administrative Tribunals', in J.K. Cogan, I. Hurd, I. Johnstone, eds., *The Oxford Handbook of International Organizations* (2016) 1085, at 1095.

[228] See, e.g., WBAT Statute, art. IV.1; IMFAT Statute, art. VII.1.c); EBRDAT Statute, art. 2.02(b); IDBAT Statute, art. III.1. The UN internal justice system goes even further, requiring 10 years of experience in the field of administrative law for UNDT Judges and 15 years of such experience for UNAT Judges. See UNDT Statute, art. 4.3.b); UNAT Statute, art. 3.3.b).

[229] See, e.g., ADBAT Statute, art. IV.2; AfDBAT Statute, art. VI.2; EBRDAT Statute, art. 2.02(d); WBAT Statute, art. IV.2.

or a nominating committee.[230] In most cases, they in turn elect their President from among their membership.[231]

The size of IATs varies. While they may have up to seven judges,[232] many sit in three-judge panels,[233] except at the UNDT where most cases are decided by a single judge. The term of office of judges also varies, for example from one non-renewable term of six years at the IDBAT[234] to unlimited three-year renewals at the AfDBAT.[235]

While some IATs sit in continuous session, many of them hold sessions at specified times throughout the year.[236] These are generally at the seat of the organization[237] although their statutes may provide for the possibility of sitting elsewhere.[238] The procedure before IATs consists of a written stage of pleadings and may also include an oral stage,[239] although in most tribunals this is rare.[240]

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[230] See, e.g., IDBAT Statute, art. III.2; UNDT Statute, art. 4.2; UNAT Statute, art. 3.2.

[231] See, e.g., ADBAT Statute, art. V.1; EBRDAT Statute, art. 2.02(f); IDBAT Statute, art. IV.1; UNAT Statute, art. 3.7; WBAT Statute, art. VI.1.

[232] See, e.g., ILOAT Statute, art. III.3; IDBAT Statute, art. III.1; UNAT Statute, art. 3.1; WBAT Statute, art. IV.1.

[233] See, e.g., ILOAT Statute, art. III.3; ADBAT Statute, art. V.4; AfDBAT Statute, art. XI.2; EBRDAT Statute, art. 5.01(a); IMFAT Statute, art. VII.4; IDBAT Statute, art. III.4; OASAT Statute, art. III.6; UNAT Statute, art. 10.1.

[234] IDBAT Statute, art. III.3.

[235] AfDBAT Statute, art. VI.5.

[236] See, e.g., OASAT Statute, art. IV; UNAT Statute, art. 4.2; WBAT Statute, art. VIII.1.

[237] See, e.g., IMFAT Statute, art. XI; UNAT Statute, art. 4.1.

[238] See, e.g., IDBAT Statute, art. IV.2; UNDT Statute, art. 5; UNAT Statute, art. 4.1; WBAT Statute, art. VIII.2.

[239] See, e.g., OECDAT Statute, art. 10.

[240] See, e.g., EBRDAT Statute, art. 7.02(a) (providing for oral hearings in ‘exceptional cases’). See also ADBAT Statute, art. VIII; AfDBAT Statute, art. XI.4; IMFAT Statute, art. XII; UNDT statute, art. 9.2; WBAT Statute, art. IX (all providing that the Tribunal shall decide in each case whether oral hearings are warranted).

The decisions of IATs are binding and generally without appeal,[241] except for those systems which provide for an appellate tribunal.[242] There is however generally the possibility to submit an application for revision of judgments on limited grounds.[243]

The main remedy provided by IATs is rescission of the administrative decision in question, although many tribunals allow for compensation to be paid in lieu of rescission.[244] Some IAT statutes also expressly provide for the tribunal to award costs.[245]

There is no formal mechanism for enforcement of IAT decisions, but no major issues of enforcement have arisen,[246] after the initial growing pains settled in the *Effect of Awards* case discussed in Section I above.[247]

IATs are assisted by a Registry, generally composed of a full-time Executive Secretary or Registrar, as well as several legal officers.[248]

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[241] See, e.g., AfDBAT Statute, art. XII.1; EBRDAT Statute, art. 8.08; IMFAT Statute, art. XIII.2; IDBAT Statute, art. VIII.2; OASAT Statute, art. X.2; OECDAT Statute, art. 12.b); UNDT Statute, art. 11.3; UNAT Statute, art. 10.6; WBAT Statute, art. XI.1.

[242] See *supra* Section III.B.

[243] See, e.g., ADBAT Statute, art. XI; AfDBAT Statute, art. XII.4; IMFAT Statute, art. XVI; OASAT Statute, art. XI.1; UNDT Statute, art. 12.1; UNAT Statute, art. 11.1; WBAT Statute, art. XIII.1.

[244] See, e.g., ADBAT Statute, art. X.1; AfDBAT Statute, art. XIII.1-2; IMFAT Statute, art. XIV; IDBAT Statute, art. IX; OASAT Statute, art. IX; OECDAT Statute, art. 12.c); UNDT Statute, art. 10.5); UNAT Statute, art. 9.1; WBAT Statute, art. XII.1.

[245] See, e.g., ADBAT Statute, art. X.4; EBRDAT Statute, art. 8.06; IMFAT Statute, art. XV; IDBAT Statute, art. IX.6-7; OASAT Statute, art. IX.5; OECDAT Statute, art. 13; UNDT Statute, art. 10.6; UNAT Statute, art. 9.2.

[246] C.F. Amerasinghe, 'International Administrative Tribunals', 2014 *Oxford Handbook of International Adjudication* 316, at 332.

[247] See *supra* note 62 and accompanying text.

[248] See, e.g., AfDBAT Statute, art. VIII; IDBAT Statute, art. V.1; OASAT Statute, art. V; OECDAT Statute, art. 9; UNDT Statute, art. 6.2; UNAT Statute, art. 5.2; WBAT Statute, art. VI.2.

B. The major Tribunals

The present subsection examines the major tribunals, which I will define as those with a jurisprudence of 500 judgments or more. This includes the ILOAT, the UNDT, the UNAT, the ATCE, the WBAT, the UNRWADT and the GCEU. The Tribunals in this subsection are arranged by total number of cases, from the ILOAT with over 4000 judgments to the GCEU with 500 judgments. However, it should be borne in mind that their level of yearly activity paints a different picture, with the UNDT considering around 170 judgments per year, almost three times that of the ILOAT (62.5 judgments per year). Certain of the other Tribunals in this subsection, while having a large overall jurisprudence due to their age, consider significantly fewer cases per year, in particular the WBAT (16.3 decisions per year) and the ATCE (12.7 appeals per year).

The ILOAT
Established 1946 — 4814 judgments — 62.5 judgments per year

The ILOAT is the oldest continuously functioning administrative tribunal, established as the LoNAT on 26 September 1927[249], serving the LoN itself and the ILO.[250] When the LoN was dissolved in 1946, the tribunal was transferred to the ILO, which became a specialized agency of the UN.[251] In 1949, Article II of the ILOAT Statute was amended to permit other international organizations to accept the tribunal's jurisdiction.[252] At the time of this writing, 58 organizations have done so,[253] giving the ILOAT a breadth of membership (in terms of type, size and variety of organizations served) not seen by any other IAT.[254] However, it must also be acknowledged that, since 2016 alone, eight organizations have decided to leave its

[249] Schermers and Blokker, *supra* note 224, at §643, citing LoN, 54 *Journal official, Supplément special* 201 and 478.

[250] 'The Tribunal', available at http://www.ilo.org/tribunal/about-us/lang--en/index.htm (accessed 20 April 2024).

[251] *Ibid.* At the time of the dissolution of the LoN, the administrative tribunal had dealt with 37 cases. *Ibid.*

[252] *Ibid.*

[253] See 'Organizations recognizing the jurisdiction', available at http://www.ilo.org/tribunal/membership/lang--en/index.htm (accessed 20 April 2024).

[254] While the UNDT currently serves 65 offices (see *infra* footnote 264 and accompanying text), it is argued that these offices, all being part of the UN common system, share more in common than the organizations served by the ILOAT. The latter tribunal, therefore, has had to develop a particular skill in resolving disputes in a great variety of different, highly unique organizations.

jurisdiction.[255] The Tribunal is composed of seven judges, appointed by the International Labour Conference on a recommendation of the Governing Body of the International Labour Office, for a renewable period of three years.[256] Cases are heard by a three-judge bench or, in exceptional circumstances to be designated by the President, by five judges or all seven.[257]

The UNDT
Established 2009 — 2533 judgments — 168.9 judgments per year

The UNDT was established (along with the UNAT, discussed immediately below) on 1 July 2009 as part of a reform to replace the UNAdT, which had functioned since 1949.[258] It hears cases brought by staff members and former staff members of the UN and its separately administered funds and programmes, as well as certain other entities.[259] The UNDT is composed of three full-time judges and six half-time judges, elected by the UNGA on the recommendation of the Internal Justice Council, a five-member body consisting of a staff representative, a management representative and three distinguished external jurists.[260] Judges of the UNDT are appointed for one non-renewable term of seven years.[261] The three full-time judges exercise their functions in New York, Geneva and Nairobi, respectively. However, the UNDT may decide to hold sessions at other duty stations, as required by its caseload.[262] Cases before the UNDT are normally considered by a single judge, although the President of the UNAT may, upon request of the President of the UNDT, authorize a case to be heard by a panel of three UNDT judges 'when necessary, by reason of the particular complexity or importance of the case.'[263] The UNDT is competent to hear and pass judgment on appeals against

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[255] See 'Organizations recognizing the jurisdiction' at http://www.ilo.org/tribunal/membership/lang--en/index.htm (accessed 20 April 2024). For a discussion of this exodus phenomenon, see de Cooker, *supra* note 7, at 239-241.

[256] ILOAT Statute, art. III.

[257] ILOAT Statute, art. IV.

[258] UNGA resolution 63/253, 24 December 2008, *Administration of justice at the United Nations*, paras. 26-27. For further information on the reform, see *supra* note 111 and accompanying text.

[259] See 'Who can use the system' at https://www.un.org/en/internaljustice/overview/who-can-use-the-system.shtml (accessed 20 April 2024).

[260] UNDT Statute, arts. 4.1-2; UNGA resolution A/RES/62/228, 22 December 2007, *Administration of justice at the United Nations*, para. 36. Pursuant to that UNGA resolution, one external jurist is nominated by the staff and one by management, and the Internal Justice Council is chaired by a distinguished jurist chosen by consensus by the four other members.

[261] UNDT Statute, art. 4.4.

[262] *Ibid.*, art. 5.

[263] UNDT Statute, art. 10.9.

administrative decisions taken at the UN Secretariat, the UN Regional Commissions, the UN Funds and Programmes, the *ad hoc* criminal tribunals and several other entities.[264]

The UNAT
Established 2009 — 1415 judgments — 101.1 judgments per year

The UNAT was established on 1 July 2009 as the appellate level of jurisdiction in the reformed UN internal justice system.[265] It is composed of seven judges appointed by the UNGA on the recommendation of the above-mentioned Internal Justice Council for one non-renewable seven-year term[266]. Cases before the UNAT are normally reviewed by a panel of three judges, but when the President or any two judges sitting on a particular case consider that the case raises a significant question of law, the case may be referred for consideration by all seven judges.[267] The UNAT is competent to hear and pass judgment on appeals from judgments of the UNDT and the UNRWADT (discussed below), decisions taken by the Standing Committee acting on behalf of the UNJSPB and decisions taken by the heads of those agencies and entities that have accepted its jurisdiction under Article 2.5 of its Statute, which currently include the ICAO, IFAD, IMO, ISA and ITLOS.[268]

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[264] It is noted that, under Article 2.5 of its Statute, the UNDT is 'competent to hear and pass judgement on an application filed against a specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter of the United Nations or other international organization or entity established by a treaty and participating in the common system of conditions of service, where a special agreement has been concluded between the agency, organization or entity concerned and the Secretary-General of the United Nations to accept the terms of the jurisdiction of the Dispute Tribunal.'

[265] UNGA resolution A/RES/63/253 of 24 December 2008, *Administration of justice at the United Nations*, paras. 26-27.

[266] UNAT Statute, art. 3.

[267] *Ibid.*, art. 10.1-2.

[268] See 'Who can use the system', available at https://www.un.org/en/internaljustice/overview/who-can-use-the-system.shtml (accessed 20 April 2024).

The ATCE
Established 1965 — 747 appeals — 12.7 appeals per year

The second-oldest continuously functioning administrative tribunal is the ATCE, which was established in 1965.[269] From 1965 until 5 April 1994, it was known as the CoE Appeals Board.[270] Its decisions were given compulsory force in 1981.[271] It has heard 762 cases to date.[272] Under art. 15.1 of its Statute, its jurisdiction 'may be extended to cover disputes between bodies attached to the Council of Europe and other international governmental organisations and their respective officials, should the appropriate authorities of such bodies or international governmental organisations so request.'[273] So far, such jurisdiction has been extended to the CoE Development Bank, the Central Commission for the Navigation of the Rhine, the Hague Conference on Private International Law and the Intergovernmental Organisation for International Carriage by Rail.[274] The Tribunal is composed of six members (a Chair, a Deputy-Chair, two judges and two deputy judges) sitting in three-member panels in a given case.[275] One interesting feature of this tribunal is the inclusion within its jurisdiction of appeals by non-staff members who were candidates in a competitive recruitment examination at the CoE, provided the complaint relates to an irregularity in the examination procedure.[276]

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[269] *Common Focus and Autonomy of International Administrative Tribunals: International Colloquy, 50th anniversary of the establishment of the Council of Europe Administrative Tribunal*, *Proceedings* (19-20 March 2015), at 6.

[270] S. Sansotta, 'The Administrative Tribunal of the Council of Europe', in *Current Issues in the Law and Practice of International Administrative Tribunals: Promoting the Effectiveness of the Decision-Making Process,* 35th Anniversary of the OAS Administrative Tribunal, OAS document OEA/Ser.R/III.1 (2006), at 19. From 1949 to 1965, a board of a more administrative nature existed to arbitrate disputes between the CoE and its staff members, but no dispute was ever submitted to it. *Ibid.*, at 20.

[271] *Ibid*.

[272] See 'List of Appeals brought before the Tribunal', available at https://rm.coe.int/complete-list-of-appeals-brought-before-the-administrative-tribunal/16808b4e13 (accessed 26 September 2024).

[273] ATCE Statute, art. 15.1.

[274] See 'Bodies and organisations subject to the jurisdiction of the Tribunal', available at https://www.coe.int/en/web/tribunal/bodies-and-organisations-subject-to-the-jurisdiction-of-the-tribunal (accessed 20 April 2024).

[275] Sansotta, *supra* note 270, at 20-21.

[276] CoE Staff Regulations, art. 59.8.d).

The UNRWADT
Established 2011 — 738 judgments — 56.8 judgments per year

The UNRWADT became operational on 1 June 2011, as the first instance tribunal in the reformed UN internal justice mechanism for the 30,000 staff members of UNRWA,[277] with appeals to the UNAT.[278] The Tribunal is modelled on the UNDT[279] and the statutes of the two tribunals share much in common. A principal reason for the creation of the UNRWADT was costs: with 30,000 staff members compared to the 80,000 staff members of the UN Secretariat, participating in the UNDT on a *pro rata* workforce basis, as proposed by the UN Secretariat, was not financially viable for UNRWA.[280] The tribunal is composed of one judge, who may be full-time or part-time, and *ad litem* judges as appropriate[281]. The judge serves one non-renewable term of seven years[282].

The WBAT
Established 1980 — 699 decisions — 16.3 decisions per year

The WBAT was established in 1980 as the independent judicial forum of last resort for the resolution of cases submitted by staff members of the World Bank Group alleging non-observance of their contracts or terms of employment. It has rendered 699 decisions to date.[283] The WBAT is composed of seven judges, all of whom are nationals of different Member States of the Bank, appointed for five-year terms, renewable once, by the Executive Directors of the Bank from a list of candidates drawn up by the President of the Bank.[284] As mentioned above, the WBAT Statute was the first to set high qualifications for judges mirroring the qualifications for Judges in the Statute of the ICJ.[285] This practice has been followed by numerous other

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[277] 'First Activity Report of the UNRWA Dispute Tribunal: June 2011 to December 2014', available at https://www.unrwa.org/sites/default/files/first_activity_report_-_2011_2014.pdf (accessed 1 May 2024), at 1, 11.

[278] UNRWADT Statute, art. 11.3.

[279] 'First Activity Report of the UNRWA Dispute Tribunal: June 2011 to December 2014', *supra* note 277, at 1.

[280] de Cooker, *supra* note 7, at 238.

[281] UNRWADT Statute, art. 4.1.

[282] *Ibid.*, art. 4.4.

[283] See 'World Bank Administrative Tribunal', available at https://tribunal.worldbank.org/ (accessed 20 April 2024).

[284] WBAT Statute, art. IV.

[285] See *supra* notes 94-95 and accompanying text.

tribunals since.[286] While a quorum of five members is necessary to constitute the Tribunal, its Statute also provides that it may hear cases in panels of three members[287]. Under art. XV of its Statute, the World Bank may make agreements with other international organizations for the submission of applications of their staff to the WBAT. To date, however, it does not appear that any organization outside the World Bank Group has concluded such an agreement.[288]

The GCEU
Established 2016 — 521 judgments — 65.1 decisions per year

On 1 September 2016, the GCEU took over the administrative law cases in the EU,[289] a function carried out by the Court of First Instance from 1989 up until 2004, when the EUCST

[286] See, e.g., ATBIS Statute, art. III.2; ADBAT Statute, art. IV; IMFAT Statute, art. VII.1; CSAT Statute, art. IV.1-3; AfDBAT Statute, art. VI.1; UNDT Statute, art. 4.3; UNAT Statute, art. 3.3; UNRWADT Statute, art. 4.3; NATOAT Statute (as contained in NATO Civilian Personnel Regulations, May 2013), art. 6.1.1; IDBAT Statute, art. III.1; EBRDAT Statute, art. 2.02(b); ESMAT Statute, art. 3.2.

[287] WBAT Statute, art. IV.

[288] The only respondents listed among the 699 concluded decisions on the Tribunal's website (accessed 27 April 2024) are the World Bank itself (IBRD), the International Finance Corporation (IFC), the Inter-American Development Association (IDA) and, occasionally, the 'World Bank Group' as a whole, or all three of the above entities mentioned separately. These correspond to the entities specifically listed in art. I of the Tribunal's Statute. Therefore, while no information on the question is explicitly provided by the Tribunal on its website, it appears that no additional organizations have entered into an agreement to use the Tribunal.

[289] Regulation 2016/1192 of the European Parliament and the Council of 6 July 2016 on the transfer to the GCEU of jurisdiction at first instance in disputes between the European Union and its servants. Accordingly, art. 270 of the Treaty on the Functioning of the European Union provides: 'The Court of Justice of the European Union shall have jurisdiction in any dispute between the Union and its servants within the limits and under the conditions laid down in the Staff Regulations of Officials and the Conditions of Employment of other servants of the Union.' Consolidated Version of the Treaty on the Functioning of the European Union, Official Journal of the European Union, vol. 59 (7 June 2017), art. 270. Article 50*a* of the Statute of the CJEU provides: '1. The General Court shall exercise at first instance jurisdiction in disputes between the Union and its servants as referred to in Article 270 of the Treaty on the Functioning of the European Union, including disputes between all institutions, bodies, offices or agencies, on the one hand, and their servants, on the other, in respect of which jurisdiction is conferred on the Court of Justice of the European Union; 2. At all stages of the procedure, including the time when the application is filed, the General Court may examine the possibilities of an amicable settlement of the dispute and may try to facilitate such settlement.' Consolidated Version of the Statute of the CJEU (1 September 2016), Article 50*a*.

was established for this task.[290] Before the reform, a three-tier jurisdictional structure existed, whereby decisions of the EUCST could be appealed on points of law to the GCEU (i.e. the Court of First Instance prior to 2009)[291] and the decision by this latter Court was subject to review by the European Court of Justice 'where there is a serious risk of the unity or consistency of Union law being affected.'[292] After the reform, a two-tier structure remains, with decisions of the GCEU now subject to appeal on points of law to the CJEU.[293] The GCEU has rendered 521 administrative law Judgments in its first eight years of operation.[294]

C. Mid-size Tribunals

The present subsection discusses mid-size Tribunals, which I will define as those with a jurisprudence of between 100 and 200 decisions. Within this group, some of the Tribunals are noticeably more active than others. The Tribunals below are arranged by level of activity, beginning with the NATOAT (at 17.8 judgments per year) and concluding with the IDBAT (at 2.6 judgments per year).

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[290] Prior to 1989, staff cases were handled by the European Court of Justice itself. Elias, *supra* note 171, at 253. For more information on the former EUCST, see 'Civil Service Tribunal: Presentation', available at http://curia.europa.eu/jcms/jcms/T5_5230/en/ (accessed 20 April 2024). See also W. Hakenberg, 'The European Union Civil Service Tribunal: A Three-tier Structure', in Elias, *supra* note 171, at 251-264; P. Mahoney, 'The European Union Civil Service Tribunal : a Specialised Tribunal or a Special Tribunal?', in A. De Walsche, ed., *Mélanges en hommage à Georges Vandersanden : promenades au sein du droit européen* (2008), 955-970; H. Cameron, 'Establishment of the European Union Civil Service Tribunal', (2006) 5 *Law and Practice of International Courts and Tribunals* 273-283; H. Tagaras, 'Comparative Law and the European Union Civil Service Tribunal', in M. Andenas and D. Fairgrieve, eds., *Courts and Comparative Law* (2015), 186-199; F. Pastor and J. Ángel, 'The European Union Civil Service Tribunal', in A. De Walsche, ed., *Mélanges en hommage à Georges Vandersanden : promenades au sein du droit européen* (2008), 873-901; G. Butler, 'An Interim Post-Mortem: Specialised Courts in the EU Judicial Architecture after the Civil Service Tribunal', (2020) 17 *International Organizations Law Review* 586-632; K. Bradley, 'European Union Civil Service Law', in H. Hofmann, G. Rowe and A. Türk, eds., *Specialized Administrative Law of the European Union: A Sectoral Review* (2018), at 559-578.

[291] Council Decision of 2 November 2004 establishing the European Union Civil Service Tribunal (2004/752/EC, Euratom), Annex 1, art. 11.1.

[292] Treaty on the Functioning of the European Union, art. 256.2. The review procedure was initiated by a non-binding proposal by the ECJ's First Advocate General. Very few such proposals have been made (six between 2004 and 2012) and even less accepted (one between 2004 and 2012). Elias, *supra* note 171, at 257.

[293] Treaty on the Functioning of the European Union, art. 256.1; Consolidated Version of the Statute of the CJEU (1 September 2016), art. 56. See also Staff Regulations of Officials of the European Union, art. 90.1.

[294] This figure is calculated using the case-law database available at http://curia.europa.eu/juris/recherche.jsf?cid=158649 (accessed 20 April 2024), choosing 'Staff Regulations of officials and Conditions of Employment of other servants' in the subject box, using date range 1 September 2016 to 5 December 2023, and limiting the search criteria to 'General Court' and search results to 'Judgments'.

The NATOAT
Established 2013 — 196 judgments — 17.8 judgments per year

The NATOAT was established in July 2013 and is competent to decide any individual dispute brought by a NATO staff member or retired staff member alleging that an administrative decision is not in compliance with the Civilian Personnel Regulations or the terms of their appointment with the Organization.[295] In its first eleven years of operation, it rendered 196 Judgments.[296] The Tribunal is composed of five members, appointed by the NATO Council for a five-year term, renewable once.[297] Cases are heard in panels consisting of three members.[298] An interesting feature of this Tribunal is that it holds oral hearings in cases as a matter of course, unless the parties agree otherwise.[299]

The AUAT
Established 2010 — 110 judgments — 12.2 judgments per year

The African Union, established in 2002 in replacement of the Organisation of African Unity,[300] created an administrative tribunal 'competent to hear appeals submitted by staff members against administrative decisions made by the Chairperson or any competent authority of any organ',[301] with the possibility of appeal to the African Court of Justice and Human

[295] See information available on the website of the Tribunal at https://www.nato.int/cps/en/natohq/topics_114072.htm (accessed 20 April 2024).

[296] See 'Statistics of Judgments and Orders of the NATO Administrative Tribunal – 2013-2022', available at https://www.nato.int/nato_static_fl2014/assets/pdf/2022/9/pdf/220923-AT-statistics-2013-2021-en.pdf (accessed 20 April 2024).

[297] NATOAT Statute (as contained in NATO Civilian Personnel Regulations, May 2013), arts. 6.1.1-6.1.2.

[298] *Ibid.*, art. 6.1.4.

[299] *Ibid.*, art. 6.7.1. For further information on the NATOAT, see S. Hill and N. Minogue, 'The Effectiveness of the North Atlantic Treaty Organization in an Era of Adaptation: The Role of the North Atlantic Treaty Organization Administrative Tribunal', in P. Quayle, ed., *The Role of International Administrative Law at International Organizations* (AIIB Yearbook of International Law, vol. 3) (2021), 213.

[300] See 'Administrative Tribunal', available at https://au.int/Tribunal (accessed 20 April 2024). See also 'About the African Union', available at https://au.int/en/overview (accessed 20 April 2024).

[301] African Union Staff Regulations and Rules, AU Doc. Assembly/AU/4(XV), 2010, Regulation 14.2(a) and Rule 62.3.

Rights.[302] The Assembly of the AU adopted new Staff Regulations and Rules in 2023,[303] although they are not yet publicly available. The AUAT has issued 110 judgments to date.[304]

The AfDBAT
Established 1997 — 168 judgments — 6.7 judgments per year

The AfDBAT was established on 16 July 1997.[305] It has rendered 174 Judgments to date.[306] The Tribunal is made up of six judges serving three-year terms, which may be renewed.[307] It is constituted to hear cases in three-judge panels.[308] Its Statute contains an interesting provision empowering it to render an advisory opinion, on the request of the Board of Governors, 'on any question of law concerning the general administration of the Bank.'[309] It does not appear however that this procedure has ever been used in practice.[310] Under art. XV of its Statute, its jurisdiction may be extended to other international organizations. To date, however, it does not appear that any organizations have made use of this option.[311]

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[302] *Ibid.*, Regulation 14.3 and Rule 62.3.

[303] AU Assembly, 'Decisions on Draft Legal Instruments', Thirty-Sixth Ordinary Session (18-19 February 2023), AU Doc. Assembly/AU/Dec.856(XXXVI), para. 2.viii.

[304] See 'African Union Administrative Tribunal', available at https://africanlii.org/judgments/AfUAT/ (accessed 27 August 2024).

[305] 'Terms of Reference of the African Development Bank Administrative Tribunal', available at https://www.afdb.org/fileadmin/uploads/afdb/Documents/Administrative-Tribunal/Administrative%20Tribunal%20-%20Terms%20of%20Reference.pdf (accessed 20 April 2024).

[306] See 'Judgments', available at https://www.afdb.org/en/about-us/organisational-structure/administrative-tribunal/judgements (accessed 26 September 2024).

[307] AfDBAT Statute, art. VI.

[308] *Ibid.*, art. XI.2.

[309] *Ibid.*, art. IV.

[310] See AfDBAT Judgment No. 43 (2005), *Arrah v. African Development Bank*, paras. 8 and 26 (refusing to apply art. IV when pleaded by the Applicant).

[311] The website of the Tribunal states that '[r]egional organizations are eligible to become a member of the Tribunal for the settlement of disputes related to their staff', but makes no reference to any organization having done so. See 'Administrative Tribunal', available at https://www.afdb.org/en/about-us/organisational-structure/administrative-tribunal (accessed 20 April 2024).

The ADBAT
Established 1991 — 130 decisions — 4.1 decisions per year

The ADBAT was established in 1991 and has rendered 130 decisions to date.[312] It is composed of five members, appointed by the Board of Directors from a list of candidates drawn up by the President, who serve for three-year terms that can be renewed twice.[313] Cases are heard by panels of three judges, unless the tribunal decides, on its own initiative or following a written request from one of the parties, to hear the case in a panel consisting of all members.[314]

The OECDAT
Established 1992 — 106 judgments — 3.3 judgments per year

The OECDAT was set up in its present form in 1992, replacing the former OECD Appeals Board, as an independent body with jurisdiction to rule on disputes between members of staff (or other qualified persons) and the UNSG. It has considered 106 cases to date.[315] The Tribunal is composed of three judges and three deputy judges, appointed by the OECD Council for three-year renewable terms.[316] It is validly constituted to hear a case when at least three judges are present.[317]

The OASAT
Established 1971 — 171 judgments — 3.3 judgments per year

The OASAT was established in 1971 to hear disputes between the OAS General Secretariat and members of its staff alleging nonobservance of the terms and conditions of their employment.[318] It has rendered 171 decisions to date.[319] The competence of the Tribunal may be extended to any inter-American specialized organization, as well as to any interested intergovernmental organization of the Americas, in accordance with the terms established by a

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[312] 'Administrative Tribunal', available at https://www.adb.org/about/administrative-tribunal (accessed 20 April 2024).

[313] ADBAT Statute, art. IV.

[314] *Ibid.*, art. V.

[315] See information available on the website of the Tribunal at https://www.oecd.org/administrativetribunal/ (accessed 26 September 2024).

[316] OECD Staff Regulations and Rules (January 2016), Regulation 22.d.

[317] OECD Staff Regulations and Rules, Annex III – Resolution of the Council on the Statute and operation of the Administrative Tribunal (adopted on 12 December 1991), art. 8.d).

[318] See information on the website of the Tribunal at https://www.oas.org/ext/en/main/oas/our-structure/agencies-and-entities/tribad/ (accessed 20 April 2024).

[319] See https://www.oas.org/ext/en/main/oas/our-structure/agencies-and-entities/tribad/Decisions/Documents (accessed 20 April 2024).

special agreement to be concluded for that purpose by the Secretary General with each such organization.[320] In 1976, the Tribunal's competence was so extended to the Inter-American Institute for Cooperation on Agriculture.[321] The Tribunal is composed of six members elected by the OAS General Assembly to serve for terms of six years, such terms to be staggered so that one new member is elected each year.[322] The Tribunal hears cases in three-member panels.[323]

The ESAAT
Established 1975 — 142 decisions — 3.0 decisions per year

The ESAAT was established as an Appeals Board in 1975, already functioning, despite its name, as an independent administrative tribunal.[324] It was formally designated as an Administrative Tribunal in 2020 and provides for the settlement of disputes arising between the Agency and staff members or experts in respect of their conditions of service. [325] It has rendered 142 decisions to date.[326] The ESAAT consists of six members of different nationalities, appointed by the ESA Council for six-year renewable terms on the basis of ESA Member States' proposals.[327] For the examination of a given case, the ESAAT is considered validly constituted when at least three members are present, including the Chairman or Deputy Chairman.[328] According to one novel provision governing the ESAAT, it has also been given jurisdiction 'in the case where a staff member wishes to sue another staff member and such action has been prevented by the Director General's refusal to waive the immunity of the latter.'[329]

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[320] OASAT Statute, art. II.4.

[321] 'Administrative Tribunal', available at https://www.oas.org/ext/en/main/oas/our-structure/agencies-and-entities/tribad/ (accessed 20 April 2024).

[322] OASAT Statute, art. III.1.

[323] *Ibid.*, art. III.6.

[324] C.F. Amerasinghe, *Documents on International Administrative Tribunals* (1989), 148.

[325] See Website of the Tribunal at https://www.esa.int/About_Us/Corporate_news/Administrative_Tribunal (accessed 20 April 2024).

[326] *Ibid.*

[327] ESA Staff Regulations, Regulation 34.

[328] ESA Appeals Board Rules of Procedure, Rule 41.2.

[329] ESA Staff Regulations, Regulation 33.5.

The IDBAT
Established 1981 — 106 judgments — 2.6 judgments per year

The IDBAT was established in 1981 to resolve disputes between the Bank and its staff members.[330] It has issued 106 decisions to date.[331] It is composed of seven members appointed by the Board of Executive Directors of the Bank from a list of candidates presented by a Nominating Committee established under the Tribunal's Statute.[332] Members are appointed for one non-renewable term of six years.[333] Cases are heard by three-judge panels unless the President of the Tribunal deems that a case involves exceptional circumstances that merit consideration by the full Tribunal.[334] The Tribunal serves both organizations within the Inter-American Development Bank Group, that is to say the IDB and the IFC.[335]

D. Smaller Tribunals

The present subsection examines smaller tribunals, i.e. those with a jurisprudence of less than 100 cases. These include the IMFAT, the ESCB, the EBRDAT, the CSAT, the TPIOIF, the TAOIF, the EUMETSAT Appeals Board and the ATBIS. They are arranged by total number of cases, from the IMFAT with 77 judgments to the ATBIS with 10 judgments.

The IMFAT
Established 1994 — 77 judgments — 2.6 judgments per year

The IMFAT was established in 1994 for the resolution of employment disputes arising between the IMF and its staff members. It has delivered 77 judgments to date.[336] As a result of changes made to the Statute of the Tribunal in 2009,[337] the Tribunal is now composed of five members appointed by the Managing Director, who serve four-year terms which can be

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[330] In 1991, the Inter-American Investment Corporation and its staff members also became subject to its jurisdiction. See information provided on the Tribunal's website at https://www.iadb.org/en/who-we-are/transparency/administrative-tribunal (accessed 20 April 2024).

[331] 'Inter-American Development Bank Administrative Tribunal – Decisions', available at https://www.IDB.org/en/who-we-are/transparency/administrative-tribunal/administrative-tribunal-decisions (accessed 20 April 2024).

[332] IDBAT Statute, arts. III.1-2 and Annex I.

[333] *Ibid.*, art. III.2.

[334] *Ibid.*, art. III.4.

[335] *Ibid.*, art. I.

[336] See information available on the website of the tribunal at https://www.imf.org/external/imfat/index.htm (accessed 20 April 2024).

[337] *Ibid.*

renewed twice for a maximum term limit of twelve years.[338] Cases are heard by a panel composed of the President and two other members designated by the President.[339] Under art. XXI of its Statute, the competence of the IMFAT may be extended to any other international organization on terms established by special agreement. To date, however, it does not appear that any organizations have exercised this option.[340]

The ESCB
Established in 2004 — 62 decisions — 3.1 decisions per year

The European Schools established a Complaints Board in 2004.[341] Although it functions as an administrative tribunal with respect to complaints brought by teachers, it has a broader jurisdiction, also handling complaints by parents or students against decisions taken by one of the bodies of the European Schools (Secretary-General, Deputy Secretary-General, Central Enrolment Authority, School Principal, Class Council, Disciplinary Council, Baccalaureate Examination Board, etc.).[342] Claims brought by teachers for which it functions as an IAT entail only about 13 percent of its caseload.[343] It has no jurisdiction to hear complaints of administrative staff, which must bring their claims through the national tribunal in which the school is located.[344]

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[338] IMFAT Statute, art. VII.

[339] *Ibid.*, art. VII.4.

[340] The Website of the Tribunal makes no reference to its jurisdiction being extended to other organizations, and all judgments list the International Monetary Fund as respondent. See 'IMF Administrative Tribunal: Judgments', available at https://www.imf.org/external/imfat/jdgmnts.htm (accessed 20 April 2024).

[341] Although the Complaints Board was provided for long before, in Article 27 of the 1994 Convention Defining the Statute of the European Schools, its Statute dates from 2004. Rules of Procedure were passed in 2005. See 'Textes fondamentaux', available at http://www.schola-europaea.eu/cree/textes.php (accessed 20 April 2024).

[342] See 'Chambre de recours des écoles européennes : accueil', available at http://www.schola-europaea.eu/cree/ (accessed 20 April 2024).

[343] This figure is based on a review of the cases through 2023 available on the website of the tribunal (accessed 21 April 2024). Of the 461 cases available, only the following 62 were brought by teachers: 01/01, 01/04, 01/06, 02/07, 03/06, 05/04, 05/06, 05/17, 05/19, 06/21, 07/01, 07/17, 08/35, 08/51, 08/51*bis*, 09/43, 09/47, 10/01, 10/75, 10/85, 11/21, 11/63, 12/04, 12/08, 12/40, 12/62, 12/72, 13/01, 13/03, 13/08, 13/12, 13/27, 13/40, 13/45, 13/58, 13/60, 14/05, 14/28, 14/47, 14/48, 14/51R, 15/18, 15/50, 16/39, 16/57, 16/58, 17/03, 17/19, 17/30, 18/04, 18/26, 18/53, 19/62, 20/03, 20/59, 20/68, 21/01, 21/49, 22/01, 22/03, 22/64, 23/02.

[344] See 'Qui peut présenter une requête devant la Chambre de recours ?', available at http://www.schola-europaea.eu/cree/chambre.php#requerant (accessed 20 April 2024).

The EBRDAT
Established in 2007 — 55 judgments — 3.2 judgments per year

The EBRDAT was constituted as an administrative tribunal in its current form in 2007[345] and hears appeals against administrative decisions once staff members have exhausted all appropriate channels for review in place at the Bank.[346] From its inception to date, it has rendered 55 judgments.[347] The Tribunal is composed of five members, appointed for three-year renewable terms by the Board of Directors on the recommendation of the President after consultation with the Vice-President, Human Resources, the General Counsel and the Staff Council.[348] Cases are heard in panels consisting of three members.[349]

The CSAT
Established in 1995 — 53 judgments — 2.0 judgments per year

The CSAT was established in 1995 and has rendered 53 Judgments to date.[350] The Tribunal consists of eight members serving four-year terms, renewable once, who hear cases in three-judge panels.[351] In addition to its jurisdiction over disputes between the Commonwealth Secretariat and its staff, the Tribunal is also empowered to consider applications by any other person who enters into a contract with the Commonwealth Secretariat[352] and every contract entered into by or on behalf of the Commonwealth Secretariat contains a provision for any dispute arising out of such contract to be submitted to the Tribunal.[353] Pursuant to art. II.2 of its Statute, the CSAT's jurisdiction may be extended to another 'international or intergovernmental Commonwealth body or organisation' meeting

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[345] The Website of the Tribunal states that 'decisions prior to 2007 were adopted under the previous Grievance and Appeals Procedures'. See 'Administrative Tribunal', available at http://www.ebrd.com/who-we-are/corporate-governance/administrative-tribunal.html (accessed 20 April 2024).

[346] *Ibid.*

[347] *Ibid.*

[348] EBRDAT Statute, arts. 2.02(a) and (d).

[349] *Ibid.*, art. 5.01(a). For further information on the EBRDAT, see Seiler, *supra* note 115, at 172-187.

[350] 'Commonwealth Secretariat Arbitral Tribunal Judgments', available at http://thecommonwealth.org/tribunal (accessed 20 April 2024).

[351] CSAT Statute, arts. IV.1, 4 and 5.

[352] CSAT Statute, art. II.1.c).

[353] 'CSAT', available at http://thecommonwealth.org/sites/default/files/page/documents/CSAT.pdf (accessed 20 April 2024).

certain requirements.[354] To date, however, it does not appear that any organizations have exercised this option.[355]

The TPIOIF
Established in 2010 — 44 judgments — 3.1 judgments per year
The TAOIF
Established in 2014 — 16 judgments — 1.6 judgments per year

The OIF set up a two-tier system composed of the TPIOIF, established in 2010, and the TAOIF, established in 2014.[356] To date, the TPIOIF has rendered 44 judgments and the TAOIF 16 judgments.[357] The TPOIF is composed of a President, appointed by the Permanent Counsel, one member appointed by the Secretary-General, and one member appointed by the Staff Committee, as well as alternates appointed in the same manner, all of which serve four-year renewable terms.[358] The TAOIF is composed of a President and two members, appointed for four-year renewable terms by the Ministerial Conference, as well as alternates appointed in the same manner.[359] The Tribunals hear cases with all three members, an alternate filling any seat in the case of recusal.[360]

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[354] CSAT Statute, art. II.2.

[355] The Website of the Tribunal makes no reference to its jurisdiction being extended to other organizations, and all but two of its Judgments list the Commonwealth Secretariat as sole respondent. See 'Judgments', available at https://thecommonwealth.org/tribunal (accessed 20 April 2024). In the two exceptions, the first two cases treated by the Tribunal (CSAT/1 and CSAT/2), the Regional director of the Commonwealth Youth Programme was the sole or joint respondent. It is clear that the jurisdiction of the Tribunal has not been explicitly extended to the Commonwealth Youth Programme, as the Tribunal in its Judgment CSAT/2, dismissed the application after having concluded that the individual bringing the application was a locally recruited staff member of the Commonwealth Youth Programme and not a staff member of the Commonwealth Secretariat as required for the Tribunal's jurisdiction under art. II.1.a) of its Statute. It distinguished its Judgment CSAT/1, where it did find that it had jurisdiction, on the grounds that in that case the individual had been recruited through the Commonwealth Secretariat in London to serve in the Commonwealth Youth Programme and was paid directly by the Commonwealth Secretariat. CSAT Judgment No. CSAT/2 (14 July 2000), para. 27. For further information on the CSAT, see Lacourt, *supra* note 116, at 191-212.

[356] The *Règlement* of the *Tribunal de première instance* entered into force on 28 September 2010. The *Règlement* of the *Tribunal d'appel* entered into force on 20 January 2014.

[357] See '*Tribunal de première instance*, available at https://www.francophonie.org/tribunal-de-premiere-instance-87 and '*Tribunal d'appel*, available at https://www.francophonie.org/tribunal-dappel-88 (accessed 20 April 2024).

[358] OIF Staff Rules, Rule 208.

[359] OIF Staff Rules, Rule 225.

[360] OIF Staff Rules, Rules 212.19 and 229.20.

The EUMETSAT Appeals Board
First decision rendered in 2008 — 20 decisions — 1.2 decisions per year

The EUMETSAT Appeals Board, despite its name, functions as an administrative tribunal issuing binding decisions. It is not clear exactly when the Tribunal was established, but the first decision provided on the website was rendered in 2008.[361] At the time of this writing, the EUMETSAT Appeals Board has rendered a total of 20 decisions.[362] The Board consists of three members and three deputies, appointed for three-year renewable terms by the Council from a list proposed by the Director-General.[363]

The ATBIS
Established in 1987 — 10 judgments — Less than 1 judgment per year

The ATBIS was established in 1987 to settle any dispute in matters of employment relations that may arise between the Bank and its officials or former officials, or persons claiming through them.[364] From its inception to the current date, it has rendered only ten judgments.[365] It is composed of five members appointed by the Board of Directors for five-year renewable terms, up to a maximum age limit of 75 years.[366] Cases may be heard by panels of three members or in plenary session.[367]

E. Other Tribunals

This final subsection briefly touches upon other IATs known to be in existence. They are included here because they have a very limited jurisprudence, they do not publish their decisions on their website, or they have no internet presence at all. In some cases, they have been mentioned in the literature but it is not clear to what extent they are operational.

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[361] See 'EUMETSAT Appeals Board decisions', available at https://www.eumetsat.int/legal-framework/eumetsat-appeals-board (accessed 20 April 2024).

[362] *Ibid*.

[363] EUMETS Staff Rules, arts. 38.4-5.

[364] See website of the Tribunal at https://www.bis.org/about/at_bis.htm (accessed 20 April 2024).

[365] See 'Decisions of the Administrative Tribunal of the BIS', available at http://www.bis.org/about/atbis_decisions.htm (accessed 20 April 2024).

[366] ATBIS Statute, arts. III.1 and III.2.

[367] *Ibid.*, art. III.4.

MERCOSUR established an administrative tribunal in 2003 (known as the MERCOSUR TAL).[368] The Tribunal is composed of four members, one member being appointed by each State Party, for two year renewable terms.[369] Each State party also appoints an alternate member, who sits when the member is absent.[370] The Tribunal appears not to be very active, showing only four decisions on its website, of which two were in 2005, a third in 2015 and the last in 2017.[371]

The ESMAT was established in 2013.[372] The Tribunal is composed of five members appointed by unanimous decision of a committee composed of the Managing Director, the General Counsel, the Secretary General, a staff representative and a chairman appointed by the chairman of the Board of Governors.[373] Members are appointed for a five-year renewable term.[374] The Tribunal hears cases either in plenary session or in panels of three members.[375] The tribunal has published five decisions on its website (three judgments and two orders) all dating from 2023.[376] It is unique in that, having been created to serve a staff of some 100 persons, it operates essentially in as an *ad hoc* tribunal: members are paid on a per-case basis and many of the traditional registry functions are outsourced to the European Free Trade Association States Court.[377] In this way, it is able to serve a small number of staff while still being economically viable. This solution was reached after attempts to join the EU system were refused.[378] Nevertheless, the Statute of the Tribunal makes clear that the ESM has not given up

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[368] MERCOSUR, Grupo Mercado Común resolution 54/03, 'Tribunal Administrativo-Laboral del Mercosur', Doc. MERCOSUR/GMC/RES N°54/03, 10 December 2003, available at https://www.tprmercosur.org/es/tal.htm (accessed 20 April 2024).

[369] MERCOSUR TAL Statute, art. 2.

[370] *Ibid.*

[371] 'Tribunal Administrativo-Laboral del MERCOSUR (TAL)', available at http://www.tprmercosur.org/es/tal.htm (accessed 20 April 2024).

[372] 'Administrative Tribunal ESMAT', available at https://www.esm.europa.eu/about-us/how-we-work#administrative_tribunal_(esmat) (accessed 20 April 2024).

[373] ESMAT Statute, art. 3.1.

[374] *Ibid.*, art. 3.3.

[375] *Ibid.*, art. 3.4.

[376] 'Administrative Tribunal ESMAT', available at https://www.esm.europa.eu/how-we-work#administrative_tribunal_(esmat) (accessed 20 April 2024).

[377] See D. Eatough, 'Building an Administrative Tribunal of an International Financial Institution from Scratch: Lessons from the European Stability Mechanism', in P. Quayle, ed., *The Role of International Administrative Law at International Organizations* (AIIB Yearbook of International Law, vol. 3) (2021), at 232.

[378] *Ibid.*, at 229-230.

hope of joining the EU system in the future, providing in its final Article that '[i]f, following a request by the ESM, the Court of Justice of the EU grants the ESM access to the jurisdiction of the Court of Justice of the European Union for staff matters via the Civil Service Tribunal of the latter, the Tribunal shall be wound up and the office of members of the Tribunal shall come to an end once they have concluded all the pending appeals before the Tribunal.'[379]

References to other administrative tribunals have been found in the literature but limited information is available about them. For example:

— The CARICOM Administrative Tribunal was established in 2020,[380] although it has made only one decision publicly available to date.[381]

— Reference has been made to an Appeals Board for the Institute for the Management of Technology,[382] and the Statute has been reproduced in a collection published by Amerasinghe.[383] According to Article 8 of that Statute, the appeals board was intended, despite its name, to operate as a true administrative tribunal issuing binding decisions. However, it is unclear whether the appeals board ever functioned and even whether the organization still exists.

— There appears to be an administrative tribunal at the Black Sea Trade and Development Bank, but the Bank's public information policy prevents the release of any of its proceedings or records.[384]

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[379] ESMAT Statute, art. 17.

[380] See 'CARICOM Launches Administrative Tribunal', available at https://caricom.org/caricom-launches-administrative-tribunal/ (accessed 20 April 2024).

[381] CARICOMAT Decision No. 1 (2023), *Rowe v. CARICOM Secretariat*.

[382] C.F. Amerasinghe, *The Law of the International Civil Service* (1994), vol. 1, at 63.

[383] C.F. Amerasinghe, *Statutes and Rules of Procedure of International Administrative Tribunals* (1984), vol. 2, at 145-148.

[384] See 'Public Information Policy of the Black Sea Trade & Development Bank', available at http://www.bstdb.org/Public_Information_Policy.pdf (accessed 20 April 2024).

— The Arab League appears to have an administrative tribunal established in 1964.[385] There was a reference to it in the 2013 Arab League Summit document[386] but other information about it is not readily available. As noted by the Geneva Labour Court, 'neither the existence of the Administrative Tribunal of the League of Arab States in Cairo, nor its rules of procedure, are documented in western literature on public international law.'[387]

— UNIDROIT has an administrative tribunal, as provided for in Article 7*bis* of the UNIDROIT Statute. The Tribunal is comprised of three full members and one substitute selected from outside the Institute, preferably from different nationalities. Members are elected for five-year terms by the General Assembly. It has published its Statute and Rules of procedure, but no decisions are available on its website.[388]

— The Nordic Investment Bank provides for the appointment of an *ad hoc* arbitral tribunal in the case of employment disputes, with each party choosing one arbitrator and those arbitrators in turn choosing a Chairman. While these *ad hoc* proceedings result in binding awards, they are not published and there is no standing administrative tribunal at the Bank.[389]

— It has been reported that, in 2017, the Appeals Board of the European Centre for Medium-Range Weather Forecasts adopted revised rules which transformed it into a bona fide IAT, and that it has issued at least two decisions since that time.[390] The tribunal has no online presence.

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[385] Schermers and Blokker, *supra* note 224, at §647.

[386] See 2013 Arab League Summit document, available at http://arableaguesummit2013.qatarconferences.org/arab-league.html (accessed 20 April 2024).

[387] *ZM v. Delegation of the Arab League*, Geneva Labour Court, Order of 17 November 1993, reproduced in 116 *International Law Reports,* 643, at 649, para. 34.

[388] See 'Administrative Tribunal', available at https://www.unidroit.org/administrative-tribunal/ (accessed 20 April 2024).

[389] See Arbitration Regulations of the Nordic Investment Bank, entered into force 15 March 2005, available at https://www.nib.int/files/db59e12a9ea67c759db328cfc8d22ecfff97e160/67-arbitration-rules.pdf (accessed 20 April 2024).

[390] See Wettberg, *supra* note 90, para. 16.

— The GAVI Alliance Formerly the Global Alliance for Vaccines and Immunisation) appears to have established an appeals tribunal in 2019.[391] The statute and rules can be found online,[392] although the tribunal itself has no online presence.

— The OPEC Fund established an administrative tribunal in 2022.[393] While its statute and rules of procedure are available on its website, its decisions are not.[394] Separately, OPEC has an Appeals Committee which has characteristics of an administrative tribunal (external members, binding decisions).[395] While its Rules and Regulations are available on its website,[396] it is not clear when it was established and no decisions are publicly available.

— The NATO Mission Appeals Tribunal was established in 2022 and is competent to adjudicate appeals lodged by civilians hired in missions against an administrative review decision of the Mission Commander.[397] It consists of ten judges from different NATO member States who hear cases in three-judge panels.[398]

— It has been reported that the Square Kilometer Array Observatory would establish an administrative tribunal,[399] although no evidence of such a tribunal could be found.

— Mention could also be made of the administrative tribunal of the Technical Centre for Agricultural and Rural Cooperation, established in 2019, notable in that the

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[391] de Cooker, *supra* note 7, at 238.

[392] 'GAVI Alliance *ad hoc* Appeals Tribunal Statute and Rules of Procedure', available at https://rm.coe.int/gavi-the-vaccine-alliance-appealstribunal-statute-and-rules-of-procedu/1680945113 (accessed 20 April 2024).

[393] See 'About the Tribunal', available at https://opecfund.org/administrative-tribunal/about-the-tribunal (accessed 20 April 2024).

[394] *Ibid.*

[395] See 'About the Committee', available at https://www.opec.org/opec_web/en/7195.htm (accessed 20 April 2024).

[396] See 'Rules and Regulations', available at https://www.opec.org/opec_web/en/7196.htm (accessed 20 April 2024).

[397] See 'Mission Appeals Tribunal', available at https://jfcnaples.nato.int/about-us/mission-appeals-tribunal (accessed 20 April 2024).

[398] *Ibid.*

[399] de Cooker, *supra* note 7, at 238.

organization had only about 100 staff members.[400] An organization of that size would normally not set up its own tribunal, and indeed the Technical Centre had previously accepted the jurisdiction of the ILOAT, but left on 30 October 2018,[401] presumably out of dissatisfaction with one of its judgments.[402] In 2020, soon after the creation of the tribunal, the Technical Centre ceased operating, and with it so did the newly-created tribunal, having heard only one case.[403]

[400] K. Meighan and G. Rodríguez-Rico, 'To Join or Not to Join: A Comparative Analysis of Joining or Creating an International Administrative Tribunal', in P. Quayle, ed., *The Role of International Administrative Law at International Organizations* (AIIB Yearbook of International Law, vol. 3) (2021), at 124. For the Statute of the Tribunal, see Statute of the Administrative Tribunal of the Technical Centre for Agricultural and Rural Cooperation, available at https://rm.coe.int/statute-of-the-administrative-tribunal-of-the-technical-centre-for-agr/16808defa2 (accessed 20 April 2024).

[401] See 'ILO Administrative Tribunal: Organisations recognizing the jurisdiction', available at https://www.ilo.org/tribunal/membership/lang--en/index.htm (accessed 20 April 2024).

[402] de Cooker, *supra* note 7, at 240.

[403] *Ibid.*, at 239.

V. ILLUSTRATIVE TABLES

In the tables below, information about current and former administrative tribunals has been aggregated. Table 1 provides an overview of key characteristics of the currently functioning administrative tribunals, organized in chronological order by date of establishment and providing information on the organizations served by the tribunal. Table 2 organizes current and former administrative tribunals by total number of decisions. Table 3 shows current and former tribunals from most active to least active, measured in terms of decisions per year.

At 4814 judgments, the ILOAT is not only the oldest continuously functioning administrative tribunal, but also the administrative tribunal with the largest jurisprudence. However, when one considers the relative activity of the various administrative tribunals by computing the number of decisions that each renders per year, a very interesting picture emerges. As can be seen from Table 3, a select few administrative tribunals are extremely active, while a great number of them decide twenty cases per year or less, with a significant number deciding less than five cases per year.

Several other observations can also be made. First, one cannot but notice the busy docket of the UN internal justice system, with the UNDT without question the most active administrative tribunal in history, rendering on average 169 judgments per year[404], and the UNAT the second most active currently-functioning administrative tribunal, rendering 101 judgments per year. Indeed, if the ILOAT and the UNDT/UNAT continue at the same pace, the overall number of judgments of the UN internal justice system will surpass that of the ILOAT in 2028.[405]

Secondly, mention should be made of two notable dissolved administrative tribunals: the EUCST and UNAdT. Having rendered 1549 judgment in 12 years, the EUCST is the second most active administrative tribunal in history in terms of judgments rendered per year (at 129 judgments per year). The jurisprudence of the UNAdT counts 1499 judgments. While this

[404] It is worth noting that these cases are decided not by one tribunal but rather three separate UNDT tribunals sitting in New York, Geneva and Nairobi, respectively (albeit operating with only one full-time judge in each location). UNDT Statute, arts. 5 and 6.2.

[405] Based on a total jurisprudence of 3892 for the UN internal justice system at the end of 2023 and a growth rate of 271 judgments per year, compared to a jurisprudence for the ILOAT of 4736 judgments at the end of 2023 a growth rate of 62 judgments per year.

averages to only 25 judgments per year over the course of its 59-year history, the influence of the UNAdT on international administrative law remains significant, in particular because the UNDT and UNAT continue to regularly cite it. Moreover, if one considers the jurisprudence of the UNAdT as a part of the jurisprudence of the UNDT/UNAT, its combined size (5447 judgments) has already surpassed that of the ILOAT (4814 judgments).

Thirdly, there is a large number of relatively inactive administrative tribunals, with the twenty least active currently functioning tribunals in Table 3 rendering less decisions per year in total than the UNDT alone (144 decisions for those 20 tribunals, compared to 169 for the UNDT). Indeed, the fourteen least active tribunals render a total of only 30 decisions per year on average.

Fourthly, the high level of activity of the UNRWADT is notable. Indeed, the tribunal for this relatively insular UN Agency renders almost as many decisions as the long-standing ILOAT. This can possibly be explained by the large pool of potential litigants, UNRWA having more than 30,000 personnel worldwide.[406]

Finally, if one takes into account the fact that the UNRWADT is itself a part of the UN internal justice system, having been established as a 'neutral first instance process' within the meaning of art. 2.10 of the UNAT Statute, the extent of activity of the UN internal justice system truly stands out: if one adds the decisions of the UNDT and UNRWADT, the new system is deciding 226 judgments per year at the first instance, in addition to 101 judgments per year at the appellate level, or a total of 327 judgments per year within the same jurisprudence. No other system of international administrative law in history has come close to this level of activity. At 327 judgments per year, the larger UN internal justice system (UNDT, UNRWADT and UNAT) is rendering around 100 decisions more per year than all other IATs combined. Furthermore, its overall jurisprudence (4686 judgments) essentially matches that of the ILOAT (4814 judgments).

This data on the overall and yearly activity of administrative tribunals is useful in providing context for the present work. Of course, appropriate attention should be given to the

[406] 'First Activity Report of the UNRWA Dispute Tribunal: June 2011 to December 2014', *supra* note 277, at 11.

work of the ILOAT, which is both the oldest continuously functioning administrative tribunal and the one with the biggest jurisprudence. This being said, in terms of yearly activity, the clear dominance of the UN internal justice system stands out. Although it is much younger, it has already established a large jurisprudence which should be given the attention it deserves. Beyond these two major systems, a vast number of smaller tribunals exist which also need to be taken into account. As will be seen, a single decision of an IAT, such as the *de Merode* decision of the WBAT, can have a major effect on international administrative law.[407]

[407] See in this regard the discussion of this case in Chapter 4, Section III.A.1.

Table 1: Currently functioning Administrative Tribunals (by date of establishment)

Established	Tribunal	Organizations covered
1946	ILOAT	International Labour Organization and 63 other organizations
1965	ATCE	Council of Europe and 4 other organizations
1971	OASAT	Organization of American States and 1 other organization.
1975	ESAAT[408]	Principal organization only
1980	WBAT	Principal organization only (World Bank Group), although provision exists to extend competence
1981	IDBAT	Inter-American Development Bank and (since 1991) Inter-American Investment Corporation
1987	ATBIS	Principal organization only
1992	OECDAT	Principal organization only
1991	ADBAT	Principal organization only
1994	IMFAT	Principal organization only, although provision exists to extend competence
1995	CSAT	Principal organization only, although provision exists to extend competence
1997	AfDBAT	Principal organization only, although provision exists to extend competence
2003	MERCOSUR TAL	Principal organization only
2004	ESCB	European Schools (teachers only - staff use national system)
2007	EBRDAT	Principal organization only
2008	EUMETSAT Appeals Board	Principal organization only
2009	UNDT	65 different offices of the UN Secretariat, the UN Regional Commissions, the UN Funds and Programmes, *ad hoc* criminal tribunals and other entities
2009	UNAT	All entities accepting jurisdiction of UNDT plus UNRWA and organizations and entities accepting jurisdiction of Appeals Tribunal by special agreement: ICAO, ICJ, IMO, ISA and ITLOS.
2010	TPIOIF	Principal organization only
2010	AUAT	Principal organization only
2011	UNRWA DT	Principal organization only
2013	NATOAT	Principal organization only
2013	ESMAT	Principal organization only
2014	TAOIF	Principal organization only
2016	GCEU	Principal organization and, since December 2022, European University Institute
2017	ECMWF Appeals Board	Principal organization only
2019	CARICOM Administrative Tribunal	
2022	OPEC Administrative Tribunal	Principal organization only, although provision exists to extend competence
2022	NATO Mission Administrative Tribunal	Principal organization only

[408] Set up in 1975 as an Appeals Board; converted to an IAT in 2020.

Table 2: Current and former Administrative Tribunals (by total number of decisions)

Administrative Tribunal	Number of decisions[409]
ILOAT	4814 judgments
UNDT	2533 judgments
EUCST (dissolved)	1549 judgments.
UNAdT (dissolved)	1499 judgements
UNAT	1415 judgments
ATCE	747 appeals
UNRWADT	738 judgments
WBAT	699 decisions
GCEU	521 judgments
NATOAT	196 judgments
OASAT	171 judgments
AfDBAT	168 judgments
ESAAT	142 decisions
ADBAT	130 decisions
AUAT	110 judgments
OECDAT	106 judgments
IDBAT	106 judgments
IMFAT	77 judgments
ESCB	62 decisions
EBRDAT	55 decisions
CSAT	53 judgments
TPIOIF	44 judgments
EUMETSAT Appeals Board	20 decisions
TAOIF	16 judgments
ATBIS	10 judgments
ESMAT	5 decisions
MERCOSUR TAL	4 decisions

[409] Calculations for Tables 2 and 3 provided following the conclusion of Chapter 2.

Table 3: Current and former Administrative Tribunals (by decisions per year)

Administrative Tribunal	Decisions per year[410]
UNDT	168.9 judgments
EUCST (dissolved)	129.1 judgments
UNAT	101.1 judgments
GCEU	65.1 judgments
ILOAT	62.5 judgments
UNRWADT	56.8 judgments
UNAdT (dissolved)	25.0 judgments
NATOAT	17.8 judgments
WBAT	16.3 decisions
ATCE	12.7 appeals
AUAT	12.2 judgments
AfDBAT	6.7 judgments
ADBAT	4.1 decisions
OECDAT	3.3 judgments
OASAT	3.3 judgments
ESCB	3.1 decisions
TPIOIF	3.1 judgments
EBRDAT	3.2 decisions
ESAAT	3.0 decisions
IDBAT	2.6 judgments
IMFAT	2.6 judgments
CSAT	2.0 judgments
TAOIF	1.6 judgments
EUMETSAT Appeals Board	1.2 decisions
ESMAT	0.5 decisions per year
ATBIS	0.3 judgments per year
MERCOSUR TAL	0.2 judgments per year

[410] Calculations for Tables 2 and 3 provided following the conclusion of Chapter 2.

VI. CONCLUSIONS OF CHAPTER 2

Beginning with a single tribunal — the LoNAT which became the ILOAT — the field of IATs has undergone tremendous growth over the past decades. There are now some thirty tribunals in operation, differing significantly in the number of staff members served and their level of activity. Small tribunals such as the ESMAT serve a staff of only some 100 persons, while the ILOAT is open to over 58,000 staff members. A number of tribunals — such as the ATBIS, the ESMAT, the MERCOSUR TAL, the EUMETSAT Appeals Board and the TAOIF — decide less than two cases per year, while the UNDT renders 169 judgments per year on average. This being said, the tribunals share much in common in terms of working methods and the substantive scope of their work.[411] While they differ significantly in age and level of activity, it can be concluded that, in terms of substantive activity, they share many more similarities than there are differences.

This chapter has aimed to provide an overview of the institutional evolution of IATs, from the creation of the LoNAT in 1927 through to the present day in which tribunals have become a common feature in most international organizations. In doing so, it has attempted to highlight several key developments, including proposals to merge or harmonize the work of tribunals, the former review procedure by the ICJ and the growth of appeals tribunals. Through this review, the dynamic nature of this field becomes clear, with additional IATs continuously coming onto the scene, existing tribunals being reformed, discussions continuing about possibilities for merger or adding appellate levels of review, and so on. On specific details, therefore, the present chapter will be outdated as soon as the ink dries.[412] Yet, if it has managed to capture the general trends, and in particular painted a picture of a dynamic and growing field, then it has done its job.

[411] See *supra* Section IV.A.

[412] The Chapter and the dissertation as a whole are current through 1 April 2024.

Source data for Table 2

- ILOAT: Triblex case-law database of the ILO Administrative Tribunal, 136th session (2023), available at https://www.ilo.org/dyn/triblex/triblexmain.bySession (accessed 20 April 2024).
- UNDT: Based on the following judgment counts shown on the UNDT website (accessed 20 April 2024): 97 (2009), 218 (2010), 219 (2011), 208 (2012), 181 (2013), 148 (2014), 126 (2015), 221 (2016), 100 (2017), 137 (2018), 188 (2019), 221 (2020), 168 (2021), 136 (2022), 145 (2023), 20 (2024).
- EUCST: http://curia.europa.eu/jcms/jcms/T5_5230/en/ (accessed 20 April 2024).
- UNAdT: http://untreaty.un.org/UNAT/Judgements_English_By_Number.htm (accessed 20 April 2024).
- UNAT: The figure of 1415 Judgments is based on the fact that Judgment numbers are written consecutively. As of 20 April 2024, the last Judgment issued is 2024-UNAT-1415.
- ATCE: https://rm.coe.int/complete-list-of-appeals-brought-before-the-administrative-tribunal/16808b4e13 (accessed 21 April 2024).
- UNRWADT: Based on the following judgment counts shown on its website (accessed 21 April 2024): 17 (2011), 68 (2012), 38 (2013), 54 (2014), 58 (2015), 39 (2016), 48 (2017), 70 (2018), 75 (2019), 73 (2020), 72 (2021), 60 (2022), 53 (2023), 13 (2024).
- WBAT: https://tribunal.worldbank.org/judgments-orders-all (accessed 21 April 2024).
- GCEU: Calculated using the case-law database available at http://curia.europa.eu/juris/recherche.jsf?cid=158649 (accessed 25 April 2024), choosing 'Staff Regulations of officials and Conditions of Employment of other servants' in the subject box, using date range 1 September 2016 to 25 April 2024, and limiting the search criteria to 'General Court' and search results to 'Judgments'.
- NATOAT: Based on the following judgment counts from the NATOAT website (accessed 21 April 2024): 8 (2013), 29 (2014), 24 (2015), 30 (2016), 10 (2017), 27 (2018), 14 (2018), 10 (2020), 22 (2021), 11 (2022), 11 (2023).
- OASAT: Based on the fact that Judgment numbers are written consecutively. *LaGuerre v. OAS Secretary General*, rendered on 15 December 2023, is Judgment No. 171.
- AfDBAT : https://www.afdb.org/en/about-us/organisational-structure/administrative-tribunal/judgements/ (accessed 21 April 2024).
- ESAAT : http://www.esa.int/About_Us/Law_at_ESA/Appeals_Board (accessed 21 April 2024).
- ADBAT: https://www.adb.org/about/administrative-tribunal (accessed 21 April 2024).
- AUAT: https://africanlii.org/judgments/AfUAT/ (accessed 27 August 2024).
- OECDAT: https://www.oecd.org/administrativetribunal/alljudgments.htm (accessed 21 April 2024).
- IDBAT: https://www.IDB.org/en/who-we-are/transparency/administrative-tribunal/administrative-tribunal-decisions (accessed 21 April 2024).
- IMFAT: http://www.imf.org/external/imfat/jdgmnts.htm (accessed 21 April 2024).
- ESCB: See list of decisions compiled *supra* note 343.
- EBRDAT: http://www.ebrd.com/who-we-are/corporate-governance/administrative-tribunal.html (accessed 21 April 2024).
- CSAT: http://thecommonwealth.org/tribunal (accessed 21 April 2024).
- TPOIF: https://www.francophonie.org/ressources?type=72 (accessed 21 April 2024).
- EUMETSAT Appeals Board : https://www.eumetsat.int/legal-framework/eumetsat-appeals-board (accessed 12 April 2024).
- TAOIF: See https://www.francophonie.org/ressources?type=73&theme=All (accessed 23 April 2024).
- ATBIS: http://www.bis.org/about/atbis_decisions.htm (accessed 23 April 2024).
- ESMAT : https://www.esm.europa.eu/how-we-work#administrative_tribunal_(esmat) (accessed 25 April 2024).
- MERCOSUR TAL: 'http://www.tprmercosur.org/es/tal.htm (accessed 23 April 2024).

Source data for Table 3

— UNDT: 2533 judgments in 15 years of operation (2009-2024).
— EUCST: 1549 judgments in 12 years of operation (2004-2016).
— UNAT: 1415 judgments in 14 years of operation (2010-2024).
— GCEU: 521 judgments in 8 years of operation (2016-2024).
— ILOAT: 4814 judgments in 77 years of operation (1947 to 2024).
— UNRWADT: 738 judgments in 13 years of operation (2011-2024).
— UNAdT: 1499 judgments in 60 years of operation (1949-2009).
— NATOAT: 196 judgments in 11 years of operation (2013-2024).
— WBAT: 699 judgments in 43 years of operation (1981 to 2024).
— ATCE: 747 appeals in 59 years of operation (1965 to 2024).
— AUAT: 110 judgments over 9 years of active operation (2015-2024).
— AfDBAT: 168 judgments in 25 years of operation (1999 to 2024).
— ADBAT: 130 decisions in 32 years of operation (1992 to 2024).
— OECDAT: 106 judgments in 32 years of operation (1992 to 2024).
— OASAT: 171 judgments in 52 years of active operation (1972 to 2024).
— ESCB: 62 decisions in 20 years of operation (2004 to 2024).
— TPOIF: 44 judgments in 14 years of operation (2010 to 2024).
— EBRDAT: 55 decisions in 16 years of operation (2007 to 2024).
— ESAAT: 142 decisions in 48 years of operation (1976 to 2024).
— IDBAT: 106 judgments in 41 years of operation (1983 to 2024).
— IMFAT: 77 judgments in 30 years of operation (1994 to 2024).
— CSAT: 53 judgments in 26 years of operation (1998 to 2024).
— TAOIF: 16 judgments in 10 years of operation (2014-2024).
— EUMETSAT Appeals Board: 20 decisions in 16 years of operation (1998-2024).
— ESMAT: 5 decisions in 11 years of operation (2013-2024).
— ATBIS: 10 judgments in 37 years of operation (1987-2024).
— MERCOSUR TAL: 4 judgments in 21 years of operation (2003-2024).

CHAPTER 3

SOURCES OF LAW

I. INTRODUCTION

In any legal system, it is important to identify the sources of law. In the case of international law, it is widely accepted that the applicable sources of law to be applied to a dispute are those found in art. 38.1 of the ICJ Statute.[413] While some commentators have questioned whether international administrative law — applicable only within specific, albeit international, organizations and with its peculiar emphasis on certain sources — can be considered to form part of international law,[414] a more accurate description would perhaps be that international administrative law is a specialized, self-contained and *sui generis* regime of international law. One principal characteristic of this specialized regime is an increased complexity in the sources of law to be applied. As Amerasinghe famously stated in 1988, it has largely been 'left to the initiative and innovative genius of the tribunals themselves to determine from what formal sources they will derive the rules they intend to apply.'[415] Although some tribunals include a provision on sources of law in their statutes, it is usually not very detailed or exhaustive, generally referring to the contract of employment, the terms of appointment and occasionally also to regulations, rules and other administrative issuances.[416] It thus becomes necessary to further elaborate the sources of law by examining what sources IATs are actually applying. That is the task undertaken in this chapter.

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[413] According to art. 38.1 of the ICJ Statute, international law to be applied by the Court includes: 'a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b. international custom, as evidence of a general practice accepted as law; c. the general principles of law recognized by civilized nations; d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.'

[414] See, e.g. P. Reuter, 'Organisations internationales et évolution du droit', in *L'évolution du droit public : études offertes à Achille Mestre* (1956), at 457; C.F. Amerasinghe, *The Law of the International Civil Service* (1994), vol. 1, at 9 ('International administrative tribunals have not regarded public international law as *per se* the law applicable to employment relations in international organizations').

[415] C.F. Amerasinghe, *The Law of the International Civil Service* (1994), vol. 1, at 109.

[416] *See, e.g.,* UNDT Statute, art. 2.a; WBAT Statute, art. II; ILOAT Statute, art. II.1; UNRWADT Statute, art. 2.a; AfDBAT Statute, art. III.1; CSAT Statute, art. II.1; IDBAT Statute, art. II.1; EBRDAT Directive on the Appeals process, para. 3.02; ATBIS Statute, art. II.2; OASAT Statute, art. II.1. The NATOAT Regulations, art. 6.2.1 is unique in that it also refers to its own case-law as a source of law.

A detailed description of sources of international administrative law has been offered elsewhere on several occasions.[417] Building on this body of work, the present chapter will aim to take our understanding further by grouping these sources into two substantially different categories, to be referred to as 'self-contained' and 'universalizing' sources. The self-contained sources of international administrative law are those which are specific to a given organization or to the contractual relationship with the particular staff member at issue. Certain of these are applied in almost every case before IATs, in particular the contract of employment, and the staff regulations and staff rules; and the bulletins, circulars, manuals and issuances of the organization. Others are less commonly cited, but nevertheless can be considered 'self-contained' in light of their specificity to a particular organization. These include the constituent instrument of the organization; decisions and resolutions of the plenary organ of the organization or other decision-making body; and the practice of the organization. The self-contained sources are, in general, widely accepted and relatively non-controversial.

The chapter then examines the 'universalizing' sources of international administrative law, which are those sources, referred to with increasing frequency, which are 'outward-looking' and thus may be adopted in common by multiple IATs. These include general principles of law, international law and decisions of other international administrative tribunals. As a result of these 'universalizing' sources, this chapter concludes that a universal law governing the international civil service has begun to crystalize.

[417] See, e.g., C.F. Amerasinghe, 'Sources of International Administrative Law', in *International Law at the Time of its Codification: Essays in Honour of Roberto Ago* (1987), vol. 1, at 67-95; C.F. Amerasinghe, *The Law of the International Civil Service* (1994), vol. 1, at 103-198; M.B. Akehurst, *The Law Governing Employment in International Organizations* (1967) 27-109; Y. Kryvoi, 'The Law Applied by International Administrative Tribunals: From Autonomy to Hierarchy', (2015) 47 *George Washington International Law Review* 274-293; O. Elias and M. Thomas 'Administrative Tribunals of International Organizations', in C. Giorgetti, ed., *The Rules, Practice and Jurisprudence of International Courts and Tribunals*, (2012), at 174-177; C.F. Amerasinghe, 'The Implications of the *de Merode* Case for International Administrative Law', (1983) 43 *Heidelberg Journal of International Law* 16-34; C.F. Amerasinghe, 'International Administrative Tribunals', 2014 *Oxford Handbook of International Adjudication* 316, at 323-326.

II. TRADITIONAL SELF-CONTAINED SOURCES OF INTERNATIONAL ADMINISTRATIVE LAW

At its base, international administrative law deals with the relationship between an organization and its staff members. These staff members being internal to the organization in which they work, the relationship is by its very nature an internal relationship. Hence the importance of traditional, self-contained sources of international administrative law. These sources include the contract of employment; the staff regulations and staff rules; the constituent instrument of the organization; bulletins, circulars, manuals and other issuances of the organization's administration; decisions of the plenary organ of the organization; and the practice of the organization. Each of these sources is discussed below in turn.

A. The contract of employment

The contract of employment is a central source of international administrative law. The WBAT in *de Merode* called it the '*sine qua non*' of the employment relationship,[418] and it has also been recognized as a source of law by the UNDT,[419] ILOAT[420] and the UNAdT.[421] The statutes of numerous administrative tribunals refer to it specifically.[422] To quote just one example, art. II.1 of the ADBAT Statute states:

> 'The Tribunal shall hear and pass judgment upon any application by which an individual member of the staff of the Bank alleges nonobservance of the contract of employment or terms of appointment of such staff member. The expressions 'contract of employment' and 'terms of appointment' include all pertinent regulations and rules in force at the time of alleged nonobservance.'

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[418] WBAT Decision No. 1 (1981), *De Merode et al. v. The World Bank*, para. 18.

[419] UNDT/2012/113, *El Moctar v. UNSG*, para. 34.

[420] ILOAT Judgment No. 67 (1962), *In re Darricades*, para. 2.

[421] UNAdT Judgement No. 273 (1981), *Mortished v. UNSG*, para. II. See also UNAdT Judgement No. 19 (1953), *Kaplan v. UNSG*, para. 3 (delineating contractual versus statutory elements of the legal relationship between staff members and the United Nations).

[422] *See, e.g.,* UNDT Statute, art. 2.a; WBAT Statute, art. II; UNRWADT Statute, art. 2.a; AfDBAT Statute, art. III.1; CSAT Statute, art. II.1; NATOAT Regulations (found in NATO Civilian Personnel Regulations, Annex IX), art. 6.2.1; IDBAT Statute, art. II.1; EBRDAT Directive on the Appeals process, para. 3.02. Reference to the contract of employment is notably absent, by contrast, in the statutes of the ILOAT and the ATCE.

The very wording of this provision illustrates the primacy of the contract of employment as a source of law under which other sources may be included.

While the contract of employment generally enjoys primacy as a source of law, this is not always so, as can be seen for example in the ADBAT's *Amora* decision and the ILOAT's *Bustos* decision, both of which looked beyond the language of the contract. In *Amora*, the ADBAT disregarded the plain language of the contract of employment, accepting the applicant's argument that his series of short-term contracts did not reflect the true nature of his employment relationship and he should thus be entitled to pension benefits.[423] In a section entitled '[t]he limits to the binding nature of contracts of employment', the ADBAT pronounced that '[u]sually, a contract signed by the parties is binding upon them. There are, however, some circumstances in which a contract may be set aside or varied by a competent tribunal. This happens, for example, when the contract fundamentally disregards reality.'[424] In *Bustos*, the ILOAT similarly disregarded the plain language of the contract of employment, treating a series of short-term contracts as a single long-term appointment. The Tribunal observed that one principal reason why the language of the contract would be disregarded by an IAT is in order to protect the weaker party to the contract:

> 'The function of a court of law is to interpret and apply a contract in accordance with the intention of the parties. When a contract is expressed in writing, the intention is normally to be ascertained from the documents produced. In some cases, however, the parties — or at any rate the party which is in a position to formulate the document — do not desire that the true relationship should be revealed. The reason for this is that, if the true relationship was made manifest, the law would impose consequences which the parties — or at any rate the stronger of them — do not wish to face.'[425]

The IMFAT made a similar pronouncement in *D'Aoust*, stating that 'the fact that a staff member accepts an offer that he or she is free to decline does weigh against challenge to the terms of the contract so accepted. But it is a question only of presumption. The Fund and an

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[423] ADBAT Decision No. 24 (1997), *Amora v. ADB*, paras. 22-27.

[424] *Ibid.,* para. 22.

[425] ILOAT Judgment No. 701 (1985), *Bustos v. PAHO*, para. 5.

applicant for a position in the Fund are not in an equal negotiating position.'[426] The Tribunal concluded that the fact that Mr. D'Aoust had accepted his initial grade and salary did not bar him from challenging the legality of the Fund's determination of grade and salary.[427]

Finally, it should also be noted that the extent to which the contract of employment is a primary source of international administrative law the situation is slightly complicated by the distinction between organizations which consider the employment relationship to be based on contract, the prevailing view, and those which consider the employment relationship one of status, following in the French administrative law tradition.[428] For organizations that consider the employment relationship to be a contractual one, the contract of employment is clearly a primary source of law. Even for those organizations where appointments are statutory, subsidiary contracts remain a relevant source of law, for example as regards salary, grade, and the nature of appointment.[429] The two most important organizations for which the relationship between staff members and the organization is one of status rather than contract are the European Union and the OECD.[430]

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[426] IMFAT Judgment No. 1996-1, *D'Aoust v. IMF*, para. 12.

[427] *Ibid.*

[428] See discussions in C.F. Amerasinghe, 'Sources of International Administrative Law', in *International Law at the Time of its Codification: Essays in Honour of Roberto Ago* (1987), vol. 1, at 69-73; M.B. Akehurst, *The Law Governing Employment in International Organizations* (1967) 60-64; C.F. Amerasinghe, *The Law of the International Civil Service* (1994), vol. 1, at 128; C.F. Amerasinghe, 'The Implications of the *de Merode* Case for International Administrative Law', (1983) 43 *Heidelberg Journal of International Law* 13-16.

[429] C.F. Amerasinghe, *The Law of the International Civil Service* (1994), vol. 1, at 128.

[430] C.F. Amerasinghe, 'Sources of International Administrative Law', in *International Law at the Time of its Codification: Essays in Honour of Roberto Ago* (1987), vol. 1, at 70.

B. Staff Regulations and Staff Rules

It is widely acknowledged that the Staff Regulations (established by the plenary organ of the organization) and Staff Rules (established by the administration and which must not contradict the Staff Regulations) constitute a primary source of law in international administrative law.[431] This was recognized explicitly by the WBAT in the *de Merode* case.[432] In the UN internal justice system, the UNDT Statute leaves no doubt that the Staff Regulations and Staff Rules are applicable law, providing that '[t]he terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged noncompliance.'[433] An identical provision can be found in the statute of the UNRWA Dispute Tribunal.[434] The ILOAT Statute also makes specific reference to the Staff Regulations as a source of law,[435] while the AfDBAT Statute refers to 'all pertinent rules and regulations.'[436] Amerasinghe has observed that 'the law creating character of staff rules or their equivalent has never been denied by the tribunals.'[437] Indeed, the very purpose of the Staff Regulations and Staff Rules is to set out the rights and duties of the staff and corresponding obligations of the organization towards the staff. It should not, therefore, come as a surprise that many decisions by IATs hinge on the application or interpretation of a specific regulation or rule. Along with the contract of employment, they represent the very core of international administrative law applicable to staff members.

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[431] C.F. Amerasinghe, *The Law of the International Civil Service* (1994), Vol. 1, at 143-149; M.B. Akehurst, *The Law Governing Employment in International Organizations* (1967) 38-46; C.F. Amerasinghe, 'International Administrative Tribunals', 2014 *Oxford Handbook of International Adjudication* 316, at 323-324; C.F. Amerasinghe, 'The Implications of the *de Merode* Case for International Administrative Law', (1983) 43 *Heidelberg Journal of International Law* 21-22.

[432] WBAT Decision No. 1 (1981), *De Merode et al. v. The World Bank*, para. 18.

[433] UNDT Statute, art. 2.1.a.

[434] UNRWADT Statute, art. 2.1.a.

[435] ILOAT Statute, art. II.

[436] AfDBAT Statute, art. II.1.iii, read together with art. III.1.

[437] C.F. Amerasinghe, 'Sources of International Administrative Law', in *International Law at the Time of its Codification: Essays in Honour of Roberto Ago* (1987), vol. 1, at 84.

C. The constituent instrument of the organization

It is readily accepted that the constituent instrument of the organization concerned is a source of international administrative law.[438] The WBAT in the *de Merode* decision stated that the Articles of Agreement were relevant as a source of law, particularly in the absence of Staff Regulations and Staff Rules.[439] The Tribunal cited multiple provisions of the Articles of Agreement of the World Bank, treating them as a sort of constitutional basis of the Bank's power to act. The ILOAT has treated the constituent instruments of various organizations as sources of law, for example to explain the duties of the head of the Organisation[440] or to establish the immunity of the Organisation on the territory of the host State.[441] The UNAdT has treated the UN Charter as a source of law on multiple occasions.[442] This has been followed by the UNDT[443] and UNAT.[444]

D. Bulletins, circulars, manuals and issuances

It is generally considered that manuals, circulars, bulletins and other issuances by the Administration have a law creating character.[445] In the UN internal justice system, the UNDT Statute leaves no doubt that administrative issuances are applicable law, providing that '[t]he terms "contract" and "terms of appointment" include … all relevant administrative issuances in force at the time of alleged noncompliance.'[446] Indeed, in the UN common system, a great

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[438] C.F. Amerasinghe, 'International Administrative Tribunals', 2014 *Oxford Handbook of International Adjudication* 316, at 323; C.F. Amerasinghe, 'Sources of International Administrative Law', in *International Law at the Time of its Codification: Essays in Honour of Roberto Ago* (1987), vol. 1, at 80.

[439] WBAT Decision No. 1 (1981), *De Merode et al. v. The World Bank*, para. 18.

[440] See, e.g., ILOAT Judgment No. 17 (1955), *Duberg v. UNESCO*, para. E.

[441] ILOAT Judgment No. 70 (1964), *In re Jurado*, para. 2.

[442] See, e.g., UNAdT Judgement No. 4 (1951), *Howrani and 4 others v. UNSG*, para. 1; UNAdT Judgement No. 19 (1953), *Kaplan v. UNSG*, para. 3; UNAdT Judgement No. 70 (1957), *Radicopoulos v. UNRWA*, paras. 2-5; UNAdT Judgement No. 273 (1981), *Mortished v. UNSG*, para. III; UNAdT Judgement No. 310 (1983), *Estabial v. UNSG*, paras. XIV-XVI.

[443] UNDT/2012/113, *El Moctar v. UNSG*, para. 18 (referring to the Charter in examining the definition of the term 'staff member'); UNDT/2010/171, *Applicant v. UNSG*, para. 6 (referring to art. 101.3 of the Charter as relevant to the definition of 'misconduct').

[444] Judgment No. 2015-UNAT-556, *Scheepers et al. v. UNSG*, para. 31 (applying art. 101.3 of the Charter).

[445] C.F. Amerasinghe, 'International Administrative Tribunals', 2014 *Oxford Handbook of International Adjudication* 316, at 324; M.B. Akehurst, *The Law Governing Employment in International Organizations* (1967) 67-71; C.F. Amerasinghe, 'Sources of International Administrative Law', in *International Law at the Time of its Codification: Essays in Honour of Roberto Ago* (1987), vol. 1, at 84.

[446] UNDT Statute, art. 2.1.a.

deal of legal detail is contained in Secretary-General's Bulletins, Administrative Instructions and Information Circulars adopted under the Staff Rules and further elaborating on them. References by the UNDT and UNAT to such administrative issuances as sources of law are commonplace.[447] The ILOAT has likewise recognized administrative circulars and issuances as sources of international administrative law,[448] as has the ATBIS[449] and the OASAT.[450] The statutes of some other administrative tribunals are drafted broadly enough to include administrative circulars and issuances within the tribunal's jurisdiction. This is the case, for example, with the IMFAT statute, which provides jurisdiction of that Tribunal over applications 'by a member of the staff challenging the legality of an administrative act adversely affecting him.'[451]

E. Decisions of the plenary organ of the organization

The potential law-creating character of decisions or resolutions of the plenary organ of an organization (for example, the UNGA in the case of the UN), or other decision-making body (such as the Board of Governors or the Executive Directors in the World Bank) is generally accepted but the question arises somewhat infrequently in international administrative law. In the case of the UN, Article 101.1 of the Charter gives the UNGA the power to adopt regulations governing the staff,[452] but the question arises whether even resolutions not put forward as staff regulations can be a source of law in employment matters. This was answered in the affirmative by the ICJ in its Advisory Opinion on the *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal*, in which the Court considered that a resolution of the UNGA concerning the prerequisites for the payment of a repatriation grant applied as a source of law before the UNAdT.[453] Amerasinghe has concluded that, in the case of most organizations, 'it is generally recognized that the plenary organ or the organ empowered to

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[447] A search carried out on 11 April 2024 yielded 446 results for "secretary-General's bulletin" in the caselaw of the UNDT and UNAT.

[448] ILOAT Judgment No. 13 (1954), *In re McIntire*, at 3; ILOAT Judgment No. 48 (1960), *In re Fisher*, para. 2.

[449] ATBIS Judgment No. 1/2021, *X v. BIS*, para. 149.

[450] OASAT Judgment No. 169 (2022), *Griner v. SG of the OAS*, para. 121.

[451] IMFAT Statute, art. II.

[452] Article 101.3 of the Charter provides: 'The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.'

[453] ICJ, *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal*, Advisory Opinion, *ICJ Reports 1982*, at 362, para. 73.

draw up the staff regulations has the power also to adopt resolutions which are a source of law for the legal relationship between the organization and the staff.'[454] With respect to the power of review of IATs over such texts, the rule applied by most IATs is that they have no power to review texts promulgating general rules or policies and are limited to a review of the application of that rule or policy in a particular case,[455] although the statutes of a select few IATs do allow for the review of regulatory decisions of general application.[456]

[454] C.F. Amerasinghe, 'The Implications of the *de Merode* Case for International Administrative Law', (1983) 43 *Heidelberg Journal of International Law* 22. But see OASAT Judgment No. 171 (2023), *LaGuerre v. SG of the OAS*, para. 105 (holding that General Assembly resolutions could not be considered automatically self-executing or as sufficient justifications to authorize case-by-case terminations of contracts).

[455] See cases cited in ADBAT Decision No. 109 (2017), *Perrin et al., v. ADB*, paras. 46-57.

[456] This is particularly the case with the statute of the EBRDAT, which defines 'administrative decision' as 'an individual decision or regulatory decision'. EBRDAT Statute, art. 1.03. The statute of the IMFAT similarly defines 'administrative act' as 'any individual or regulatory decision' but clarifies that 'the expression "regulatory decision" shall mean any rule concerning the terms and conditions of staff employment, including the General Administrative Orders and the Staff Retirement Plan, but excluding any resolutions adopted by the Board of Governors of the Fund'. IMFAT Statute, art. 2.2. Moreover, IATs do generally possess an 'indirect' power of judicial review over regulatory texts in the sense that they may review their legality to the extent relevant to an analysis of an individual administrative decision challenged by a staff member. See, e.g., ILOAT Judgment No. 2420 (2005), *Mr S.B. et al. v. FAO*, para. 11; EUMETSAT Appeals Board Decision in Cases Nos. 9-14 (2021), *e. a. v. EUMETSAT*, paras. 86-87. See also Ullrich, *supra* note 87, at 474-475.

F. Practice of the organization

Another source of law is the practice of the organization.[457] In the law of international organizations more generally, this source of law is often referred to as 'established practice';[458] as applicable in the administrative law context, it is generally referred to simply as 'organizational practice'[459] or 'practice of the organization'[460].

Practice of the organization as a source of law was recognized by the ICJ in its advisory opinion on *Judgments of the Administrative Tribunal of the International Labour Organization upon Complaints Made Against UNESCO* , where it analysed the expectancy of renewal of a fixed-term contract by reference to the practice within the Organization and stated:

'The fact is that there has developed in this matter a body of practice to the effect that holders of fixed-term contracts, although not assimilated to holders of permanent or indeterminate contracts, have often been treated as entitled to be considered for continued employment, consistently with the requirements and the general good of the organization, in a manner transcending the strict wording of

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[457] C.F. Amerasinghe, 'International Administrative Tribunals', 2014 *Oxford Handbook of International Adjudication* 316, at 324; Y. Kryvoi, 'The Law Applied by International Administrative Tribunals: From Autonomy to Hierarchy', (2015) 47 *George Washington International Law Review* 291; M.B. Akehurst, *The Law Governing Employment in International Organizations* (1967), at 94-97; C.F. Amerasinghe, 'Sources of International Administrative Law', in *International Law at the Time of its Codification: Essays in Honour of Roberto Ago* (1987), vol. 1, at 89; C.F. Amerasinghe, *The Law of the International Civil Service* (1994), vol. 1, at 159-168.

[458] C. Peters, 'Subsequent Practice and Established Practice of International Organizations: Two Sides of the Same Coin' (2011) 3(2) *Goettingen Journal of International Law* 617-642. The concept of established practice has been codified in the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character, art. 1.1(34) ('"rules of the Organization" means, in particular, the constituent instruments, relevant decisions, and established practice of the Organization'), the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, art. 2.1(j) ('"rules of the organization" means, in particular, the constituent instruments, decisions and resolutions adopted in accordance with them, and established practice of the organization'), and the 2011 ILC Draft Articles on the responsibility of international organizations, art. 2(b) ('"rules of the organization" means, in particular, the constituent instruments, decisions, resolutions and other acts of the international organization adopted in accordance with those instruments, and established practice of the organization').

[459] See C. Rohde, 'Organizational Practice as a Source of Law', in D. Petrović (dir.), *Une contribution de 90 ans du Tribunal administratif de l'Organisation internationale du travail à la création d'un droit de la fonction publique internationale* (Genève, OIT, 2017), 53-73.

[460] See C.F. Amerasinghe, 'Sources of International Administrative Law', in *International Law at the Time of its Codification: Essays in Honour of Roberto Ago* (1987), vol. 1, at 89.

> the contract. … The Practice as here surveyed is a relevant factor in the interpretation of the contracts in question.'[461]

Similarly, in *re Connolly-Battisti (No. 4)*, the ILOAT considered the definition of the within grade salary increment 'in the light of well-established practice.'[462] In *re Feistauer*, it held that 'because it was established practice to consult an employee on a proposed redeployment, the Organization had a duty to consider the complainant's objections to repdeployment before deciding to abolish his post on that basis.'[463] In *re Leger*, it held that a statement by the Director of a practice which he intends to follow can under certain conditions create such an obligation.'[464] The Tribunal clarified however that 'a statement of practice must not conflict with the rule which it is elaborating.'[465] In this regard, it has in subsequent cases made clear that practice of the organization cannot 'be invoked to deny … officials their written rights'[466] and, in fact, even considered practice as hierarchically inferior to a conflicting written provision when invoked to the advantage of the staff member.[467]

Organizational practice has also been recoginized by the UNAdT. In *Belchamber v. UNSG*, it found on the basis of a uniform practice that there was an implied obligation on the part of the administration to hold consultations with the staff representatives prior to the revision of the salary scale.[468] In *Fürst v. UNSG*, it held that an applicant's 'appointment at P-3 level in no way contravened United Nations Staff Regulations or established practice.'[469] In *Mendez v. UNSG*, it referred to practice of the organization to interpret the expression 'staff subject to geographical distribution.'[470]

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[461] ICJ, *Judgments of the Administrative Tribunal of the International Labour Organization upon Complaints Made Against UNESCO,* Advisory Opinion, *ICJ Reports 1956*, at 91.

[462] ILOAT Judgment No. 294 (1977), *In re Connolly-Battisti (No. 4)*, para. 1.

[463] ILOAT Judgment No. 1779 (1998), *In re Feistauer*, para. 13.

[464] ILOAT Judgment No. 486 (1982), *In re Leger*, paras. 7-8.

[465] *Ibid.*, para. 8.

[466] ILOAT Judgment No. 2411 (2005), *Mr E.K. L. v. EPO*, para. 9.

[467] ILOAT Judgment No. 2556 (2006), *S.A.K. v. OPCW*, para. 12.

[468] UNAdT Judgement No. 236 (1978), *Belchamber v. UNSG,* para. XX.

[469] UNAdT Judgement No. 241 (1979), *Fürst v. UNSG,* para. III.

[470] UNAdT Judgement No. 268 (1981), *Mendez v. UNSG*, para. XIV.

Among the statutes of IATs, that of the ATBIS is notable for explicitly recognizing organizational practice as a source of law, stating in Article IX concerning sources of law that '[i]n all cases, the Tribunal shall take into account the customs and practices of the Bank.'[471]

Organization practice has also been explicitly recognized as a source of law in IAT judgments. In *de Merode,* for example, the WBAT stated that '[t]he practice of the organization may also, in certain circumstances, become part of the conditions of employment.'[472] However, it cautioned that the practice of the organization only becomes a binding source of international administrative law when it is being followed by the organization out of a sense of legal obligation:

> 'Obviously, the organization would be discouraged from taking measures favourable to its employees on an *ad hoc* basis if each time it did so it had to take the risk of initiating a practice which might become legally binding upon it. The integration of practice into the conditions of employment must therefore be limited to that of which there is evidence that it is followed by the organization in the conviction that it reflects a legal obligation, as was recognized by the International Court of Justice in its Advisory Opinion on *Judgments of the Administrative Tribunal of the ILO*.'[473]

Similarly, the IMFAT has stated that 'administrative practice may, in certain circumstances, give rise to legal rights and obligations' but only when 'there is evidence that it is followed by the organization in the conviction that it reflects a legal obligation.'[474] Thus, practice of the organization acts as a sort of customary international law which is *lex specialis* to the organization, since it requires, like customary international law, not only practice but also *opinio juris*.

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[471] ATBIS Statute, art. IX.3.

[472] WBAT Decision No. 1 (1981), *De Merode et al. v. The World Bank*, para. 23.

[473] WBAT Decision No. 1 (1981), *De Merode et al. v. The World Bank*, para. 23.

[474] IMFAT Judgment No. 2012-1, *Sachdev v. IMF*, para. 80. See also Commentary on the IMFAT Statute (2020), at 18; IMFAT Judgment No. 2015-1, *Hanna v. IMF*, paras. 50-53; IMFAT Judgment No. 2007-1, *Daseking-Frank et al v. IMF*, paras. 56-57; IMFAT Judgment No. 1997-2, *Ms. 'B' v. IMF*, para. 37.

In recent cases, the UNDT has regularly relied on the past practice of the organization in upholding disciplinary measures imposed on a staff member.[475] The WBAT in 2020 stated that 'it is a well-settled principle that the practice of the [organization] can create a legal relationship between [it] and its staff', and it went on to use that practice to interpret a rule.[476] The AfDBAT in 2021 recognized an organizational practice that the President of the Bank could not delegate authority to authorize summary dismissal.[477] The ILOAT for its part stated in 2016 that:

> 'Consistent precedent has it that while an international organization is obliged to apply its written rules, it must also act in accordance with a consistent practice while that practice is in existence. A staff member may rely on a practice that is created by an announcement, by an administrative circular or otherwise, which is evidence that in the exercise of the discretionary power the head of the organisation will follow a specified administrative procedure. Accordingly, a decision by the executive head of an international organization who has created an established practice in furtherance of the exercise of discretion conferred by a written rule may be vitiated if the decision breaches the existing practice.'[478]

Practice of the organization has also been recognized as a source of law by the ADBAT. In *Behuria*, it refused to award compensation to an applicant, stating that 'it is the practice of the Bank not to make extra payment when an officer on a temporary assignment performs the work normally carried out by an officer of a higher level.'[479] In *Mesch and Siy*, it concluded that there was no general right to tax reimbursement, basing its finding in part on the fact that there was no 'pattern or practice of making such reimbursement, let alone one that is clear, unambiguous, consistent and of significant duration.'[480]

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[475] See, e.g., UNDT/2022/014, *Desbois v. UNSG*, paras. 64-65; UNDT/2022/015, *Egian v. UNSG*, para. 85; UNDT/2021/042, *Applicant v. UNSG*, para. 54; UNDT/2021/149, *Dantas v. UNSG*, para. 65; UNDT/2020/036, *Kozul-Wright v. UNSG*, paras. 31, 33; UNDT/2022/014, *Desbois v. UNSG*, para. 64.

[476] WBAT Decision No. 638 (2020), *FQ v. IFC*, paras. 122-124.

[477] AfDBAT Judgment No. 144 (2021), *J.L.N. v. AfDB*, para. 59.

[478] ILOAT Judgment No. 3680 (2016), *V.K. v. OPCW*, para. 12 (ultimately not upholding the claim based on practice of the organisation because it found that the practice was not one of general application).

[479] ADBAT Decision No. 19 (1996), *Behuria v. ADB*, para. 13.

[480] ADBAT Decision No. 35 (1997), *Mesch and Siy v. ADB*, para. 24.

An effort has been made recently by Christian Rohde, Principal Registrar for the UNDT and UNAT, to flesh out practice of the organization as a source of law.[481] Based on numerous examples, several of which have been mentioned here, he concludes that '[i]t is now widely accepted that organizational practice can indeed result in the creation of law in international organizations.'[482] He offers a long list of criteria for the establishment of organizational practice as a source of law, the most pertinent of which in the opinion of the present author are the following: (1) the practice must be clear, (2) it must have a determinable effective date, (3) it must be procedurally fair and legitimate, (4) it must have been publicized, (5) it must be taken out of a sense of legal obligation (*opinio juris*), (6) it must be recognized and relied upon, (7) it must be longstanding, (8) it must be free from variation, and (9) it must not contradict a written rule.[483] This useful catalogue can assist tribunals in identifying practice as a source of law in the future.

Finally, the question arises how much practice is necessary for it to constitute a source of law. While it is difficult to arrive at a precise answer, the AfDBAT has stated that '[t]he important principle to emphasize is that the practice must be constant and consistent in order to give rise to a general rule or practice. It must be well established and accepted by the organization. The evidence establishing it must be clear and compelling to leave no doubt that the practice exists and is observed.'[484] Similarly, the ILOAT stated in *re del Valle Franco Fernandez* that 'to be binding in law a practice must be so constant and consistent as to reflect a general rule.'[485] In *re Berthet (No. 3), Delius, Glöckner (No. 6), Robrahn and Stegmüller (No. 2)*, the ILOAT refused to recognize an organizational practice of adjusting pensions in line with adjustments to salaries to reflect cost of living, noting that the practice had been in place 'for a relatively limited number of years.'[486] The WBAT has been more specific, looking to 'a consistent practice for at least ten years.'[487] Very brief instances of practice may better be

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[481] See C. Rohde, 'Organizational Practice as a Source of Law', in D. Petrović (dir.), *Une contribution de 90 ans du Tribunal administratif de l'Organisation internationale du travail à la création d'un droit de la fonction publique internationale* (Genève, OIT, 2017), 53-73.

[482] *Ibid.*, at 61.

[483] *Ibid.*, at 63-69.

[484] AfDBAT Judgment No. 85 (2013), *J.B. v. AfDB*, para. 51.

[485] ILOAT Judgment No. 1610 (1997), *In re del Valle Franco Fernandez*, para. 21.

[486] ILOAT Judgment No. 2089 (2002), *In re Berthet (No. 3), Delius, Glöckner (No. 6), Robrahn and Stegmüller (No. 2)*, para. 14.

[487] WBAT Decision No. 638 (2020), *FQ v. IFC*, para. 124.

considered under the principle of estoppel.[488] Ultimately, it appears that there is no specific magic number of years necessary for organizational practice to be elevated to a source of law in a given case. Rather, IATs are likely to look to various factors, of the kind identified by Rhode, to reach an overall impression and conclusion.[489]

[488] M.B. Akehurst, *The Law Governing Employment in International Organizations* (1967), 94.

[489] See Rohde, *supra* note 481, at 67 (observing with respect to the *In re Berthet (No. 3)* Judgment, discussed *supra* note 486 and accompanying text, that '[t]he Tribunal's language can be taken as an indication that other factors of some gravity need to flow together to justify the finding of a practice creating a right').

III. 'UNIVERSALIZING' SOURCES OF INTERNATIONAL ADMINISTRATIVE LAW

While the traditional, self-contained, sources outlined above are undoubtedly applied systematically, there exist a number of other sources of international administrative law which are applied with increasing frequency. Because of the role that these sources may play in uniting the respective jurisprudences of different IATs, they will be referred to as 'universalizing' sources of international administrative law. In the following subsections, these various sources will be analysed, which include general principles, international law and the decisions of other IATs.

A. General principles

It is now beyond doubt that general principles constitute a source of international administrative law, which are used to help interpret the written law but which, in the case of certain fundamental principles, may even override it.[490] Such general principles may usefully be divided into two distinct categories. On the one hand, one finds the type of general principles used by international courts and tribunals more generally, such as the principles of good faith, non-discrimination, equality of treatment, *res judicata*, legality, the good administration of justice, acquiescence, *non liquet*, non-retroactivity and estoppel, as well as certain procedural due process guarantees (e.g. right to a hearing, right to be represented), principles of interpretation (e.g. in light of the object and purpose, consistent with intentions of the drafters), and principles such as *restitution in integrum* (duty to mitigate damages) and unjust enrichment. On the other hand, there exist a rather large body of principles that are employed specifically (albeit not exclusively) in international administrative law. These include the principle of acquired rights, legitimate expectation, equal pay for equal work, duty of care, the right to information from the administration and the independence of the organization and its staff from member States, as well as the Noblemaire, Fleming and *patere legem* principles.

General principles are referred to as a source of law in the statutes of a number of IATs. For example, art. III of the IMFAT Statute explicitly calls on that tribunal to apply general principles, stating that, '[i]n deciding on an application, the Tribunal shall apply the internal

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[490] C.F. Amerasinghe, 'International Administrative Tribunals', 2014 *Oxford Handbook of International Adjudication* 316, at 324-325; C.F. Amerasinghe, 'The Implications of the *de Merode* Case for International Administrative Law', (1983) 43 *Heidelberg Journal of International Law* 25-29.

law of the Fund, including generally recognized principles of international administrative law concerning judicial review of administrative acts.'[491] The commentary to the IMFAT Statute states that 'general principles of international administrative law, such as the right to be heard (the doctrine of *audi alteram partem*) are so widely accepted and well-established in different legal systems that they are regarded as generally applicable to all decisions taken by international organizations, including the Fund.'[492] Art. V.1 of the AfDBAT Statute provides that, '[i]n deciding on an application, the Tribunal shall apply … generally recognized principles of international administrative law concerning the resolution of employment disputes of staff in international organizations.'[493] The OASAT Statute provides that 'general principles of labor law' shall be applied as a source of law.[494] The Statutes of the TPIOIF and TAOIF also provide for the application of general principles of law.[495]

General principles have been recognized by IATs on numerous occasions. Indeed, the LoNAT made specific reference to general principles as a source of law in its very first case in 1929. In its judgment, it stated that it would refer to general principles in the absence of positive law on the matter under adjudication, although this was not necessary under the circumstances of the case.[496]

The most thorough and significant treatment of general principles by an IAT is found in a 2019 Judgment of the EBRDAT,[497] in which it carried out an exhaustive investigation of the sources of law set out para. 3.02 of the EBRD Directive on the Appeals Process, which include:

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[491] IMFAT Statute, art. III.2.

[492] Commentary on the Statute of the IMF Administrative Tribunal (2020), available online at https://www.imf.org/external/imfat/pdf/2020_Amended-Statute.pdf#page=15 (accessed 11 March 2024), at 18. It is interesting to note that the Commentary also states: 'The reference to recognized principles of international administrative law is intended to limit the powers of the tribunal by making clear that the standards of review applied by the tribunal should not go beyond those applied by other tribunals, and that the tribunal is expected to recognize the limitations observed by other administrative tribunals of international organizations in reviewing the exercise of discretionary authority by the decision-making organs of the Fund. In other words, the fact that the tribunal has been given competence to review employment-related decisions by the Fund would not mean that it had greater latitude in the exercise of that power than that exercised by other administrative tribunals.' *Ibid.*, at 17. While this does seem to substantially limit the meaning of 'general principles of international administrative law', it does so in a way which aims to bring the jurisprudence and work of the various IATs together.

[493] AfDBAT Statute, art. V.1. See also CSAT Statute, art. XII.1; ATBIS Statute, art. IX.2.

[494] OASAT Statute, art. II.v.

[495] TPIOIF Statute, para. 206; TAOIF Statute, para. 224.

[496] League of Nations Administrative Tribunal, Judgment No. 1 (1929), *In re Di Palma Castiglione*, at 2.

[497] EBRDAT Decision in Case No. 2019/AT/06, *Appellant v. EBRD*, Section 6.3.4.

(i) the Staff Member's contract of employment, (ii) the internal law of the Bank and (iii) generally recognised principles of international administrative law. Since the first two sources did not resolve the question at issue — whether the circumstances of employment of an independent contractor can create an ongoing staff member relationship between the individual and the Bank — the case turned on general principles of law. The EBRDAT thus proceeded to carry out the most thorough exegesis of general principles of international administrative law to date. It first observed as follows:

> 'How to determine the existence and content of generally recognised principles is a matter of methodology. When sources are not extensive within a special field, it may be appropriate to look at the general field of law of which the former is part. To the extent it is compatible with the principles informing the special area, the methodological approach adopted in the general area may be applicable to complement the sources available in the former. While international administrative law is a separate field of law, it is part of the larger field of public international law. It may, therefore, be useful to look at the general field of public international law to find guidance as to the method according to which the existence of generally recognised principles may be determined. Of relevance in this context is the doctrinal debate around the rule on the applicability of generally recognised principles that can be found in Article 38, paragraph 1 (c) of the Statute of the International Court of Justice (the 'ICJ'). Most recently, the issue is being dealt with by the International Law Commission (the 'ILC') in its ongoing work on general principles of law. For the moment, this work resulted in the First Report on General Principles of Law, adopted at the Commission's Seventy-first session of 2019. While the work is still in a preliminary phase, and it has not addressed specifically the field of international administrative law, it makes a comprehensive analysis of the doctrinal debate on the determination of generally recognised principles in the general field of public international law. As pointed out above, the methodological approach of the general field of public international law may be applied, to the extent compatible, in the special field of international administrative law. As the ILC Report points out, there are at least two categories of general

> principles: those formed within the international legal system, and those derived from national legal systems.'[498]

Following the methodology of the ILC on general principles, the EBRDAT analysed both the international legal system and national legal systems for evidence of general principles relevant to the issue. With respect to the international legal system, it stated that, '[l]acking any treaties or custom on a certain issue, an indicator of the existence of a general principle is the jurisprudence by other, comparable international courts.'[499] Thus, the Tribunal essentially looked to the jurisprudence of other IATs, as well as national legal systems — the other source of general principles mentioned by the ILC — for evidence of a general principle of international administrative law that may lead it to conclude that an employer-employee relationship exists even when a contract states the relationship is one of independent contractor. It is interesting to note, however, that after this exhaustive analysis, it concluded that the relationship was in fact one of an independent contractor since the individual had freely negotiated higher remuneration than received by staff members.[500] Nevertheless, one gains a clear picture that, in the Tribunal's view, the standards for determining general principles elaborated by the ILC in the context of public international law generally, i.e. looking to jurisprudence of sister tribunals and looking to national legal systems, can be applied in the context of international administrative law.[501]

Another detailed explanation of general principles as a source of law has been offered by the TAOIF:

> 'Il n'est pas contestable que les organisations internationales sont liées par un certain nombre de règles coutumières et de principes généraux de droit. Les principes généraux du droit international sont tributaires de la même analyse que les règles coutumières : ils sont essentiellement propres à chaque organisation internationale. On remarque que la tendance contemporaine s'oriente vers

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[498] *Ibid.*, at 13.

[499] *Ibid.*, at 14.

[500] *Ibid.*, at 24-27.

[501] For additional cases in which the EBRDAT has relied on general principles, see EBRDAT Decision in Case No. 2006/AT/04 (Decision on liability and Judgment), *Appellant v. EBRD*, para. 115; EBRDAT Decision in Case No. 2017/AT/03, *Appellant* v *EBRD*, para. 4.10; EBDRAT Decision in Case No. 2021/AT/02, *Appellant v. EBRD*, paras. 56, 64; EBRDAT Decision in Case No. 2022/AT/01, *Appellant v. EBRD*, para. 20; EBRD Decision in Case No. 2023/AT/02, *Appellant v. EBRD*, para. 27.

> l'émergence de principes généraux propres à l'ensemble des organisations internationales. Les juridictions administratives internationales se réfèrent souvent aux principes généraux qui reçoivent d'ailleurs diverses dénominations. Ainsi le TAOIT fait parfois référence à « un principe général » mais plus souvent aux : principes généraux du droit, principes généraux de la fonction publique internationale, principes généraux du droit de la fonction publique internationale, principes généraux inhérents au droit de la fonction publique internationale, [ou] principes généraux applicables à la fonction publique internationale. Indépendamment de l'hétérogénéié relative des expressions précitées, il est de jurisprudence constante que les organisations internationales sont liées par un corpus de principes généraux.'[502]

The ILOAT, for its part, has recognized general principles as a source of law on several occasions. As early as 1957 in *Waghorn* it stated that it was 'bound exclusively by the internal law of the Organisation … as well as by general principles of law.'[503] In *Sharma*, the Tribunal stated that the conditions of employment of officials were 'governed … in a subsidiary way, by general principles of law and, in particular, administrative law.'[504] In *Niesing (No. 2), Peeters (No. 2) and Roussot (No. 2)*, it stated that '[t]hough the Tribunal's main task is to enforce the written rules in disputes between organisation and staff member, clear and consistent precedent makes dealings between the two sides subject, not just to the material provisions of the Staff Regulations and the contract of employment, but also to a set of general principles that form part of the law of the international civil service.'[505] The ILOAT has indeed applied general principles to determine the outcome of numerous cases, involving issues as

[502] TAOIF, Jugement No. 7 (2018), *W, X, Y et Z v. OIF*, paras. 17-20 (internal citations omitted).

[503] ILOAT Judgment No. 28 (1957), *In re Waghord*, part A.

[504] ILOAT Judgment No. 30 (1957), *In re Sharma*, at 2.

[505] ILOAT Judgment No. 1118 (1991), *In re Niesing (No. 2), Peeters (No. 2) and Roussot (No. 2)*, para. 9.

varied as the recovery of monies paid in error, [506] the right to a hearing in disciplinary cases,[507] acquired rights,[508] renewal of fixed-term appointments[509] and myriad other issues.[510]

The WBAT in *de Merode* stated clearly that '[a]nother source of the rights and duties of the staff of the Bank consists of general principles of law',[511] of which it specifically cited the principle of non-retroactivity, the principle of non-discrimination and the principle of reasonable relationship between aims and means.[512] In the *Salle* case, it affirmed the statement in *de Merode* concerning general principles, observing that '[c]onditions of employment may also derive from various other sources, including general principles of law.'[513] In *Wahie*, the Tribunal examined general principles in its analysis of whether the Appeals Committee had committed procedural defects, even after examining the relevant staff rule on the question.[514]

The IMFAT in *Ms 'B'* called attention to the explicit reference to general principles as a source of law in its statute and proceeded to examine whether such general principles would require reasonable notice of a change in policy.[515] In *Ms. 'EE'*, the Tribunal stated that '[t]his Tribunal has invoked general principles of international administrative law both to fill in

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[506] ILOAT Judgment No. 53, *In re Wakley*, para. 4 ('In the absence of relevant provisions in the Staff Rules, the general principle of law according to which the payer is entitled to pursue the recovery against the payee of sums paid in error is applicable to the present case').

[507] ILOAT Judgment No. 203 (1973), *In re Ferrecchia*, para. 1.

[508] ILOAT Judgment No. 429 (1980), *In re Gubin and Nemo*, para. 9.

[509] ILOAT Judgment No. 1154 (1992), *In re Bluske*, para. 4.

[510] ILOAT Judgment No. 1756 (1998), *In re Awoyemi*, para. 3 ('A firm line of precedent says that the rights under a contract of employment … include any that flow from general principles of the international civil service'); ILOAT Judgment No. 2120 (2002), *Mr. I.M.B. v. IAEA*, para. 10 (concluding that a provision which discriminated between candidates for appointment based on their marital status and family relationship was 'contrary to … general principles of law and those which govern the international civil service'); ILOAT Judgment No. 2257 (2003), *Mr. E.F. v. EPO*, para. 20 ('There is no principle of international law which requires the EPO to ensure all of its pensioners are treated the same vis-à-vis the taxes they pay in their home countries'); ILOAT Judgment No. 2256 (2003), *Mr. M. L. v. OPCW*, paras, 8, 15, 23 (concluding that an organization could not create an agreement with a member State which limited the tax-exempt status of its staff members under international law); ILOAT Judgment No. 2720 (2008), *D.J. G. v. ITU*, para. 12 (stating that the duty to refrain from any type of conduct that may harm the dignity or reputation of the Organization or its staff members 'flows from the general principles governing the international civil service'); ILOAT Judgment No. 3182 (2013), *Ms M. H v. ILO*, para. 5 (holding that 'the Director-General's power to appoint the officials of the ILO has to be exercised in accordance with the general principles of law').

[511] WBAT Decision No. 1 (1981), *De Merode et al. v. The World Bank*, para. 25.

[512] *Ibid.*, paras. 34, 46-47.

[513] WBAT, Decision No. 10 (1982), *Salle v. IBRD*, para. 29.

[514] WBAT, Decision No. 93 (1990), *Wahie v. IBRD*, para. 42.

[515] IMFAT Judgment No. 1997-2, *Ms. 'B' v. IMF*, paras. 37, 59.

lacunae in the written law of the Fund and to buttress its requirements.'[516] The Tribunal has continued to recognize its statutory obligation to apply general principles as part of the internal law of the Fund in numerous other cases, involving issues such as fair process,[517] the appropriate standard of review,[518] the right of a candidate for a post to be fairly considered[519] and many others.[520] In one case, a breach of general principles of international administrative law was even mentioned in the operative paragraph, resulting in $60,000 compensation.[521]

The former UNAdT in *Moreira de Barros* ruled that when 'there is a gap, or lacuna, in the internal laws [of the United Nations]...the Tribunal is entitled, if not obliged, to consider general principles of law.'[522] In *Kiwanuka*, it used general principles of law to develop a list of standards for reviewing administrative actions in relation to disciplinary actions.[523] These requirements were adopted by the UNDT in *Kouka*, which pointed out specifically that those standards were derived from general principles.[524] In *Obdeijn*, the UNDT stated that '[i]n the adjudication of employment disputes that come before them, international administrative tribunals may rely on, among other sources, general principles of law—including international human rights law, international administrative law and labour law—which may be derived from, inter alia, international treaties and international case law.'[525] In *Kisambira*, the UNDT

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[516] IMFAT Judgment No. 2010-4, *Ms. 'EE' v. IMF*, para. 186.

[517] IMFAT Judgment No. 2003-1, *Ms. 'J' v. IMF*, paras. 159-160; IMFAT Judgment No. 2003-2, *Ms. 'K' v. IMF*, paras. 97-98.

[518] IMFAT Judgment No. 2003-1, *Ms. 'J' v. IMF*, para. 102; IMFAT Judgment No. 2003-2, *Ms. 'K' v. IMF*, para. 42.

[519] IMFAT Judgment No. 2007-3, *Mr. M. D'Aoust (No. 2) v. IMF*, para. 67.

[520] IMFAT Judgment No. 2001-2, *Mr. 'P' v. IMF (No. 2)*, para. 152 and IMFAT Judgment No. 2005-1, *Mr. 'F' v. IMF*, note 18 (considering notice and hearing as essential principles of international administrative law); IMFAT Judgment No. 2011-2, *Ms. D. Pyne v. IMF*, para. 64 ('The obligation of the organization to assist a redundant staff member in identifying opportunities for reassignment … is supported by general principles of international administrative law'); IMFAT Judgment No. 2017-2, *Ms. 'NN' v. IMF*, para. 96 (obligation to provide feedback to an unsuccessful applicant). See also IMFAT Judgment No. 1997-1, *Ms. 'C' v. IMF*, para. 44; IMFAT Judgment No. 1999-1, *Mr. 'A' v. IMF*, paras. 92-93; IMFAT Judgment No. 2001-2, *Mr. 'P' v. IMF (No. 2)*, para. 125; IMFAT Judgment No. 2002-1, *Mr. 'R' v. IMF*, para. 30; IMFAT Judgment No. 2006-6, *Ms. 'M' and Dr. 'M' v. IMF*, para. 123; IMFAT Judgment No. 2021-2, *Mr. 'RR' v. IMF*, para. 132; IMFAT Judgment No. 2022-1, *'TT' v. IMF*, para. 129; IMFAT Judgment No. 2023-4, *'VV' (No. 2) v. IMF*, paras. 110-112.

[521] IMFAT Judgment No. 2015-3, *Ms. 'GG' (No. 2) v. IMF*, at 144.

[522] UNAdT Judgement No. 1320 (2007), *Moreira de Barros v. UNSG*, para. III.

[523] UNAdT Judgement No. 941 (1999), *Kiwanuka v. UNSG*, para. III.

[524] UNDT/2009/009, *Kouka v. UNSG*, para. 10. See also UNDT/2010/171, *Applicant v. UNSG*, para. 5 (following *Kouka* and also making specific reference to the general principles from which the standards were derived).

[525] UNDT/2011/032, *Obdeijn v. UNSG*, para. 31.

emphasized that 'in accordance with general principles and international labour norms (including as expressed in international instruments on the right to freedom of association and collective bargaining), the Respondent has an obligation to facilitate organisational rights of staff members.'[526] In *Hassanin*, it recalled and applied this jurisprudence, observing that it had 'previously discussed at length that general principles of international law and norms are relevant in its interpretation of a staff member's rights in the context of their terms of appointment.'[527]

The ATBIS in its very first Judgment (No. 1/1996), at three points in its reasoning made reference to and applied what it characterized as general principles, referring to the principles of equal treatment and non-discrimination, the principle of *pacta sunt servanda*, and a principle according to which interest is due on unpaid debt.[528] In its Judgment No. 1/1998, the Tribunal examined as a preliminary question whether it could interpret the Bank's regulations in light of general principles of law, unanimously concluding that it was empowered to do so under art. 9.1 of its Statute.[529]

[526] UNDT Order No. 36 (NY/2011), *Kisambira v. UNSG*, para. 23.

[527] UNDT Order No. 83 (NY/2011), *Hassanin v. UNSG*, para. 23. See also 2013-UNAT-203, *Applicant v. UNSG*, para. 33.

[528] ATBIS Judgment No. 1/1996 (1997), *X and Y v. BIS*, paras. 3(b), 3(d), 6(a).

[529] ATBIS Judgment No. 1/1998 (2000), *Applicants 1-42 v. BIS*, para. I of the facts. For additional application of general principles by this tribunal, see ATBIS Judgment No. 1/1999 (2001), *X v. BIS*, paras. 1(c), 2(b), 4(c) (applying the principle of equality); ATBIS Judgment No. 1/2006 (2007), *X v. BIS*, paras. 3(a) and 3(c) (applying the principle of acquired rights); ATBIS Judgment No. 1/2015 (2016), *X and Y v. BIS*, para. 4(l) (applying the principle of equality).

General principles have also been applied as a source of law by the OASAT,[530] the AfDBAT,[531] the IDBAT,[532] the NATOAT,[533] the UNRWADT,[534] the TPIOIF,[535] the EUMETSAT Appeals Board[536] and the CSAT.[537]

It is clear from the above that IATs are invoking general principles with increasing regularity. The effect of this use of general principles is important. Indeed, this use of general

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[530] OASAT Judgment No. 25 (1976), *Bauta* v. *SG of the OAS*, at 16 (referring to 'the general principle that one may do anything that the law does not expressly forbid'); OASAT Judgment No. 64 (1982), *Chisman et al. and Montalván et al. v. SG of the OAS*, at 14, 20 (referring to 'the general principle that legislative or authentic interpretation goes back in time and hence the date of its entry into force becomes that of the rule being interpreted' and the general principle that 'when one rule replaces another, … the effects of the substitute rule must begin to take effect at the moment when the previous rule expires'); OASAT Judgment No. 127 (1995) *Díaz-Franjul v. SG of the OAS*, at 18; OASAT Judgment No. 169 (2022), *Griner v. SG of the OAS*, para. 157 (holding that the standard of proof that had been applied was consonant with the principles of fairness and due process).

[531] AfDBAT Judgment No. 75 (2010), *Mr. H. N-M v. AfDB*, para. 26 (recognizing *res judicata* as a general principle); AfDBAT Judgment No. 79 (2012), *J.R. AfDB*, para. 54 (recognizing the right to an effective remedy as a general principle of international administrative law); AfDBAT Judgment No. 101 (2018), *P.T. AfDB*, para. 55 ('Among the most fundamental general principles of the procedure before the tribunals are the rule against splitting one's case, the adversarial principle and the principle of equality of arms.'); AfDBAT Order No. 114 (2019), *K.K.D.F v. AfDB,* paras. 3-4 (recognizing a general principle that IATs must administer justice in public and thus refusing a request that the hearings be *in camera*); AfDBAT Judgment No. 138 (2020), *D.S.A. v. AfDB*, para. 71 (recognizing a general principle that an organization may not terminate the appointment of a staff member whose post has been abolished without first taking suitable steps to find him alternate employment); AfDBAT Judgment No. 43 (2005), *Bate v. AfDB*, para. 18 (declaring that the power to judge the legality of an individual decision in light of a staff member's terms of employment was consistent with 'general principles of international civil service law'); AfDBAT Judgment No. 155 (2022), *O.B. v. AfDB*, para. 45 (recognizing a general principle concerning the importance of internal time-limits); AfDBAT Judgment No. 159 (2022), *M. S. v. AfDB*, para. 34 (no general principle prevents the use of email in official correspondence with the administration); AfDBAT Judgment No. 164 (2023), *C.L.L. v. AfDB*, paras. 37-38 (applying general principles to determine the elements necessary to prove moral damages).

[532] IDBAT Judgment in Case No. 100 (2022), *BD v. IDB*, para. 38; IDBAT Judgment in Case No. 102 (2021), *Parrales v. IDB*, paras. 112-113; IDBAT Judgment in Case No. 103 (2022), *TD v. IDB*, paras. 85, 88, 106.

[533] NATOAT Judgment No. AT-J(2021)0004, *PH v. NATO International Staff*, para. 198; NATOAT Judgment No. AT-J(2021)0006, *SG v. Headquarters NATO Airborne Early Warning and Control Force Geilenkirchen*, paras. 94-95; NATOAT Judgment No. AT-J(2022)0007, *SS v. Centre for Maritime Research and Experimentation*, para. 64; NATOAT Judgment AT-J(2022)0016, *JE v. NATO Support and Procurement Agency*, para. 64; NATOAT Judgment No. AT-J(2023)0004, *JT v. Supreme Allied Commander Transformation*, para. 45; NATOAT Judgment No. AT-J(2023)0007, *HS v. NATO International Staff*, paras. 47-50; NATOAT Judgment No. AT-J(2019)1281, *SA v. NATO International Staff*, para. 46.

[534] UNRWADT Judgment No. UNRWA/DT/2022/052, *Al Bustanji v. CGUNRWA*, para. 61; UNRWADT Judgment No. UNRWA/DT/2023/013, *Wakid v. CGUNRWA*, para. 91.

[535] TPIOIF, Jugement No. 8 (2015), *X v. OIF*, at 14 (observing that 'en tant qu'organisation internationale et employeur, l'OIF est tenue de se conformer … aux principes généraux du droit international applicable en la matière — en particulier ceux dégagés par les tribunaux administratifs d'autre organisations internationales'). See also TPIOIF, Jugement No. 27 (2022), *X v. OIF*, para. 6.3. The TPIOIF also found a violation of general principles of international law in TPIOIF, Judgment No. 43 (2023), *X v. OIF*, para. 71.

[536] EUMETSAT Appeals Board Decision in Cases Nos. 9-14 (2021), *e. a. v. EUMETSAT*, para. 87; EUMETSAT Appeals Board Decision in Case No. 19 (2022), *Anonymous v. EUMETSAT*, para. 28.

principles is a significant development for the overall cohesion of international administrative law. In the words of Amerasinghe:

> 'While each organisation has its own written law contained in regulations and rules which a court settling disputes between that organisation and its staff must apply, general principles are invoked particularly in the interpretation of the written law, seemingly as *jus cogens* (fundamental law) or where there are lacunae. It is these principles that have made it possible to conceive of a *system* of international administrative law, despite the diversity and individuality of written laws pertaining to the different organisations and the multiplicity of courts applying them.'[538]

Similarly, Elias and Thomas have observed that '[t]he jurisprudence of international administrative tribunals has … indicated a convergence of principles from which one might discern a singular body of law that might be termed international administrative law. A common *corpus juris* might be inferred from the recognition by international administrative tribunals of the application of "general principles of law."'[539] Viewed in this way, there is thus good reason to place general principles among those 'universalizing' sources of law.

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[537] CSAT Judgment No. CSAT/5 (No. 1) (2002), *Rumman Faruqi v. Commonwealth Secretariat*, para. 50 ('The Statute and Rules of the Tribunal, as well as the Staff Regulations and Rules of the Commonwealth Secretariat, all reflect general principles of fairness'); CSAT Judgment No. CSAT/17 (2012), *C H v. Commonwealth Secretariat*, para. 127 (declaring that it is a general principle that the outcome of a grievance procedure should not be inordinately delayed); CSAT Judgment No. APL/20 (No. 1) (2014), *Julius Ndungu Kaberere v. Commonwealth Secretariat*, paras. 15 and 25 (concluding that there was no general principle requiring that parties' names be redacted or that judgments should not be published); CSAT Judgment No. CSAT/12 (No. 2) (2008), *Professor Victor Ohiometa Ayeni v. Commonwealth Secretariat*, paras. 35-46 (examining general principles applicable in the granting of remedies).

[538] C.F. Amerasinghe, 'The Future of International Administrative Law', (1996) 45 *International and Comparative Law Quarterly* 773, at 774-775.

[539] O. Elias and M. Thomas 'Administrative Tribunals of International Organizations', in C. Giorgetti, ed., *The Rules, Practice and Jurisprudence of International Courts and Tribunals* (2012), at 175 (referring in particular to the principle of non-discrimination and a general principle of law to discern certain procedural guarantees).

B. International law

Another source of law which is increasingly used by IATs is international law. To those who consider that international administrative law is itself international law, the inclusion of international law as an external source may appear rather peculiar. It is worth recalling, therefore, that the precise status or nature of international administrative law is debated.[540] As noted by Amerasinghe:

> 'There are a variety of possibilities ranging from the view that international administrative law is public international law pure and simple to the view that it is not law at all. Some writers feel that it is international law but not public international law, while others are content to characterize it more or less as the internal law of international organizations. … It would be sufficient to acknowledge … that while the law applied by tribunals is the internal law of the organizations, it is a breed of international law and may even, therefore, be regarded as a special branch of public international law.'[541]

As further elaborated by Villalpando:

> 'Several models of the relationship between the law of the international civil service and the international legal order have been proposed. On the one hand, the legal validity of the rules that govern [the] international civil service appears to be based on the international legal order. These rules are part of the "derivative" law of the international organization, flowing from the latter's constituent act, which is (usually) an international agreement, namely a source of international law. … On the other hand, the law of the international civil service has some features that are alien to international law. Indeed, the relationships governed by international civil service law never involve (at least directly) states themselves, which remain the major actors of the law of nations. They are further characterized by the subjection of one of the parties (the employee) to the authority of the other (the administration), an unusual trait in the international legal system. … In addition, contrary to international law in general, the law of the international civil service is

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[540] See *supra* notes 9-10 and accompanying text.

[541] See C.F. Amerasinghe, 'Sources of International Administrative Law', in *International Law at the Time of its Codification: Essays in Honour of Roberto Ago* (1987), vol. 1, at 68-69.

> characterized by a rigid hierarchy of sources and usually incorporates compulsory mechanisms of implementation. To circumvent this conundrum, some have advanced the theory that the internal law of international organizations should be considered an autonomous legal order in between international and municipal law. This argument, however, also faces difficulties, such as that of identifying an autonomous legal foundation for this law and sources to be referred to when the written rules fail to regulate some aspects of the employment relationship.'[542]

Thus, the prevailing view is that international administrative law is either an autonomous legal order or, at most, a special branch of public international law. In either case, it appears appropriate to include references to 'pure' forms of international law among the sources of law to be applied. Such references to international law arise in a number of different contexts, including general references, the application of customary international law, the application of international treaties, references to the judgments of other international courts and tribunals and the use of the rules of interpretation found in international law. The present subsection will treat each of these areas in turn.[543]

First, in certain cases, IATs have made general statements about the need to comply with international law. For example, in *Obdeijn*, the UNDT observed that:

> 'When the General Assembly established the current system of administration of justice, it affirmed that such system shall be 'consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike' (General Assembly resolution 63/253). The General Assembly therefore contemplates interpretation of the internal law of the United Nations in conformity with international law and principles of the rule of law.'[544]

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[542] Villalpando, 'The Law of the International Civil Service', in J.K. Cogan, I. Hurd and I. Johnstone, eds., *The Oxford Handbook of International Organizations* (2016), at 1071-1072.

[543] References to international human rights instruments in particular are now so common in the caselaw of IATs that an entire chapter of the present dissertation is devoted to them. See Chapter 5 below.

[544] UNDT/2011/032, *Obdeijn v. UNSG*, para. 32

Similarly, in *Tadonki*, the UNDT referred to the same UNGA Resolution[545] and included an entire section of its Judgment on 'The requirements of compliance with international law, principle of the rule of law and due process', concluding that the manner in which employment is terminated should be consistent with international law, including human rights law and principles of due process.[546] In *Khisa*, the UNDT cited the UNGA's reference to international law for the proposition that it was 'entitled to take into consideration international legal instruments that protect against forced evictions and violation of other related human rights when deliberating on matters before it.'[547] Other IATs have also made general references to the need to comply with international law. The EBRDAT stated that '[i]t is normally the province of this Tribunal to issue final decisions on whether the Bank has complied with international law.'[548] In a similar way, the TAOIF stated that '[l]e juge administratif devra … appliquer d'une part les textes règlementaires concernant les fonctionnaires, d'autre part les contrats des fonctionnaires, parfois même d'autres textes (soit de droit interne, soit de droit international).'[549]

Second, IATs have on a number of occasions applied customary international law. In *NZ*, the applicant argued that a right to collective bargaining existed in customary international law and that this right had been violated by the respondent. The NATOAT considered that the conventions cited by the applicant to support this claim were far from universal acceptance and thus did 'not show a uniform practice of States, informed by a sense of legal obligation, sufficient to indicate a rule of customary international law relevant to international organizations like NATO.'[550] Thus, while the tribunal did not apply customary international law, it left no doubt that it could do so. In *Mindua*, the UNDT found a right of access to justice to be codified in Article 10 of the UDHR, concluded that norm had become part of customary international law and found that it was binding on the Organization.[551] In *Samoulada* and in

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[545] UNDT/2009/016, *Tadonki v. UNSG (Order on an Application for suspension of action)*, para. 8.2.1 (citing UNGA resolution A/RES/63/253, 24 December 2008, *Administration of justice at the United Nations*, preamble).

[546] *Ibid*., paras. 8.2.1-8.2.8.

[547] UNDT/2013/047, *Khisa v. UNSG*, para. 34.

[548] EBRDAT Decision in Case No. 2019/AT/02, *Appellant v. EBRD*, para. 57.

[549] TAOIF, Jugement No. 7 (2018), *W, X, Y et Z v. OIF*, para. 21.

[550] NATOAT Judgment No. AT-J(2014)0025, *NZ v. NATO Support Agency*, para. 65.

[551] UNDT/2018/097, *Mindua v. UNSG*, para. 30.

Chaoui et al., it proceeded in the same way with respect to the right to a fair trial.[552] However, it should be noted that when the UNAT considered *Mindua*, it stated that while '[t]he UNDT correctly acknowledged that access to justice is a norm of customary international law', the UNGA has 'emphasized that the Tribunals shall not have powers beyond those statutorily conferred on them by their respective statutes.'[553] It added that: 'If the current situation is in violation of the norms of customary international law, as it appears to be, such is a matter for the General Assembly, and not this Tribunal, to rectify. It will therefore be prudent and in the interests of the Organization for this Judgement to be brought to the attention of the President of the General Assembly for consideration and possible action.'[554]

IATs have searched for evidence of customary law in other ways as well. In *Mesch and Siy (No. 4)*, the ADBAT searched for evidence of customary international law in the practice of other IATs. The case involved a complaint of two staff members required to pay income tax on their salaries. The Applicants argued that a customary rule of international law prohibited such a practice.[555] The Tribunal stated that '[i]n assessing whether or not there is indeed a norm of international law that supports the claim of the Applicants to tax reimbursement, it is important to examine the jurisprudence of other international administrative tribunals. Again, these are not in any way controlling upon this Tribunal, but are persuasive in identifying prevailing norms and expectations.'[556] Following its examination of precedents from other IATs, the ADBAT concluded that no such customary norm existed.[557] In *Claus*, the ADBAT looked to an Advisory Opinion of the ICJ to conclude that 'no customary international law requires legal representation within an international organization at all the levels of administrative review.'[558] In *ZS*, the Appellant referred to the rules for staff in the EU, which provide for the possibility of a staff member to request, at any time, that the employer take an administrative decision that can subsequently be challenged, and suggest that NATO should apply that provision by analogy. Not able to find such a provision in the rules of other

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[552] UNDT Order No. 157 (GVA/2017), *Samoulada v. UNSG*, para. 15; UNDT Order No. 128 (GVA/2018), *Chaoui, Kalotay & Richards v. UNSG*, para. 14.

[553] 2019-UNAT-921, *Mindua v. UNSG*, para. 27.

[554] *Ibid.*

[555] ADBAT, Decision No. 35 (1997), *Mesch and Siy v. ADB*, para. 12.

[556] *Ibid*., para. 40.

[557] *Ibid*., para. 42.

[558] ABDAT Decision No. 105 (2015), *Claus v. ADB*, para. 66.

international organizations, the NATOAT concluded that it was 'therefore a specific statutory provision for a specific organization and does not constitute customary international civil service law.'[559] In these cases, while the tribunal refused to accept that a rule of customary law existed, it sent a clear signal that, if such a rule did exist, it would be given due weight.

Third, IATs have referred to international treaties, thus treating them as a source of law. Indeed, it is shown in Chapter 5 that IATs have referred to international human rights instruments on no less than 400 occasions.[560] In certain cases, IATs have also applied international humanitarian law instruments. In *SS*, for example, the NATOAT was required to interpret a provision of a Military Technical Agreement concerning the wearing of uniforms by civilians. The tribunal stated that 'the normal rules of treaty interpretation would require that [the provision] be construed in accordance with the rules of international law in force between the parties, including the international law of armed conflict. This requires that combatants discriminate between military and civilian targets, and for this reason members of regular armed forces wear uniforms in order to identify themselves as combatants — and thus as lawful targets.'[561] The tribunal therefore concluded that the provision in question could not be interpreted as requiring civilians to wear uniforms. In *Jibara*, the UNRWADT concluded that the Agency's Detained Staff Policy should not have been applied to a staff member since 'the arrest, detention and sentencing of the Applicant by the IDF and an Israeli Military Court are illegal, as per international law.'[562]

Fourth, there have also been situations where IATs have applied international law in the sense that they have referred to and followed the judgments of other international courts and tribunals. For example, in *Abboud*, the UNDT referred extensively to the jurisprudence of the ICTY and the ICJ in finding that it followed from its jurisdiction to deal with staff complaints

[559] NATOAT Judgment No. AT-J(2015)0013, *ZS v. NATO International Staff*, para. 58.

[560] See *infra* Chapter 5.

[561] NATOAT Judgment No. AT-J(2014)0008, *SS v. Joint Forces Command Headquarters Brunssum*, para. 35.

[562] UNRWADT Judgment No. UNRWA/DT/2012/025, *Jibara v. CGUNRWA*, para. 40.

that it also had the power to find a staff member in contempt of court and penalize the staff member appropriately.[563]

Fifth, IATs have also made clear that they follow rules of interpretation established in general international law. For example, in *Belser*, the ILOAT stated that '[i]n construing the rules the Tribunal is bound to take an objective view and pay heed, in line with the method approved in international law, to their wording, context, purport and purpose.'[564] In *Hartigan*, the ILOAT cited to the case-law of the ICJ for the proposition that, in construing the meaning of a phrase, '[i]t is improper for a court to stretch the sense beyond what the words will bear.'[565] In *Igbinedion*, the UNDT quoted a decision of the ICJ for the proposition that 'the words in their natural and ordinary meaning are ambiguous or lead to an unreasonable result, then, and then only, must the Court, by resort to other methods of interpretation, seek to ascertain what the parties really did mean when they used these words' so as to avoid an 'unreasonable or absurd' interpretation.[566] In *Maryan Green*, the CoE Appeals Board referred to general principles of interpretation to interpret a provision of the Pension Scheme Regulations, emphasizing that the principles of interpretation in art. 31 of the VCLT could be applied.[567] Similarly, the NATOAT applied the VCLT rules of interpretation in the *KE*[568] and *HS*[569] cases.

Finally, there have even been some cases where both parties before an IAT made claims based on international law and the IAT had to choose between competing international legal principles. In *Al-Khatib*, for example, a dispute arose following an accident with an UNRWA

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[563] UNDT/2010/030, *Abboud v. UNSG*, paras. 27-37 (quoting ICTY, *Prosecutor v. Tadić*, Judgment on Allegations of Contempt against Prior Counsel, Milan Vujin of 31 January 2000, Case IT-94-1-A-R77, paras. 13-19; also quoting ICJ, *Nuclear Tests Case (Australia v. France)*, Judgment of 20 December 1974, ICJ Rep. 253, at 259-260, para. 23). In contrast, the UNDT in *Tanifum* refused to look to the ICJ, stating "[i]t is trite law that the United Nations is governed by its internal rules and regulations and not the laws of any other Organization unless it adopts such laws as part of its internal law. The principle of *forum prorogatum*, which is alleged by the Applicant to exist in the practice of the ICJ, is not part of the internal law of the United Nations". UNDT/2020/179, *Tanifum*, para. 29.

[564] ILOAT Judgment No. 1456 (1995), *In re Belser, Bossung, Lederer, Riewald, Sarre, Strebel and Zimmer*, para. 16 (followed in ILOAT Judgment No. 3744 (2016), *S v. FAO*, para. 8).

[565] ILOAT Judgment No. 1805 (1999), *In re Hartigan*, para. 7.

[566] UNDT/2011/110, *Igbinedion v. UNSG*, para. 73 (quoting ICJ, *Competence of the General Assembly for the Admission of a State to the United Nations,* Advisory Opinion of 3 March 1950, ICJ Rep. 4, at 8).

[567] CoE Appeals Board, Decision on Appeal No. 9/1973, *Green v. CoE Secretary General*, para. 21, note 1.

[568] NATOAT Judgment No. AT-J(2021)0003, *KE v. NATO International Staff*, para. 60.

[569] NATOAT Judgment No. AT-J(2023)0007, *HS v. NATO International Staff*, para. 36.

vehicle driven by an UNRWA staff member when a domestic court ordered the staff member to provide the car log of the vehicle and the organization told him not to comply with the order. The staff member submitted a complaint to the UNRWADT, arguing that the decision of the administration instructing him not to submit the car log to the local courts deprived him of his basic right under international law to prove his innocence before the local judicial authorities. The administration argued, also on the basis of international law, that under art. II of the 1946 Convention on Privileges and Immunities of the United Nations, UN property 'shall enjoy immunity from every form of legal process' and 'the archives of the United Nations, and in general all documents belonging to it or held by it, shall be inviolable wherever located.' The UNDRWADT found for the Respondent, concluding that the decision instructing the Applicant not to disclose the travel log, an official UNRWA document, to the local court, was justified by the 1946 Convention.[570]

Another such case involving competing claims based on international law was *Dulce* before the OASAT. In that case, the complainant sought to have the tribunal enforce the principle of equal pay for equal work. The Tribunal, after observing that there was no written law within the Organization recognizing that principle, stated: 'Even though the attorney for the Complainant contends that there is no law that prohibits it, in earlier Judgments this Tribunal has held that in public international law, what is not permitted by a written or unwritten rule is prohibited.'[571] Thus, both parties argued on the basis of international law, the complainant arguing on the basis of a purported universal right in international law, and the respondent arguing, also purportedly on the basis of international law, that such an unwritten principle could not be recognized.

IATs are thus invoking international law on a regular basis. Much like their use of general principles described above,[572] the increased citation to international law by the various IATs necessarily has an effect on the overall cohesion of international administrative law. The more that individual IATs cite to a common external source, the more connected they become. It is thus appropriate to include international law among the 'universalizing' sources of law.

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[570] UNRWADT Judgment No. UNRWA/DT/2015/011, *Al-Khatib v. CGUNRWA*, para. 29.

[571] OASAT Judgment No. 111 (1990), *Dulce v. OAS Secretary General*, para. 31.

[572] See Section III.A above.

C. Decisions of other international administrative tribunals

In terms of sources of law, it is argued that one area that has been largely overlooked by previous commentators is the extent to which IATs have begun citing each other. As these citations are often used to support conclusions of law, they can and should be considered a source of law in their own right. This trend is a significant new development in international administrative law and the next full chapter of this dissertation explores it in depth, arguing that the practice of cross-fertilization contributes to the harmonization of outcomes among tribunals and the development of a common jurisprudence of international administrative law.[573] The present subsection, by contrast, addresses the citation of other IAT decisions specifically as a source of law.

For a lawyer trained in the common law legal tradition, such as the present author, it is quite natural to consider the citation of other judgments as a source of law. After all, the determination of law based on the following of previous judicial precedents — *stare decisis* — is the very essence of the common law tradition. As defined by Black's Law Dictionary, common law is '[t]he body of law derived from judicial decisions and opinions, rather than from statutes or constitutions.'[574]

Although it is natural, particularly in the common-law tradition, to consider previous judicial precedents as a source of law, there are perhaps two complications with considering the citation of other IAT decisions as constituting an example of common law *stare decisis*. First, such citation does not occur *within* a confined legal system (either by a tribunal citing a lower instance or by citing itself in a prior case), but rather occurs in a horizontal sense, with one IAT looking across to and citing another IAT which exists, formally, in a different legal sphere. Of course, the more one considers the tribunal being cited to be part of the same legal system, the more like common law *stare decisis* the cross-fertilization appears. In this sense, the question of whether the citation of other IAT decisions constitutes a source of law is bound up with the larger question of this dissertation, i.e. whether the proliferation of IATs is leading to a legal system of international administrative law.

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[573] See Chapter 4 below.

[574] Black's Law Dictionary, Pocket Edition (1996), at 113.

The second difficulty with considering the citation of other IAT decisions as a source of law in the common law tradition is that, while many common law lawyers may be practicing before and within IATs, the system itself is *sui generis*: it cannot be considered as wholly derived from the common law, the civil law or any other legal tradition. Indeed, as discussed above, the statutes of individual tribunals sometimes specify sources of law, and if the drafters intended for the citation of other IATs to constitute a source of law in the formal sense, they could have explicitly provided for this. It is not the objective here to create something that was never intended. Rather, the argument is that IATs are frequently behaving in ways that treat the decisions of sister tribunals as if they were a source of law, even if they are not in the formal sense. In other words, while the cited decision is not formally binding under the terms of the statute of the IAT citing it, the latter IAT is relying on that decision, and often appearing to base its decision on it nonetheless.

Examples of this trend can be grouped into five main categories. First, certain IATs have made overt statements concerning the decisions of other IATs as a potential source of law. Second, in some cases where IATs are considering issues of first impression, they have relied on decisions of other IATs to inform their reasoning. Third, one finds decisions where the IAT could have cited its own case-law for a legal proposition, or no case-law at all, but chooses to cite to another tribunal, leaving one to draw the conclusion that it considers the other decision persuasive in its decision-making process. Fourth, reference can be made to several stand-out cases where an IAT has cited so many other tribunals in the context of one decision that one cannot but draw the conclusion that the tribunal is treating those decisions as a source of law. Fifth and finally, one also encounters cases where a given IAT over the course of numerous decisions repeatedly cites to another tribunal for the same legal proposition. Each of these five areas is examined below in turn.

First, IATs have occasionally made statements in support of considering the decisions of other IATs as a source of law. Perhaps the most notable example of this is the seminal *Lindsey* decision of the ADBAT, since the tribunal's statement was made in specifically in the context of its discussion of sources of law. It stated that it would reason 'by analogy, from the staff practices of international organizations generally, including the decisions of international

administrative tribunals dealing with comparable situations.'[575] It went on to add that '[t]here is, in this sphere, a large measure of "common" law of international organizations to which, according to the circumstances, the Tribunal will give due weight.'[576]

Another notable example came recently from the CARICOM Administrative Tribunal, which began its first decision with an analysis of the 'law applied by the tribunal.' This discussion is particularly relevant as it identifies the decisions of other IATs as one of the three main sources of international administrative law:

> 'There are three main sources of law for International Administrative Law: (i) substantive rules, such as employment contracts, staff regulations, staff rules, and administrative orders; (ii) procedural and interpretative rules, such as statutes of the Tribunal, general principles of law (such as estoppel, good faith, equity, non-abuse of rights, and due process); and (iii) customary international law (including certain human rights principles, such as non-discrimination), judicial precedents (of other courts, both national as well as international, including other international administrative tribunals —as far as they are consistent with customary international law).'[577]

The ADBAT thus identified judicial precedents as one of the three main sources of law applicable before it, albeit with the *caveat* that such precedents must be consistent with customary international law. This is a somewhat curious addition, since customary international law is more common in public international law *strictu sensu*, while there are many areas of international administrative law which may not be covered by customary norms.

The UNDT also has made an explicit pronouncement on the relevance of the decisions of other IATs, although slightly more cautious than the ADBAT in considering it a source of law in its own right:

> 'The Tribunal is of the view that although judgments from [the] ILOAT are not binding upon it, they have a persuasive value and warrant consideration, especially

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[575] ADBAT Decision No. 1 (1992), *Lindsey v. ADB*, para. 4.

[576] *Ibid.*

[577] CARICOM Administrative Tribunal Decision No. 1 (2023), *Rowe v. CARICOM Secretariat*, para. 44.

> when they touch upon issues that affect the common system as a whole. A convergent and uniform interpretation of rules or legal principles applying all across the common system when the factual situations at hand raise similar legal issues is desirable and proper. In this respect, the Redesign Panel on the United Nations system of administration of justice stated in its report . . . that "there should be harmonization [of the UNAT and the ILOAT] jurisprudence . . . so as to ensure, so far as is practicable, equal treatment of the staff members of specialized agencies and those of the United Nations itself."'[578]

While the UNDT is careful to clarify that the decisions of other IATs are to be considered as persuasive rather than binding authority, the fact that it explicitly acknowledges this persuasive value of such decisions is significant in establishing it as a source of law, albeit not a formal one. It is also worth noting that the UNDT offers a reason for treating the decisions of other IATs as an informal source of law, in particular so that staff members from the UN common system appearing before different tribunals will be treated equally.

The WBAT has also had occasion to comment on the legal persuasiveness of decisions of other IATs. In the two substantially similar cases of *Vera Caryk* and *Madhusudan*, the WBAT stated with respect to the *Amora* decision of the ADBAT[579] that, '[a]s such, the *Amora* decision is not binding on the present Tribunal. On the other hand, the Tribunal considers that a harmony of views of similar international jurisdictions is to be welcomed, if possible, and of course the Tribunal will be influenced by persuasive analysis whatever its source.'[580]

Finally, the OASAT in *Hebblethwaite et al.*, before citing to the ILOAT, stated that it was doing so because 'the jurisprudence established by the Tribunal of the International Labor Organization … is one of the most important sources of legal doctrine on the question of the employment relationship of the staff of international organizations.'[581]

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[578] UNDT/2017/097, *Lloret Alcañiz, Zhao, Xie, Kutner, and Kring v. UNSG*, para. 88 (citing Report of the Redesign Panel, U.N. Doc. A/61/205, para. 96).

[579] ADBAT Decision No. 24 (1997), *Amora v. ADB*.

[580] WBAT Decision No. 214 (1999), *Caryk v. IBRD*, para. 19; WBAT Decision No. 215 (1999), *Madhusudan v. IBRD*, para. 25.

[581] OASAT Judgment No. 30 (1977), *Hebblethwaite et al. v. SGOAS*, para. 2.

A second way in which IATs appear to be using the decisions of other IATs as a source of law is in considering issues of first impression. For example, in *Bertucci*, the UNDT considered whether the deliberations of a selection committee for a high-level post could be disclosed in order to determine whether the committee had been influenced by unproven allegations which were circulating in the public media.[582] In its analysis of the question, the UNDT analyzed the jurisprudence of the ILOAT in great detail, spending over five pages reviewing six key ILOAT cases.[583] It concluded that 'the thrust of these judgments is . . . that the relevant material should be provided to the Tribunal, if not to the staff member'[584] and it went on to follow this approach.[585]

Similarly, in the *JF* Judgment, the NATOAT declared that '[t]here is consensus among international administrative tribunals that a decision in the exercise of discretion is subject to only limited review by a tribunal' and that 'tribunals will not substitute their own view for the organizations' assessments,' supporting these statements with case law from the ILOAT and WBAT before concluding that '[t]he NATO Administrative Tribunal concurs with these approaches.'[586]

Thus, in presence of a novel legal question, rather than reasoning completely based on first principles, the IAT in question tests the water by examining how the question has been handled by its sister tribunals. While the conclusions of the other tribunals are not binding on the IAT, it has relied on them in these examples to develop its own conclusion. They can be considered therefore to constitute a sort of informal source of law, even if not directly binding on the tribunal in question.

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[582] UNDT Order No. 40 (NY/2010), *Bertucci v. UNSG*, paras. 1–6.

[583] *Ibid.*, paras. 23–35 (citing ILOAT Judgment No. 556 (1983), *In re Ali Khan*; ILOAT Judgment No. 1115 (1991), *In re Omokolo (Nos. 1 and 2)*; ILOAT Judgment No. 1177 (1992), *In re Der Hovsepian*; ILOAT Judgment No. 1323 (1994), *In re Morris (No. 2)*; ILOAT Judgment No. 1372 (1994), *In re Malhotra*; ILOAT Judgment No. 1513 (1996), *In re Fauquex*).

[584] *Ibid.*, para. 36.

[585] *Ibid.*, para. 46.

[586] See NATOAT Judgment No. AT-J(2013)0001, *JF v. NATO Support Agency*, paras. 34–37 (citing ILOAT Judgment No. 3214 (2013), *J.H. V.M. v. EPO*; ILOAT Judgment No. 3217 (2013), *A. S. v. IOM*; ILOAT Judgment No. 3228 (2013), *O. S. v. EPO*; WBAT Decision No. 6 (1981), *Suntharalingam v. IBRD*; WBAT Decision No. 85 (1989), *de Raet v. IBRD*).

The third example in which IATs are treating the decisions of other IATs as a sort of informal source of law is in cases where the IAT could have cited its own case-law for a legal proposition, or no case-law at all, but chooses to cite to another tribunal, leaving one to draw the conclusion that it considers the other decision persuasive in its decision-making process. This has in fact occurred on numerous occasions in several different tribunals. For example, in *Farah Aleem & Irfan Aleem*, the WBAT considered the effect of competing divorce decrees from the United States and Pakistan.[587] Even after recalling that a related issue had already been addressed in its own decision in the *E* case, the WBAT referred to and followed the 2001 IMFAT judgment cited in the *E* case, concluding that the retired staff member had no legal basis to evade the U.S. divorce decree.[588]

The ADBAT has also taken this approach. In *Alcartado*, even after concluding on the basis of its own case law that grievances must be submitted within prescribed time limits, it nevertheless bolstered its conclusion by references to judgments of the ILOAT and decisions of the WBAT.[589] In disciplinary cases, the ADBAT has also cited to other tribunals to establish common propositions of international administrative law, such as that a tribunal should not substitute its discretion or assessment for that of the Director General[590] or that administrative disciplinary proceedings require a lower standard of proof than applies in criminal cases.[591]

Several cases can also be identified where the UNDT referred to other IATs to establish relatively simple propositions which could have been established by reference to its own jurisprudence or by reasoning on first principles. In *Woldeselassie*, for example, the UNDT cited multiple ILOAT cases for the simple proposition that theft constitutes an egregious lapse in the integrity expected of an international civil servant.[592] In *Samardzic et al.*, the UNDT faced the simple task of dismissing an application for being out of time. Yet, in doing so, it first compared the time limits in its Statute to those of the WBAT, the ILOAT and the EUCST to show that 'the time limits in the United Nations justice system are neither unique nor

[587] WBAT Decision No. 424 (2009), *Aleem & Aleem v. IBRD*, paras. 57–62.

[588] *Ibid.* See also WBAT Decision No. 383 (2008), *Mills v. IBRD*, paras. 33, 35 (citing IMFAT Judgment No. 2001-2 (2002), *Mr. 'R' v. IMF*; IMFAT Judgment No. 2006-6, *Ms. 'M' and Dr. 'M' v. IMF*).

[589] ADBAT Decision No. 41 (1998), *Alcartado v. ADB*, para. 12.

[590] ADBAT Decision No. 78 (2007), *Abat v. ADB*, para. 43.

[591] ADBAT Decision No. 79 (2007), *Gnanathurai v. ADB*, paras. 25, 33, 43.

[592] UNDT/2010/096, *Woldeselassie v. UNSG*, para. 55 (citing ILOAT Judgment No. 1828 (1999), *K. A. K. v. WHO*; ILOAT Judgment No. 1925 (2000), *In re Schubert*; ILOAT Judgment No. 2231 (2003), *E. B. v. FAO*).

exceptionally restrictive.'[593] It then cited cases of the ILOAT, WBAT and UNAdT which emphasized the importance of time limits.[594] Notably, the Tribunal then finally landed on a decision from its own jurisprudence for the exact proposition, observing that '[f]inally, the Dispute Tribunal has also already justified time limits.'[595] In this case, there can be no doubt that a decision on point in its own jurisprudence existed, and yet the tribunal chose to cite to numerous decisions of other IATs before citing to itself. Such prioritizing of external decisions provides an excellent example of their use as a source of law.

In *Obdeijn*, the UNDT cited eleven different ILOAT Judgments, drawing heavily on the jurisprudence of that tribunal to elaborate and explain rules governing the expiry of fixed-term appointments.[596] In *Zeid*, it considered the question of compensation to the applicant for substantial or inordinate delay by the organization vis-à-vis various procedures involving staff members. Even after citing several UNDT and UNAT decisions establishing the principle that such delays should be compensated, the UNDT went on to detail similar cases in the ILOAT and WBAT.[597]

Mention could also be made of the *Yuksek (II)* decision before the ATCE, in which it cited to the ILOAT on ten different occasions for a wide variety of propositions, including among others the right of staff members to information,[598] the duty of appointments panels to act impartially[599] and the duty of a decision-maker to withdraw in situations where impartiality may be open to question.[600] For each of these propositions, there was an available precedent in

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[593] UNDT/2010/019, *Samardzic et al. v. UNSG*, paras. 22–23).

[594] *Ibid.*, paras. 24–26 (citing ILOAT Judgment No. 752 (1986), *In re Goldschmidt*; WBAT Decision No. 114 (1992), *Agerschou v. IBRD*; UNAdT Judgement No. 953 (2000), *Ya'coub v. CGUNRWA*).

[595] See *ibid.*, para. 27 (citing UNDT/2009/036, *Morsy v. UNSG*).

[596] UNDT/2011/032, *Obdeijn v. UNSG*, paras. 24, 36–37, 48, 52 (citing ILOAT Judgment No. 17 (1955), *In re Duberg*; ILOAT Judgment No. 18 (1955), *In re Leff*; ILOAT Judgment No. 19 (1955), *In re Wilcox*; ILOAT Judgment No. 21 (1955), *In re Bernstein*; ILOAT Judgment No. 191 (1972), *In re Ballo*; ILOAT Judgment No. 675 (1985), *In re Pérez del Castillo*; ILOAT Judgment No. 1154 (1992), *In re Bluske*; ILOAT Judgment No. 1317 (1994), *In re Amira*; ILOAT Judgment No. 1817 (1999), *F. J. v. Eurocontrol*; ILOAT Judgment No. 1911 (2000), *In re Ansorge (No. 3)*; ILOAT Judgment No. 2499 (2006), *G.E. J. v. ILO*).

[597] UNDT/2013/005, *Zeid v. UNSG*, paras. 55–61 (citing ILOAT Judgment No. 2706 (2008), *C. C. v. WIPO*; WBAT Decision No. 453 (2011), *BO v. IBRD*).

[598] See ATCE Decision on App. No. 665/2020 (2021), *Yuksek (II) v. CESG*, para. 62.

[599] See *ibid.*, para. 70.

[600] See *ibid.*, para. 79. For a fuller description of the external citations in *Yuksek (II)*, see *infra* notes 776-784.

the jurisprudence of the ATCE which the tribunal did not cite.[601] The fact that the Tribunal chose instead to cite repeatedly to the ILOAT evidences that it is using the decisions of other IATs as a source of law. In the *A et al.* judgment before the NATOAT, moreover, that tribunal cited twelve judgments of the ILOAT, seven of the WBAT, as well as decisions of the ATCE and the Appeals Board of the ESA, for the widely accepted proposition that a decision of a legislative body cannot be reviewed by an administrative tribunal, absent an administrative decision applying it in the context of an individual case.[602] It did so, moreover, after opening with a quotation from its own jurisprudence supporting the proposition. The OECDAT, similarly, cited to the ILOAT and UNAdT for a given proposition even after supporting that same proposition by a citation to its own statute.[603] In the *Mr. D* case, moreover, it cited to a judgment of the ATCE even after citing one of its own prior judgments.[604]

These examples are significant in establishing citation to decisions of other IATs as a source of law because there were relevant internal precedents which could have sufficed to support the legal propositions at issue, but the tribunal in question cited to other IATs instead or in addition, sometimes even leading with the external cases. One sees this also in *Wilson*, where the UNDT seems to intersperse references to ILOAT case-law with its review of UNDT and UNAT case law, as if it is all coming from the same jurisprudential system.[605]

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[601] See, e.g., ATCE Decision on App. No. 344/2005 (2006), *Emezie v. CESG*, para. 34 (on the right of staff members to information); ATCE Decision on App. No. 320/2003 (2004), *Spiegel v. CESG*, para. 43 (on the duty of appointment panels to act impartially); ATCE Decision on Apps. Nos. 211/1995, Nos. 213–214/1995, No. 220/1996, Nos. 222–223/1996, Nos. 227–228/1997, Nos. 229–230/1997, and Nos. 242–243/1998 (1999), *Beygo (II) v. CESG*, para. 74 (considering requests that a decision-maker withdraw).

[602] See NATOAT Judgment No. AT-J(2018)0015, *A et al. v. NATO International Staff*, paras. 85–94; NATOAT Judgment No. AT-J(2018)0016, *SD v. NATO International Staff*, paras. 77–87; NATOAT Judgment No. AT-J(2018)0019, *EB v. NATO International Staff*, paras. 64–69. In the same three parallel cases, moreover, the Tribunal cited to both the ATCE and the UNAT to support the proposition, also widely accepted, that it can raise questions of its own competence *sua sponte*. *See* NATOAT Judgment No. AT-J(2018)0015, *A et al. v. NATO International Staff*, para. 75; NATOAT Judgment No. AT-J(2018)0016, *SD v. NATO International Staff*, para. 66; NATOAT Judgment No. AT-J(2018)0019, *EB v. NATO International Staff*, para. 56.

[603] See *ibid*., paras. 56, 59, 77, 84. See also OECDAT Judgment in Case No. 75 (2014), *XXX v. SG*, para. 10 (citing ILOAT Judgment No. 1734 (1998), *In re Kowasch*; ILOAT Judgment No. 3027 (2011), *R.S. K. v. ICC*; UNDT Judgment No. UNDT/2011/043 (2011), *Zewdu v. UNSG*); OECDAT Judgment in Case No. 77 (2014), *XXX v. SG*, para. 30 (citing ILOAT Judgment No. 3268 (2014), *P.A.C. R. v. IPO*; UNDT Judgment No. UNDT/2011/013, *Mandol v. UNSG*); OECDAT Judgment in Case No. 90 (2018), *AA v. SG*, para. 33 (citing ILOAT Judgment No. 2584 (2007), *L.A. M. v. UNESCO*; ILOAT Judgment No. 509 (1982), *In re de Villegas (No. 5)*; ILOAT Judgment No. 2066 (2001), *In re Tekouk*; UNAdT Judgement No. 57 (1955), *Hilpern v. UNSG*; CJEU, *Guillot v. Commission of the European Communities*, Judgment in Case No. 53/72 (Second Chamber 1974)).

[604] See OECDAT Judgment in Case No. 50 (2001), *D v. SG*, at 4.

[605] UNDT/2018/136 Corr. 1, *Wilson v. UNSG*, paras. 75, 87. This approach can be contrasted with that in *El-Kholy*, where it stated that it would consider judgments of the ILOAT as persuasive on an issue '[i]n the absence of specific authority from the United Nations Appeals Tribunal.' UNDT/2016/102, *El-Kholy v. UNSG*, para. 60.

The fourth way in which IATs are behaving as if is the decisions of other IATs are a source of law is when a tribunal cites to so many other tribunals in the context of one decision that one cannot but draw the conclusion that the tribunal is using them in its reasoning, thus treating them as a source of law at least in an informal sense. This trend is particularly noticeable in the jurisprudence of the IMFAT. For example, in its 2007 Judgment in *Mr. D'Aoust (No. 2)*, the IMFAT cited some twenty judgments of other IATs, including nine judgments of the ILOAT,[606] five decisions of the WBAT,[607] three judgements of the UNAdT[608] and two decisions of the ADBAT.[609] In its 2012 *Sachdev* Judgment, the IMFAT cited externally fourteen times, including nine decisions of the WBAT,[610] four judgments of the ILOAT,[611] and one decision of the ADBAT.[612] In its 2010 Judgment in *Ms. 'EE'*, the IMFAT also cited other

[606] IMFAT Judgment No. 2007-3, *Mr. M. D'Aoust (No. 2) v. IMF*, paras. 10, 67–68, 73, 86, 102, 137 (citing ILOAT Judgment No. 1177 (1992), *In re Der Hovsepian*; ILOAT Judgment No. 1595 (1997), *In re De Riemaeker (No. 3)*; ILOAT Judgment No. 1646 (1997), *In re Pinto*; ILOAT Judgment No. 1359 (1994), *In re Cassaignau (No. 4)*; ILOAT Judgment No. 1316 (1994), *In re van der Peet (No. 17)*; ILOAT Judgment No. 1223 (1993), *In re Kirstetter (No. 2)*; ILOAT Judgment No. 2163 (2002), *M. D. S. v. FAO*; ILOAT Judgment No. 1158 (1992), *In re Vianney*; ILOAT Judgment No. 2393 (2005), *R.S. I. v. FAO*; ILOAT Judgment No. 2004 (2001), *In re Matthews*).

[607] *Ibid.*, paras. 73, 86, 137 (citing WBAT Decision No. 344 (2005), *Hitch v. IBRD*; WBAT Decision No. 100 (1991), *Jassal v. IBRD*; WBAT Decision No. 326 (2004), *Perea v. IFC*; WBAT Decision No. 57 (1988), *Sebastian (No. 2) v. IBRD*; WBAT Decision No. 245 (2001), *Nunberg v. IBRD*).

[608] *Ibid.*, paras. 10, 103 (citing UNAdT Judgement No. 1245 (2005), *Applicant v. UNSG*; UNAdT Judgement No. 1304 (2006), *Applicant v. UNSG*; UNAdT Judgement No. 1126 (2003), *Byaje v. UNSG*).

[609] *Ibid.*, paras. 73, 137 (citing ADBAT Decision No. 59 (2003), *Guioguio v. ADB*; ADBAT Decision No. 40 (1998), *Alexander v. ADB*).

[610] IMFAT Judgment No. 2012-1, *Ms. N. Sachdev v. IMF*, para. 80 (citing WBAT Decision No. 1 (1981), *de Merode et al. v. World Bank*); *ibid.*, para. 100 (citing WBAT Decision No. 344 (2005), *Hitch v. IBRD*; WBAT Decision No. 100 (1991), *Jassal v. IBRD*); *ibid.*, para. 171 (citing WBAT Decision No. 294 (2003), *Njovens v. IBRD*); *ibid.*, paras. 212–16 (citing WBAT Decision No. 321 (2004), *Jakub v. IBRD*; WBAT Decision No. 226 (2000), *Marshall v. IBRD*; WBAT Decision No. 347 (2006), *F (No. 2) v. IBRD*; WBAT Decision No. 161 (1997), *Arellano (No. 2) v. IBRD*; WBAT Decision No. 260 (2002), *Marchesini v. IBRD*).

[611] *Ibid.*, para. 100 (citing ILOAT Judgment No. 1646 (1997), *In re Pinto*); *ibid.*, para. 135 (citing ILOAT Judgment No. 2393 (2005), *R.S. I. v. FAO*); *ibid.*, para. 171 (citing ILOAT Judgment No. 2156 (2002), *A. M. I. v. IFRC*); *ibid.*, para. 217 (citing ILOAT Judgment No. 133 (1969), *In re Hermann*).

[612] *Ibid.*, para. 100 (citing ADBAT Decision No. 59 (2003), *Guioguio v. ADB*).

IATs fourteen times, including ten separate references to the WBAT,[613] three to the ADBAT,[614] and one to the UNAdT.[615] In the 1999 case of *Mr. 'A'*, [616] the IMFAT cited to thirteen other IAT decisions on the question of its jurisdiction over a contractual worker, including six judgements of the UNAdT,[617] five judgments of the ILOAT,[618] one decision of the WBAT,[619] and one of the ADBAT.[620] Additional examples of this trend can be found in the sub-section dedicated to cross-fertilization by the IMFAT in Chapter 4, Section II(A)(2).

At the AfDBAT, a prime example is the *D.S.A.* Judgment in 2019, in which the Tribunal cited to no fewer than fourteen different decisions of other IATs, including the WBAT, ILOAT and IMFAT.[621] In addition, in *T.K.*, the AfDBAT cited to the UNAdT, WBAT, IMFAT and

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[613] IMFAT Judgment No. 2010-4, *Ms. 'EE' v. IMF*, para. 85 (citing WBAT Decision No. 304 (2003), *D v. IFC*); *ibid.*, paras. 87, 125 (citing WBAT Decision No. 392 (2009), *AE v. IBRD*; WBAT Decision No. 393 (2009), *AF v. IBRD*); *ibid.*, para. 101 (citing WBAT Decision No. 246 (2001), *Koudogbo, v. IBRD*); *ibid.*, paras. 103, 248 (citing WBAT Decision No. 340 (2005), *G v. IBRD*; WBAT Decision No. 362 (2007), *N v. IBRD*; WBAT Decision No. 426 (2009), *BB v. IBRD*); *ibid.*, paras. 105–06, 111 (citing WBAT Decision No. 145 (1995), *Sjamsubahri v. IBRD*); *ibid.*, para. 187 (citing WBAT Decision No. 430 (2010), *BF v. IBRD*); *ibid.*, para. 195 (citing WBAT Decision No. 380 (2008), *Z v. IBRD*).

[614] *Ibid.*, paras. 90, 174–76 (citing ADBAT Decision No. 55 (2002), *Galang v. ADB*); *ibid.*, para. 139 (citing ADBAT Decision No. 5 (1995), *Bares v. ADB*); *ibid.*, para. 189 (citing ADBAT Decision No. 1 (1992), *Lindsey v. ADB*).

[615] *Ibid.*, para. 85 (citing UNAdT Judgement No. 941 (1999), *Kiwanuka v. UNSG*).

[616] IMFAT Judgment No. 1999-1, *Mr. 'A' v. IMF*, paras. 2, 60.

[617] *Ibid.*, para. 90 n.19 (citing UNAdT Judgement No. 378 (1986), *Bohn, Coeytaux, and Vouillemont v. UNJSPF*; UNAdT Judgement No. 379 (1986), *Gilbert, Hyde, Ishkinazi, and Michel v. UNJSPF*; UNAdT Judgement No. 461 (1989), *Zafari v. CGUNRWA*; *ibid.*, paras. 66, 74 (citing UNAdT Judgement No. 96 (1965), *Camargo v. UNSG*); *ibid.*, paras. 88–90 (citing UNAdT Judgement No. 628 (1993), *Shkukani v. CGUNRWA*); *ibid.*, paras. 74–76 (citing UNAdT Judgement No. 230 (1977), *Teixeira v. UNSG*; UNAdT Judgement No. 233 (1978), *Teixeira v. UNSG*).

[618] *Ibid.*, paras. 72–73 (citing ILOAT Judgment No. 1034 (1990), *In re Amezketa*); *ibid.*, paras. 77–81 (citing ILOAT Judgment No. 701 (1985), *In re Bustos*); *ibid.*, paras. 70–71, 91 (citing ILOAT Judgment No. 67 (1962), *In re Darricades*); *ibid.*, para. 65 (citing ILOAT Judgment No. 307 (1977), *In re Labarthe*); *ibid.*, paras. 68–69 (citing ILOAT Judgment No. 75 (1964), *In re Privitera*).

[619] *Ibid.*, para. 63 (citing WBAT Decision No. 15 (1984), *Justin v. World Bank*).

[620] *Ibid.*, paras. 82–85 (citing ADBAT Decision No. 24 (1997), *Amora v. ADB*).

[621] See AfDBAT Judgment No. 138 (2020), *D.S.A. v. AfDB*, para. 17 (citing WBAT Decision No. 551 (2016), *DV v. IFC*, para. 50; ILOAT Judgment No. 4099 (2019), *R (No. 2) v. WHO*, para. 3); para. 20 (citing WBAT Decision No. 533 (2016), *DI v. IBRD*, para. 85; WBAT Decision No. 260 (2002), *Marchesini v. IBRD*, para. 30; WBAT Decision No. 526 (2015), *DD v. IBRD*, paras. 58–59); para. 21 (citing WBAT Decision No. 266 (2002), *Husain v. IBRD*, para. 32; WBAT Decision No. 551, *DV v. IFC*, paras. 58–59); para. 30 (citing ILOAT Judgment No. 2092 (2002), *In re Spaans*, para. 7); para. 68 (citing WBAT Decision No. 533 (2016), *DI v. IBRD*, paras. 118–22); *ibid.*, para. 69 (citing ILOAT Judgment No. 3688 (2016), *P.-M. (No. 2) v. WHO*, para. 26); paras. 71–72 (citing ILOAT Judgment No. 269 (1976), *In re Gracia de Muñiz*, para. 2; ILOAT Judgment No. 1745 (1998), *In re de Roos*, para. 7; ILOAT Judgment No. 2207 (2003), *O. T. v. FAO*, para. 9); para. 73 (citing IMFAT Judgment No. 2005-1, *Mr. 'F' v. IMF*, para. 117); para. 81 (citing WBAT Decision No. 56 (1988), *Pinto v. IBRD*, para. 11; ILOAT Judgment No. 474 (1982), *In re Gale*, para. 3). For a more detailed description of this case and the substantive areas for which it chose to cite externally, see *infra* notes 795-801.

multiple judgments of the ILOAT.[622] In *Ms. C.A.W.*, it cited to multiple decisions of the WBAT and ILOAT.[623] The CSAT, for its part, cited twelve different ILOAT judgments in the *A. K.* case, for a wide variety of propositions.[624] Finally, the ATBIS in its Judgment in case 1/2018, cited to the decisions of other tribunals twice as frequently as to its own judgments, including multiple references to the jurisprudence of the ILOAT, UNDT, UNAT, WBAT, and the General Court of the CJEU.[625] When an IAT fills its judgment with so many external citations, as in these examples, one cannot but be left with the conclusion that it is treating them as a source of law at least in an informal sense.

The fifth way that IATs appear to be using the decisions of other IATs akin to a source of law is where a given IAT over the course of numerous decisions repeatedly cites to another tribunal for the same legal proposition. For example, the UNDT has cited to the same judgment of the ILOAT on *thirty-seven* separate occasions to explain the operation of the doctrine of *res*

[622] See AfDBAT Judgment No. 12 (2001), *T. K. v. AfDB*, para. 17 (citing ILOAT Judgment No. 342 (1978), *In re Price (No. 2)*; ILOAT Judgment No. 591 (1983), *In re Garcia*; ILOAT Judgment No. 929 (1988), *In re Dunand and Jacquemod*; UDAdT Judgement No. 388 (1987), *Moser v. UNSG*; WBAT Decision No. 56 (1988), *Pinto v. IBRD*; IMFAT Judgment No. 1996-1 (1996), *D'Aoust v. IMF*). For a more detailed description of this case and the substantive areas for which it chose to cite externally, see *infra* note 802

[623] See *AfDBAT* Judgment No. 50 (2006), *C. A. W. v. AfDB*, paras. 58, 69–70 (citing WBAT Decision No. 6 (1981), *Suntharalingam v. IBRD*, paras. 34–36; WBAT Decision No. 10 (1982), *Salle v. IBRD*, para. 59; WBAT Decision No. 133 (1993), *Samuel-Thambiah v. IBRD*, para. 133; WBAT Decision No. 225 (2000), *Zwaga v. IBRD*, paras. 32, 54–56; ILOAT Judgment No. 152 (1970), *In re Kersaudy*; ILOAT Judgment No. 226 (1974), *In re Schawalder-Vrancheva (No. 2)*; ILOAT Judgment No. 1212 (1993), *In re Schickel-Zuber*, para. 3). For a more detailed description of this case and the substantive areas for which it chose to cite externally, see *infra* note 803

[624] CSAT Judgment No. CSAT/14 (No. 2) (2010), *A K v. Commonwealth Secretariat*, para. 50 (citing ILOAT Judgment No. 2232 (2003), *Bustani v. OPCW*). For a more detailed description of this case and the substantive areas for which it chose to cite externally, see *infra* notes 852-854.

[625] ATBIS Judgment No. 1/2018 (2019), *X. v. BIS*, paras. 59, 60, 62, 67, 70, 123, 125, 130, 140, 147, 155, 162, 163, 191. For a more detailed description of this case and the substantive areas for which it chose to cite externally, see *infra* notes 879-891.

judicata, in particular in the context of an order concerning the withdrawal of an application.[626] While it is easy to understand why an IAT would cite to a sister tribunal when it faces an issue of first impression, the practice of systematically citing to the jurisprudence of another tribunal evidences a more important phenomenon. Rather than citing to itself after it has established a proposition the first time, the UNDT has continued citing to a judgment of the ILOAT for as fundamental a concept as the definition of *res judicata*. In such circumstances, one cannot but draw the conclusion that the UNDT is treating the ILOAT precedent as a source of law, rather than using one of its own prior decisions as that source. The reasons why it has done this are unclear, but the practice is not.

Thus, IATs are treating the decisions of their sister tribunals as a source of law in five different ways: by making overt statements concerning external decisions as a potential source of law, by relying on decisions of other IATs to inform their reasoning when a gap in their own jurisprudence exists, by citing to other tribunals even when a gap in their own jurisprudence does not exist, and by citing to a multitude of other tribunals, and by citing to the same decision of another IAT repeatedly for the same legal proposition. Viewing these five trends together, a strong case can be made for the decisions of other IATs to be categorized as a source of law, at least in an informal sense. As such, it should be considered among the 'universalizing' sources, like general principles and international law, due to the contribution it makes to the overall cohesion of international administrative law. Indeed, this is such an important phenomenon for the development of a universal law of international justice that the next chapter will address it exhaustively.

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[626] See UNDT/2013/108, *Guevara v. UNSG*; UNDT/2013/122, *El-Komy v. UNSG*; UNDT/2013/123, *El-Komy v. UNSG*; UNDT/2013/125, *Applicant v. UNSG*; UNDT/2013/168, *Mabande v. UNSG*; UNDT/2014/008, *Yudin v. UNSG*; UNDT/2014/009, *Adundo v. UNSG*; UNDT/2014/010, *Lamuraglia v. UNSG*; UNDT/2014/011, *Adu-Mensah v. UNSG*; UNDT/2014/012, *Chaclag v. UNSG*; UNDT/2014/024, *Utkina v. UNSG*; UNDT/2014/031, *Shrivastava v. UNSG*; UNDT Order No. 113 (NY/2014), *Sprauten v. UNSG*; UNDT Order No. 130 (NY/2014), *Kodre v. UNSG*; UNDT Order No. 261 (NY/2014), *Wishart v. UNSG*; UNDT Order No. 350 (NY/2014), *Gittens v. UNSG*; UNDT Order No. 354 (NY/2014), *Snit v. UNSG*; UNDT Order No. 150 (NY/2015), *El Chaar v. UNSG*; UNDT Order No. 33 (NY/2016), *Chua v. UNSG*; UNDT Order No. 55 (NY/2016), *Kawas v. UNSG*; UNDT Order No. 56 (NY/2016), *Al-Midani v. UNSG*; UNDT Order No. 68 (NY/2016), *Bilbrough v. UNSG*; UNDT Order No. 133 (NY/2016), *Lawrence v. UNSG*; UNDT Order No. 207 (NY/2016), *Basnyat v. UNSG*; UNDT Order No. 265 (NY/2016), *Elimu v. UNSG*; UNDT Order No. 52 (NY/2017), *Shehadeh v. UNSG*; UNDT Order No. 99 (NY/2017), *Applicant v. UNSG*; UNDT Order No. 182 (NY/2017), *Sebillot v. UNSG*; UNDT Order No. 183 (NY/2017), *Yuen v. UNSG*; UNDT Order No. 184 (NY/2017), *Duong v. UNSG*; UNDT Order No. 226 (NY/2017), *Menekse v. UNSG*; UNDT Order No. 2 (NY/2018), *Roy v. UNSG*; UNDT Order No. 98 (NY/2018), *Kinglow v. UNSG*; UNDT Order No. 115 (NY/2018), *Chohan v. UNSG*; UNDT Order No. 141 (NY/2018), *Ndiaye v. UNSG*; UNDT Order No. 215 (NY/2018), *Malinin v. UNSG*; UNDT Order No. 216 (NY/2018), *Zilberg v. UNSG*.

IV. A LEAGUE OF ITS OWN: NATIONAL LAW AS A SOURCE OF INTERNATIONAL ADMINISTRATIVE LAW

While national law is in general excluded as a source of law by IATs[627] (the absence of an applicable national legal system being after all the *raison d'etre* of the tribunals in the first place), there are some specific situations where national law has been recognized as applicable, either by the Staff Regulations and Rules or by the tribunals themselves.[628] Perhaps the most well-known area where this occurs is references to national law with respect to the definition of marriage in order to determine certain benefits, a compromise which seeks, in the words of the UNAT, 'to respect the various cultural and religious sensibilities existing in the world, as no general solution is imposed by the Organization, which simply tolerates and respects national choices.'[629] For example, between 2007 and 2014, the personal status of a staff member in the UN system was determined by the law of the nationality of the staff member concerned,[630] while subsequent to 2014 it has been determined by reference to the law of the competent authority under which the personal status has been established (for example, this could be the law of the country where the staff member married, if this differs from his/her country of nationality).[631] While this constituted a major change in the method for determining personal status, it is worth noting that national law remains applicable; it is only the question of which national law that has changed. National law has also been referred to in some organizations to define adoption, divorce, residence, or with respect to certain tax, visa and residence issues.[632] National law has also been made applicable in some cases through the employment contract,[633] and has been examined by administrative tribunals to the extent it may

[627] C.F. Amerasinghe, *The Law of the International Civil Service* (1994), vol. 1, at 176; M.B. Akehurst, *The Law Governing Employment in International Organizations* (1967), 102; C.F. Amerasinghe, 'International Administrative Tribunals', 2014 *Oxford Handbook of International Adjudication* 316, at 324.

[628] See, e.g., C.F. Amerasinghe, *The Law of the International Civil Service* (1994), vol. 1, at 176-182.

[629] 2010-UNAT-007, *El-Zaim v. UNJSPB*, para. 22 (citing UNAdT Judgement No. 1183 (2004), *Adrian v. UNSG*, para. II).

[630] 2016-UNAT-663, *Al Abani v. UNSG*, para. 22 (citing Secretary-General's bulletin, 'Personal status for purposes of United Nations entitlements', 24 Sept. 2004, UN Doc. ST/SGB/2004/13).

[631] *Ibid.* (citing Secretary-General's bulletin, 'Personal status for purposes of United Nations entitlements', 26 June 2014, UN Doc. ST/SGB/2004/13/Rev.1). For more on the determination of personal status, see Garrido Muñoz et al., *supra* note 2, Chapter 3, section 3.2.2 and Chapter 6, section 6.4.4.

[632] Y. Kryvoi, 'The Law Applied by International Administrative Tribunals: From Autonomy to Hierarchy', (2015) 47 *George Washington International Law Review* 267, at 292-293.

[633] C.F. Amerasinghe, *The Law of the International Civil Service* (1994), vol. 1, at 178.

be relevant in determining general principles of law.[634] Certain tribunals, because of their context, may refer to national law more often than others.[635] Some will hardly apply it at all, as is clear from the *Decarnière (No. 2) and Verlinden (Nos. 1 and 2)* decision of the ILOAT: 'The Tribunal must enforce the law within the full ambit of the competence its Statute vests in it. For that purpose it will apply any material rule of law, be it international or administrative or labour law or any other body of law. The only sort it will not apply is national law, save where there is express renvoi thereto in staff regulations or contract of employment.'[636] As a general matter, national law is referred to in such a limited number of circumstances that it is difficult to consider it as a source of international administrative law at all. It is more properly considered as exceptionally applied in a limited set of circumstances.

[634] See, e.g., ILOAT Judgment No. 493 (1982), *In re Volz*, para. 5; ILOAT Judgment No. 688 (1985), *In re Kassler*, para. 1.

[635] For a rich discussion of references to national law by the EUCST, see H. Tagaras, 'Comparative Law and the European Union Civil Service Tribunal', in M. Andenas and D. Fairgrieve, eds., *Courts and Comparative Law* (2015), 191-198.

[636] ILOAT Judgment No. 1369 (1994), *In re Decarniere No. 2 and Verlinden Nos. 1 and 2*, para. 15.

V. THE QUESTION OF A HIERARCHY OF SOURCES

Once the sources of international administrative law have been identified, the question has sometimes arisen whether they exist in any hierarchical relationship, such that, in the event of a conflict of sources, it can be easily identified which is the 'stronger' source which should prevail.[637] Such a view would be convenient for the resolution of disputes, but in certain cases may prove overly simplistic. In reality, much depends on the context of the case, as we have seen with the discussion of the contract of employment: it is often considered to have primacy over other sources, yet there are increasing examples of IATs willing to look beyond the plain wording of the contract if it can be justified by the circumstances of the case.[638] Furthermore, the hierarchical relationship may also be dictated by the particular administrative structure of the organization at issue, as pointed out by Amerasinghe, comparing three ILOAT cases (concerning the WHO, PAHO and Eurocontrol) which reached different conclusions about whether manuals, circulars and issuances could amend the staff rules, the differing conclusions due to differences in the Staff Regulations of the respective organizations.[639]

While in most cases this hierarchy has been derived by commentators following consideration of the practice of tribunals, the statutes of at least two tribunals explicitly codify a hierarchy. The EDRBAT Statute provides an order of precedence of applicable sources, as follows:

> '(a) decisions of the Board of Governors and of Committees of the Board of Governors on staff and employment matters;
>
> (b) decisions of the Board of Directors on staff and employment matters, including where the issue relates to a Retirement Plan or any benefit thereunder, the Rules of such Retirement Plans;

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[637] See, in this regard, Y. Kryvoi, 'The Law Applied by International Administrative Tribunals: From Autonomy to Hierarchy', (2015) 47 *George Washington International Law Review* 267-301; C.F. Amerasinghe, 'Sources of International Administrative Law', in *International Law at the Time of its Codification: Essays in Honour of Roberto Ago* (1987), vol. 1, 67 at 81-82.

[638] See *supra* notes 423-427 and accompanying text.

[639] C.F. Amerasinghe, *The Law of the International Civil Service* (1994), vol. 1, at 148 (comparing ILOAT Judgment No. 325 (1977), *Verdager v. WHO*; ILOAT Judgment No. 470 (1982), *Perrone v PAHO*; and ILOAT Judgment No. 292 (1977), *Molloy v Eurocontrol*).

(c) the Staff Regulations of the Bank;

(d) the body of rules and procedures issued in writing by or under the authority of the President, the Vice President, Human Resources & Administration and the Director of Human Resources; or where the issue relates to a Retirement Plan or any benefit thereunder, the body of rules and procedures issued by any committee established pursuant to the Rules of such Retirement Plan, and, in each case, reasonably accessible to staff; and

(e) Bank administrative practice, to the extent this practice is not inconsistent with the foregoing sources.'[640]

The OASAT Statute, for its part, provides that:

> 'For the adjudication of any disputes involving the personnel of the General Secretariat, the internal legislation of the Organization shall take precedence over general principles of labor law and the laws of any member State; and, within that internal legislation, the Charter is the instrument of the highest legal order, followed by the resolutions of the General Assembly, and then by the resolutions of the Permanent Council, and finally by the norms adopted by the other organs under the Charter — each acting within its respective sphere of competence.'[641]

The prevailing view in respect of other tribunals, where the hierarchy has not been made so explicit, is that it generally operates as follows: constituent instruments prevail over staff regulations, which prevail over staff rules, which prevail over manuals, circulars and issuances.[642] This has indeed been confirmed within the UN internal justice system, the UNDT having discussed the 'hierarchy of the UN's internal legislation' and stating: 'This is headed

[640] EBRDAT Statute, para. 3.02.

[641] OASAT Statute, art. I.v.

[642] See Y. Kryvoi, 'The Law Applied by International Administrative Tribunals: From Autonomy to Hierarchy', (2015) 47 *George Washington International Law Review* 267, at 282 and 296-299.

by the Charter of the UN followed by resolutions of the General Assembly, staff regulation and rules, Secretary-General bulletins and then administrative instructions.'[643]

Against this background, it is increasingly recognized that '[r]ules of international public law, including procedural and substantive general principles of international law, should prevail over any conflicting internal law of international organizations.'[644] It appears that this also applies to general principles of international administrative law. In this regard, the NATO Civilian Personnel Regulations state: 'It is understood that the Tribunal shall have the authority to rule on the Civilian Personnel Regulations [CPR] in the event that a CPR provision seriously violates a general principle of international public service law.'[645] As Amarasinghe has observed with respect to general principles: 'The reasonable conclusion seems to be that, as regards the general principles of law of a *fundamental* nature, they are superior hierarchically to any written law in particular and could, indeed, be the supreme source of law. The rule against discrimination or equality of treatment and the principle that a staff member has a right to be heard before a disciplinary sanction is imposed on him are examples of general principles of a fundamental nature.'[646] Thus, the supremacy of fundamental general principles of international law over the standard sources is increasingly recognized. Finally, as outlined in detail in Chapter 4, this same phenomenon is apparent with regard to international human rights law, which is now regularly applied as a source of law and often considered hierarchically superior to traditional sources in the case of a conflict.

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[643] UNDT/2009/030, *Hastings v. UNSG*, para. 18.

[644] *Ibid.*, at 300.

[645] NATOAT Regulations (found in NATO Civilian Personnel Regulations, Annex IX), art. 6.2.1, n. 1.

[646] C.F. Amerasinghe, 'International Administrative Tribunals', 2014 *Oxford Handbook of International Adjudication* 316, at 325.

VI. CONCLUSIONS OF CHAPTER 3

Identifying the sources of international administrative law may appear simple at first — examining the statutes of various IATs, one begins to hear a common refrain, which almost always mentions the contract of employment and the terms of appointment, with occasional reference also to other pertinent regulations and rules.[647] Delving deeper, the questions seem to multiply: What are these 'terms of appointment', and where do they come from, if not the contract? Which regulations and rules are 'pertinent'? What about the constituent instrument of the organization in question? General principles? International law? Other decisions of the same tribunal? Decisions of other tribunals? One soon appreciates that the sources identified in the various statutes, unlike art. 38.1 of the ICJ Statute, do not amount to a complete list. In fact, the further one looks, the more it begins to seem like only the tip of the iceberg.

This chapter has attempted to provide a catalogue of these various sources, as used by the IATs themselves. Building on previous work in this area, which have identified a number of sources, it aims to further our understanding of these sources by dividing them into two functionally different groups: 'self-contained' sources and 'universalizing' sources of international administrative law. The self-contained sources are those internal sources specific to a particular organization or even specific contractual relationship. The most common of these are the contract of employment; the staff regulations and staff rules; and the bulletins, circulars, manuals and issuances of the organization. Others also exist, although they are referred to less frequently, including the constituent instrument of the organization, decisions and resolutions of the plenary organ of the organization or other decision-making body, and the practice of the organization. These self-contained sources are relatively non-controversial and have been aptly covered in previous works.[648]

For this reason, the chapter has focused on the 'universalizing' sources of international administrative law, which are those sources which may be adopted in common by multiple international administrative tribunals. These include general principles of law, international law, and decisions of other international administrative tribunals. It is the position of this chapter that these sources are being used with increasing frequency by IATs and that this

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[647] See the statutory provisions listed *supra* in note 416.

[648] See works cited in *supra* note 417.

practice is contributing to the creation of a universal law of international justice. It certainly does not intend to argue that this process is absolute — the 'self-contained' sources remain extremely important to each tribunal and each organization. Rather, it is hoped that, after the catalogue of 'universalizing' sources contained in this chapter, the reader will be left with the firm impression that, alongside the melody of traditional, self-contained sources, a harmony of universalizing sources is increasingly audible, adding to the overall complexity of international administrative law. Indeed, it is this combination of sources — the internal and the external, self-contained and universalizing — that gives international administrative law its unique character, a body of norms which is not exactly traditional international law, but certainly not traditionally internal law either.

CHAPTER 4

CROSS-FERTILIZATION: EVIDENCE OF A NASCENT COMMON JURISPRUDENCE

I. INTRODUCTION

Almost sixty years ago, Akehurst already had concluded that '[i]nternational administrative tribunals behave *as if* the internal laws of different organizations formed part of a single system of law' and that it was 'clear that the internal laws of different organizations bear a remarkable resemblance to each other, and can therefore establish strong precedents for each other.'[649] The present chapter aims to take stock of how far IATs have come in this regard: just how often are they citing each other and to what extent have they developed a common jurisprudence? Reviewing this now extensive practice of cross-fertilization, it illustrates how the numerous IATs now in existence are increasingly adopting a more unified jurisprudence. Section II will consider this phenomenon of 'cross-fertilization' through a review of the jurisprudence of all IATs. Section III will approach the question by examining the most influential cases in terms of number of times they have been cited by other IATs and the quantity of other IATs citing to them. Section IV will offer some concluding observations.

[649] M.B. Akehurst, *The Law Governing Employment in International Organizations* (1967), 263.

II. CROSS-FERTILIZATION IN THE JURISPRUDENCE OF EACH TRIBUNAL

The present section will examine the question of cross-fertilization among IATs by engaging in an exhaustive review of the jurisprudence of all IATs. The tribunals are presented not based on their age or size of their jurisprudence but rather based on an appreciation of their contributions to cross-fertilization, beginning with those tribunals having most actively participated in cross-fertilization and progressing to those less willing to engage in it.

A. The leaders of cross-fertilization

While it is the premise of this chapter that virtually all IATs are citing to their sister tribunals with increasing regularity, some of them are certainly leading this charge. This subsection reviews the jurisprudence of those tribunals most actively involved in cross-fertilization, including the World Bank Administrative Tribunal (WBAT), the International Monetary Fund Administrative Tribunal (IMFAT), the United Nations Dispute Tribunal (UNDT), the United Nations Appeals Tribunal (UNAT), the Asian Development Bank Administrative Tribunal (ADBAT), the Council of Europe Administrative Tribunal (ATCE), and the African Development Bank Administrative Tribunal (AfDBAT).

1. *World Bank Administrative Tribunal (WBAT)*

No tribunal has addressed cross-fertilization between IATs as directly and clearly as the WBAT in its first case, in the celebrated *de Merode* Decision. In that Decision, the WBAT considered the question of cross-fertilization in detail, and it merits quotation *in extenso*:

> 'The Tribunal does not overlook the fact that each international organization has its own constituent instrument; its own membership; its own institutional structure; its own functions; its own measure of legal personality; its own personnel policy; and that the difference between one organization and another are so obvious that the notion of a common law of international organization must be subject to numerous and sometimes significant qualifications. But the fact that these differences exist does not exclude the possibility that similar conditions may affect the solution of comparable problems. While the various international administrative tribunals do not consider themselves bound by each other's decisions and have worked out a sometimes divergent jurisprudence adapted to each organization, it is equally true

> that on certain points the solutions reached are not significantly different. It even happens that the judgments of one tribunal may refer to the jurisprudence of another. Some of these judgments even go so far as to speak of general principles of international civil service law or of a body of rules applicable to the international civil service. Whether these similar features amount to a true corpus juris is not a matter on which it is necessary for the Tribunal to express a view. The Tribunal is free to take note of solutions worked out in sufficiently comparable conditions by other administrative tribunals, particularly those of the United Nations family. In this way the Tribunal may take account both of the diversity of international organizations and the special character of the Bank without neglecting the tendency towards a certain *rapprochement*.'[650]

Thus, the WBAT appears to trace a careful line by accepting the primacy of the internal law of each organization while acknowledging or even encouraging cross-fertilization, in light of the many common issues that IATs face. There is no doubt that this statement has served as encouragement for other IATs to refer to the jurisprudence of their sister tribunals,[651] thus paving the way for much of the cross-fertilization discussed in the current work.

Although the WBAT did not actually cite any other IATs in its *de Merode* Decision after making this statement—limiting itself to general statements that a given principle 'has been applied in many judgments of other international administrative tribunals'[652]—it has referred to specific decisions of other IATs regularly in subsequent cases.

The WBAT has cited to its sister tribunal the IMFAT a number of times. For example, in three 2021 decisions, it cited to the IMFAT for the proposition that an IAT could overturn a discretionary decision carried out in violation of a fair and reasonable procedure.[653] In the *AA* case, it cited the IMFAT to show that the Bank is separate from the staff association and cannot be held liable for its actions unless the staff association acted at the instructions of management

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[650] WBAT Decision No. 1 (1981), *de Merode et al. v. World Bank*, paras. 26-28.

[651] See, e.g., CSAT Judgment No. CSAT/3 (No. 1) (2001), *Mohsin v. Commonwealth Secretariat*, para. 2.

[652] See WBAT Decision No. 1 (1981), *de Merode et al. v. World Bank*, para. 46.

[653] WBAT Decision No. 658 (2021), *GG v. IFC*, para. 77; WBAT Decision No. 659 (2021), *GH v. IFC*, para. 82; WBAT Decision No. 660 (2021), *GI v. IFC*, para. 80.

or under its effective control.[654] In the *E* case, the WBAT cited a 2001 IMFAT judgment dealing with the principle of abstention, according to which an administrative tribunal must avoid interpreting a decision of a national court.[655] In *Farah Aleem & Irfan Aleem*, the WBAT considered the effect of competing divorce decrees from the United States and Pakistan.[656] Even after recalling that a related issue had already been addressed in its own decision in the *E* case, the WBAT referred to and followed the 2001 IMFAT judgment cited in the *E* case, concluding that the retired staff member had no legal basis to evade the U.S. divorce decree.[657]

The WBAT has cited the jurisprudence of the ILOAT multiple times as well. For example, in its 2023 decision in the *HF, HG and HH v. IFC* case, it cited to the ILOAT for the proposition that an applicant challenging a decision allocating him to a particular pay grade had to challenge the initial decision and could not bypass the time-limit by challenging subsequent payments of his monthly salary.[658] In the *HD* case, the WBAT cited to the ILOAT for the proposition that when evidence is inconclusive in a misconduct investigation, the benefit of the doubt goes to the staff member accused of misconduct.[659] It is interesting to note, moreover, that it cited to the ILOAT even after quoting an internal World Bank guide stating this exact proposition.[660] In the *HA* case, it cited to the ILOAT as well as the UNAT for the proposition that a deficient application which is subsequently corrected after the filing deadline will not be considered time-barred.[661] In *GS*, it cited to the ILOAT as well as the UNDT for the proposition that an applicant must submit to a selection process in order to subsequently challenge that selection process.[662] In *BO*, another case concerning the fairness of a recruitment procedure, the WBAT cited the jurisprudence of the ILOAT both for the proposition that preference for gender parity cannot outweigh candidates' qualifications and for the proposition

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[654] WBAT Decision No. 384 (2008), *AA v. IBRD*, paras. 28, 49–50.

[655] WBAT Decision No. 325 (2004), *E v. IBRD*, para. 26 (concerning the deduction of support payments under the Staff Retirement Plan in light of a divorce decree handed down by a domestic court, and citing IMFAT Judgment No. 2002-1, *Mr. 'R' v. IMF*, para. 146).

[656] WBAT Decision No. 424 (2009), *Aleem & Aleem v. IBRD*, paras. 57–62.

[657] *Ibid.* See also WBAT Decision No. 383 (2008), *Mills v. IBRD*, paras. 33, 35 (citing IMFAT Judgment No. 2001-2 (2002), *Mr. 'R' v. IMF*; IMFAT Judgment No. 2006-6, *Ms. 'M' and Dr. 'M' v. IMF*).

[658] WBAT Decision No. 699 (2023), *HF, HG and HH v. IFC (preliminary objection)*, para. 75.

[659] WBAT Decision No. 697 (2023), *HD v. IBRD*, para. 122.

[660] *Ibid.*

[661] WBAT Decision No. 690 (2023), *HA v. IBRD (preliminary objection)*, paras. 73-76. See also WBAT Decision No. 689 (2023), *GZ v. IBRD (preliminary objection)*, paras. 48-51.

[662] WBAT Decision No. 672 (2022), *GS v. IBRD (preliminary objection)*, paras. 67-69.

that long delays and lack of information in a recruitment proceeding should be compensated.[663] In the *S* case, the WBAT cited a judgment of the ILOAT to support its conclusion that when 'staff members are involved in a crime, international administrative tribunals give considerable deference to the management's evaluation of institutional interests.'[664] The WBAT also cited to the ILOAT in the *Cissé* case, which concerned a staff member who was a former Prime Minister of Niger.[665] While a staff member for the Bank, he was nominated as a candidate for the Presidency of Niger.[666] As a result, questions of interpretation of a staff rule relating to pursuit of national public office arose. The WBAT cited to the ILOAT for the proposition that 'Staff Regulations should be interpreted in themselves, with due regard to their purpose and independently of national legislation.'[667]

The WBAT has also relied on the jurisprudence of the ADBAT. For example, in the two substantially similar cases of *Vera Caryk* and *Madhusudan*, the WBAT considered claims that the use of successive short-term contracts had deprived staff members of certain benefits, including pension.[668] The applicants in both cases relied heavily on the *Amora* Decision of the ADBAT, in which that tribunal held that if a label given to an employment relationship was merely a device to deny the employee regular staff benefits, it should be disregarded.[669] The WBAT commented in both decisions that, '[a]s such, the *Amora* decision is not binding on the present Tribunal. On the other hand, the Tribunal considers that a harmony of views of similar international jurisdictions is to be welcomed, if possible, and of course the Tribunal will be influenced by persuasive analysis whatever its source.'[670] The WBAT stated in both judgments that the *Amora* Decision was 'persuasive but clearly distinguishable', as the applicant in that

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[663] WBAT Decision No. 453 (2011), *BO v. IBRD*, paras. 66–71 (citing ILOAT Judgment No. 2116 (2002), *In re Giordimaina*; ILOAT Judgment No. 2392 (2005), *Mrs. H.J. T. v. IFAD*).

[664] WBAT Decision No. 373 (2007), *S v. IBRD*, para. 67 (citing ILOAT Judgment No. 49 (1960), *In re Duncker*).

[665] WBAT Decision No. 242 (2001), *Cissé v. IBRD*, para. 3.

[666] *Ibid.*, para. 14.

[667] *Ibid.*, para. 23.

[668] WBAT Decision No. 214 (1999), *Caryk v. IBRD*, para. 5; WBAT Decision No. 215 (1999), *Madhusudan v. IBRD*, paras. 2–3.

[669] WBAT Decision No. 214 (1999), *Caryk v. IBRD*, para. 13; WBAT Decision No. 215 (1999), *Madhusudan v. IBRD*, para. 25 (both cases citing ADBAT Decision No. 24 (1997), *Amora v. ADB*).

[670] WBAT Decision No. 214 (1999), *Caryk v. IBRD*, para. 19; WBAT Decision No. 215 (1999), *Madhusudan v. IBRD*, para. 25.

case was treated as an independent contractor, while the applicant before the WBAT was a staff member, albeit on short-term contracts.[671]

The WBAT has cited to the tribunals of the UN internal justice system for a variety of issues. In this regard, it certainly stands out for citing to the UNDT and UNAT much more than other IATs do. For example, in the *HB* case, it cited to the UNDT concerning the denial of a fair opportunity to compete for a position.[672] In the *GS* case, it cited to the UNDT for the proposition that an applicant must submit to a selection process in order to subsequently challenge that process.[673] In the *GC* case, it looked to the UNDT concerning termination of employment during paternity leave.[674] In the *CL* case, it cited to the UNDT for the proposition that '[i]t is a universal obligation of both employee and employer to act in good faith towards each other.'[675] In the *FM* case, it adopted the definition of constructive dismissal used by the UNDT and UNAT.[676] In the *Tanner* case, it adopted the UNDT definition of what constitutes a failure to report for duty.[677] In the *FA* case, it referred to the jurisprudence of both the UNDT and UNAT for the proposition that a sexual relationship between staff members can be established through text and email messages, even in the absence of physical contact.[678] In the *HA* and *GZ* cases, it looked to the UNAT jurisprudence concerning whether an application was time-barred due to corrections made after the time-limit.[679] In the *Marafie* case, it looked to the UNAT concerning lack of standing of a former staff member and external candidate to

[671] WBAT Decision No. 214 (1999), *Caryk v. IBRD*, paras. 20–26; WBAT Decision No. 215 (1999), *Madhusudan v. IBRD*, paras. 26–34. *See also* WBAT Decision No. 362 (2007), *N v. IBRD*, paras. 36–37 (citing ADBAT Decision No. 55 (2002), *Galang v. ADB*, to support a compensation award for moral damage, anxiety and stress caused to a staff member by due process violations during a misconduct investigation).

[672] WBAT Decision No. 693 (2023), *HB v. IFC*, paras. 65-66 (quoting UNDT/2011/094, *Sprauten v. UNSG*).

[673] WBAT Decision No. 672 (2022), *GS v. IBRD*, para. 68 (quoting UNDT/2015/086, *Rockcliffe v. UNSG*).

[674] WBAT Decision No. 650 (2021), *GC v. IBRD*, paras. 85, 99 (quoting UNDT/2016/186, *Lemonnier v. UNSG*).

[675] WBAT Decision No. 499 (2009), *CL v. IBRD*, para. 73 (quoting UNDT/2009/025, *James v. UNSG*) (internal quotation marks omitted). See also WBAT Decision No. 668 (2022), *GO v. IBRD*, para. 93.

[676] WBAT Decision No. 643 (2020), *FM v. IBRD*, para. 129 (citing 2011-UNAT-130, *Koda v. UNSG*).

[677] WBAT Decision No. 478 (2013), *Tanner v. IBRD*, para. 30 (citing UNDT/2021/050, *Amoussouga-Géro v. UNSG*).

[678] WBAT Decision No. 612 (2019), *FA v. IBRD*, paras. 152–53 (citing UNDT/2018/132, *Mapuranga v. UNSG*; 2013-UNAT-280, *Applicant v. UNSG*).

[679] WBAT Decision No. 690 (2023) *HA v. IBRD*, para. 75; WBAT Decision No. 689 (2023), *GZ v. IBRD*, para. 50 (citing 2010-UNAT-046, *Vangelova v. UNSG*).

challenge a selection process.[680] In the *AI (No. 3)* case, it cited the UNAT for the proposition that an applicant cannot use the revision procedure as 'a disguised way to criticize the Judgment or to expose grounds to disagree with it.'[681] The WBAT also occasionally refers to the jurisprudence of the former UNAdT.[682]

Thus, not only has the WBAT influenced and encouraged cross-fertilization with its pronouncement in its seminal *de Merode* Decision, it has continued to practice cross-fertilization throughout its jurisprudence by citing regularly to a wide variety of different IATs.

2. *International Monetary Fund Administrative Tribunal (IMFAT)*

The IMFAT has cited to other IATs very extensively. Indeed, a review of IMFAT judgments from 1994 to 2024 revealed 415 references to the WBAT, 147 references to the ILOAT, 72 references to the UNAT, 70 references to the ADBAT, 56 references to the UNDT, 9 references to the IDBAT and 7 references to the AfDBAT.[683] Of these figures, the 415 references to the WBAT are particularly striking, given that the WBAT has less frequently

[680] WBAT Decision No. 684 (2022), *Marafie v. IBRD*, para. 42 (citing 2017-UNAT-727, *Khan v. UNSG*).

[681] WBAT Decision No. 495 (2014), *AI (No. 3) v. IBRD*, para. 25.

[682] See WBAT Decision No. 361 (2007), *G (No. 2) v. IBRD*, para. 30; WBAT Decision No. 380 (2008), *Z v. IBRD*, para. 20.

[683] Search carried out on 11 April 2024 on combined jurisprudence from 1994 to 2024. It should be noted that the figures cited represent the total number of hits for each IAT in the IMFAT jurisprudence, some of which may be citations by the parties. The ADBAT is sometimes abbreviated as ADBAT and sometimes AsDBAT in the jurisprudence of the IMFAT, both of which were taken into account.

referred to the jurisprudence of the IMFAT.[684] Thus, like the relationship between the ILOAT and the UNDT discussed below, one finds a sort of unequal conversation between these tribunals, stronger in one direction than in the other. The reasons for this are unclear, but one does notice between these two tribunals within important international financial institutions a similar dynamic that can be seen between two other significant tribunals, the ILOAT and the UNDT: the tribunal first to be established is noticeably more reticent to cite to the other.

The IMFAT cites to other IATs so frequently that space does not permit an exhaustive treatment of each such instance. This section will instead focus on cases where the IMFAT has cited to other IATs the most extensively. In these cases, the evidence of cross-fertilization is indisputable: one can clearly see a tribunal willingly developing its reasoning by reference not just to the occasional external decision but to numerous decisions of several tribunals within the same judgment.

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[684] See WBAT Decision No. 325 (2004), *E v. IBRD*, para. 26; WBAT Decision No. 383 (2008), *Mills v. IBRD*, paras. 33–35; WBAT Decision No. 384 (2008), *AA v. IBRD*, para. 49; WBAT Decision No. 424 (2009), *Aleem & Aleem v. IBRD*, paras. 57–62; WBAT Decision No. 645 (2021), *FT v. IBRD*, paras. 89-92; WBAT Decision No. 658 (2021), *GG v. IFC*, paras. 77-78, 121-122; WBAT Decision No. 659 (2021), *GH v. IFC*, paras. 82-83, 123-124; WBAT Decision No. 660 (2021), *GI v. IFC*, paras. 80-81, 121-122. The extent to which the IMFAT has cited the ADBAT is also notable. As a tribunal with a relatively small jurisprudence, having rendered only 120 decisions since its first case in 1992, other IATs have cited the ADBAT on just a handful of occasions, whereas the IMFAT has cited seventeen different ADBAT judgments, often multiple times: ADBAT Decision No. 1 (1992), *Lindsey v. ADB* (cited in IMFAT Judgment No. 1997-1, *Ms. 'C' v. IMF*; IMFAT Judgment No. 2002-1, *Mr. 'R' v. IMF*; IMFAT Judgment No. 2002-3, *Ms. 'G' and Mr. 'H' v. IMF*; IMFAT Judgment No. 2006-2, *Ms. 'T' v. IMF*; IMFAT Judgment No. 2006-3, *Ms. 'U' v. IMF*; IMFAT Judgment No. 2006-6, *Ms. 'M' and Dr. 'M' v. IMF*; IMFAT Judgment No. 2010-4, *Ms. 'EE' v. IMF*; IMFAT Judgment No. 2013-4, *Mr. 'HH' v. IMF*); ADBAT Decision No. 5 (1995), *Bares v. ADB* (cited in IMFAT Judgment No. 2007-8, *Mr. 'DD' v. IMF*; IMFAT Judgment No. 2010-4, *Ms. 'EE' v. IMF*); ADBAT Decision No. 12 (1996), *Viswanathan v. ADB* (cited in IMFAT Judgment No. 2002-3, *Ms. 'G' and Mr. 'H' v. IMF*); ADBAT Decision No. 18 (1996), *Mesch & Siy v. ADB (No. 3)* (cited in: IMFAT Judgment No. 2001-1, *Estate of Mr. 'D' v. IMF*; IMFAT Judgment No. 2001-2, *Mr. 'P' (No. 2) v. IMF*); ADBAT Decision No. 20 (1996), *Chan v. ADB* (cited in IMFAT Judgment No. 1999-2, *Mr. 'V' v. IMF*); ADBAT Decision No. 24 (1997), *Amora v. ADB* (cited in IMFAT Judgment No. 1999-1, *Mr. 'A' v. IMF*); ADBAT Decision No. 39 (1998), *De Armas et al. v. ADB* (cited in IMFAT Judgment No. 2002-1, *Mr. 'R' v. IMF*); ADBAT Decision No. 40 (1998), *Alexander v. ADB* (cited in IMFAT Judgment No. 2005-4, *Ms. 'Z' v. IMF*; IMFAT Judgment No. 2007-3, *Mr. M. D'Aoust (No. 2) v. IMF*; IMFAT Judgment No. 2011-1, *Ms. C. O'Connor (No. 2) v. IMF*); ADBAT Decision No. 41 (1998), *Alcartado v. ADB* (cited in IMFAT Judgment No. 2001-1, *Estate of Mr. 'D' v. IMF*; IMFAT Judgment No. 2002-2, *Ms. 'Y' (No. 2) v. IMF*; IMFAT Judgment No. 2006-1, *Mr. 'O' v. IMF*; IMFAT Judgment No. 2006-5, *Ms. 'AA' v. IMF*; IMFAT Judgment No. 2011-1, *Ms. C. O-Connor (No. 2) v. IMF*; IMFAT Judgment No. 2015-3, *Ms. 'GG' (No. 2) v. IMF*); ADBAT Decision No. 51 (2000), *Toivanen v. ADB* (cited in IMFAT Judgment No. 2006-2, *Ms. 'T' v. IMF*; IMFAT Judgment No. 2006-3, *Ms. 'U' v. IMF*; IMFAT Judgment No. 2006-5, *Ms. 'AA' v. IMF*); ADBAT Decision No. 55 (2002), *Galang v. ADB* (cited in IMFAT Judgment No. 2010-4, *Ms. 'EE' v. IMF*); ADBAT Decision No. 58 (2003), *Ms. C. v. ADB* (cited in IMFAT Judgment No. 2006-5, *Ms. 'AA' v. IMF*); ADBAT Decision No. 59 (2003), *Guioguio v. ADB* (cited in IMFAT Judgment No. 2007-3, *Mr. M. D'Aoust (No. 2) v. IMF*; IMFAT Judgment No. 2012-1, *Ms. N. Sachdev v. IMF*); ADBAT Decision No. 70 (2005), *de Alwis v. ADB (No. 3)* (cited in IMFAT Judgment No. 2016-2, *Mr. 'KK' v. IMF*); ADBAT Decision No. 103 (2014), *Mr. 'E' v. ADB* (cited in IMFAT Judgment No. 2015-3, *Ms. 'GG' (No. 2) v. IMF*); ADBAT Decision No. 104 (2014), *Mr. F v. ADB* (cited in IMFAT Judgment No. 2015-3, *Ms. 'GG' (No. 2) v. IMF*; IMFAT Judgment No. 2022-1, *'TT' v. IMF*); ADBAT Decision No. 115 (2018), *Cruz v. ADB* (cited in IMFAT Judgment No. 2019-1, *Mr. 'LL' v. IMF*).

For example, in its 2007 Judgment in *Mr. D'Aoust (No. 2)*, in which an unsuccessful applicant in a selection procedure challenged that procedure as tainted by procedural defects, the IMFAT cited some twenty judgments of other IATs, including the ILOAT,[685] WBAT,[686] UNAdT[687] and ADBAT.[688] It relied on the jurisprudence of these tribunals in considering a variety of questions, including when it is appropriate to disclose the recruitment file to the applicant challenging the selection procedure,[689] the standing of unsuccessful applicants to bring a claim to the tribunal,[690] the discretion of the administration in selection decisions,[691] and the relationship between that discretion and the terms of the vacancy announcement.[692]

In its 2010 Judgment in *Ms. 'EE'*, concerning a staff member's challenge to a misconduct investigation, the IMFAT cited other IATs fourteen times, including ten separate references to the WBAT,[693] three to the ADBAT,[694] and one to the UNAdT.[695] For example, it cited to the

[685] IMFAT Judgment No. 2007-3, *Mr. M. D'Aoust (No. 2) v. IMF*, paras. 10, 67–68, 73, 86, 102, 137 (citing ILOAT Judgment No. 1177 (1992), *In re Der Hovsepian*; ILOAT Judgment No. 1595 (1997), *In re De Riemaeker (No. 3)*; ILOAT Judgment No. 1646 (1997), *In re Pinto*; ILOAT Judgment No. 1359 (1994), *In re Cassaignau (No. 4)*; ILOAT Judgment No. 1316 (1994), *In re van der Peet (No. 17)*; ILOAT Judgment No. 1223 (1993), *In re Kirstetter (No. 2)*; ILOAT Judgment No. 2163 (2002), *M. D. S. v. FAO*; ILOAT Judgment No. 1158 (1992), *In re Vianney*; ILOAT Judgment No. 2393 (2005), *R.S. I. v. FAO*; ILOAT Judgment No. 2004 (2001), *In re Matthews*).

[686] *Ibid.*, paras. 73, 86, 137 (citing WBAT Decision No. 344 (2005), *Hitch v. IBRD*; WBAT Decision No. 100 (1991), *Jassal v. IBRD*; WBAT Decision No. 326 (2004), *Perea v. IFC*; WBAT Decision No. 57 (1988), *Sebastian (No. 2) v. IBRD*; WBAT Decision No. 245 (2001), *Nunberg v. IBRD*).

[687] *Ibid.*, paras. 10, 103 (citing UNAdT Judgement No. 1245 (2005), *Applicant v. UNSG*; UNAdT Judgement No. 1304 (2006), *Applicant v. UNSG*; UNAdT Judgement No. 1126 (2003), *Byaje v. UNSG*).

[688] *Ibid.*, paras. 73, 137 (citing ADBAT Decision No. 59 (2003), *Guioguio v. ADB*; ADBAT Decision No. 40 (1998), *Alexander v. ADB*).

[689] *Ibid.*, para. 10.

[690] *Ibid.*, para. 68.

[691] *Ibid.*, paras. 73, 86.

[692] *Ibid.*, paras. 102–03.

[693] IMFAT Judgment No. 2010-4, *Ms. 'EE' v. IMF*, para. 85 (citing WBAT Decision No. 304 (2003), *D v. IFC*); *ibid.*, paras. 87, 125 (citing WBAT Decision No. 392 (2009), *AE v. IBRD*; WBAT Decision No. 393 (2009), *AF v. IBRD*); *ibid.*, para. 101 (citing WBAT Decision No. 246 (2001), *Koudogbo, v. IBRD*); *ibid.*, paras. 103, 248 (citing WBAT Decision No. 340 (2005), *G v. IBRD*; WBAT Decision No. 362 (2007), *N v. IBRD*; WBAT Decision No. 426 (2009), *BB v. IBRD*); *ibid.*, paras. 105–06, 111 (citing WBAT Decision No. 145 (1995), *Sjamsubahri v. IBRD*); *ibid.*, para. 187 (citing WBAT Decision No. 430 (2010), *BF v. IBRD*); *ibid.*, para. 195 (citing WBAT Decision No. 380 (2008), *Z v. IBRD*).

[694] *Ibid.*, paras. 90, 174–76 (citing ADBAT Decision No. 55 (2002), *Galang v. ADB*); *ibid.*, para. 139 (citing ADBAT Decision No. 5 (1995), *Bares v. ADB*); *ibid.*, para. 189 (citing ADBAT Decision No. 1 (1992), *Lindsey v. ADB*).

[695] *Ibid.*, para. 85 (citing UNAdT Judgement No. 941 (1999), *Kiwanuka v. UNSG*).

UNAdT concerning the quasi-judicial nature of the imposition of disciplinary sanctions,[696] and it looked to both the WBAT and the ADBAT for the scrutiny to be applied to the decision to place the staff member on administrative leave.[697]

In its 2012 *Sachdev* Judgment, concerning a challenge to a decision not to select the applicant for a post and a subsequent decision to abolish the post she encumbered, the IMFAT also cited to other IATs on fourteen occasions, including to the WBAT, ILOAT and ADBAT.[698] The case concerned a challenge to a decision not to select the applicant for a post and a subsequent decision to abolish the post she encumbered.[699] The Tribunal looked to the work of the WBAT and the ADBAT with respect to the review of selection decisions.[700] It also looked at the jurisprudence of the WBAT, and to a lesser extent the ILOAT, in considering the question of reassignment in the case of redundancy.[701]

In *GG (No. 2)*, the IMFAT cited six different cases of the WBAT,[702] three of the ILOAT,[703] three of the ADBAT,[704] and one from the European Union Civil Service Tribunal (EUCST).[705] These references were made in a wide range of areas, from the calculation of

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[696] *Ibid.*

[697] *Ibid.*, paras. 90, 103–07, 174–76.

[698] IMFAT Judgment No. 2012-1, *Ms. N. Sachdev v. IMF*, para. 80 (citing WBAT Decision No. 1 (1981), *de Merode et al. v. World Bank*); *ibid.*, para. 100 (citing WBAT Decision No. 344 (2005), *Hitch v. IBRD*; WBAT Decision No. 100 (1991), *Jassal v. IBRD*; ILOAT Judgment No. 1646 (1997), *In re Pinto*; ADBAT Decision No. 59 (2003), *Guioguio v. ADB*); *ibid.*, para. 135 (citing ILOAT Judgment No. 2393 (2005), *R.S. I. v. FAO*); *ibid.*, para. 171 (citing WBAT Decision No. 294 (2003), *Njovens v. IBRD*; ILOAT Judgment No. 2156 (2002), *A. M. I. v. IFRC*); *ibid.*, paras. 212–16 (citing WBAT Decision No. 321 (2004), *Jakub v. IBRD*; WBAT Decision No. 226 (2000), *Marshall v. IBRD*; WBAT Decision No. 347 (2006), *F (No. 2) v. IBRD*; WBAT Decision No. 161 (1997), *Arellano (No. 2) v. IBRD*; WBAT Decision No. 260 (2002), *Marchesini v. IBRD*); *ibid.*, para. 217 (citing ILOAT Judgment No. 133 (1969), *In re Hermann*).

[699] *Ibid.*, para. 2.

[700] *Ibid.*, para. 100.

[701] *Ibid.*, paras. 212–17.

[702] IMFAT Judgment No. 2015-3, *Ms. 'GG' (No. 2) v. IMF*, paras. 24, 66, 271, 362, 441, 466 (citing WBAT Decision No. 362 (2007), *N v. IBRD*; WBAT Decision No. 197 (1998), *Rendall-Speranza v. IFC*; WBAT Decision No. 494 (2014), *Sekabaraga v. IBRD (Preliminary Objection)*; WBAT Decision No. 1 (1981), *de Merode et al. v. World Bank*; WBAT Decision No. 408 (2009), *AK v. IBRD*; WBAT Decision No. 416 (2009), *AS v. IBRD*).

[703] *Ibid.*, paras. 66, 187, 249, 271 (citing ILOAT Judgment No. 3318 (2014), *E. D. G. v. FAO*; ILOAT Judgment No. 3347 (2014), *H. L. v. WIPO*; ILOAT Judgment No. 2553 (2006), *H.F. v. IAEA*).

[704] *Ibid.*, paras. 271, 302, 440 (citing ADBAT Decision No. 103 (2014), *Mr. 'E' v. ADB*; ADBAT Decision No. 41 (1998), *Alcartado v. ADB*; ADBAT Decision No. 104 (2014), *Mr. F v. ADB*).

[705] *Ibid.*, para. 187 (citing EUCST Judgment No. F-52/05 (2008), *Q v EC*).

compensation awards to the evidence necessary to prove a harassment claim, among many others.[706]

In the 1999 case of *Mr. 'A'*, [707] the IMFAT engaged in a highly detailed examination of the jurisprudence of no less than thirteen other IAT decisions on the question of its jurisdiction over a contractual worker, reviewing six judgements of the UNAdT,[708] five judgments of the ILOAT,[709] one decision of the WBAT,[710] and one of the ADBAT.[711] The 2001 Judgment in *Estate of Mr. 'D'* is also notable, in particular for its extensive use of the jurisprudence of the WBAT, referring to eleven different decisions of that tribunal.[712] It also referred to two decisions of the ADBAT[713] and two judgments of the ILOAT.[714] The IMFAT found support in the decisions of these other IATs for the proposition that a decision of a Grievance Committee Chairman as to the timeliness of administrative review may be re-examined when assessing whether an applicant to the tribunal has met the exhaustion of remedies requirement of the

[706] These also included the *in camera* review of documents, the distinction between a misconduct procedure and a case for the resolution of an employment dispute, the special responsibilities carried by managers for ensuring the fair treatment of staff members, constraints on an organization's discretionary authority to adopt regulatory decisions, respectful formulation of pleadings, and the right to an impartial adjudicator. See *ibid.*, paras. 24, 66, 187, 249, 271, 302, 362, 440–41, 466.

[707] IMFAT Judgment No. 1999-1, *Mr. 'A' v. IMF*, paras. 2, 60.

[708] *Ibid.*, para. 90 n.19 (citing UNAdT Judgement No. 378 (1986), *Bohn, Coeytaux, and Vouillemont v. UNJSPF*; UNAdT Judgement No. 379 (1986), *Gilbert, Hyde, Ishkinazi, and Michel v. UNJSPF*; UNAdT Judgement No. 461 (1989), *Zafari v. CGUNRWA*; *ibid.*, paras. 66, 74 (citing UNAdT Judgement No. 96 (1965), *Camargo v. UNSG*); *ibid.*, paras. 88–90 (citing UNAdT Judgement No. 628 (1993), *Shkukani v. CGUNRWA*); *ibid.*, paras. 74–76 (citing UNAdT Judgement No. 230 (1977), *Teixeira v. UNSG*; UNAdT Judgement No. 233 (1978), *Teixeira v. UNSG*).

[709] *Ibid.*, paras. 72–73 (citing ILOAT Judgment No. 1034 (1990), *In re Amezketa*); *ibid.*, paras. 77–81 (citing ILOAT Judgment No. 701 (1985), *In re Bustos*); *ibid.*, paras. 70–71, 91 (citing ILOAT Judgment No. 67 (1962), *In re Darricades*); *ibid.*, para. 65 (citing ILOAT Judgment No. 307 (1977), *In re Labarthe*); *ibid.*, paras. 68–69 (citing ILOAT Judgment No. 75 (1964), *In re Privitera*).

[710] *Ibid.*, para. 63 (citing WBAT Decision No. 15 (1984), *Justin v. World Bank*).

[711] *Ibid.*, paras. 82–85 (citing ADBAT Decision No. 24 (1997), *Amora v. ADB*).

[712] IMFAT Judgment No. 2001-1, *Estate of Mr. 'D' v. IMF*, para. 67 (citing WBAT Decision No. 132 (1993), *Rae (No. 2) v. IBRD*); *ibid.*, para. 68 (citing WBAT Decision No. 89 (1990), *de Jong v. IFC*); *ibid.*, para. 94 (citing WBAT Decision No. 152 (1996), *Lewin v. IBRD*); *ibid.*, paras. 97, 121 (citing WBAT Decision No. 134 (1993), *Setia v. IBRD*); *ibid.*, paras. 104–05 (citing WBAT Decision No. 151 (1996), *Yousufzi v. IBRD*); *ibid.*, paras. 104, 125 (citing WBAT Decision No. 114 (1992), *Agerschou v. IBRD*); *ibid.*, para. 106 (citing WBAT Decision No. 182 (1997), *A v. IBRD*; WBAT Decision No. 195 (1998), *Mustafa v. IBRD*); *ibid.*, para. 120 (citing WBAT Decision No. 174 (1997), *Guya v. IBRD*); *ibid.*, para. 125 (citing WBAT Decision No. 129 (1993), *Bredero v. IBRD*); *ibid.*, paras. 126–127 (citing WBAT Decision No. 78 (1989), *Robinson v. IBRD*).

[713] *Ibid.*, paras. 92, 95 (citing ADBAT Decision No. 41 (1998), *Alcartado v. ADB*); *ibid.*, paras. 104, 107 (citing ADBAT Decision No. 18 (1996), *Mesch and Siy v. ADB (No. 3)*).

[714] *Ibid.*, paras. 93, 96 (citing ILOAT Judgment No. 575 (1983), *In re Schulz*); *ibid.*, para. 100 (citing ILOAT Judgment No. 259 (1975), *In re Al-Joundi*).

tribunal's statute.[715] In the 2005 case of *Mr. 'F'*,[716] the IMFAT acknowledged at the outset that it was the first time it had considered a challenge by a staff member to the abolition of his post. It thus examined no fewer than thirteen decisions of the WBAT[717] and five judgments of the ILOAT[718] on the matter, concluding that '[t]he jurisprudence of administrative tribunals accordingly indicates that international organizations must make genuine, serious, and pro-active efforts in reassignment of their employees whose positions have been abolished.'[719]

In many other cases, the IMFAT cited other IATs extensively, such as its 2002 Judgment in *Ms. 'Y' (No. 2)*,[720] citing nine external judgments; its 2006 Judgment in *Ms. 'AA'*[721] and its 2011 Judgment in *Pyne*,[722] each citing eight external judgments; as well as its 1996 Judgment

[715] *Ibid.*, paras. 92–107.

[716] IMFAT Judgment No. 2005-1, *Mr. 'F' v. IMF*.

[717] *Ibid.*, para. 48 (citing WBAT Decision No. 302 (2003), *Fidel v. IBRD*); *ibid.*, para. 52 (citing WBAT Decision No. 165 (1997), *Brannigan v. IBRD*); *ibid.*, paras. 52, 114 (citing WBAT Decision No. 161 (1997), *Arellano (No. 2) v. IBRD*); *ibid.*, para. 71 (citing WBAT Decision No. 100 (1991), *Jassal v. IBRD*); *ibid.*, para. 72 (citing WBAT Decision No. 168 (1997), *Denning v. IBRD*; WBAT Decision No. 260 (2002), *Marchesini v. IBRD*; WBAT Decision No. 273 (2002), *Harou v. IBRD*; WBAT Decision No. 292 (2003), *del Campo v. IBRD*; WBAT Decision No. 294 (2003), *Njovens v. IBRD*; WBAT Decision No. 297 (2003), *Taborga v. IBRD*); *ibid.*, para. 104 (citing WBAT Decision No. 192 (1998), *Garcia-Mujica v. IBRD*); *ibid.*, para. 120 (citing WBAT Decision No. 321 (2004), *Jakub v. IBRD*); *ibid.*, para. 121 (citing WBAT Decision No. 139 (1994), *Chhabra v. IBRD*).

[718] *Ibid.*, para. 13 n.8 (citing ILOAT Judgment No. 1372 (1994), *In re Malhotra*); *ibid.*, paras. 48, 78 (citing ILOAT Judgment No. 139 (1969), *J. C. v. CERN*); *ibid.*, para. 60 (citing ILOAT Judgment No. 2156 (2002), *A. M. I. v. IFRC*); *ibid.*, para. 113 (citing ILOAT Judgment No. 269 (1976), *In re Gracia de Muñiz*); *ibid.*, para. 116 (citing ILOAT Judgment No. 2294 (2004), *S. S. v. Interpol*).

[719] *Ibid.*, para. 117.

[720] IMFAT Judgment No. 2002-2, *Ms. "Y" (No. 2) v. IMF* (citing ADBAT Decision No. 41 (1998), *Alcartado v. ADB*; ILOAT Judgment No. 1272 (1993), *In re Diotallevi and Tedjini*; ILOAT Judgment No. 2040 (2000), *In re Durand-Smet (No. 4)*; ILOAT Judgment No. 1500 (1996), *In re Pary (No. 4)*; WBAT Decision No. 1 (1981), *de Merode et al. v. World Bank*; WBAT Decision No. 85 (1989), *de Raet v. IBRD*; WBAT Decision No. 56 (1988), *Pinto v. IBRD*; WBAT Decision No. 57 (1988), *Sebastian (No. 2) v. IBRD*; WBAT Decision No. 151 (1996), *Yousufzi v. IBRD*).

[721] IMFAT Judgment No. 2006-5, *Ms. "AA" v. IMF* (citing ADBAT Decision No. 41 (1998), *Alcartado v. ADB*; ADBAT Decision No. 58 (2003), *Ms. C v. ADB*; ADBAT Decision No. 51 (2000), *Toivanen v. ADB*; ILOAT Judgment No. 1466 (1996), *In re Saunders (No. 13)*; ILOAT Judgment No. 575 (1983), *In re Schulz*; WBAT Decision No. 182 (1997), *A v. IBRD*; WBAT Decision No. 325 (2004), *E v. IBRD*; WBAT Decision No. 356 (2006), *N v. IBRD*).

[722] IMFAT Judgment No. 2011-2, *Pyne v. IMF* (citing ILOAT Judgment No. 269 (1976), *In re Gracia de Muñiz*; WBAT Decision No. 226 (2000), *Marshall v. IBRD*; WBAT Decision No. 321 (2004), *Jakub v. IBRD*; WBAT Decision No. 347 (2006), *F (No. 2) v. IBRD*; WBAT Decision No. 161 (1997), *Arellano (No. 2) v. IBRD*; WBAT Decision No. 260 (2002), *Marchesini v. IBRD*; WBAT Decision No. 1 (1981), *de Merode et al. v. World Bank*; WBAT Decision No. 149 (1996), *Kepper v. IFC*).

in *Mr. D'Aoust*,[723] its 1997 Judgment in *Ms. 'C'*,[724] and its 2007 Judgment in *Daseking-Frank et al.*,[725] each citing seven external judgments.

3. *United Nations Dispute Tribunal (UNDT)*

The UNDT has cited to the ILOAT on over 200 occasions and to the WBAT twenty-six times.[726] It has also cited to the ADBAT,[727] the AfDBAT,[728] the IMFAT[729] and the ATCE.[730] Indeed, it has cited to other tribunals so frequently that an exhaustive treatment is not possible. Instead, this section will focus on examples where the UNDT's reference to the jurisprudence of other IATs was particularly extensive or otherwise significant. These examples show a tribunal with a developed practice of cross-fertilization, including citing to the same judgment of a sister tribunal repeatedly and citing to other tribunals even when a citation to its own jurisprudence would have been available.

For example, the UNDT has cited to the same judgment of the ILOAT on numerous occasions to explain the operation of the doctrine of *res judicata*, in particular in the context of

[723] IMFAT Judgment No. 1996-1, *D'Aoust v. IMF* (citing WBAT Decision No. 56 (1988), *Pinto v. IBRD*; IDBAT Judgment in Case No. 2 (1984), *Schwarzenberg Fonck v. IDB*; ILOAT Judgment No. 323 (1977), *In re Connolly-Battisti (No. 5)*; ILOAT Judgment No. 1272 (1993), *In re Diotallevi and Tedjini*; ILOAT Judgment No. 929 (1988), *In re Dunand and Jacquemod*; ILOAT Judgment No. 591 (1983), *In re Garcia*; ILOAT Judgment No. 963 (1989), *In re Niesing, Peeters and Roussot*).

[724]IMFAT Judgment No. 1997-1, *Ms. "C" v. IMF* (citing ADBAT Decision No. 1 (1992), *Lindsey v. ADB*; UNAdT Judgement No. 707 (1995), *Belas-Gianou v. UNSG*; UNAdT Judgement No. 700 (1995), *Benthin v. UNSG*; UNAdT Judgement No. 465 (1989), *Safavi v. UNSG*; WBAT Decision No. 27 (1985), *Broemser v. IBRD*; WBAT Decision No. 7 (1982), *Buranavanichkit v. IBRD*; WBAT Decision No. 12 (1982), *Matta v. IBRD*).

[725] IMFAT Judgment No. 2007-1, *Daseking-Frank, et al. v. IMF* (citing UNAdT Judgement No. 403 (1987), *Gretz and others v. UNJSPB*; WBAT Decision No. 1 (1981), *de Merode et al. v. World Bank*; WBAT Decision No. 38 (1987), *von Stauffenberg, Ganuelas, and Leach v. World Bank*; WBAT Decision No. 57 (1988), *Sebastian (No. 2) v. IBRD*; ILOAT Judgment 1912 (2000), *In re Berthet (No. 2), Lampinen, Leberman and Schechinger*; WBAT Decision No. 205 (1999), *Crevier v. IBRD*; WBAT Decision No. 149 (1996), *Kepper v. IFC*).

[726] Search carried out on 15 April 2024. It should be noted that the figures cited represent the total number of hits for each IAT in the UNDT jurisprudence, some of which may be citations by the parties.

[727] UNDT Order No. 126 (NY/2013), *Gatti et al. v. UNSG*; UNDT/2012/018, *McKay v. UNSG*.

[728] UNDT/2013/157, *Nwuke v. UNSG*.

[729] UNDT/2013/163, *Applicant v. UNSG*.

[730] UNDT/2016/087, *Mihai v. UNSG*.

an order concerning the withdrawal of an application.[731] Similarly, in *Hassanin*, concerning the lawfulness of a decision to terminate a staff member's permanent contract, the UNDT included a section in its judgment entitled 'overview of relevant case law' in which, after reviewing the case-law of the UNDT, UNAT, and UNAdT, it considered the jurisprudence of the ILOAT in detail.[732] The UNDT continued to review this ILOAT case law in its judgments in *Crotty*, *Alsado*, *Wright*, *Fasanella*, *Smith* and *Zachariah*.[733]

In a series of cases involving hundreds of applicants contesting the organization's decision to implement a post adjustment multiplier determined by the ICSC resulting in a substantial pay cut,[734] the UNDT cited several judgments of the ILOAT,[735] in particular Judgment 4134 in which ILO staff members were contesting the application of the same post

[731] See UNDT/2013/108, *Guevara v. UNSG*; UNDT/2013/122, *El-Komy v. UNSG*; UNDT/2013/123, *El-Komy v. UNSG*; UNDT/2013/125, *Applicant v. UNSG*; UNDT/2013/168, *Mabande v. UNSG*; UNDT/2014/008, *Yudin v. UNSG*; UNDT/2014/009, *Adundo v. UNSG*; UNDT/2014/010, *Lamuraglia v. UNSG*; UNDT/2014/011, *Adu-Mensah v. UNSG*; UNDT/2014/012, *Chaclag v. UNSG*; UNDT/2014/024, *Utkina v. UNSG*; UNDT/2014/031, *Shrivastava v. UNSG*; UNDT Order No. 113 (NY/2014), *Sprauten v. UNSG*; UNDT Order No. 130 (NY/2014), *Kodre v. UNSG*; UNDT Order No. 261 (NY/2014), *Wishart v. UNSG*; UNDT Order No. 350 (NY/2014), *Gittens v. UNSG*; UNDT Order No. 354 (NY/2014), *Snit v. UNSG*; UNDT Order No. 150 (NY/2015), *El Chaar v. UNSG*; UNDT Order No. 33 (NY/2016), *Chua v. UNSG*; UNDT Order No. 55 (NY/2016), *Kawas v. UNSG*; UNDT Order No. 56 (NY/2016), *Al-Midani v. UNSG*; UNDT Order No. 68 (NY/2016), *Bilbrough v. UNSG*; UNDT Order No. 133 (NY/2016), *Lawrence v. UNSG*; UNDT Order No. 207 (NY/2016), *Basnyat v. UNSG*; UNDT Order No. 265 (NY/2016), *Elimu v. UNSG*; UNDT Order No. 52 (NY/2017), *Shehadeh v. UNSG*; UNDT Order No. 99 (NY/2017), *Applicant v. UNSG*; UNDT Order No. 182 (NY/2017), *Sebillot v. UNSG*; UNDT Order No. 183 (NY/2017), *Yuen v. UNSG*; UNDT Order No. 184 (NY/2017), *Duong v. UNSG*; UNDT Order No. 226 (NY/2017), *Menekse v. UNSG*; UNDT Order No. 2 (NY/2018), *Roy v. UNSG*; UNDT Order No. 98 (NY/2018), *Kinglow v. UNSG*; UNDT Order No. 115 (NY/2018), *Chohan v. UNSG*; UNDT Order No. 141 (NY/2018), *Ndiaye v. UNSG*; UNDT Order No. 215 (NY/2018), *Malinin v. UNSG*; UNDT Order No. 216 (NY/2018), *Zilberg v. UNSG*.

[732] UNDT/2016/181, *Hassanin v. UNSG*, paras. 87–90 (citing ILOAT Judgment No. 1782 (1998), *In re Zaunbauer*; ILOAT Judgment No. 3238 (2013), *M.-J. C. and others v. Centre for the Dev. of Enterprise*; ILOAT Judgment No. 3437 (2015), *I. T. v. Technical Centre for Agricultural & Rural Co-op.*).

[733] UNDT/2016/190, *Crotty v. UNSG*; UNDT/2016/191, *Alsado v. UNSG*; UNDT/2016/192, *Wright v. UNSG*; UNDT/2016/193, *Fasanella v. UNSG*; UNDT/2016/194, *Smith v. UNSG*; UNDT/2016/195, *Zachariah v. UNSG*. For references to the ILOAT, *see, e.g.*, UNDT/2016/190, *Crotty v. UNSG*, paras. 57–60, 89–90, 96.

[734]See UNDT/2020/106, *Abd Al-Shakour et al. v. UNSG*; UNDT/2020/107, *Cardenas Fischer et al. v. UNSG*; UNDT/2020/114, *Steinbach v. UNSG*; UNDT/2020/115, *Bozic v. UNSG*; UNDT/2020/117, *Andres et al. v. UNSG*; UNDT/2020/118, *Angelova et al. v. UNSG*; UNDT/2020/122, *Andreeva et al. v. UNSG*; UNDT/2020/129, *Bozic et al. v. UNSG*; UNDT/2020/130, *Angelova et al. v. UNSG*; UNDT/2020/131, *Andres et al. v. UNSG*; UNDT/2020/132, *Andreeva et al. v. UNSG*; UNDT/2020/133, *Abd Al-Shakour et al. v. UNSG*; UNDT/2020/148, *Doedens et al. v. UNSG*; UNDT/2020/149, *Correia Reis et al. v. UNSG*; UNDT/2020/150, *Bettighofer et al. v. UNSG*; UNDT/2020/151, *Avognon et al. v. UNSG*; UNDT/2020/152, *Alsaqqaf et al. v. UNSG*; UNDT/2020/153, *Aligula et al. v. UNSG*; UNDT/2020/154, *Aksioutine et al. v. UNSG*.

[735] ILOAT Judgment No. 29 (1957), *In re Sherif*; ILOAT Judgment No. 61 (1962), *In re Lindsey*; ILOAT Judgment No. 832 (1987), *In re Ayoub, Lucal, Montat, Perret-Nguyen and Samson*; ILOAT Judgment No. 1798 (1999), *In re Ashurst, Berthet, Bosshard and Tuli*; ILOAT Judgment No. 4134 (2019), *B. and others et al. v. ILO*.

adjustment multiplier in that organization.[736] On the one hand, this could be seen as an important moment in the regime of cross-fertilization between IATs, in which two separate IATs within the UN common system treated a common question and the second to address the question considered the analysis of the first. In fact, the second tribunal to consider the question, the UNDT, even allowed the parties to submit additional pleadings on the relevance of the ILOAT Judgment to their cases.[737] Ultimately, however, the UNDT concluded that it could not follow the ILOAT reasoning and reached the opposite result, leading to the legitimacy crisis and fears of fragmentation discussed previously.[738]

Likewise, in a series of cases by multiple applicants challenging the 2017 unified salary scale,[739] the UNDT relied substantially on the jurisprudence of the ILOAT in its analysis of several issues, including the staff member's right of access to justice,[740] the reviewability of administrative decisions implementing decisions adopted by the General Assembly or ICSC,[741] and the principle of acquired rights.[742]

4. *United Nations Appeals Tribunal (UNAT)*

The UNAT has cited other IATs on some thirty occasions. These references are almost exclusively limited to judgments of the ILOAT—a somewhat ironic situation given the fact that the ILOAT almost never cites to the judgments of the U.N. internal justice system. The UNAT has referred to and followed judgments of the ILOAT in a wide variety of areas,

[736] ILOAT Judgment No. 4134 (2019), *B. and others et al. v. ILO*.

[737] UNDT/2020/106, *Abd Al-Shakour et al. v. UNSG*, para. 7.

[738] See *supra* notes 149-153 and accompanying text.

[739] See UNDT/2017/097, *Lloret Alcañiz, Zhao, Xie, Kutner, and Kring v. UNSG*; UNDT/2017/098, *Quijano-Evans & Dedeyne-Amann v. UNSG*; UNDT/2017/099, *Mirella, Ben Said, Santini, and Keating v. UNSG*.

[740] See, e.g., UNDT/2017/097, *Lloret Alcañiz, Zhao, Xie, Kutner, and Kring v. UNSG*, paras. 54–63 (citing ILOAT Judgment No. 122 (1968), *In re Chadsey*; ILOAT Judgment No. 1644 (1997), *In re Rubio*).

[741] See, e.g., *ibid.*, paras. 86–87 (citing ILOAT Judgment No. 1265 (1993), *In re Berlioz, Hansson, Heitz, Pary (No. 2) and Slater*; ILOAT Judgment No. 3883 (2017), *B. and others v. ILO*).

[742] See, e.g., *ibid.*, paras. 107–22 (citing ILOAT Judgment No. 19 (1955), *In re Wilcox*; ILOAT Judgment No. 29 (1957), *In re Sherif*; ILOAT Judgment No. 51 (1960), *In re Poulain d'Andecy*; ILOAT Judgment No. 61 (1962), *In re Lindsey*; ILOAT Judgment No. 365 (1978), *In re Lamadie (No. 2) and Kraanen*; ILOAT Judgment No. 370 (1979), *In re Mertens*; ILOAT Judgment No. 391 (1980), *In re de Los Cobos and Wenger*; ILOAT Judgment No. 832 (1987), *In re Ayoub, Lucal, Monat, Perret-Nguyen and Samson*).

including: due process rights,[743] the principle of acquired rights,[744] and the power of the organization to abolish posts,[745] among many others.[746] The UNAT decided in *Sanwidi*, however, that the jurisprudence of its predecessor the UNAdT, though of persuasive value, cannot be a binding precedent for the new Tribunals to follow.[747]

5. *Asian Development Bank Administrative Tribunal (ADBAT)*

The ADBAT refers to other IATs frequently, with more than a third of its decisions referencing at least one other tribunal. Most of these references were to the jurisprudence of the ILOAT and, to a certain extent, to the WBAT and the UNadT. Interestingly, despite this history of referring to the UNAdT, the ADBAT has referred hardly at all to the UNDT or UNAT in the new U.N. internal justice system.

From its first Decision in *Lindsey*, when the ADBAT was discussing sources of law, it stated that it would reason 'by analogy, from the staff practices of international organizations generally, including the decisions of international administrative tribunals dealing with comparable situations.'[748] It went on to add that '[t]here is, in this sphere, a large measure of

[743] See 2013-UNAT-302, *Applicant v. UNSG*, para. 37 (citing ILOAT Judgment No. 2771 (2009), *Y. G. v. FAO*).

[744] See 2018-UNAT-840, *Alcañiz et al. v. UNSG*, paras. 86, 90 (citing ILOAT Judgment No. 832 (1987), *In re Ayoub, Lucal, Monat, Perret-Nguyen and Samson*; ILOAT Judgment No. 2632 (2007), *P. B. and I. N. v. Eurocontrol*). *See also* 2018-UNAT-841, *Quijano-Evans et al. v. UNSG*; 2018-UNAT-842, *Mirella et al. v. UNSG*.

[745] See 2012-UNAT-236, *Gehr v. UNSG*, paras. 25, 29 (citing ILOAT Judgment No. 2967 (2011), *F. L. v. ITU*; ILOAT Judgment No. 3084 (2012), *R.C. W. v. FAO*). *See also* 2013-UNAT-281, *Pacheco v. UNSG*, para. 22; 2014-UNAT-450, *Bali v. UNSG*, para. 21; 2015-UNAT-592, *Matadi et al. v. UNSG*, para. 16; 2016-UNAT-660, *Toure v. UNSG*, para. 16; 2016-UNAT-678, *Khalaf v. UNSG*, para. 38.

[746] Other propositions for which the UNAT has looked to the ILOAT include the Noblemaire principle and its application to the pension systems (*see, e.g.,* 2010-UNAT-034, *Muthuswami et al. v. UNJSPB*, para. 30), the rate of pre-judgment and post-judgment interest to apply with respect to awards of compensation (*see, e.g.,* 2010-UNAT-059, *Warren v. UNSG*, para. 15), balancing the staff-member's right of access to documents with the right of confidentiality (*see, e.g.,* 2011-UNAT-121, *Bertucci v. UNSG*, paras. 46, 49), the standard of review of classification decisions (*see, e.g.,* 2011-UNAT-105, *Fuentes v. UNSG*, para. 26), the requirement to narrowly tailor requests for access to documents (*see, e.g.,* UNAT Order No. 256 (2016), *Rangel v. ICJ Registrar*, para. 5), the obligation of the organization to state reasons for its decisions (*see, e.g.,* 2011-UNAT-178, *Hepworth v. UNSG*, para. 32), the obligation to provide an opportunity for a staff member to respond to allegations against him/her before terminating an appointment (*see, e.g.,* 2012-UNAT-231, *Ortiz v. ICAO Secretary General*, para. 44), the obligation to compensate an official placed on leave unlawfully (*see, e.g.,* 2013-UNAT-282, *Lauritzen v. UNSG*, para. 43), the role of first-level review as fact-finder (*see, e.g.,* 2013-UNAT-302, *Applicant v. UNSG*, para. 35), and recusal (*see, e.g.,* 2014-UNAT-397, *Finniss v. UNSG*, para. 22).

[747] 2010-UNAT-084, *Sanwidi v. UNSG*, para. 37.

[748] ADBAT Decision No. 1 (1992), *Lindsey v. ADB*, para. 4.

"common" law of international organizations to which, according to the circumstances, the Tribunal will give due weight.'[749] Although less celebrated than the WBAT's similar pronouncement in *de Merode*, one cannot help but notice the similar approach: both tribunals clearly accept and even seem to encourage a practice of cross-fertilization.

There are several decisions of the ADBAT which stand out for the extent to which the Tribunal referred to other IATs. In *Mesch and Siy (No. 4)*, the ADBAT cited extensively to the WBAT, the ILOAT, the UNAdT, and the former OECD Appeals Board .[750] In *Perrin, et al.*, in which 122 staff members challenged changes to the education grant scheme, the ADBAT engaged in an extensive review of the jurisprudence of the ILOAT, the WBAT, and the UNAdT.[751] It also cited the UNAT for the proposition that IATs can raise issues *sua sponte*[752] and the ILOAT when discussing when joinder of cases is appropriate.[753]

In *Eisuke Suzuki et al.*, the ADBAT cited several different IATs in considering whether the ADB could treat staff members and pensioners differently with respect to medical insurance coverage.[754] The Tribunal applied the four-part test of the IMFAT to determine when differential treatment of two groups is justified,[755] substantiating this with additional examples from the jurisprudence of the WBAT.[756] In the same decision, it referred to the ILOAT for the

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[749] *Ibid.*

[750] ADBAT Decision No. 35 (1997), *Mesch & Siy (No.4) v. ADB*, paras. 14, 17–18, 21, 26, 40–42 (concerning whether tax reimbursement on salary constitutes a fundamental and essential condition of employment and citing WBAT Decision No. 1 (1981), *de Merode et al. v. World Bank*; ILOAT Judgment No. 61 (1962), *In re Lindsey*; ILOAT Judgment No. 391 (1980), *In re de Los Cobos and Wenger*; ILOAT Judgment No. 426 (1980), *In re Settino*; ILOAT Judgment No. 514 (1982), *In re Alonso (No. 3)*; ILOAT Judgement No. 1118 (1991), *In re Niesing (No. 2), Peeters (No. 2) and Roussot (No. 2)*; UNAdT Judgement No. 19 (1953), *Kaplan v. UNSG*; UNAdT Judgement No. 88 (1963), *Davidson v. UNSG*; UNAdT Judgement No. 395 (1987), *Oummih, Gordon and Gruber v. UNSG*; OECD Appeals Board Decision No. 111 (1988), *In re Hopkins and others*).

[751] ADBAT Decision No. 109 (2017), *Perrin, et al. v. ADB*, paras. 48–54 (citing ILOAT Judgment No. 622 (1984), *In re Sikka (No. 3)*; ILOAT Judgment No. 624 (1984), *In re Giroud (No. 2) and Lovrecich*; ILOAT Judgment No. 961 (1989), *In re F. J. (No. 2), Laurent and van der Sluis*; ILOAT Judgment No. 1463 (1995), *In re Weber*; ILOAT Judgment No. 1712 (1998), *In re Aelvoet (No. 6) and others*; ILOAT Judgment No. 2822 (2009), *D. N. P. v. Eurocontrol*; ILOAT Judgment No. 3291 (2014), *E. A. and others v. EPO*; ILOAT Judgment No. 3427 (2015), *I. H. T. (No. 17) and others v. EPO*; UNAT Judgment No. 2014-UNAT-481, *Lee v. UNSG*; WBAT Decision No. 118 (1992), *Briscoe v. IBRD*; UNAdT Judgement No. 1157 (2003), *Andronov v. UNSG*).

[752] *Ibid.*, para. 43 (citing UNAT Judgment No. 2015-UNAT-526, *Tintukasiri v. UNSG*).

[753] *Ibid.*, para. 45 (citing ILOAT Judgment No. 1001 (1990), *In re Hillhouse-Reine and Woess*; ILOAT Judgment No. 1203 (1992), *In re Horsman, Koper, McNeill and Petitfils*).

[754] ADBAT Decision No. 82 (2008), *Suzuki et al. v. ABD*, paras. 35–39.

[755] *Ibid.*, para. 32.

[756] *Ibid.*, paras. 35–36.

proposition that the ADB could reserve its rights to change the terms of its medical plan.[757] It also referred to the *de Merode* Decision of the WBAT, ultimately concluding that the ADB's actions conformed with the requirements of that decision, in that changes to conditions of employment should be made only after careful consideration and adequate consultation.[758]

In *Amora*, the ADBAT cited multiple ILOAT judgments and distinguished UNAdT judgements in its conclusion that a staff member's series of short-term contracts did not reflect the true nature of his employment relationship and he should thus be entitled to pension benefits.[759] In *Alcartado*, it referred to judgments of the ILOAT and decisions of the WBAT for its conclusion that grievances must be submitted within prescribed time limits.[760] In *Agliam*, it cited to the ILOAT, WBAT and UNAdT for the proposition that the head of an international organization has discretion to transfer its staff.[761]

The ADBAT has often cited other administrative tribunals when considering disciplinary cases. In *Abat*, for example, it cited to the jurisprudence of the ILOAT, the WBAT, the UNAT and the UNAdT for multiple propositions.[762] What is interesting about this case is that the Tribunal chose to cite to the jurisprudence of other IATs for relatively common propositions of international administrative law—such as that in disciplinary cases a tribunal should not substitute its discretion or assessment for that of the Director General[763]—propositions which could surely have been found within its own jurisprudence.

The same phenomenon can be observed in *Gnanathurai*, another disciplinary case also citing the ILOAT, WBAT and the former UNAdT.[764] In support of the proposition that administrative disciplinary proceedings require a lower standard of proof than applies in criminal cases, the ADBAT cited first to a judgement of the UNAdT, before referring to one of its own decisions and an ADB administrative issuance, both of which support the same

[757] *Ibid.*, para. 27.

[758] *Ibid.*, paras. 28, 38.

[759] ADBAT Decision No. 24 (1997), *Amora v. ADB*, paras. 24–26, 40.

[760] ADBAT Decision No. 41 (1998), *Alcartado v. ADB*, para. 12.

[761] ADBAT Decision No. 83 (2008), *Agliam v. ADB*, paras. 28–31.

[762] ADBAT Decision No. 78 (2007), *Abat v. ADB*, paras. 27, 33, 43, 47.

[763] *Ibid.*, para. 43.

[764] ADBAT Decision No. 79 (2007), *Gnanathurai v. ADB*, paras. 25, 33, 43.

proposition. It then went on to cite yet another judgement of the UNAdT.[765] The ADBAT also cited the ILOAT, WBAT and UNAdT in other disciplinary cases, including *Zaidi*,[766] *Bristol*,[767] *Chaudhry*,[768] and *Ms. M*.[769] In still other disciplinary cases, it cited to two of those tribunals.[770]

[765] *Ibid*., para. 33.

[766] ADBAT Decision No. 17 (1996), *Zaidi v. ABD*, paras. 10, 20, 22, 50, 61.

[767] ADBAT Decision No. 75 (2006), *Bristol v. ADB*, paras. 29, 51.

[768] ADBAT Decision No. 23 (1996), *Chaudhry v. ADB*, paras. 21, 35.

[769] ADBAT Decision No. 119 (2018), *Ms. M v. ADB*, paras. 59, 69, 71, 87, 91, 99, 104, 120.

[770] ADBAT Decision No. 55 (2002), *Galang v. ADB*, paras. 46–47; ADBAT Decision No. 85 (2008), *de Alwis (No. 4) v. ADB*, paras. 34, 39.

In a great many other decisions, the ADBAT has cited to at least one decision of another IAT, including those of the ILOAT,[771] WBAT,[772] OECDAT,[773] IMFAT,[774] and UNAdT.[775]

6. *Council of Europe Administrative Tribunal (ATCE)*

The ATCE is notable in particular for the extent to which it has cited the ILOAT. For example, in *Yuksek (II)*, it cited to the ILOAT on ten different occasions in a single decision. This was for a wide range of propositions, including the determination of whether a communication from a staff member constitutes a request to review an administrative

[771] See ADBAT Decision No. 8 (1995), *Behuria v. ADB*, para. 23 (regarding the requirement to respect prescribed time-limits); ADBAT Decision No. 32 (1997), *Cumaranatunge (No. 2) v. ADB*, para. 5 (balancing the competing interests of privacy and transparency); ADBAT Decision No. 33 (1997), *Viswanathan (No. 2) v. ADB*, para. 8 (grounds for review of judgments); ADBAT Decision No. 66 (2004), *de Alwis (No. 2) v. ADB*, para. 17 (grounds for revision of judgments); ADBAT Decision No. 43 (1999), *Haider v. ADB*, para. 18 (discretionary power of the managerial authority in probationary cases); ADBAT Decision No. 68 (2005), *Soerakoesoemah, et al. v. ADB*, para. 14 (principle that the tribunal is not empowered to rewrite a valid contract); ADBAT Decision No. 80 (2007), *Ahmad v. ADB*, para. 45 (principle of proportionality); ADBAT Decision No. 90 (2009), *Cahutay v. ADB*, para. 27 (lack of proportionality as an error in law); ADBAT Decision No. 116 (2018), *Ms. J v. ADB*, para. 90 (principle of proportionality); ADBAT Decision No. 117 (2018), *Mr. K v. ADB*, para. 108 (principle of proportionality); ADBAT Decision No. 118 (2018), *Ms. L v. ADB*, para. 123 (proportionality of a penalty); ADBAT Decision No. 91 (2009), *Murray v. ADB*, para. 47 (principle of non-discrimination); ADBAT Decision No. 98 (2012), *Kalyanaraman (No. 2) v. ADB*, paras. 28–29 (Noblemaire principle); ADBAT Decision No. 106 (2015), *Ms. G (No. 2) v. ADB*, para. 38 (describing consequences of a staff member's failure to engage in the performance review process); *ibid.*, para. 45 (balance between the requirements of due process and confidentiality); ADBAT Decision No. 113 (2018), *Perrin, et al. (No. 3) v. ADB*, paras. 52, 60–61, 93 (acquired rights and fundamental conditions of employment).

[772] See ADBAT Decision No. 12 (1996), *Viswanathan v. ADB*, para. 13 (principle of non-discrimination); ADBAT Decision No. 1 (1992), *Lindsey v. ADB*, paras. 12, 35; *ibid.*, para. 7 (Asian Dev. Bank Admin. Trib. 1992) (utility of performance appraisals); *ibid.*, para. 43 (option of compensation in lieu of specific performance); *ibid.*, para. 45 (possibility of causing harm without tangible loss); ADBAT Decision No. 3 (1994), *Yan v. ADB*, para. 29 (discretion given to decisions of the respondent organization); ADBAT Decision No. 34 (1997), *Wilkinson (No. 2) v. ADB*, para. 4 (grounds for revision of judgments); ADBAT Decision No. 111 (2018), *Ms. D (No. 3) v. ADB*, para. 45 (limited scope for the revision of judgments); ADBAT Decision No. 103 (2014), *Mr. 'E' v. ADB*, para. 54 (existence of generally recognized principles of international administrative law); ADBAT Decision No. 111 (2018), *Ms. D (No. 3) v. ADB*, para. 56 (determination of the conditions of employment); ADBAT Decision No. 65 (2004), *Yamagishi v. ADB*, para. 44 (function of the probationary period); ADBAT Decision No. 58 (2003), *Ms. C. v. ADB*, para. 12 (legality of settlement agreements); ADBAT Decision No. 3 (1994), *Yan v. ADB*, para. 31 (principle that the tribunal should not substitute its judgment for that of the administration); *ibid.*, paras. 20–21 (shifting of the burden of proof in discrimination cases); ADBAT Decision No 10 (1996), *Wilkinson v. ADB*, paras. 7, 17; ADBAT Decision No. 3 (1994), *Yan v. ADB*, para. 30 (discretion of the administration in establishing the grade/classification of a position).

[773] See ADBAT Decision No. 108 (2017), *Mr. H v. ADB*, para. 56 (concerning the proportionality of dismissing a staff member for pursuing criminal proceedings against another staff member in national courts).

[774] See ADBAT Decision No. 122 (2019), *Mr. Ocampo v. ADB*, para. 14 (exhaustion of internal remedies); ADBAT Decision No. 87 (2009), *Ms. A v. ADB*, para. 30 (discretion of the administration in making appointment and promotion decisions).

[775] ADBAT Decision No. 77 (2006), *Mr. A v. ADB*, para. 31 (calculation of damages); ADBAT Decision No. 72 (2005), *Shimabuku (Nos. 1 and 2) v. ADB*, para. 30 (person who claims a contract was signed under duress bears the burden of proving it).

decision,[776] the right of staff members to information,[777] the duty of the organization to provide staff members with procedural guidance,[778] the right of every candidate for a post to have his or her application considered in good faith and in keeping with the basic rules of fair and open competition,[779] the duty of appointments panels to act impartially,[780] the necessary standard of proof to establish bias,[781] the duty of a decision-maker to withdraw in situations where impartiality may be open to question,[782] and the principal of *res judicata*.[783] In this same decision, the Tribunal cited to its own jurisprudence on only four occasions.[784] The fact that the Tribunal chose to cite externally more than internally shows indeed just how far the use of cross-fertilization has come.

[776] See ATCE Decision on App. No. 665/2020 (2021), *Yuksek (II) v. CESG*, para. 56.

[777] See *ibid*., para. 62.

[778] See *ibid.*

[779] See *ibid*., para. 69.

[780] See *ibid.*, para. 70.

[781] See *ibid.*, para. 73.

[782] See *ibid.*, para. 79.

[783] See *ibid.*, para. 86.

[784] See ATCE Decision on App. No. 665/2020 (2021), *Yuksek (II) v. CESG*, paras. 51, 68, 73 and 86.

The ATCE has also cited the ILOAT for many other propositions, including access to justice,[785] acquired rights,[786] the principle of equal pay for equal work,[787] and the definition of 'spouse',[788] to name only a few.[789]

[785] See ATCE Decision on App. No. 226/1996 (1997), *Zimmermann v. CESG*, para. 29 (citing ILOAT Judgment No. 122 (1968), *In re Chadsey*).

[786] See ATCE Decision on Apps. Nos. 492–497/2011, Nos. 504–508/2011, No. 510/2011, No. 512/2011, Nos. 515–520/2011, No. 527/2012 (2012), *Baron v. CESG*, para. 53.

[787] See ATCE Decision on Apps. No. 587/2018 and No. 588/2018 (2018), *Devaux (II) and (III) v. CESG*, para. 68.

[788] See ATCE Decision on App. No. 321/2003 (2005), *Nyctelius v. CESG*, paras. 39–40.

[789] The ATCE has also cited to the ILOAT regarding the non-binding nature of opinions of the Disciplinary Board (see ATCE Decision on Apps. No. 187/1994 and No. 193/1994 (1995), *Roose (I) v. GCESDF*, para. 115; ATCE Decision on Apps. No. 189/1994 and No. 195/1994 (1994), *Ernould (I) v. GCESDF*, para. 143; ATCE Decision on Apps. No. 190/1994, No. 196/1994, No. 197/1994, and No. 201/1995 (1995), *Lelégard (I) v. GCESDF*, para. 160; ATCE Decision on App. No. 208/1995 (1996), *Marechal v. GCESDF*, para. 61), breach of professional duties as a disciplinary offence (see ATCE Decision on Apps. No. 189/1994 and No. 195/1994 (1994), *Ernould (I) v. GCESDF*, para. 140; ATCE Decision on Apps. No. 190/1994, No. 196/1994, No. 197/1994, and No. 201/1995 (1995), *Lelégard (I) v. GCESDF*, para. 157; ATCE Decision on App. No. 208/1995 (1996), *Marechal v. GCESDF*, para. 59), lack of proportionality as an error of law (*see* ATCE Decision on Apps. No. 189/1994 and No. 195/1994 (1994), *Ernould (I) v. GCESDF*, para. 155; ATCE Decision on Apps. No. 190/1994, No. 196/1994, No. 197/1994, and No. 201/1995 (1995), *Lelégard (I) v. GCESDF*, para. 178; ATCE Decision on App. No. 178/1994 (1994), *Fender (I) v. CESG*, para. 42; ATCE Decision on App. No. 624/2019 (2020), *Martz v. CESG*, para. 62; ATCE Decision on App. No. 208/1995 (1996), *Marechal v. GCESDF*, para. 88), respect for staff members' dignity (*see* ATCE Decision on App. No. 266/2001 (2001), *Girasoli v. CESG*, para. 37), the ongoing interest of a retired staff member in exposing a breach of due process (see ATCE Decision on App. No. 267/2001 (2002), *Peukert (III) v. CESG*, para. 24), establishing harassment through an accumulation of events (*see* ATCE Decision on App. No. 285/2001 (2003), *Parienti v. CESG*, para. 39), burden of proof on the party pleading harassment or other inappropriate behavior (see *ibid.*, para. 58; ATCE Decision on App. No. 605/2019 (2019), *X v. CESG*, para. 63), the dependent-child allowance (*see* ATCE Decision on App. No. 293/2002 (2002), *ERB v. CESG*, para. 51), consent to an administrative decision rendering a challenge to it inadmissible (see ATCE Decision on App. No. 392/2007 (2008), *Dăgăliță v. CESG*, paras. 40–41), the principle that communications are deemed effective when sent, not when actually read (*see* ATCE Decision on App. No. 416/2008 (2009), *Švarca v. CESG*, para. 34), the discretion of the administration with regard to application of the principle of equal treatment (see ATCE Decision on Apps. No. 587/2018 and No. 588/2018 (2018), *Devaux (II) v. CESG*, para. 68), the applicability of general principles of law and basic human rights principles (see *ibid.*, para. 98), the duty of the employer to inform officials in advance of any action that may imperil their rights or harm their interests (*see ibid.*, para. 108), the principle that there is no promise of renewal of fixed-term contracts (*see ibid.*, para. 109), the organization's duties in the context of an investigation of harassment (see ATCE Decision on App. No. 594/2018 (2019), *Bauer v. GCEDB*, para. 60), the principle that there is no need to prove intent in a harassment claim (*see ibid.*, para. 61), proportionality in disciplinary measures (see *ibid.*, para. 63), compliance with time limits (*see* ATCE Decision on App. No. 603/2019 (2019), *Ana v. CESG*, para. 47), the principle that a practice cannot become legally binding if it contravenes a written rule already in force (see ATCE Decision on App. No. 617/2019 (2019), *Ubowksa (I) v. CESG*, para. 29; ATCE Decision on App. No. 638/2020 (2020), *Zrvandyan v. CESG*, para. 49), the proposition that there is no need for administration to provide further reasons when accepting the recommendations of an internal appeals body (see ATCE Decision on App. No. 624/2019 (2020), *Martz v. CESG*, para. 55), the discretion of administration, subject to the principle of proportionality (see *ibid.*, para. 61), the proposition that practice can be created by an announcement, by an administrative circular, or otherwise (*see* ATCE Decision on App. No. 638/2020 (2020), *Zrvandyan v. CESG*, para. 49), the proposition that the performance appraisal is generally the responsibility of a staff-member's immediate supervisor (*see* ATCE Decision on App. No. 650/2020 (2021), *Levertova v. GCEDB*, para. 52), the discretion of the controlling authority (see ATCE Decision on Apps. Nos. 115–117/1985 (1986), *Peukert (I) v. CESG*, para. 97; ATCE Decision on App. No. 130/1985 (1986), *Fuchs (II) v. CESG*, para. 46; ATCE Decision on Apps. Nos. 147–148/1986 (1987), *Bartsch (II) and Peukert (II) v. CESG*, para. 51), administrative review of the organization's discretionary authority (*see* ATCE Decision on Apps. Nos. 115–117/1985 (1986), *Peukert (I) v. CESG*, para. 99; ATCE Decision on App. No. 130/1985 (1986), *Fuchs (II) v. CESG*, para. 48; ATCE Decision on App. No. 131/1986 (1986), *Koenig v. CESG*, para. 49; ATCE Decision on Apps. Nos. 147–148/1986 (1987), *Bartsch (II) and Peukert (II) v. CESG*, para. 53; ATCE Decision on App. No. 166/1990 (1992), *Beygo (I) v. CESG*, para. 40), the principle that an authority is bound by its own rules (see ATCE Decision on Apps. Nos. 115–117/1985 (1986), *Peukert (I) v. CESG*, para. 100; ATCE Decision on Apps. Nos. 147–148/1986 (1987), *Bartsch (II) and Peukert (II) v. CESG*, para. 54), and the importance of impartiality in recruitment procedures (see ATCE Decision on App. No. 172/1993 (1994), *Feriozzi-Kleijssen v. CESG*, para. 31).

The ATCE has also occasionally cited to the OECDAT.[790] Like several other tribunals, the ATCE has cited to the UNAdT on multiple occasions[791] but only rarely to the new U.N. internal justice system.[792] Finally, the ATCE has cited to the NATOAT on two occasions,[793] the only IAT yet to have done so.

7. *African Development Bank Administrative Tribunal (AfDBAT)*

References to the case law of other IATs in the jurisprudence of the AfDBAT are numerous, in particular to the ILOAT, the WBAT, the UNAdT, the IMFAT and the ADBAT.[794] As we have seen with other IATs, there appears to be a noticeable hesitancy to cite the UNDT and UNAT, compared with their predecessor the UNAdT, which the AfDBAT has regularly cited.

Among the AfDBAT Judgments referring to the jurisprudence of other IATs, a few stand out for the sheer number and breadth of citations they contain. The most significant of these is the *D.S.A.* Judgment in 2019, in which the Tribunal cited to no fewer than fourteen different decisions of other IATs. In the case, which concerned a challenge to a decision of the Bank to separate the applicant following the abolition of his post, the AfDBAT cited to the WBAT and the ILOAT concerning the scope of its power of review,[795] to the WBAT for the standard to determine whether there was a legal basis for the respondent to abolish the position,[796] to the ILOAT for the proposition that IATs have recognized a general principle that an organization

[790] See ATCE Decision on App. No. 209/1995 (1996), *Smyth v. CESG*, para. 33 (concerning the interpretation of pension rules); ATCE Decision on Apps. Nos. 231-38/1997 (1998), *Fuchs and others v. CESG*, paras. 51, 57–58 (concerning comparing English and French languages versions of a report).

[791] See ATCE Decision on Apps. Nos. 115–117/1985 (1986), *Peukert (I) v. CESG*; ATCE Decision on App. No. 130/1985 (1986), *Fuchs (II) v. CESG*; ATCE Decision on Apps. Nos. 147–148/1986 (1987), *Bartsch (II) and Peukert (II) v. CESG*; ATCE Decision on App. No. 166/1990 (1992), *Beygo (I) v. CESG*; ATCE Decision on Apps. No. 187/1994 and No. 193/1994 (1995), *Roose (I) v. GCESDF*; ATCE Decision on Apps. No. 189/1994 and 195/1994 (1994), *Ernould (I) v. GCESDF*; ATCE Decision on Apps. No. 190/1994, No. 196/1994, No. 197/1994, and No. 201/1995 (1994), *Lelégard (I) v. GCESDF*; ATCE Decision on App. No. 208/1995 (1996), *Marechal v. GCESDF*; ATCE Decision on App. No. 212/1995 (1995), *Bouillon (II) v. CESG*.

[792] See ATCE Decision on App. No. 622/2019 (2020), *Brechenmacher (II) v. CESG*, para. 89.

[793] See ATCE Decision on Apps. Nos. 101–113/1984 (1985), *Stevens v. CESG*, para. 65; ATCE Decision on Apps. No. 587/2018 and No. 588/2018 (2018), *Devaux (II) and (III) v. CESG*, para. 109.

[794] Search carried out on September 8, 2021 on combined jurisprudence July 1999 to December 2020.

[795] See AfDBAT Judgment No. 138 (2020), *D.S.A. v. AfDB*, para. 17 (citing WBAT Decision No. 551 (2016), *DV v. IFC*, para. 50; ILOAT Judgment No. 4099 (2019), *R (No. 2) v. WHO*, para. 3).

[796] *Ibid*., para. 20 (citing WBAT Decision No. 533 (2016), *DI v. IBRD*, para. 85; WBAT Decision No. 260 (2002), *Marchesini v. IBRD*, para. 30; WBAT Decision No. 526 (2015), *DD v. IBRD*, paras. 58–59).

may not immediately terminate a staff member whose post has been abolished if the staff member holds an appointment of indeterminate duration,[797] to the IMFAT for the obligation to attempt to reassign staff members whose post has been abolished,[798] and to the ILOAT concerning the discretion of the head of the administration to accept or reject recommendations made by an Appeals Committee.[799] It looked to the jurisprudence of both the WBAT and the ILOAT for the test to determine whether an abolition of post was 'genuine'[800] and for the mechanisms with which the administration must comply when reassigning staff members whose posts have been abolished.[801]

Several other cases also stand out for their extensive reliance on the jurisprudence of other IATs. In *T.K.*, the AfDBAT cited to the UNAdT, WBAT, IMFAT and multiple judgments of the ILOAT for the proposition that it is an established general rule of international administrative law that the assignment of grades to posts constitutes an exercise of discretionary power, which can only be overturned by a tribunal if abusive, arbitrary or based on significant procedural or substantive errors.[802] In *Ms. C.A.W.*, it cited to multiple decisions of the WBAT and judgments of the ILOAT to support its conclusion that there is a requirement in international administrative law that, before terminating a staff member, even during the probationary period, the administration must provide reasons and give the staff member an opportunity to defend him or herself.[803] In *Mr. N.O.*, a case in which a staff member was contesting his summary dismissal for serious misconduct, it cited to the jurisprudence of the

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[797] *Ibid*., paras. 71–72 (citing ILOAT Judgment No. 269 (1976), *In re Gracia de Muñiz*, para. 2; ILOAT Judgment No. 1745 (1998), *In re de Roos*, para. 7; ILOAT Judgment No. 2207 (2003), *O. T. v. FAO*, para. 9).

[798] *Ibid*., para. 73 (citing IMFAT Judgment No. 2005-1, *Mr. 'F' v. IMF*, para. 117).

[799] *Ibid.*, para. 81 (citing WBAT Decision No. 56 (1988), *Pinto v. IBRD*, para. 11; ILOAT Judgment No. 474 (1982), *In re Gale*, para. 3).

[800] See *ibid*., para. 21 (citing WBAT Decision No. 266 (2002), *Husain v. IBRD*, para. 32; WBAT Decision No. 551, *DV v. IFC*, paras. 58–59); *ibid.*, para. 30 (citing ILOAT Judgment No. 2092 (2002), *In re Spaans*, para. 7).

[801] See *ibid*., para. 68 (citing WBAT Decision No. 533 (2016), *DI v. IBRD*, paras. 118–22); *ibid.*, para. 69 (citing ILOAT Judgment No. 3688 (2016), *P.-M. (No. 2) v. WHO*, para. 26).

[802] See AfDBAT Judgment No. 12 (2001), *T. K. v. AfDB*, para. 17 (citing ILOAT Judgment No. 342 (1978), *In re Price (No. 2)*; ILOAT Judgment No. 591 (1983), *In re Garcia*; ILOAT Judgment No. 929 (1988), *In re Dunand and Jacquemod*; UDAdT Judgement No. 388 (1987), *Moser v. UNSG*; WBAT Decision No. 56 (1988), *Pinto v. IBRD*; IMFAT Judgment No. 1996-1 (1996), *D'Aoust v. IMF*).

[803] See *AfDBAT* Judgment No. 50 (2006), *C. A. W. v. AfDB*, paras. 58, 69–70 (citing WBAT Decision No. 6 (1981), *Suntharalingam v. IBRD*, paras. 34–36; WBAT Decision No. 10 (1982), *Salle v. IBRD*, para. 59; WBAT Decision No. 133 (1993), *Samuel-Thambiah v. IBRD*, para. 133; WBAT Decision No. 225 (2000), *Zwaga v. IBRD*, paras. 32, 54–56; ILOAT Judgment No. 152 (1970), *In re Kersaudy*; ILOAT Judgment No. 226 (1974), *In re Schawalder-Vrancheva (No. 2)*; ILOAT Judgment No. 1212 (1993), *In re Schickel-Zuber*, para. 3).

ADBAT and UNAdT for the proposition that once a *prima facie* case has been established, the burden switches to the staff member to prove his or her innocence.[804] It then looked to the jurisprudence of the WBAT to determine whether the sanction of summary dismissal was proportionate.[805] In *D.T.*, it cited to the ILOAT to establish the requirements for an issue to be *res judicata*, to the WBAT for reviewability of a decision by the President and to the UNAdT for how to measure discrimination.[806]

In a further six cases, the AfDBAT has cited to at least two other IATs in the course of its judgment.[807] In an additional seven cases, it has cited two or more decisions of another

[804] See AfDBAT Judgment No. 62 (2008), *N. O. v. AfDB*, para. 82 (citing UNAdT Judgement No. 484 (1990), *Omosola v. UNSG*, para. 2; UNAdT Judgement No. 987 (2000), *Edongo v. UNSG*, para. 66; ADBAT Decision No. 79 (2007), *Gnanathurai v. ADB*, para. 33).

[805] See *ibid*., paras. 85–88 (citing WBAT Decision No. 300 (2003), *Kwakwa v. IFC*; WBAT Decision No. 304 (2003), *D v. IFC*).

[806] See AfDBAT Judgment No. 119 (2019), *D. T. v. AfDB*, paras. 33–34, 64, 66, 70 (citing ILOAT Judgment No. 3106 (2012), *A.G. S. v. UNIDO*, para. 4; ILOAT Judgment No. 1216 (1993), *J.-F. S. v. Interpol*; ILOAT Judgment No. 2745 (2008), *R. S. v. IAEA*, para. 13; WBAT Decision No. 5 (1981), *Saberi v. IBRD*, para. 24; UNAdT Judgement No. 268 (1981), *Mendez v. UNSG*, at 391).

[807] See AfDBAT Judgment No. 25 (2002), *J. N. N. v. AfDB*, paras. 47–48 (citing the WBAT and ILOAT); AfDBAT Judgment No. 26 (2002), *Komlan v. AfDB*, paras. 33–34 (citing the WBAT and ILOAT); AfDBAT Judgment No. 42 (2005), *M. B. v. AfDB*, paras. 43, 45 (citing the ILOAT and WBAT); AfDBAT Judgment No. 65 (2008), *B. L. M. v. AfDB*, para. 30 (citing the UNAdT and ABDAT); AfDBAT Judgment No. 70 (2009), *H. N. M. v. AfDB*, para. 64 (citing the UNAdT and WBAT); AfDBAT Judgment No. 103 (2018), *S. M. v. AfDB*, para. 70 (citing the ILOAT and WBAT).

IAT.[808] And in some twenty other judgments, it has cited to at least one other IAT,[809] for a great variety of different propositions, ranging from jurisdiction *ratione personae* over external candidates to a selection procedure (citing the ILOAT),[810] to the binding nature of a negotiated settlement (citing the WBAT),[811] to causing reputational damage to the institution as a grounds for summary dismissal (citing the ADBAT),[812] to the prohibition of discrimination (citing the

[808] See AfDBAT Judgment No. 22 (2001), *A. C. v AfDB*, paras. 27–29, 32, 38–39 (citing WBAT Decision No. 56 (1988), *Pinto v. IBRD*, para. 11; ILOAT Judgment No. 474 (1982), *In re Gale*, para. 3; ILOAT Judgment No. 25 (1957), *In re Hoefnagels*; ILOAT Judgment No. 447 (1981), *In re Quiñones*); AfDBAT Judgment No. 38 (2005), *Jenkins-Johnston v. AfDB*, paras. 51–52 (citing WBAT Decision No. 142 (1995), *Carew v. IBRD*, para. 30; WBAT Decision No. 300 (2003), *Kwakwa v. IFC*; WBAT Decision No. 304 (2003), *D v. IFC*); AfDBAT Judgment No. 77 (2011), *A. R. R. v. AfDB*, paras. 26–33 (citing ILOAT Judgment No. 2962 (2011), *C.-A. M. v. WIPO*; ILOAT Judgment No. 2722 (2008), *Messrs M. A. and others v. Eurocontrol*; ILOAT Judgment No. 2912 (2010), *B. E.-C. v. IFRC*, para. 4; ILOAT Judgment No. 364 (1978), *In re Fournier D'Albe*, para. 8); AfDBAT Judgment No. 91 (2015), *S. O. v. AfDB*, para. 30 (citing ILOAT Judgment No. 2781 (2008), *C. T. v. AITIC*; ILOAT Judgment No. 3330 (2014), *A. N. v. UNESCO*; ILOAT Judgment No. 3333 (2014), *A. S. v. UPU*); IfDBAT Judgment No. 127 (2019), *M. M. v. African Legal Support Facility*, paras. 29, 43, 49 (citing ILOAT Judgment No. 3172 (2012), *S. K. v. CTBTO PrepCom*; ILOAT Judgment 3914 (2018), *S. (No. 2) v. WTO*; ILOAT Judgment No. 3582 (2016), *D. v. WHO*); AfDBAT Judgment No. 21 (2001), *W. B. O.-O. v. AfDB*, para. 8 (citing ILOAT Judgment 802 (1987), *In re van der Peet (No. 10)*; ILOAT, Judgment No. 1306 (1994), *In re Der Hovsepian (No. 2)*); AfDBAT Judgment No. 111 (2018), *D. T. v. AfDB*, para. 24 (citing WBAT Decision No. 295 (2003), *Vick v. IBRD*; WBAT Decision No. 333 (2005), *Malik v. IBRD*).

[809] See AfDBAT Judgment No. 13 (2001), *B. K. v. AfDB*, para. 31 (citing WBAT Decision No. 56 (1988), *Pinto v. IBRD*, para. 11); AfDBAT Judgment No. 23, *Asongwed v. AfDB*, para. 39 (citing ILOAT Judgment No. 179 (1971), *In re Varnet*); AfDBAT Judgment No. 32 (2003), *J. A. v. AfDB*, paras. 26–27 (citing IMFAT Judgment No. 1994-1, *Mr. 'X' v. IMF*); AfDBAT Judgment No. 33 (2004), *B. A. I. v. AfDB*, para. 23 (citing ILOAT Judgment No. 1845 (1999), *In re Palma (No. 5)*); AfDBAT Judgment No. 44 (2005), *K. S. v. AfDB*, paras. 59–62 (distinguishing practice of the ILOAT and WBAT); AfDBAT Judgment No. 64 (2008), *Bate v. AfDB*, para. 25 (citing WBAT Decision No. 1 (1981), *de Merode et al. v. World Bank*); AfDBAT Judgment No. 74 (2010), *Arbibou v. AfDB*, para. 17 (citing ILOAT Judgment No. 2722 (2008), *Messrs M. A. and others v. Europcontrol*); AfDBAT Judgment No. 76 (2011), *L. T. K. M. v. AfDB*, para. 54 (citing ILOAT Judgment No. 2861 (2009), *M. d R. C. e S. d V. v. WMO*, para. 53); AfDBAT Judgment No. 89 (2014), *A. K. v. AfDB*, para. 17 (citing WBAT Decision No. 20 (1985), *van Gent (No. 5) v. IBRD*, para. 26); AfDBAT Judgment No. 90 (2014), *S. G. v. AfDB*, para. 36 (citing ILOAT Judgment No. 2324 (2004), *E. C. v. OPCW*, para. 13); AfDBAT Judgment No. 95 (2016), *B. O. v. AfDB*, para. 93 (citing ADBAT Decision No. 79 (2007), *Gnanathurai v. ADB*); AfDBAT Judgment No. 97 (2007), *Bate v. AfDB*, para. 165 (citing ILOAT Judgment No. 3688 (2016), *P.-M. (No. 2) v. WHO*); AfDBAT Judgment No. 104 (2018), *S. A. v. AfDB*, para. 54 (citing ILOAT Judgment No. 1610 (1997), *In re del Valle Franco Fernandez*); AfDBAT Order No. 114 (2019), *K. K. D. F. v. AfDB*, para. 2 (citing WBAT Decision No. 1 (1981), *de Merode et al. v. World Bank*); AfDBAT Judgment No. 129 (2019), *A. O. v. AfDB*, para. 36 (citing ILOAT Judgment No. 475 (1982), *In re Lakey*); AfDBAT Judgment No. 131 (2019), *R. I. U. v. AfDB*, para. 23 (citing ILOAT Judgment No. 3126 (2012), *V.C. B. v. EFTA*, para. 17); AfDBAT Judgment 134 (2020), *H. B. v. AfDB*, para. 49 (citing UNAdT Judgement No. 268 (1981), *Mendez v. UNSG*, at 391); AfDBAT Judgment No. 136 (2020), *I. G. v. AfDB*, para. 36 (citing IMFAT Judgment No. 2005-1, *Mr. 'F' v. IMF*, para. 117); AfDBAT Judgment No. 137 (2020), *A. A. v. AfDB*, para. 41 (citing IMFAT Judgment No. 2005-1, *Mr. 'F' v. IMF*, para. 117); AfDBAT Judgment No. 142 (2020), *H. G. v. AfDB*, para. 24 (citing ILOAT Judgment No. 3330 (2014), *A. N. v. UNESCO*, para. 2).

[810] See AfDBAT Judgment No. 33 (2004), *B. A. I. v. AfDB*, para. 23 (citing ILOAT Judgment No. 1845 (1999), *In re Palma (No. 5)*).

[811] See AfDBAT Judgment No. 89 (2014), *A. K. v. AfDB*, para. 17 (citing WBAT Decision No. 20 (1985), *van Gent (No. 5) v. IBRD*, para. 26).

[812] See AfDBAT Judgment No. 95 (2016), *B. O. v. AfDB*, para. 93 (citing ADBAT Decision No. 79 (2007), *Gnanathurai v. ADB*).

UNAdT),[813] to the obligation to attempt to reassign staff members following the abolition of their posts (citing the IMFAT).[814]

B. Tribunals regularly practicing cross-fertilization

While not engaging in the practice of cross-fertilization as frequently as those tribunals discussed in the previous section, there is a second group of IATs that is nonetheless notable for the regularity with which they have come to cite each other. This subsection reviews the jurisprudence of those tribunals, including the NATO Administrative Tribunal (NATOAT), the OECD Administrative Tribunal (OECDAT), the European Bank for Reconstruction and Development Administrative Tribunal (EBRDAT), The Commonwealth Secretariat Arbitral Tribunal (CSAT), the European Space Agency Administrative Tribunal (ESAAT), and the Bank for International Settlements Administrative Tribunal (ATBIS).

1. *NATO Administrative Tribunal (NATOAT)*

The NATOAT has cited to other tribunals with relative regularity, including forty-five references to the ILOAT, twenty-six references to the WBAT, twenty-one references to the ATCE, nine references to the ESAAT, and four references to the UNAT.[815]

In one notable judgment involving three parallel cases, each with numerous applicants, the NATOAT reviewed the jurisprudence of multiple IATs for the widely accepted proposition that a decision of a legislative body cannot be reviewed by an administrative tribunal, absent an administrative decision applying it in the context of an individual case.[816] It is interesting that the Tribunal would go to such lengths to cite other IATs for such a universally accepted

[813] See AfDBAT Judgment 134 (2020), *H. B. v. AfDB*, para. 49 (citing UNAdT Judgement No. 268 (1981), *Mendez v. UNSG*, at 391).

[814] See AfDBAT Judgment No. 136 (2020), *I. G. v. AfDB*, para. 36 (citing IMFAT Judgment No. 2005-1, Mr. 'F' v. IMF, para. 117).

[815] Search carried out on September 8, 2021, on combined jurisprudence from 2013 to 2019.

[816] See NATOAT Judgment No. AT-J(2018)0015, *A et al. v. NATO International Staff*, paras. 85–94; NATOAT Judgment No. AT-J(2018)0016, *SD v. NATO International Staff*, paras. 77–87; NATOAT Judgment No. AT-J(2018)0019, *EB v. NATO International Staff*, paras. 64–69. In the same three parallel cases, moreover, the Tribunal cited to both the ATCE and the UNAT to support the proposition, also widely accepted, that it can raise questions of its own competence *sua sponte*. *See* NATOAT Judgment No. AT-J(2018)0015, *A et al. v. NATO International Staff*, para. 75; NATOAT Judgment No. AT-J(2018)0016, *SD v. NATO International Staff*, para. 66; NATOAT Judgment No. AT-J(2018)0019, *EB v. NATO International Staff*, para. 56.

proposition of international administrative law, especially after beginning with a quotation from its own jurisprudence supporting the proposition. Many of these same judgments, moreover, have been cited for this proposition by the ADBAT.[817] Thus, once again, one is left with the feeling that IATs are increasingly citing other Tribunals not so much to fill a gap in their own jurisprudence, or in cases of high uncertainty, but rather in a building momentum of shared jurisprudence creation.

Also of note is the *JF* Judgment, in which the NATOAT referred to case law from the ILOAT and WBAT to support its conclusion that a decision in the exercise of discretion is subject to only limited review.[818] These WBAT cases, it might be noted, have also been cited by the ADBAT.[819] The NATOAT further cited to the ILOAT and WBAT in the specific context of discretion involving probationary employees.[820] It cited to the ILOAT with respect to the administration's discretion to determine the severity of a disciplinary measure[821] and the obligation to provide reasons for an administrative decision. [822] Finally, in determining what precedential value to give to the jurisprudence of the former NATO Appeals Board, the NATOAT looked to a judgment of the UNAT which examined this question with respect to the UNAdT.[823]

[817] *See* ADBAT Decision No. 109 (2017), *Perrin, et al v. ADB*, paras. 48–54.

[818] See NATOAT Judgment No. AT-J(2013)0001, *JF v. NATO Support Agency*, paras. 34–37 (citing ILOAT Judgment No. 3214 (2013), *J.H. V.M. v. EPO*; ILOAT Judgment No. 3217 (2013), *A. S. v. IOM*; ILOAT Judgment No. 3228 (2013), *O. S. v. EPO*; WBAT Decision No. 6 (1981), *Suntharalingam v. IBRD*; WBAT Decision No. 85 (1989), *de Raet v. IBRD*).

[819] See ADBAT Decision No. 1 (1992), *Lindsey v. ADB*; ADBAT Decision No. 3 (1994), *Yan v. ADB*.

[820] See NATOAT Judgment No. AT-J(2013)0001, *JF v. NATO Support Agency*, paras. 47–49 (citing ILOAT Judgment No. 2599 (2007), *C. G. v. ESO*; WBAT Decision No. 7 (1982), *Buranavanichkit v. IBRD*; WBAT Decision No. 10, (1982), *Salle v. IBRD*).

[821] See NATOAT Judgment No. AT-J(2013)0007, *JA v. NATO Joint Warfare Centre*, para. 39 (citing ILOAT Judgment No. 207 (1973), *In re Khelifati*; ILOAT Judgment No. 1984 (2000), *In re van Walstijn*; ILOAT Judgment No. 2773 (2009), *S. N.-S. v. FAO*; ILOAT Judgment No. 2944 (2010), *C. C. v. UNESCO*).

[822] See NATOAT Judgment No. AT-J(2017)0023, *MK v. NATO Headquarters Allied Air Command*, para. 41 (citing ILOAT Judgment No. 2339 (2004), *T. N. v. EPO*; ILOAT Judgment No. 2092 (2002), *In re Spaans*; ILOAT Judgment No. 2261 (2003), *H. K. v. FAO*).

[823] See NATOAT Judgment No. AT-J(2014)0009, *ZS v. NATO International Staff*, para. 25 (citing 2010-UNAT-084, *Sanwidi v. UNSG*, para. 37).

2. *OECD Administrative Tribunal (OECDAT)*

The OECDAT cites other IATs regularly, including forty-three references to the ILOAT, six references to the ADBAT, two references to the UNDT, four references to the UNAT, three references to the ATCE, and one reference to the WBAT.[824]

The OECDAT carried out its most exhaustive examination of the jurisprudence of other IATs in two parallel cases concerning an increase in health insurance premiums of former staff members, *Ms. AA* and *Mr. KK*. The Tribunal found that while the applicants may have had an acquired right to health insurance, they had no acquired right to continue paying the same premium for that health insurance.[825] It supported this conclusion with a review of multiple judgments of the ILOAT and decisions of the ATCE as well as a decision of the ADBAT.[826]

One begins to see the growth of an interconnected system of cross-fertilization here, the ADBAT decision cited by the OECDAT having itself cited one of the ILOAT cases cited by the OECDAT for the same proposition.[827]

In several other judgments, the OECDAT has cited to more than one other IAT. For example, in *Mr. AA*, the OECDAT cited multiple judgments of the ILOAT, decisions of the WBAT and judgements of the UNAdT.[828] This is particularly interesting since, in many cases a citation to its internal law was possible, or no citation was strictly necessary. For example, for the proposition that the Secretary-General had the option of asking the Tribunal to substitute compensation for reinstatement in the Organisation, the OECDAT cited to its own

[824] Search carried out on 8 September 2021 on combined jurisprudence from 1992 to 2020.

[825] OECDAT Judgment in Cases No. 85 and No. 88 (2018), *AA v. SG*; OECDAT Judgment in Cases No. 86 and No. 89 (2018), *KK v. SG*.

[826] *Ibid.* (citing ILOAT Judgment No. 1226 (1994), *In re Georgiadis, Kazinetz, McCallum and Polycarpou*; ILOAT Judgment No. 1392 (1995), *In re Raths (No. 2)*; ILOAT Judgment No. 1446 (1995), *In re Agoncillo, Colatosti, Gilland, Jacobsen, Palluel and Pappalardo*; ILOAT Judgment No. 1917 (2018), *In re Dekker (No. 3)*; ATCE Decision on App. Nos. 477–484/2011 (2012), *Prévost v. CESG*; ATCE Decision on App. Nos. 571–576/2017 and 578/2017 (2017), *Brannan and others v. CESG*; ADBAT Decision No. 82 (2008), *Suzuki et al. v. ADB*).

[827] ILOAT Judgment No. 1917 is cited by the ADBAT Judgment No. 82. The OECDAT Judgment in Cases No. 85 and No. 88 cites to both separately.

[828] See OECDAT Judgment in Case No. 91 (2019), *AA v. SG*, paras. 56, 59, 77, 78, 84.

Statute—which clearly would have sufficed—but bolstered this with citations to judgments of the ILOAT and the UNAdT.[829]

Like many other IATs, the OECDAT regularly cites to the jurisprudence of the ILOAT. The most significant of these is anonymous Judgment No. 79, in which the OECDAT reviewed some twenty cases of the ILOAT defining the notion of material error.[830] It has also cited to the ILOAT in *Mr. W* (concerning immunities of staff members),[831] another *Mr. W* Judgment (concerning the jurisdiction to assess the proportionality of a dismissal as a sanction),[832] *Mr. E* (pension benefits),[833] Anonymous Judgment number 73 (discretionary authority of the administration),[834] and *AA* (concerning which acts constitute administrative decisions).[835] Also notable is the OECDAT's citation to the ATCE in *Mr. D* to show the application of a provision on the postponement of adjustments to the salary scale.[836] The fact that the Tribunal also cited to one of its own judgments for the same proposition demonstrates that it is not citing other IATs to fill a gap, but rather because it feels that it is appropriate to do so and that there is a value add by citing an additional tribunal, even when an internal precedent is squarely on point. This can only be considered evidence of a nascent shared jurisprudence of international administrative law.

[829] See *ibid*., paras. 56, 59, 77, 84. *See also* OECDAT Judgment in Case No. 75 (2014), *XXX v. SG*, para. 10 (citing ILOAT Judgment No. 1734 (1998), *In re Kowasch*; ILOAT Judgment No. 3027 (2011), *R.S. K. v. ICC*; UNDT Judgment No. UNDT/2011/043 (2011), *Zewdu v. UNSG*); OECDAT Judgment in Case No. 77 (2014), *XXX v. SG*, para. 30 (citing ILOAT Judgment No. 3268 (2014), *P.A.C. R. v. IPO*; UNDT Judgment No. UNDT/2011/013, *Mandol v. UNSG*); OECDAT Judgment in Case No. 90 (2018), *AA v. SG*, para. 33 (citing ILOAT Judgment No. 2584 (2007), *L.A. M. v. UNESCO*; ILOAT Judgment No. 509 (1982), *In re de Villegas (No. 5)*; ILOAT Judgment No. 2066 (2001), *In re Tekouk*; UNAdT Judgement No. 57 (1955), *Hilpern v. UNSG*; CJEU, *Guillot v. Commission of the European Communities*, Judgment in Case No. 53/72 (Second Chamber 1974)).

[830] See OECDAT Judgment in Case No. 79 (2015), *XXX v. SG*, paras. 54–58.

[831] See OECDAT Judgment in Case No. 60 (2006), *W. v. SG*, para. 3.

[832] See OECDAT Judgment in Case No. 61 (2006), *W. v. SG*, para. 7 n.2.

[833] See OECDAT Judgment in Case No. 66 (2010), *E. v. SG*, at 8.

[834] See OECDAT Judgment in Case No. 73 (2014), *XXX v. SG*, para. 30.

[835] See OECDAT Judgment in Case No. 93 (2020), *AA v. SG*, para. 62.

[836] See OECDAT Judgment in Case No. 50 (2001), *D v. SG*, at 4.

3. *EBRD Administrative Tribunal (EBRDAT)*

The EBRDAT regularly references the jurisprudence of other IATs. Indeed, in an early case, *Mr. C*, the EBRDAT referred to multiple judgments and decisions of the IMFAT, ADBAT, ILOAT, and WBAT concerning what constituted unjustified discrimination and when express differentiation can be justified, [837] concluding that differentiation was justified only when it was rationally related to its purpose and proportionate to the achievement of that purpose.[838] It went so far as to state that its understanding, on the basis of the cases of these other IATs, constituted "its understanding of international administrative law."[839] Thus, one can really feel a tribunal, in its first case, attempting to derive international administrative law from its sister tribunals.

The most exhaustive use of case law from other IATs by the EBRDAT came in a 2019 case concerning a long-term independent contractor for the Bank whose contract was not renewed.[840] Following a lengthy analysis of numerous judgments and decisions of the ILOAT, IMFAT, ADBAT, and WBAT,[841] the EBRD ultimately distinguished these cases on the facts, concluding that the individual in question had freely negotiated the terms of the contract as an independent contractor.[842] One could argue that this also represents a high degree of cross-fertilization since, if the cases are distinguishable on the facts, there was all the more reason for the Tribunal to avoid citing them in the first place, but it chose to engage with them.

In a series of other cases in 2019, the EBRDAT considered whether it had jurisdiction to consider a claim by an external consultant that he was a *de facto* staff member of the Bank,

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[837] See EBRDAT Decision in Case No. 01/03 (2004) (Liability and Remedy), *C. v. EBRD*, paras. 55–60 (citing IMFAT Judgment No. 2002-1, *Mr. 'R' v. IMF*; IMFAT Judgment No. 1996-1, *D'Aoust v. IMF*; ADBAT Decision No. 1 (1992), *Lindsey v. ADB*; ILOAT Judgment No. 1194 (1992), *In re Vollering*; WBAT Decision No. 1 (1981), *de Merode et al. v. World Bank*).

[838] *Ibid.*, para. 88.

[839] *Ibid.*, para. 86.

[840] See EBRDAT Decision in Case No. 2019/AT/06 (2019), *Appellant v. EBRD*, Section 6.3.4.

[841] *Ibid*. at 14–15 and 23–25 (citing ILOAT Judgment No. 67 (1962), *In re Darricades*; ILOAT Judgment No. 122 (1968), *In re Chadsey*; ILOAT Judgment No. 701 (1985), *In re Bustos*; ILOAT Judgment No. 3459 (2015), *L. K. v. EPO*; ILOAT Judgment No. 3551 (2015), *K. v. WHO*; ILOAT Judgment No. 4045 (2018), *D. v. EPO*; WBAT Decision No. 215 (1999), *Madhusudan v. IBRD*; UNAdT Judgement No. 233 (1978), *Teixeira v. UNSG*; IMFAT Judgment No. 1999-1, *Mr. 'A' v. IMF*; ADBAT Decision No. 24 (1997), *Amora v. ADB*).

[842] *Ibid*. at 24–25.

even though the EBRADAT's jurisdiction is limited to claims brought by staff members.[843] The majority opinion concluded that it did have jurisdiction, citing judgments of the ILOAT and decisions of the ADBAT as support.[844] However, detailed dissenting opinions in two of the cases distinguished those external precedents, pointing to other judgments of the ILOAT and other IATs that reached the opposite conclusion.[845] What is notable for present purposes is that both the majority and dissenting opinions accept the relevance of the jurisprudence of other IATs, using some external precedents as support and distinguishing others on their specific facts; in no case do they simply disregard them as external law.

In addition to these prominent examples engaging with the jurisprudence of other IATs, the EBRDAT often includes at least one reference to another IAT in its decisions. It has cited the ILOAT on several other occasions, frequently providing multiple references to that tribunal.[846] It also regularly cites to the WBAT.[847] Occasionally, it cites to other tribunals, such

[843] EBRDAT Decision in Case No. 2019/AT/02 (2020), *Appellant v. EBRD*, para. 71; EBRDAT Decision in Case No. 2019/AT/03 (2020), *Appellant v. EBRD*, para. 44; EBRDAT Decision in Case No. 2019/AT/04 (2020), *Appellant v. EBRD*, para. 42; EBRDAT Decision in Case No. 2019/AT/05 (2020), *Appellant v. EBRD*, para. 41 (all citing ILOAT Judgment No. 1385 (1995), *In re Burt*; ILOAT Judgment No. 701 (1985), *In re Bustos*; ADBAT Decision No. 24 (1997), *Amora v. ADB*).

[844] *Ibid*.

[845] See EBRDAT Decision in Case No. 2019/AT/04 (2020), *Appellant v. EBRD*, paras. 23–54 (de Cooker, dissenting); EBRDAT Decision in Case No. 2019/AT/05 (2020), *Appellant v. EBRD*, paras. 29–50 (de Cooker, dissenting).

[846] See EBRDAT Decision in Case No. 2016/AT/01 (2016), *Grassi v. EBRD*, para. 33 (citing ILOAT Judgment No. 2882 (2010), *S. G. G. v. WIPO*); EBRDAT Decision in Cases Nos. 2019/AT/07 and 2020/AT/05 (2022), *Appellant v. EBRD*, para. 56 (citing ILOAT Judgment No. 934 (1988), *In re van der Peet (No. 13)*); EBRDAT Decision in Case No. 2019/AT/08 (2020), *Appellant v. EBRD*, paras. 65, 106 (citing ILOAT Judgment No. 4207 (2020), *G. M. v. IAEA*; ILOAT Judgment No. 3365 (2014), *S. M.-S. v. WHO*); EBRDAT Decision in Case No. 2020/AT/02 (2020), *Appellant v. EBRD*, paras. 58–59 (citing ILOAT Judgment No. 1118 (1991), *In re Niesing (No. 2), Peeters (No. 2) and Roussot (No. 2)*; ILOAT Judgment No. 1821 (1999), *In re Allaert and Warmels (No. 3)*; ILOAT Judgment No. 3274 (2014), *Mr É. H. v. Eurocontrol*).

[847] See EBRDAT Decision in Case No. 2006/AT/04 (2007) (Liability), *Appellant v. EBRD*, para. 72 (citing WBAT Decision No. 1 (1981), *de Merode et al. v. World Bank*); EBRDAT Decision in Case No. 2017/AT/02 (2017), *A. v. EBRD*, para. 27 (citing WBAT Decision No. 434 (2010), *BG v. IFC*; WBAT Decision No. 337 (2005), *O v. IBRD*); EBRDAT Decision in Case No. 2017/AT/03 (2017), *Appellant v. EBRD*, para. 4.11 (citing WBAT Decision No. 114 (1992), *Agerschou v. IBRD*). On one occasion, the EBRDAT cited to both the ILOAT and WBAT. *See* EBRDAT Decision in Case No. 2020/AT/04 (2020), *Appellant v. EBRD*, paras. 47, 60 (citing ILOAT Judgment No. 3868 (2018), *S. v. WTO*; WBAT Decision No. 152 (1996), *Lewin v. IBRD*).

as the UNDT,[848] the UNAT,[849] and the IMFAT.[850] Thus, through its detailed engagement in a number of decisions—both by the majority and the dissent and both relying on and distinguishing external precedents—and its consistent reliance on other IATs throughout the course of its jurisprudence, the EBRDAT has regularly embraced cross-fertilization.

4. *Commonwealth Secretariat Arbitral Tribunal (CSAT)*

The CSAT regularly refers to the case law of other IATs. Indeed, in its forty-three judgments, the CSAT has cited other IATs in no fewer than thirty-one of them.[851]

The CSAT cites to the ILOAT almost as fluidly as it does to its own jurisprudence. In the *A. K.* case, for example, the Tribunal cited twelve different ILOAT judgments, including

[848] See EBRDAT Decision in Case No. 2020/AT/03 (2020), *Appellant v. EBRD*, para. 51 (citing UNDT Judgment No. UNDT/2010/202, *Mensah v. UNSG*).

[849] See EBRDAT Decision in Case No. 2019/AT/09 (2020), *Appellant v. EBRD*, para. 53 (citing UNAT Judgment No. 2017-UNAT-802, *Riecan v. UNSG*).

[850] See EBRDAT Decision in Cases No. 2018/AT/01 and No. 2018/AT/04 (2018), *Appellant v. EBRD*, at 8 (distinguishing IMFAT case law). *See also ibid*. at 16 (Wolf, dissenting) (citing IMFAT Judgment No. 2002-1, *Mr. 'R' v. IMF*).

[851] CSAT Judgment No. CSAT/1 (1998), *Hans v. Commonwealth Secretariat and Ebert, Regional Director of the Commonwealth Secretariat Youth Programme*; CSAT Judgment No. CSAT/3 (No. 1) (2001), *Mohsin v. Commonwealth Secretariat*; CSAT Judgment No. CSAT/3 (No. 2) (2001), *Mohsin v. Commonwealth Secretariat*; CSAT Judgment No. CSAT/5 (No. 1) (2002), *Faruqi v. Commonwealth Secretariat*; CSAT Judgment No. CSAT/5 (No. 2) (2002), *Faruqi v. Commonwealth Secretariat*; CSAT Judgment No. CSAT/7 (2003), *Commonwealth Secretariat Staff Association v. Commonwealth Secretariat*; CSAT Judgment No. CSAT/8 (No. 2) (2005), *Sumukan Ltd. v. Commonwealth Secretariat*; CSAT Judgment No. CSAT/11 (2006), *Saddington v. Commonwealth Secretariat*; CSAT Judgment No. CSAT/12 (No. 1) (2007), *Ayeni v. Commonwealth Secretariat*; CSAT Judgment No. CSAT/12 (No. 2) (2008), *Ayeni v. Commonwealth Secretariat*; CSAT Judgment No. CSAT/14 (No. 1) (2009), *Keeling v. Commonwealth Secretariat*; CSAT Judgment No. CSAT/14 (No. 2) (2010), *A K v. Commonwealth Secretariat*; CSAT Judgment No. CSAT/15 (2010), *M H v. Commonwealth Secretariat*; CSAT Judgment No. CSAT APL/16 (2011), *Oyas v. Commonwealth Secretariat*; CSAT Judgment No. CSAT APL/16 (No. 2) (2012), *Oyas v. Commonwealth Secretariat*; CSAT Judgment No. 17 (2012), *C H v. Commonwealth Secretariat*; CSAT Judgment No. CSAT APL/18 (2012), *P H v. Commonwealth Secretariat*; CSAT Judgment No. 20 (2013), *Kaberere v. Commonwealth Secretariat*; CSAT Judgment No. CSAT APL/21 (2014), *Addo v. Commonwealth Secretariat*; CSAT Judgment No. CSAT APL/22 (No. 1) (2014), *Bandara v. Commonwealth Secretariat*; CSAT Judgment No. CSAT APL/27 (2015), *Singh v. Commonwealth Secretariat*; CSAT Judgment No. CSAT APL/28 (2015), *Dogra v. the Commonwealth Secretariat*; CSAT Judgment No. CSAT APL/33 (2016), *Akintade v. Commonwealth Secretariat*; CSAT Judgment No. CSAT APL/37 (No. 2) (2016), *Matus v. Commonwealth Secretariat*; CSAT Judgment No. CSAT APL/40 (2018), *Venuprasad v. Commonwealth Secretariat*; CSAT Judgment No. CSAT APL/40 (No. 2) (2018), *Venuprasad v. Commonwealth Secretariat*; CSAT Judgment No. CSAT APL/41 (No. 1) (2018), *Ojiambo v. Commonwealth Secretariat*; CSAT Judgment No. CSAT APL/41 (No. 2) (2019), *Ojiambo v. Commonwealth Secretariat*; CSAT Judgment No. CSAT APL/42 (2019), *HH, HL & DW v. Commonwealth Secretariat*; CSAT Judgment No. CSAT APL/43 (2019), *Commonwealth Secretariat v. Venuprasad*.

well-known cases such as the celebrated *Bustani* Judgment.[852] It also cited to ILOAT judgments in the context of more routine matters, such as the need to provide evidence beyond mere allegations to prove the existence of discrimination, for which the Tribunal cited to five ILOAT cases,[853] and claims of constructive dismissal, for which the Tribunal also cited to five ILOAT judgments.[854] In the *Saroha* case, it cited six ILOAT judgments in the course of its four-page Judgment. [855] In deciding whether compensation should be awarded for procedural error, the Tribunal stated that it 'has found it helpful to look at the developing jurisprudence of other international Tribunals who have made awards of compensation for such irregularity,'[856] citing to four ILOAT judgments for this guidance and concluding that 'international Administrative Tribunals frequently consider procedural errors arising from claims before them, and do award compensation for such errors.'[857] Following a review of two other ILOAT cases, it concluded that 'it is the accepted practice of International Administrative Tribunals to award cost on a discretionary basis.'[858] Mention could also be made of the *Faruqi* Judgment, where the CSAT referred to two ILOAT judgments to support the proposition that a tribunal's jurisdiction is limited to the terms of its Statute and the other instruments under which it has

[852] CSAT Judgment No. CSAT/14 (No. 2) (2010), *A K v. Commonwealth Secretariat*, para. 50 (citing ILOAT Judgment No. 2232 (2003), *Bustani v. OPCW*). For more on the *Bustani* decision, *see* J. Klabbers, 'The Bustani Case before the ILOAT: Constitutionalism in Disguise?' (2004) 53 *International and Comparative Law Quarterly* 455.

[853] CSAT Judgment No. CSAT/14 (No. 2) (2010), *A K v. Commonwealth Secretariat*, para. 51 (citing ILOAT Judgment No. 2602 (2007), *S. C. v. WHO*; ILOAT Judgment No. 2609 (2007), *M. A. and others v. ITU*; ILOAT Judgment No. 2615 (2007), *A. S. v. CERN*; ILOAT Judgment No. 2636 (2007), *B. F. v. WIPO*; ILOAT Judgment No. 2655 (2007), *F. B.-B. and M. C. v. CERN*).

[854] *Ibid.*, para. 62 (citing ILOAT Judgment No. 2200 (2003), *M. P. v. ITU*; ILOAT Judgment No. 2261 (2003), *H. K. v. FAO*; ILOAT Judgment No. 2435 (2005), *L.F.R. v. ITU*; ILOAT Judgment No. 2745 (2008), *R. S. v. IAEA*; ILOAT Judgment No. 2587 (2007), *N. O. v. IFRC*).

[855] CSAT Judgment No. CSAT/3 (No. 2) (2001), *Mohsin v. Commonwealth Secretariat*.

[856] *Ibid.*, para. 4.

[857] *Ibid.* (citing ILOAT Judgment No. 195 (1972), *In re Chawla*; ILOAT Judgment No. 1158 (1992), *In re Vianney*; ILOAT Judgment No. 1380 (1995), *In re Schimmel*; ILOAT Judgment No. 2004 (2001), *In re Matthews*).

[858] *Ibid*., para. 6. (citing ILOAT Judgment No. 320 (1977), *In re Ghaffar*; ILOAT Judgment No. 931 (1988), *In re Bakker*).

been established.[859] In nine other judgments, the CSAT cited to at least one and often multiple ILOAT judgments.[860]

While the CSAT appears to have a marked preference for the ILOAT, it would be wrong to assume that the CSAT cites exclusively to that tribunal. To the contrary, from its third Judgment, it adopted the pronouncement by the WBAT in *de Merode* that it 'is free to take note of solutions worked out in sufficiently comparable conditions by other administrative Tribunals.'[861] This comes through in the CSAT jurisprudence, in which the Tribunal regularly

[859] CSAT Judgment No. CSAT/5 (No. 1) (2002), *Faruqi v. Commonwealth Secretariat*, para. 60 (citing ILOAT Judgment No. 1260 (1993), *In re Fagotto*; ILOAT Judgment No. 1509 (1996), *In re Zhu*).

[860] For additional cases citing to the ILOAT, *see* CSAT Judgment No. CSAT/5 (No. 2) (2002), *Faruqi v. Commonwealth Secretariat*, para. 8 (citing ILOAT Judgment No. 191 (1972), *In re Ballo*; ILOAT Judgment No. 2138 (2002), *M. H. J. v. IAEA*); CSAT Judgment No. CSAT/8 (No. 2) (2005), *Sumukan Ltd. v. Commonwealth Secretariat*, para. 4.43 (citing ILOAT Judgment No. 191 (1972), *In re Ballo*); CSAT Judgment No. CSAT/17 (2012), *C H v. Commonwealth Secretariat*, para. 138 (citing ILOAT Judgment No. 2967 (2011), *F. L. v. ITU*); CSAT Judgment No. CSAT APL/18 (2012), *P H v. Commonwealth Secretariat*, para. 38 (citing ILOAT Judgment No. 2313 (2004), *Z. P. v. WHO*; ILOAT Judgment No. 2979 (2011), *C. G. v. IAEA*); CSAT Judgment No. CSAT APL/21 (2014), *Addo v. Commonwealth Secretariat*, para. 81 (citing ILOAT Judgment No. 367 (1978), *In re Sita Ram*); CSAT Judgment No. CSAT APL/22 (No. 2) (2015), *Bandara v. Commonwealth Secretariat*, paras. 74, 78 (citing ILOAT Judgment No. 367 (1972), *In re Sita Ram*; ILOAT Judgment No. 3347 (2014), *H. L. v. WIPO*); CSAT Judgment No. CSAT APL/28 (2015), *Dogra v. Commonwealth Secretariat*, para. 14 (citing ILOAT Judgment No. 529 (1982), *In re Ayyangar*); CSAT Judgment No. CSAT APL/37 (No. 2) (2016), *Matus v. Commonwealth Secretariat*, paras. 100, 113 (citing ILOAT Judgment No. 1052 (1990), *In re James*; ILOAT Judgment No. 1696 (1998), *In re Felkai*; ILOAT Judgment No. 3440 (2015), *E. O. G. v. PAHO*); CSAT Judgment No. CSAT APL/40 (No. 2) (2018), *Venuprasad v. Commonwealth Secretariat*, para. 79 (citing ILOAT Judgment No. 427 (1980), *In re Dicancro*).

[861] CSAT Judgment No. CSAT/3 (No. 1) (2001), *Mohsin v. Commonwealth Secretariat*, at 1 (citing WBAT Decision No. 1 (1981), *de Merode et al. v. World Bank*).

makes reference to multiple IATs in the context of a single judgment.[862] It is also worth making special note of two decisions of other IATs that the CSAT has cited repeatedly, the *de Merode* Decision of the WBAT, which the CSAT has cited in six of its judgments,[863] and the *Ballo* Judgment of the ILOAT, which the CSAT has cited in five different cases.[864] Finally, as with other IATs, one is again struck by how much more the Tribunal cited to the UNAdT than it has to the new U.N. internal justice system.

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[862] See CSAT Judgment No. CSAT/1 (1998), *Hans v. Commonwealth Secretariat and Ebert, Regional Director of the Commonwealth Secretariat Youth Programme*, at 3, 6 (citing ILOAT Judgment No. 44 (1960), *In re Ellen Kahal*; WBAT Decision No. 10 (1982), *Salle v. IBRD*); CSAT Judgment No. CSAT/3 (No. 1) (2001), *Mohsin v. Commonwealth Secretariat*, paras. 2, 8.3 (citing WBAT Decision No. 1 (1981), *de Merode et al. v. World Bank*; LOAT Judgment No. 77 (1964), *In re Rebeck*; ILOAT Judgment No. 229 (1974), *In re Hrdina*); CSAT Judgment No. CSAT/7 (2003), *Commonwealth Secretariat Staff Association v. Commonwealth Secretariat*, at 2–4 (citing ILOAT Judgment No. 391 (1980), *In re de Los Cobos and Wenger*); ILOAT Judgment No. 1118 (1991), *In re Niesing (No. 2), Peeters (No. 2) and Roussot (No. 2)*; ILOAT Judgment No. 1912 (2000), *In re Berthet (No. 2)*; WBAT Decision No. 1 (1981), *de Merode et al. v. World Bank*); CSAT Judgment No. CSAT/11 (2006), *Saddington v. Commonwealth Secretariat*, paras. 12–13, 27, 35 (citing ILOAT Judgment No. 28 (1957), *In re Waghorn*; ILOAT Judgment No. 191 (1972), *In re Ballo*; ILOAT Judgment No. 782 (1986), *In re Gieser*; WBAT Decision No. 1 (1981), *de Merode et al. v. World Bank*; UNAdT Judgement No. 56 (1954), *Aglion v. UNSG*); CSAT Judgment No. CSAT/12 (No. 1) (2007), *Ayeni v. Commonwealth Secretariat*, paras. 33–35 (citing ILOAT Judgment No. 17 (1955), *In re Duberg*; ILOAT Judgment No. 469 (1982), *In re O'Connell*; ILOAT Judgment No. 592 (1983), *In re Byrne-Sutton*; UNAdT Judgement No. 4 (1951), *Howrani and 4 others v. UNSG*); CSAT Judgment No. CSAT/12 (No. 2) (2008), *Ayeni v. Commonwealth Secretariat*, paras. 55–57 (citing ILOAT Judgment No. 460 (1981), *In re Rombach*; ILOAT Judgment No. 538 (1982), *In re Djoehana (No. 2)*; WBAT Decision No. 1 (1981), *de Merode et al. v. World Bank*); CSAT Judgment No. CSAT/14 (No. 1) (2009), *Keeling v. Commonwealth Secretariat*, paras. 42–45, 52 (citing UNAdT Judgement No. 92 (1964), *Higgins v. UNSG*; UNAdT Judgement No. 192 (1974), *Levcik v. UNSG*; ILOAT Judgment No. 703 (1985), *In re Gross*); CSAT Judgment No. CSAT/15 (2010), *M H v. Commonwealth Secretariat*, paras. 66, 86 (citing ILOAT Judgment No. 1897 (2000), *In re Cervantes (No. 4), Kagermeier (No. 5) and Munnix (No. 2)*; ILOAT Judgment No. 2377 (2004), *A. F. v. IAEA*; WBAT Decision No. 1 (1981), *de Merode et al. v. World Bank*; UNAdT Judgement No. 343 (1985), *Talwar v. UNSG*); CSAT Judgment No. CSAT APL/16 (2011), *Oyas v. Commonwealth Secretariat*, paras. 86–87 (citing ILOAT Judgment No. 191 (2000), *In re Ballo*; ILOAT Judgment No. 2510 (2005), *W. G. v. ITU*; WBAT Decision No. 423 (2009), *BA v. IBRD*); CSAT Judgment No. CSAT/20 (2013), *Kaberere v. Commonwealth Secretariat*, paras. 83, 98 (citing UNAdT Judgement No. 742 (1955), *Manson v. UNSG*; ILOAT Judgment No. 2602 (2007), *S. C. v. WHO*); CSAT Judgment No. CSAT APL/27 (2007), *Singh v. Commonwealth Secretariat*, paras. 51, 56 (citing ILOAT Judgment No. 529 (1982), *In re Ayyangar*; WBAT Decision No. 423 (2009), *BA v. IBRD*); CSAT Judgment No. CSAT APL/40 (2018), *Venuprasad v. Commonwealth Secretariat*, paras. 134, 148 (citing UNAdT Judgement No. 183 (1974), *Lindblad v. UNSG*; UNAdT Judgement No. 340 (1984), *Lebaga v. IMO SG*; ILOAT Judgment No. 474 (1982), *In re Gale*); CSAT Judgment No. CSAT APL/41 (No. 1) (2018), *Ojiambo v. Commonwealth Secretariat*, para. 51 (citing ILOAT Judgment No. 191 (1972), *In re Ballo*; WBAT Decision No. 1 (1981), *de Merode et al. v. World Bank*); CSAT Judgment No. CSAT APL/43 (2019), *Commonwealth Secretariat v. Venuprasad*, paras. 134, 296 (citing UNAdT Judgement No. 183 (1974), *Lindblad v. UNSG*; UNAdT Judgement No. 340 (1984), *Lebaga v. IMO*; ILOAT Judgment No. 931 (1988), *In re Bakker*).

[863] CSAT Judgment No. CSAT/3 (No. 1) (2001), *Mohsin v. Commonwealth Secretariat*, para. 2; CSAT Judgment No. CSAT/7 (2003), *Commonwealth Secretariat Staff Association v. Commonwealth Secretariat*, at 3–4; CSAT Judgment No. CSAT/11 (2006), *Saddington v. Commonwealth Secretariat*, para. 12; CSAT Judgment No. CSAT/12 (No. 2) (2008), *Ayeni v. Commonwealth Secretariat*, para. 55; CSAT Judgment No. CSAT/15 (2010), *M H v. Commonwealth Secretariat*, para. 66; CSAT Judgment No. CSAT APL/41 (No. 1) (2018), *Ojiambo v. Commonwealth Secretariat*, para. 51.

[864] CSAT Judgment No. CSAT/5 (No. 2) (2002), *Faruqi v. Commonwealth Secretariat*, at 8; CSAT Judgment No. CSAT/8 (No. 2) (2005), *Sumukan Ltd. v. Commonwealth Secretariat*, para. 4.43; CSAT Judgment No. CSAT/11 (2006), *Saddington v. Commonwealth Secretariat*, para. 13; CSAT Judgment No. CSAT APL/16 (2011), *Oyas v. Commonwealth Secretariat*, para. 86; CSAT Judgment No. CSAT APL/41 (No. 1) (2018), *Ojiambo v. Commonwealth Secretariat*, para. 51.

5. *European Space Agency Administrative Tribunal (ESAAT)*

The ESAAT has cited to other tribunals with relative frequency and is also notable for citing to a wide variety of different tribunals. A review of its jurisprudence from its first case as an Appeals Board concluded in 1976 to the present revealed fourteen references to the ILOAT, five references to the EUMETS Appeals Board, four references to the ATCE, three references to the OECDAT, two references to the NATOAT, and one reference each to the WBAT, the UNAdT, the ADBAT, and the UNDT.[865]

In the *G e.a.* case, the Tribunal considered whether a change in the method for adjusting pensions affected acquired rights of pensioners.[866] It is interesting to note that the Tribunal first referred to the definition of acquired rights in the ILOAT jurisprudence before going on to cite its own jurisprudence on the same matter.[867] In reaching the conclusion that the method for adjusting pensions was not part of the essentials of an employment relationship, the Tribunal cited to the ILOAT, ATCE, NATOAT, and OECDAT.[868] Similarly, in *Buenadicha et al.*, the Tribunal again considered a challenge to the method for adjusting pensions and, during its discussion of acquired rights, it cited no less than five other IATs.[869] In still another case concerning the changes to the method for adjusting pensions, the ESSAAT concluded that the applicants, as active staff members, had no personal rights that were directly affected and thus

[865] Search carried out on 2 February 2023 on the combined jurisprudence from 1976 to 2022 (cases 1–139).

[866] ESAAT Decision in Cases Nos. 122–128 (2021), *G e. a. v. ESA*, paras. 11–13, 57, 107–122.

[867] *Ibid.*, paras. 108–10, 114 (citing ILOAT Judgment No. 832 (1987), *In re Ayoub, Lucal, Monat, Perret-Nguyen and Samson*; ILOAT Judgment No. 4028 (2018), *D. (No. 3), D. (No. 4) and F. v. ITU*; ILOAT Judgment No. 4380 (2021), *B. v. FAO*).

[868] *Ibid.*, paras. 117–22 (citing ILOAT Judgment No. 2089 (2002), *In re Berthet (No. 3), Delius, Glöckner (No. 6), Robrahn and Stegmüller (No. 2)*; ATCE Decision on App. Nos. 640-644/2020, 646-648/2020 et seq. (2021), *Parsons (V) and others v. CESG*; NATOAT Judgment No. AT-J(2021)0014 (2021), *G et al. v. NATO International Staff*; OECDAT Judgment No. 94 (2021), *AA, BB, CC, DD, EE v. SG*). In addition, the Tribunal cited to the ATCE concerning the requirements for meeting the obligation to state reasons for a decision of a technical nature. *Ibid.*, para. 138 (citing ATCE Decision on App. Nos. 640-644/2020, 646-648/2020 et seq. (2021), *Parsons (V) and others v. CESG*).

[869] ESAAT Decision in Case No. 138 (2022), *Buenadicha et al. v. ESA*, para. 49 (citing ATCE Decision on App. Nos. 640-644/2020, 646-648/2020 et seq. (2021), *Parsons (V) and others v. CESG*; NATOAT Judgment No. AT-J(2021)0014 (2021), *G et al. v. NATO International Staff*; EUMETSAT Appeals Board Decision in Cases Nos. 9–14 (2021), *[Redacted] e. a. v. EUMETSAT*; ILOAT Judgment No. 2089 (2002), *In re Berthet (No. 3), Delius, Glöckner (No. 6), Robrahn and Stegmüller (No. 2)*; ECMWF Appeals Board Decision in Cases Nos. 7–11 (2022)).

found the application inadmissible, basing this conclusion on decisions of the ATCE, OECDAT, and EUMETSAT.[870]

In *Buenadicha, Gabriel and Hernadez*, the ESAAT cited and quoted numerous judgments of the ILOAT to support its conclusion that the principle of non-retroactivity was a general principle of law to be applied in the case.[871] Indeed, the Tribunal often cites to the ILOAT, having done so in over ten other cases as well.[872]

The Tribunal has regularly cited to the *Sawelew* judgment of the EUMETSAT for the proposition that applicants for a staff position have standing before the competent Appeals

[870] ESAAT Decision in Case No. 136 (2022), *Duesmann, Lopez e. a. v. ESA*, paras. 47–49 (citing ATCE Decision on App. Nos. 640-644/2020, 646-648/2020 et seq. (2021), *Parsons (V) and others v. CESG*; OECDAT Judgment in Case No. 96 (2021), *AA, BB, CC, DD, EE, FF, GG, HH v. SG*; EUMETSAT Appeals Board Decision in Cases Nos. 9–14 (2021), *[Redacted] e. a. v. EUMETSAT*).

[871] ESAAT Decision in Cases Nos. 112, 113, 114 (2019), *Buenadicha, Gabriel and Hernandez v. ESA*, paras. 58–65 (citing ILOAT Judgment No. 767 (1986), *In re Cachelin*; ILOAT Judgment No. 963 (1989), *In re Niesing, Peeters and Roussot*; ILOAT Judgment No. 1130 (1991), *In re Godin, Ledrut (no. 3) and Verschelden*; ILOAT Judgment No. 1610 (1997), *In re del Valle Franco Fernandez*; ILOAT Judgment No. 1979 (2000), *In re Bousquet (No. 4) and others*; ILOAT Judgment No. 2439 (2005), *T.B. v. UPU*; and ILOAT Judgment No. 3884 (2017), *C.-S. v. ILO*).

[872] ESAAT Decision in Cases Nos. 88 and 89 (2013), *B.D. and J.A. v. ESA*, at 7 (citing ILOAT Judgment No. 2420 (2005), *S. B. and others v. FAO*); ESAAT Decision in Case No. 96 (2016), *XXX v. ESA*, at 8, 14, 16 (citing ILOAT Judgment No. 544 (1983), *In re Bordeaux*; ILOAT Judgment No. 675 (1985), *In re Pérez del Castillo*; ILOAT Judgment No. 946 (1988), *In re Fernandez-Caballero*; ILOAT Judgment No. 1128 (1991), *In re Williams*; ILOAT Judgment No. 1154 (1992), *In re Bluske*; ILOAT Judgment No. 1279 (1993), *In re Almazan-Aguirre, Barreda, Barrientos and Chacon*; ILOAT Judgment No. 1298 (1993), *In re Ahmad (No. 2)*; ILOAT Judgment No. 1583 (1997), *In re Ricart Nouel*); ESAAT Decision in Cases Nos. 98, 99, 100 (2017), *Buenadicha, CSAC and Duesmann v. Director General*, para. 46 (citing ILOAT Judgment No. 3291 (2014), *E. A. and others v. EPO*); ESAAT Decision in Case No. 102 (2017), *G. v. ESA*, paras. 40, 62 (citing ILOAT Judgment No. 1782 (1998), *In re Zaunbauer*; ILOAT Judgment No. 2377 (2005), *A. F. v. IAEA*; ILOAT Judgment No. 2669 (2008), *M. C. v. FAO*; ILOAT Judgment No. 2830 (2009), *S. G. G. v. WIPO*); ESAAT Decision in Case No. 106 (2018), *X v. ESA*, paras. 55, 71–72, 97 (citing ILOAT Judgment No. 782 (1986), *In re Gieser*; ILOAT Judgment No. 3755 (2017), *P. v. WHO*; ILOAT Judgment No. 3870 (2017), *B. Y. v. WHO*; ILOAT Judgment No. 3871 (2017), *G. v. WHO*); ESAAT Decision in Cases Nos. 108 and 109 (2017), *X v. Director General*, para. 98 (citing ILOAT Judgment No. 2944 (2014), *C. C. v. UNESCO*); ESAAT Decision in Case No. 118 (2021), *X v. ESA*, para. 78 (citing ILOAT Judgment No. 1279 (1993), *In re Almazan-Aguirre, Barreda, Barrientos and Chacon*); ESAAT Decision in Case No. 119 (2021), *CSAC, L and D v. ESA*, para. 48 (citing ILOAT Judgment No. 3291 (2014), *E. A. and others v. EPO*); ESAAT Decision in Case No. 129 (2020), *Frota v. ESA*, para. 55 (citing ILOAT Judgment No. 2920 (2010), *H. S. v. EPO*); ESAAT Decision in Case No. 131 (2021), *X v. ESA*, paras. 64, 67 (citing ILOAT Judgment No. 1698 (1998), *In re Mitastein (No. 3)*; ILOAT Judgment No. 2920 (2010), *H. S. v. EPO*); ESAAT Decision in Case No. 137 (2022), *X v. ESA*, para. 46 (citing ILOAT Judgment No. 2920 (2010), *H. S. v. EPO*); ESAAT Decision in Case No. 132 (2021), *X and Y v. ESA*, paras. 28, 34, 83 (citing ILOAT Judgment No. 209 (1973), *In re Lindsey (No. 2)*; ILOAT Judgment No. 357 (1978), *In re ASP*; ILOAT Judgment No. 832 (1987), *In re Ayoub, Lucal, Monat, Perret-Nguyen and Samson*; ILOAT Judgment No. 990 (1990), *In re Cuvillier (No. 3)*; ILOAT Judgment No. 4028 (2010), *D. (No. 3), D. (No. 4) and F. v. ITU*).

Board or Administrative Tribunal.[873] Finally, it has also occasionally cited the OECDAT,[874] AfDBAT,[875] WBAT,[876] and UNDT.[877]

6. *Bank for International Settlements Administrative Tribunal (ATBIS)*

In the small jurisprudence of the ATBIS (which has only rendered 10 judgments), one nevertheless finds seventeen references to the ILOAT, two references to the UNDT, five references to the UNAT, five references to the WBAT, two references to the General Court of the Court of Justice of the European Union (CJEU), and two references to the UNAdT.[878] It interesting to note that, contrary to the trend seen across other tribunals, the ATBIS has cited the tribunals of the new U.N. internal justice system much more extensively than the former UNAdT.

The ATBIS Judgment in case 1/2018 stands out as a particularly salient example of cross-fertilization. The lengthy Judgment concerning an individual who separated from the organization under disputed circumstances contains multiple references to the jurisprudence of the ILOAT, UNDT, UNAT, WBAT, and the General Court of the CJEU. The Tribunal refers to jurisprudence of the ILOAT and WBAT in its analysis of the validity of the separation agreement.[879] It cites to judgments of the ILOAT in addressing a question of estoppel,[880] an argument of constructive dismissal,[881] the principle that the staff member is deemed to have

[873] See ESAAT Decision in Case No. 129 (2020), *Frota v. ESA*, para. 45; ESAAT Decision in Case No. 131 (2021), *X v. ESA*, para. 44; ESAAT Decision in Case No. 137 (2022), *X v. ESA*, para. 27 (all citing EUMETSAT Appeals Board Decision in Case No. 7 (2020), *[Redacted] v. EUMETSAT*).

[874] ESAAT Decision in Cases Nos. 67, 68, 69 (1998), *C v. ESA, K v. ESA, G v. ESA*, at 6 (citing OECDAT Judgment in Cases No. 24 and No. 25 (1997), *P. B. and G. B. v. SG*, at 4, concerning acquired rights).

[875] ESAAT Decision in Case No. 96 (2016), *XXX v. ESA*, at 13 (citing AFDBAT Judgment No. 44 (2005), *K. S. v. AfDB*).

[876] ESAAT Decision in Case No. 70 (1998), *C. v. ESA*, at 5 (citing WBAT Decision No. 141 (1995), *Abadian v. IBRD*, with respect to calculation of time-limits).

[877] ESAAT Decision in Case No. 101 (2018), *X e. a. v. ESA*, para. 91 (citing and distinguishing UNDT Judgment No. UNDT/2017/098, *Quijano-Evans & Dedeyne-Amman v. UNSG*, in a discussion of acquired rights).

[878] Search carried out on 8 September 2021 on combined jurisprudence from 1996 to 2020.

[879] ATBIS Judgment No. 1/2018 (2019), *X. v. BIS*, paras. 59, 62 (citing ILOAT Judgment No. 1075 (1991), *In re Leonor*; ILOAT Judgment No. 3680 (2016), *V. K. v. OPCW*; ILOAT Judgment No. 3750 (2016), *M. v. Global Fund*, para. 5; WBAT Decision No. 25 (1985), *Mr. Y v. IFC*; WBAT Decision No. 29 (1986), *Kirk v. IBRD*; WBAT Decision No. 35 (1987), *Gamble v. IBRD*).

[880] *Ibid.*, para. 70 (citing ILOAT Judgment No. 2435 (2005), *L.F.R. v. ITU*).

[881] *Ibid.*, para. 91 (citing ILOAT Judgment No. 2587 (2007), *N. O. v. AfDB*).

knowledge of the applicable staff rules,[882] the obligation of the administration to state reasons for a non-renewal,[883] the substance of the organization's duty of care,[884] and the nature of the principle of equality.[885] It cites to the UNDT, UNAT, and the ILOAT when considering the existence of a challengeable administrative decision.[886] It cites to the UNAT and the General Court of the CJEU when discussing incidents for which an award of compensation is appropriate.[887] It cites to the UNDT and UNAT when examining burden of proof,[888] abuse of discretion,[889] and the principle of equal treatment.[890] And finally, it cites to the WBAT with respect to the applicability of waiver clauses.[891] Indeed, when these citations to other tribunals are considered cumulatively, the ATBIS has cited to other IATs in this judgment around twice as frequently as it has cited to its own jurisprudence.

It is also worth noting that the ATBIS has included at least one reference to the jurisprudence of the ILOAT in virtually every judgment it has rendered, on a great variety of different subjects, including what constitutes injury to a staff member,[892] the principle of

[882] *Ibid.*, para. 125 (citing ILOAT Judgment No. 1168 (1992), *In re Price (No. 2)*, para. 3).

[883] *Ibid.*, para. 140 (citing ILOAT Judgment No. 3837 (2017), *K. (No. 2) v. UNESCO*, para. 10).

[884] *Ibid*., para. 162 (citing ILOAT Judgment No. 3660 (2016), *D. v. Eurocontrol*, para. 7; ILOAT Judgment No. 3337 (2014), *P.D.M. v. EPO*, para. 11; ILOAT Judgment No. 3065 (2012), *R. M. v. ILO*, para. 10).

[885] *Ibid*., para. 191 (citing ILOAT Judgment No. 344 (1978), *In re Callewaert-Haezebrouck (No. 2)*).

[886] *Ibid*., para. 130 (citing UNDT Judgment No. UNDT/2013/166, *Gehr v. UNSG*, para. 32; UNAT Judgment No. 2013-UNAT-298, *Morsy v. UNSG*, para. 23; ILOAT Judgment No. 3837 (2017), *K. (No. 2) v. UNESCO*, para. 10).

[887] *Ibid*., para. 163 (citing UNAT Judgment No. 2010-UNAT-095, *Antaki v. UNSG*, para. 20; UNAT Judgment No. 2012-UNAT-201, *Obdeijin v. UNSG*, para. 42; ILOAT Judgment No. 3593 (2016), *E. v. FAO*, para. 14; CJEU, *Curto v. European Parliament*, Case No. T-275/17 (2018), para. 115; CJEU, *SQ v. European Investment Bank*, Case T-377/17 (2018), para. 162).

[888] *Ibid*., para. 60 (citing UNDT Judgment No. UNDT/2013/050 (2013), *Simmons v. UNSG*, para. 9); *ibid*., para. 123 (citing UNDT Judgment No. UNDT/2013/166 (2013), *Gehr v. UNSG*, para. 35; UNAT Judgment No. 2013-UNAT-298 (2013), *Morsy v. UNSG*, para. 23).

[889] *Ibid*., para. 147 (citing UNDT Judgment No. UNDT/2013/166 (2013), *Gehr v. UNSG*, para. 34; UNAT Judgment No. 2013-UNAT-298 (2013), *Morsy v. UNSG*, para. 23).

[890] *Ibid*., para. 155 (citing UNDT Judgment No. UNDT/2013/166 (2013), *Gehr v. UNSG*, para. 34; UNAT Judgment No. 2010-UNAT-095 (2010), *Antaki v. UNSG*, para. 20; UNAT Judgment No. 2012-UNAT-201 (2012), *Obdeijin v. UNSG*, para. 42).

[891] *Ibid*., para. 67 (citing WBAT Decision No. 35 (1987), *Gamble v. IBRD*).

[892] ATBIS Judgment No. 1/1999 (2001), *X. v. BIS*, at 11 (citing ILOAT Judgment No. 85, *In re Jurado (No. 3 – Grant of Sick Leave)*; ILOAT Judgment No. 764 (1986), *In re Berte (No. 2)*, para. 4).

equality,[893] the determination of whether a position is existing or newly created,[894] the discretion of the administration in selection decisions,[895] the discretion of the administration to confirm or not a provisional appointment,[896] the non-applicability of discretion when based on incorrect facts,[897] the inability of the administration to alter fundamental conditions of employment,[898] and the requirement that the administration act with reasonable discretion in taking account of its financial interests.[899]

C. Tribunals employing cross-fertilization least frequently

Having reviewed the numerous tribunals that engage in cross-fertilization frequently or at least regularly in the past two subsections, this subsection rounds out the picture by reviewing the relatively few tribunals that have been most hesitant to engage in this practice. This includes the International Labour Organization Administrative Tribunal (ILOAT), the Organization of American States Administrative Tribunal (OASAT), and the Inter-American Development Bank Administrative Tribunal (IDBAT).

1. *International Labour Organization Administrative Tribunal (ILOAT)*

The ILOAT has cited other IATs extremely sparingly. Indeed, it has emphasized that it "develops its own case law which takes account of the fundamental rights enjoyed by civil

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[893] *Ibid*. at 17 (citing ILOAT Judgment No. 614 (1984), *In re Ali Khan (No. 3)*, para. 7; ILOAT Judgment No. 622 (1984), *In re Sikka (No. 3)*; ILOAT Judgment No. 1194 (1992), *In re Vollering*; ILOAT Judgment No. 1366 (1994), *In re Kigaraba (No. 3)*; ILOAT Judgment No. 1536 (1996), *In re Raoof*).

[894] ATBIS Judgment No. 1/2005 (2006), *X. v. BIS*, at 4 (citing ILOAT Judgment No. 2510 (2006), *W.G. v. ITU*).

[895] *Ibid*. (citing ILOAT Judgment No. 2522 (2006), *A.F. v. IAEA*).

[896] ATBIS Judgment No. 1/2011 (2012), *X. v. BIS*, at 9 (citing ILOAT Judgment No. 2977 (2011), *L. S. v. EPO*, para. 4; ILOAT Judgment No. 2599 (2007), *C. G. v. ESO*, para. 5).

[897] ATBIS Judgment No. 1/2005 (2006), *X. v. BIS*, at 6 (citing ILOAT Judgment No. 182 (1971), *In re Glynn*).

[898] ATBIS Judgment No. 1/2006 (2007), *X. v. BIS*, at 11 (citing ILOAT Judgment No. 426 (1980), *In re Settino*; ILOAT Judgment No. 986 (1989), *In re Ayoub (No. 2), von Knorring, Perret-Nguyen (No. 2) and Santarelli*; ILOAT Judgment No. 832 (1987), *In re Ayoub, Lucal, Monat, Perret-Nguyen and Samson*; ILOAT Judgment No. 1226 (1994), *In re Georgiadis, Kazinetz, McCallum and Polycarpou*; WBAT Decision No. 1 (1981), *de Merode et al. v. World Bank*).

[899] *Ibid*. at 13 (citing ILOAT Judgment No. 832 (1987), *In re Ayoub, Lucal, Monat, Perret-Nguyen and Samson*; WBAT Decision No. 1 (1981), *de Merode et al. v. World Bank*).

servants and the general principles of the international civil service" but that "it is in no way bound by the case law of other international courts."[900]

The ILOAT has actually referred to a judgment of another international tribunal on its own initiative in only two cases. In *Ms L.S.* v. *Eurocontrol*, which concerned the denial of reimbursement of medical expenses, the ILOAT followed the practice of the EUCST (without providing a specific case reference) in concluding that the criteria for reimbursement were interdependent and need not all be satisfied.[901] In *Application for the suspension of the execution of Judgment 2867*, it referred to the general practice of the UNDT and UNAT (again without citing a specific case) for the proposition that it could not decide on a stay of execution of its own judgment, since "it is normally the court handling the appeal against the judgment in question which is competent to decide on a request for a stay of execution of the judgment."[902]

It is certainly striking how rarely the ILOAT has cited to other tribunals, particularly when viewed against the robust growth of this practice within virtually all other tribunals as detailed in the present work. One can only speculate on the reasons for this, but it could be the case that as the most established tribunal with the largest jurisprudence on which to draw, it simply does not need to look to the work of its peers as often as they need to look to its pronouncements. A more pessimistic view would be that it is stubbornly maintaining an outdated practice while other tribunals have modernized. Whatever the reason, an ironic situation has been created, with the ILOAT being the tribunal far and away the most often cited by others but the least likely to cite others itself.

2. *Organization of American States Administrative Tribunal (OASAT)*

The OASAT has cited to other IATs occasionally, in particular the WBAT and the ILOAT and on one occasion the IMFAT. For example, in *Gómez Pulido*, the OASAT cited the WBAT for the proposition that a suspension of a staff member must be carried out scrupulously and in

[900] ILOAT Judgment No. 3138 (2012), *A.-M. B. v. ITU*, para. 7.

[901] ILOAT Judgment No. 3497 (2015), *S. v. Eurocontrol*, para. 13.

[902] ILOAT Judgment No. 3003 (2011), *IFAD v. A. T. S. G.*, para. 33.

accordance with the due process of law required by the international legal order.[903] In *Brunetti et al.*, it cited to the *de Merode* Decision of the WBAT for the proposition that the method of computing tax reimbursement is not an acquired right.[904] In *Romero and Folgate*, it cited the WBAT's *de Merode* Decision and several ILOAT cases for this proposition and the proposition that staff members may be ordered to repay overpayments made by the administration.[905] In *Bangha*, the Tribunal cited and distinguished a judgment of the ILOAT concerning detrimental reliance on the conditions of employment.[906] In *Hebblethwaite et al.*, by contrast, the OASAT cited the ILOAT approvingly, stating that:

> On the basis of the jurisprudence established by the Tribunal of the International Labor Organization, which is one of the most important sources of legal doctrine on the question of the employment relationship of the staff of international organizations, and in view of the opinion of this Tribunal as to the circumstances surrounding these cases, it must be held that the administrative decision to terminate the Complainants' employment injured them by violating the principle of non-retroactivity and infringing rights deriving from standards that were an integral part of the conditions of their employment.[907]

In the same Judgment, the OASAT went on to quote large sections of another judgment of the ILOAT in order to distinguish two types of provisions in Staff Regulations and Rules: on the one hand, provisions concerning the structure and functioning of the international civil service which are statutory in character and may be modified at any time in the interest of the service, subject to the principle of non-retroactivity; and, on the other hand, provisions which appertain to the individual terms and conditions of an official, which may be modified only to the extent that they do not infringe the essential terms in consideration of which the official accepted appointment.[908] The OASAT further quoted this same Judgment for this distinction

[903] OASAT Judgment No. 93 (1986), *Pulido v. SGOAS*, paras. 23, 32.

[904] OASAT Judgment No. 95 (1986), *Brunetti et al. v. SGOAS*, paras. 76, 79.

[905] OASAT Judgment No. 140 (1999), *Romero and Folgate v. SGOAS*, at 13–14, 18–19.

[906] OASAT Judgment No. 12 (1975), *Bangha v. SGOAS and OAS Retirement and Pension Committee*, para. 4.

[907] OASAT Judgment No. 30 (1977), *Hebblethwaite et al. v. SGOAS*, para. 2.

[908] *Ibid.* (citing ILOAT Judgment No. 61 (1962), *In re Lindsey*).

between provisions in its *Pando* Judgment.[909] Finally, in *Cárdenas*, the OASAT quoted a large passage from a judgment of the IMFAT concerning the principle of the exhaustion of local remedies, even after quoting its own caselaw on the same point.[910]

3. *Inter-American Development Bank Administrative Tribunal (IDBAT)*

References to the jurisprudence of other IATs by the IDBAT are quite limited—it having cited to a decision of another IAT in only about ten of its first 100 judgments. Those ten cases evidence a clear preference of the IDBAT for the jurisprudence of the WBAT. Indeed, while most of the other Tribunals reviewed cite most frequently to the ILOAT, the IDBAT has done so exclusively on only one occasion.[911] In two other cases, it included a citation to the ILOAT alongside citations to the WBAT, one of which citing additionally to the ADBAT.[912] Every other time the IDBAT has cited externally, however, those citations have been exclusively to the jurisprudence of the WBAT, to which it has referred for a wide variety of propositions.[913]

It is unclear why the IDBAT, and the OASAT, have cited to other IATs so rarely. It is worth considering, however, whether the physical location of these tribunals—both located in Washington, D.C. and thus distant from many of their sister tribunals located in Europe and elsewhere—may be a factor. This could also explain why, when the IDBAT has cited

[909] OASAT Judgment No. 117 (1992), *Pando v. IAICA Director General*, paras. 11–12.

[910] OASAT Judgment No. 166 (2019), *Cárdenas v. SGOAS*, paras. 51–52.

[911] IADBAT Judgment in Case No. 42 (1996), *Peroustianis v. IDB*, at 4 (citing ILOAT Judgment No. 946 (1988), *In re Fernandez-Caballero*).

[912] IADBAT Judgment in Case No. 80 (2015), *Agusti, Vena, Verdejo-Sancho et al. v. IDB*, at 14–15 (citing ILOAT Judgment No. 701 (1985), *In re Bustos*; WBAT Decision No. 253 (2001), *Prescott v. IBRD*; ADBAT Decision No. 24 (1997), *Amora v. ADB*); IADBAT Judgment in Case No. 88 (Costs) (2016), *Altafin et al. v. IDB*, para. 8 (citing ILOAT Judgment No. 3758 (2016), *P. (No. 7) v. WHO*; WBAT Decision No. 214 (1999), *Caryk v. IBRD*).

[913] These include the role of managerial discretion when considering the legality of an administrative decision (see, e.g., IADBAT Judgment in Case No. 23 (1989), *Buria-Hellbeck v. IDB*, at 5; IADBAT Judgment in Cases Nos. 86, 87, and 89 (2017), *Cressa et al., Ares et al., Canterbury et al., v. IDB*, para. 35), limitations on IATs' jurisdiction *ratione materiae* (see, e.g., IADBAT Judgment in Case No. 57 (2005), *Mostajo de Calle et al. v. IDB*, at 14), the obligation of the administration to attempt to find an alternative position for a staff member whose employment was declared redundant (see, e.g., IADBAT Judgment in Case No. 72 (2011), *Ponciano v. IDB*, at 20), the power of international organizations to amend rules concerning staff members' rights and duties (see, e.g., IADBAT Judgment in Cases Nos. 86, 87, and 89 (2017), *Cressa et al., Ares et al., Canterbury et al. v. IDB*, para. 40), the scope of review in disciplinary cases (see, e.g., IADBAT Judgment No. 74 (2011), *Fernández v. IDB*, at 21), the principle of proportionality in disciplinary proceedings (IADBAT Judgment in Case No. 91 (2016), *Andrade v. IDB*, at 19) and the requirements of due process (see, e.g., IADBAT Judgment in Case No. 100 (2022), *BD v. IDB*, para. 43).

externally, it has done so exclusively to the WBAT, another tribunal located in Washington, D.C. Similarly, the OASAT has shown a preference for the WBAT and another Washington, D.C.-based tribunal, the IMFAT.

D. Cross-fertilization in other administrative tribunals

There are only a few other tribunals which have rarely cited to their peers. This is the case, for example, with the UNRWA Dispute Tribunal, which seems content to rely almost exclusively on those other tribunals within the same jurisdictional system (in particular, the UNAT, but also the UNDT and the former UNAdT). When it has cited further afield, these have been exclusively to the ILOAT, which it has done on seven occasions.[914] A similar remark could be made about the ESCB: It has cited relatively frequently to the CJEU and the former EUCST,[915] but never to another administrative tribunal.

[914] See UNRWADT Judgment No. UNRWA/DT/2012/001, *Jaber v. CGUNRWA*, paras. 46, 62 (citing ILOAT Judgment No. 1486 (1996), *In re Wassef (No. 8)*); UNRWADT Judgment No. UNRWA/DT/2012/018, *Harrich v. CGUNRWA,* para. 20 (citing ILOAT Judgment No. 1203 (1992), *In re Horsman, Koper McNeill and Petitfils*); UNRWADT Judgment No. UNRWA/DT/2013/038, *Abu Nada v. CGUNRWA*, para. 82 (citing ILOAT Judgment No. 2698 (2008), *S. G. G. v. WIPO*; ILOAT Judgment No. 2829 (2009), *S. G. G. v. WIPO*); UNRWADT Judgment No. UNRWA/DT/2020/073, *Al Othman v. CGUNRWA*, para. 72 (citing ILOAT Judgment No. 1669 (1997), *In re Meyers*; ILOAT Judgment No. 4365 (2020), *M. v. UNESCO*); UNRWADT Judgment No. UNRWA/DT/2021/043, *Ibrahim v. CGUNRWA*, para. 22 (citing ILOAT Judgment No. 614 (1984), *In re Ali Khan (No. 3)*; ILOAT Judgment No. 845 (1987), *In re West (No. 5)*); UNRWADT Judgment No. UNRWA/DT/2021/063, *Arrabieh v. CGUNRWA*, para. 36 (citing ILOAT Judgment No. 614 (1984), *In re Ali Khan (No. 3)*; ILOAT Judgment No. 845 (1987), *In re West (No. 5)*); UNRWADT Judgment No. UNRWA/2022/004, *Abu Shmais v. CGUNRWA*, para. 24 (citing ILOAT Judgment No. 2807 (2009), *R. M.-V. v. UNESCO*).

[915] ESCB Decision on Application No. 08/51 (2009), para. 25 (citing CJEU); ESCB Decision on Application No. 08/51*bis* (2011), paras. 15–19 (discussing relationship with CJEU); ESCB Decision on Application No. 10/75 (2011), paras. 19–22 (discussing relationship with CJEU); ESCB Decision on Application No. 10/85 (2011), para. 19 (citing CJEU and EUCST); ESCB Decision on Application No. 12/40 (2012), paras. 20, 21, 25, 30 (citing CJEU); ESCB Decision on Application Nos. 12/72 and 12/73 (2013), para. 7 (citing CJEU); ESCB Decision on Application No. 13/27 (2013), para. 9 (citing CJEU); ESCB Decision on Application No. 13/45 (2014), paras. 16, 18, 25–26 (citing CJEU and EUCST); ESCB Decision on Application No. 13/58 (2014), para. 8 (citing EUCST); ESCB Decision on Application No. 14/28 (2015), para. 38 (citing CJEU); ESCB Decision on Application No. 14/48 (2015), paras. 8, 16, 21 (citing CJEU and EUCST); ESCB Decision on Application No. 16/58 (2017), paras. 16–18 (citing CJEU and EUCST); ESCB Decision on Application No. 17/03 (2017), para. 12 (citing EUCST); ESCB Decision on Application No. 18/04 (2018), paras. 12–21 (citing and following CJEU); ESCB Decision on Application No. 18/26 (2019), paras. 27–28, 39–41 (citing CJEU and EUCST); ESCB Decision on Application No. 20/59 (2020), para. 18 (citing CJEU); ESCB Decision on Application No. 21/01 (2021), para. 5 (citing CJEU); ESCB Decision on Application No. 22/03 (2022), paras. 14, 19, 22 (citing CJEU).

The General Court of the CJEU has been categorical that the jurisprudence of other IATs is not applicable before it. In its 2017 Judgment in *Arango Jaramillo*, it stated that the jurisprudence of the ILOAT did not constitute a source of EU law and thus could not be invoked except as evidence of a rule or principle recognized in EU law.[916] It thus followed the practice of the former EUCST, which refused to apply the jurisprudence of the ILOAT, stating that "it must be observed that that case-law does not, as such, constitute a source of European Union law."[917]

The TPOIF has also been reticent to cite to other IATs. While it has cited to ILOAT judgments in five cases out of its thirty-seven-case jurisprudence,[918] the only other IAT it has ever cited was to the OECDAT in a recent case.[919] The TAOIF, by contrast, appears more willing than the TPIOIF to cite to other IATs. In this vein, it has cited to the ILOAT in over

[916] CJEU*, Jaramillo v. EIB*, Case No. T-482/16 (2017), ECLI:EU:T:2017:901, para. 113.

[917] EUCST Case No. F-98/09 (2011), ECLI:EU:F:2011:156, *Whitehead v. ECB*, para. 76.

[918] TPIOIF Judgment No. 24 (2021), para. 3.1 (citing ILOAT Judgment No. 2586 (2007), *G. I. v. OPCW*); TPIOIF Judgment No. 25 (2021), paras. 76, 83 (citing ILOAT Judgment No. 557 (1983), *In re Ali Khan (No. 2)*, para. 4; ILOAT Judgment No. 317 (1977), *In re Rhyner-Cuerel*); TPIOIF Judgment No. 29 (2022), paras. 11.2, 11.6 and 11.8 (citing ILOAT Judgment No. 2933 (2010), *B. D. v. WHO*, para. 10; ILOAT Judgement No. 3372 (2014), *R. A.B. v. ILO*, para. 12); ILOAT Judgment No. 3992 (2018), *H. v. OPCW*, para. 5; ILOAT Judgment No. 3594 (2016), *M. v. FAO*, para. 6); TPIOIF Judgment No. 31 (2022), para. 11.5 (citing ILOAT, Judgment No. 3704 (2016), *D. v. ILO*, para. 3; ILOAT Judgment No. 3869 (2017), *A. v. WHO*), para. 9; TPIOIF Judgment No. 34 (2022), para. 11.2, 11.6 and 11.8 (citing ILOAT Judgment No. 2933 (2010), *B. D. v. WHO*, para. 10; ILOAT Judgment No. 3372 (2014), *R. A.B. v. ILO*, para. 12; ILOAT Judgment No. 3992 (2018), *H. v. OPCW*, para. 5; ILOAT Judgment No. 3594 (2016), *M. v. FAO*, para. 6).

[919] TPIOIF Judgment No. 31 (2022), para. 11.5 (citing OECDAT Judgment No. 75 (2014)).

half of its Judgments,[920] to the OECDAT on three occasions,[921] as well as once each to the WBAT, UNDT, and UNAdT.[922]

The CARICOM Administrative Tribunal, established in 2020, began its inaugural decision with an analysis of the 'law applied by the tribunal,' observing that the preamble to its statute affirmed that its decisions 'shall be consistent with the principles of fundamental human rights and taken in accordance with international administrative law.'[923] It then identified the decisions of other international administrative tribunals, as far as they were consistent with customary international law, as one of the three sources of international administrative law.[924] In considering the substance of the complaint, it went on to cite over fifteen decisions of a wide variety of other IATs for diverse points of law, including abuse of discretion, due process, and non-discrimination.[925] While it is too early to draw any conclusions

[920] Out of the 15 judgments it has rendered, the TAOIF has cited the ILOAT in eight of them: TAOIF Judgment No. 2 (2013), para. 12 (citing ILOAT Judgment No. 31 (1958), *In re Raina*; ILOAT Judgment No. 40 (1960), *In re Lamming*; ILOAT Judgment No. 44 (1960), *In re Ellen Kahal*; ILOAT Judgment No. 91 (1966), *In re Deschamps*); TAOIF Judgment No. 4 (2016), paras. 21–22, 39 (citing ILOAT Judgment No. 166 (1970), *In re Bidoli*; ILOAT Judgment No. 470 (1982), *In re Perrone*; ILOAT Judgment No. 1317 (1994), *In re Amira*); TAOIF Judgment No. 5 (2017), paras. 32, 37 (citing ILOAT Judgment, No. 272 (1976), *In re Carrillo*; ILOAT Judgement No. 3619 (2016), *P. v. EPO*); TAOIF Judgment No. 6 (2017), para. 33 (citing ILOAT Judgment No. 137 (1969), *In re Brache*; ILOAT Judgment No. 902 (1988), *In re Aevoet and others*); TAOIF Judgment No. 7 (2018), paras. 19–20 (citing ILOAT Judgment No. 322 (1977), *In re Breuckmann (No. 2)*; ILOAT Judgment No. 832 (1987), *In re Ayoub, Lucal, Monat, Perret-Nguyen and Samson*; ILOAT Judgment No. 873 (1987), *In re Da*; ILOAT Judgment No. 896 (1988), *In re Vukmanovic*; ILOAT Judgment No. 958 (1989), *In re El Boustani (No.3)*; ILOAT Judgment No. 1025 (1990), *In re Barahona and Royo Gracia (No. 2)*; ILOAT Judgment No. 1118 (1991), *In re Niesing (No. 2), Peeters (No. 2) and Roussot (No. 2)*; ILOAT Judgment No. 1125 (1991), *In re Lehmann-Schurter*; ILOAT Judgment No. 1425 (1995), *In re S.-Z. (Nos. 2 and 3)*; ILOAT Judgment No. 1450 (1995), *In re Kock, N'diaye and Silberreiss*; ILOAT Judgment No. 2097 (2002), *In re Deville and others and In re Gasser*); TAOIF Judgment No. 8 (2019), paras. 26–27 (citing ILOAT Judgment No. 2067 (2001), *In re Annabi (No. 2)*; ILOAT Judgment No. 2100 (2002), *In re Guastavi (No. 2)*; ILOAT Judgment No. 2521 (2006), *G.C. v. FAO*; ILOAT Judgment No. 3233 (2013), *V. S.-M. v. UNESCO*; ILOAT Judgment No. 3347 (2014), *H. L. v. WIPO*; ILOAT Judgment No. 3416 (2015), *P. B. v. IOM*; ILOAT Judgment No. 4305 (2020), *J. v. WHO*); TAOIF Judgment No. 9 (2020), paras. 3–4 (citing ILOAT Judgment No. 1064 (1991), *In re Unninayar (No. 2)*; ILOAT Judgment No. 1306 (1994), *In re Der Hovsepian (No. 2)*; ILOAT Judgment No. 2483 (2006), *H. B. v. WCO*; ILOAT Judgment No. 4187 (2019), *S. (M.) (No.3) v. EPO*); TAOIF Judgment No. 14 (2021), para. 19 (citing ILOAT Judgment No. 3005 (2011), *D. v. EPO*; ILOAT Judgment No. 4363 (2020), *C. M. v ILO*).

[921] TAOIF Judgment No. 6 (2017), para. 37 (citing OECDAT Judgment in Case No. 69 (2011), *I v. SG*); TAOIF Judgment No. 8 (2019), para. 26 (citing OECDAT Judgment in Case No. 81 (2016), *AA v. SG*); TAOIF Judgment No. 14 (2021), para. 14 (citing OECDAT Judgment in Case No. 64 (2009), *F. v. SG*).

[922] TAOIF Judgment No. 8 (2019), para. 26 (citing WBAT Decision No. 409 (2009), *AL v. IBRD*); TAOIF Judgment No. 9 (2020), para. 4 (citing UNDT Judgment No. UNDT/2017/022, *Auda v. UNSG*); TAOIF Judgment No. 2 (2013), paras. 12, 27 (citing UNAdT Judgement No. 357 (1985), *Sforza-Chrzanowski v. UNSG*; UNAdT Judgement No. 560 (1992), *Claxton v. UNSG*; UNAdT Judgement No. 579 (1992), *Tarjouman v. UNSG*; UNAdT Judgement No. 1124 (2003), *D'Cruz v. UNSG*).

[923] CARICOM Administrative Tribunal Decision No. 1 (2023), *Rowe v. CARICOM Secretariat*, para. 42.

[924] *Ibid.*, para. 44.

[925] *Ibid.*, paras. 47–51, 62, 66–69, 81.

given that this tribunal has only rendered this one decision so far, it certainly seems to have gotten off to a good start, with this initial decision reminiscent of the WBAT's initial *de Merode* Decision and the ADBAT's initial *Lindsey* Decision.

Finally, a select few tribunals have not cited to other tribunals at all. This is the case for the very small jurisprudence of the MERCOSUR TAL[926] and the EUMETSAT Appeals Board.[927]

[926]Judgments 1–4, Tribunal Administrativo-Laboral del Mercosur, available at https://www.tpr mercosur.org/es/tal.htm (accessed 17 July 2024).

[927] Judgments 1–20, EUMETSAT Appeals Board, available at https://www.eumetsat.int/legal-framework/eumetsat-appeals-board (accessed 17 July 2024). It also should be noted that certain other tribunals do not make their jurisprudence publicly available. This is the case for the European Stability Mechanism Administrative Tribunal, the African Union Administrative Tribunal, and the GAVI (Vaccine Alliance) Administrative Tribunal.

III. EXAMINATION OF THE QUESTION BY REFERENCE TO THE MOST INFLUENTIAL CASES

While the previous section engaged in an exhaustive examination of cross-fertilization by reference to the jurisprudence of each tribunal, this section seeks to view the question from a different angle, through an examination of the most influential cases in terms of number of times they have been cited by other IATs and the quantity of other IATs citing to them. Whereas the previous section provided an overall picture of the current state and frequency of cross-fertilization, this section aims to complete the picture by providing more context, in particular the subject matter of the judgments being referred to most often by other IATs and the legal propositions which are most prone to cross-fertilization.

A. The most cited judgments of International Administrative Tribunals

The present subsection discusses the ten most cited IAT judgments. While the WBAT easily holds the top spot with its highly influential *de Merode* Decision, it is striking to note that eight of the other judgments in the top ten were handed down by the ILOAT. Thus, one gains a clear impression that, in terms of most influential jurisprudence, the ILOAT is the leader, alongside the WBAT due to its first seminal decision. The only other IAT which retains a spot in the top ten is the ADBAT with its *Amora* decision in the ninth position. These decisions, and the propositions for which they have been cited, are examined below.

1. *de Merode et al. v. World Bank (WBAT, 1981)*

When it comes to cross-fertilization among IATs, there is no more significant and celebrated decision than the 1981 *de Merode* Decision of the WBAT, the first decision rendered by that Tribunal. The case concerned whether the implementation of decisions of the Executive Director regarding tax reimbursement and salary adjustment amounted to non-observance by the Bank of the contracts or terms of employment of the applicants. It is significant both for what it says about cross-fertilization and for the wellspring of cross-fertilization it has created. The former point has already been discussed,[928] in particular the WBAT's important statement that "the judgments of one tribunal may refer to the jurisprudence of another" and that "[s]ome of these judgments even go so far as to speak of general principles of international civil service

[928] See WBAT Decision No. 1 (1981), *de Merode et al. v. World Bank*, paras. 26–28.

law or of a body of rules applicable to the international civil service," as well as its observation of "a certain *rapprochement*" among the jurisprudences of the various IATs.[929]

Equally significant is the extent that other IATs have referred to the *de Merode* decision. Indeed, it has been cited an incredible sixty-eight times by no fewer than ten other IATs, far and away more than any other single decision in international administrative law. Other IATs most commonly refer to *de Merode* for the proposition that fundamental and essential terms and conditions of employment cannot be unilaterally amended.[930] They also regularly refer to

[929] *Ibid.*, para. 28.

[930] ADBAT Decision No. 35 (1997), *Mesch & Siy (No.4) v. ADB*, paras. 14, 18, 21, 26, 41, 45; UNDT Judgment No. UNDT/2017/097, *Lloret Alcañiz et al. v. UNSG*, paras. 124, 129, 131–36; UNDT Judgment No. UNDT/2017/098, *Quijano-Evans and Dedeyne-Amann v. UNSG*, paras. 99, 104–14; UNDT Judgment No. UNDT/2017/099, *Mirella et al. v. UNSG*, paras. 107, 112–22; UNDT Judgment No. UNDT/2020/106, *Abd Al-Shakour et al. v. UNSG*, para. 114; UNDT Judgment No. UNDT/2020/107, *Cardenas Fischer et al. v. UNSG*, para. 114; UNDT Judgment No. UNDT/2020/114, *Steinbach v. UNSG*, para. 108; UNDT Judgment No. UNDT/2020/115, *Bozic v. UNSG*, para. 108; UNDT Judgment No. UNDT/2020/117, *Andres et al. v. UNSG*, para. 108; UNDT Judgment No. UNDT/2020/118, *Angelova et al. v. UNSG*, para. 108; UNDT Judgment No. UNDT/2020/122, *Andreeva et al. v. UNSG*, para. 108; UNDT Judgment No. UNDT/2020/129, *Bozic et al. v. UNSG*, para. 95; UNDT Judgment No. UNDT/2020/130, *Angelova et al. v. UNSG*, para. 95; UNDT Judgment No. UNDT/2020/131, *Andres et al. v. UNSG*, para. 95; UNDT Judgment No. UNDT/2020/132, *Andreeva et al. v. UNSG*, para. 95; UNDT Judgment No. UNDT/2020/133, *Abd Al-Shakour et al. v. UNSG*, para. 95; UNDT Judgment No. UNDT/2020/148, *Doedens et al. v. UNSG*, para. 93; UNDT Judgment No. UNDT/2020/149, *Correia Reis et al. v. UNSG*, para. 93; UNDT Judgment No. UNDT/2020/150, *Bettighofer et al. v. UNSG*, para. 93; UNDT Judgment No. UNDT/2020/151, *Avognon et al. v. UNSG*, para. 93; UNDT Judgment No. UNDT/2020/152, *Alsaqqaf et al. v. UNSG*, para. 93; UNDT Judgment No. UNDT/2020/153, *Aligula et al. v. UNSG*, para. 93; UNDT Judgment No. UNDT/2020/154, *Aksioutine et al. v. UNSG*, para. 93; UNAT Judgment No. 2018-UNAT-840, *Alcañiz et al. v. UNSG*, para. 26; UNAT Judgment No. 2018-UNAT-841, *Quijano-Evans et al. v. UNSG*, para. 23; UNAT Judgment No. 2018-UNAT-842, *Mirella et al. v. UNSG*, para. 23; ATBIS Judgment No. 1/2006 (2007), *Applicant v. BIS*, at 10–11; AfDBAT Judgment No. 64 (2008), *Bate Arrah v. AfDB*, para. 25; CSAT Judgment No. CSAT/11 (2006), *Saddington v. Commonwealth Secretariat*, para. 35; IDBAT Judgment in Cases Nos. 86, 87 and 89 (2017), *Cressa et al., Ares et al. and Canterbury et al. v. IDB*, paras. 40–41; IMFAT Judgment No. 2007-1, *Daseking-Frank et al. v. IMF*, paras. 54–60.

it in relation to the principle of acquired rights,[931] the discretionary power of the administration and the proper standard for exercising that power,[932] the requirement that reforms to administrative procedures be carefully implemented,[933] the principle of non-discrimination,[934] administrative practice as a source of law,[935] and the proposition that the employment relationship of international civil servants is governed by the internal law prevailing within the organization in which they work.[936] It has also been referred to on occasion for a wide variety of other propositions, including the prohibition of non-retroactive application of laws,[937] the

[931] OASAT Judgment No. 95 (1986), *Brunetti et al. v. SGOAS*, para. 76; OASAT Judgment No. 140 (1999), *Romero and Folgate v. SGOAS*, at 12–13; UNDT Judgment No. UNDT/2011/188, *Omer v. UNSG*, para. 21; UNDT Judgment No. UNDT/2011/189, *Garcia v. UNSG*, para. 26; UNDT Judgment No. UNDT/2011/198, *Chattopadhyay v. UNSG*, para. 41; UNDT Judgment No. UNDT/2013/090, *Candusso v. UNSG*, para. 31; UNDT Judgment No. UNDT/2017/097, *Lloret Alcañiz et al. v. UNSG*, paras. 124, 129, 131–36; UNDT Judgment No. UNDT/2017/098, *Quijano-Evans and Dedyne-Amann v. UNSG*, paras. 99, 104–14; UNDT Judgment No. UNDT/2017/099, *Mirella et al. v. UNSG*, paras. 107, 112–22; UNDT Judgment No. UNDT/2020/039, *Nicholas v. UNSG*, paras. 48–49; UNDT Judgment No. UNDT/2020/106, *Abd Al-Shakour et al. v. UNSG*, para. 116; UNDT Judgment No. UNDT/2020/107, *Cardenas Fischer et al. v. UNSG*, para. 116; UNDT Judgment No. UNDT/2020/114, *Steinbach v. UNSG*, para. 110; UNDT Judgment No. UNDT/2020/115, *Bozic v. UNSG*, para. 110; UNDT Judgment No. UNDT/2020/117, *Andres et al. v. UNSG*, para. 110; UNDT Judgment No. UNDT/2020/118, *Angelova et al. v. UNSG*, para. 110; UNDT Judgment No. UNDT/2020/122, *Andreeva et al. v. UNSG*, para. 110; UNDT Judgment No. UNDT/2020/129, *Bozic et al. v. UNSG*, para. 97; UNDT Judgment No. UNDT/2020/130, *Angelova et al. v. UNSG*, para. 97; UNDT Judgment No. UNDT/2020/131, *Andres et al. v. UNSG*, para. 97; UNDT Judgment No. UNDT/2020/132, *Andreeva et al. v. UNSG*, para. 97; UNDT Judgment No. UNDT/2020/133, *Abd Al-Shakour et al. v. UNSG*, para. 97; UNDT Judgment No. UNDT/2020/148, *Doedens et al. v. UNSG*, para. 95; UNDT Judgment No. UNDT/2020/149, *Correia Reis et al. v. UNSG*, para. 95; UNDT Judgment No. UNDT/2020/150, *Bettighofer et al. v. UNSG*, para. 95; UNDT Judgment No. UNDT/2020/151, *Avognon et al. v. UNSG*, para. 95; UNDT Judgment No. UNDT/2020/152, *Alsaqqaf et al. v. UNSG*, para. 95; UNDT Judgment No. UNDT/2020/153, *Aligula et al. v. UNSG*, para. 95; UNDT Judgment No. UNDT/2020/154, *Aksioutine et al. v. UNSG*, para. 95; CSAT Judgment No. CSAT/12 (No. 2) (2008), *Ayeni v. Commonwealth Secretariat*, para. 55.

[932] UNDT Judgment No. UNDT/2012/029, *Diop v. UNSG*, para. 28; CSAT Judgment No. CSAT/15 (2010), *M H v. Commonwealth Secretariat*, para. 66; CSAT Judgment No. CSAT APL/41 (No. 1) (2018), *Ojiambo v. Commonwealth Secretariat*, para. 51; IMFAT Judgment No. 2002-1, *Mr. 'R' v. IMF*, para. 31; IMFAT Judgment No. 2002-2, *Ms. 'Y' (No. 2) v. IMF*, para. 47; IMFAT Judgment No. 2007-1, *Daseking-Frank et al. v. IMF*, para. 90; IMFAT Judgment No. 2011-2, *Ms. D. Pyne v. IMF*, paras. 114, 136; IMFAT Judgment No. 2014-2, *Mr. E. Weisman v. IMF*, para. 47; IMFAT Judgment No. 2015-3, *Ms. 'GG' (No. 2) v. IMF*, paras. 362–63, 398; IMFAT Judgment No. 2016-5, *Mr. E. Verreydt v. IMF*, para. 80.

[933] ADBAT Decision No. 82 (2008), *Suzuki v. ADB*, para. 38; IMFAT Judgment No. 2002-1, *Mr. 'R' v. IMF*, para. 59; IMFAT Judgment No. 2002-3, *Ms. 'G' and Mr. 'H' v. IMF*, para. 77; IMFAT Judgment No. 2015-3, *Ms. 'GG' (No. 2) v. IMF*, para. 380.

[934] ADBAT Decision No. 12 (1996), *Viswanathan v. ADB*, para. 13; IMFAT Judgment No. 2002-1, *Mr. 'R' v. IMF*, paras. 31, 36; IMFAT Judgment No. 2015-3, *Ms. 'GG' (No. 2) v. IMF*, para. 393.

[935] IMFAT Judgment No. 1997-2, *Ms. 'B' v. IMF*, para. 37; IMFAT Judgment No. 2007-1, *Daseking-Frank et al. v. IMF*, paras. 64, 69; IMFAT Judgment No. 2012-1, *Ms. N. Sachdev v. IMF*, para. 80; IMFAT Judgment No. 2015-1, *Ms. D. Hanna v. IMF*, para. 50.

[936] UNDT Judgment No. UNDT/2011/032, *Obdeijn v. UNSG*, para. 31; CSAT Judgment No. CSAT/3 (No. 1) (2001), *Mohsin v. Commonwealth Secretariat*, para. 2; CSAT Judgment No. CSAT/11 (2006), *Saddington v. Commonwealth Secretariat*, para. 12.

[937] ADBAT Decision No. 17 (1996), *Zaidi v. ADB*, para. 61; ADBAT Decision No. 23, *Chaudhry v. ADB*, para. 35.

existence of generally recognized principles of international administrative law,[938] the periodic adjustment of salaries,[939] the possible existence of terms and conditions of employment outside the principle contractual instruments,[940] the right of access to an IAT as a fundamental right of international civil servants,[941] requests for oral hearings,[942] and the prevalence of cross-fertilization among IATs.[943] It is worth noting that the case also provides one of the most exhaustive and systematic treatments of sources of law in any IAT decision.[944] Overall, there is no doubt that the *de Merode* Decision stands alone in international administrative law as the single most seminal case. Indeed, it has been observed that the Decision directly influenced the drafting of the Statute of the IMFAT.[945]

2. *A.G. S. v. UNIDO (ILOAT, 2012)*

The *A.G. S.* Judgment by the ILOAT[946] has only been cited by two other IATs—the UNDT and the AfDBAT—but they have cited it with such frequency, thirty-eight times, that it is behind only *de Merode* in terms of overall prevalence. While the case is substantively interesting for the tension it illustrates between the need to protect freedom of association and freedom of expression, on the one hand, and the Organization's duty of care concerning the applicant's professional reputation, on the other hand, it has always been cited in the context of the principle of *res judicata*, in particular the tribunal's conclusion that the existence of an earlier judgment concerning the same applicant and facts did not constitute a *res judicata* because the earlier judgment only concerned the receivability of the application.

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[938] ADBAT Decision No. 103 (2014), *Mr. 'E' v. ADB*, para. 54; EBRDAT Decision in Case No. 01/03 (2004) (Liability and Remedy), *C. v. EBRD*, para. 55.

[939] CSAT Judgment No. CSAT/7 (2003), *Commonwealth Secretariat Staff Association v. Commonwealth Secretariat*, at 3–4; IMFAT Judgment No. 1997-2, *Ms. 'B' v. IMF*, para. 37.

[940] ADBAT Decision No. 111 (2018), *Ms. D v. ADB (No. 3)*, para. 56; IMFAT Judgment No. 2013-2, *Mr. B. Tosko Bello v. IMF*, para. 65.

[941] IMFAT Judgment No. 2015-3, *Ms. 'GG' (No. 2) v. IMF*, para. 441; IMFAT Judgment No. 2016-5, *Mr. E. Verreydt v. IMF*, para. 106.

[942] AfDBAT Order No. 114 (2019), *K. K. D. F. v. AfDB*, paras. 1–2.

[943] CSAT Judgment No. CSAT/3 (No. 1) (2001), *Mohsin v. Commonwealth Secretariat*, para. 2.

[944] For a complete discussion of this aspect of the *de Merode* case, *see* C.F. Amerasinghe, 'The Implications of the de Merode Case for International Administrative Law', (1983) 43 Heidelberg Journal of international law 16.

[945] IMFAT Judgment No. 2007-1, *Daseking-Frank et al. v. IMF*, para. 57.

[946] ILOAT Judgment No. 3106 (2012), *Mr. A.G. S. v. UNIDO*.

3. *Ayoub, Lucal, Montat, Perret-Nguyen and Samson (ILOAT, 1987)*

The case of *Ayoub et al.* before the ILOAT concerned changes to the calculation of pension benefits, which the applicants alleged affected their acquired rights.[947] Its discussion of acquired rights has been cited by the ADBAT,[948] the UNDT,[949] the UNAT,[950] and the ESAAT.[951] It has also been frequently cited by the UNDT in the context of the meaning of the phrase "contract of employment."[952] The ATBIS cites to it for the proposition that fundamental terms of employment may only be amended according to reasonably exercised discretion.[953]

4. *Lindsey (ILOAT, 1962)*

The *Lindsey* Decision concerned changes to the pension regime applicable at the International Telecommunications Union, which the applicant claimed violated his acquired rights. The Tribunal drew a distinction between statutory terms, which pertain to the structure and functioning of the international civil service and which are subject to unilateral modification, on the one hand, and contractual terms, which pertain to the individual terms and conditions of an official in consideration of which he or she accepted the appointment, and which are not subject to unilateral modification, on the other hand.[954] The decision has been cited approvingly by both the OASAT and the ADBAT for this distinction between statutory terms and contractual terms.[955] In contrast, the UNDT has concluded that *Lindsey*'s distinction between contractual and statutory elements is not enough, in itself, to determine acquired rights, in that modifications would be allowed even affecting contractional obligations so long as they do not infringe "essential" or "fundamental" terms of appointment.[956]

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[947] ILOAT Judgment No. 832 (1987), *In re Ayoub, Lucal, Montat, Perret-Nguyen and Samson*.

[948] ADBAT Decision No. 113 (2018), *Perrin et al. v. ADB (No. 3)*, para. 60.

[949] See, e.g., UNDT Judgment No. UNDT/2017/097, *Lloret Alcañiz et al v. UNSG*.

[950] See, e.g., UNAT Judgment No. 2018-UNAT-840, *Lloret Alcañiz et al. v. UNSG*.

[951] ESAAT Decision in Cases Nos. 122–128 (2021), *G e. a. v. ESA*, para. 114; ESAAT Decision in Case No. 132 (2021), *X and Y v. ESA*, para. 83; ESAAT Decision in Case No. 138 (2022), *Buenadicha et al. v. ESA*, para. 45.

[952] See, e.g., UNDT Judgment No. UNDT/2020/152, *Alsaqqaf et al. v. UNSG*, para. 95.

[953] ATBIS Judgment No. 1/2006 (2007), *X. v. BIS*.

[954] ILOAT Judgment No. 61 (1962), *In re Lindsey*, para. 12.

[955] See, e.g., OASAT Judgment No. 30 (1977), *Hebblethwaite et al. v. SGOAS*, para. 2; ADBAT Decision No. 35 (1997), *Mesch & Siy (No.4) v. ADB*, para. 17.

[956] See, e.g., UNDT Judgment No. UNDT/2020/106, *Abd Al-Shakour et al. v. UNSG*, para. 114.

5. *Sherif (ILOAT, 1956)*

The *Sherif* Judgment of the ILOAT arose out of a decision to terminate a staff-member's employment for unsatisfactory employment.[957] The applicant argued that the decision violated his contract of employment and his acquired rights, since the provision of the Staff Regulations under which he was terminated was added after he took up employment. The Tribunal clarified that the principle of acquired rights did not prevent changes to the Staff Regulations but rather that such changes could not have retroactive effect.[958] Thus, it espoused a distinction between contractual elements (in the contract of employment) which were to be considered acquired rights, and statutory elements (in the Staff Regulations and Rules) which were subject to change. This distinction has since been disregarded by IATs in favor of a more nuanced approach which examines the substance of the right in question. The *Sherif* case has been cited repeatedly, especially by the UNDT, as an example of the "old" distinction.[959]

6. *Other highly-cited judgments*

Among the five remaining judgments found in the top ten, four are also from the ILOAT. For example, the ILOAT Judgment in *B and others, A.-M. and others, and A.-U. and others*, [960] concerning a complaint by Geneva-based staff members of the ILO challenging a downward adjustment in their salaries, has been cited nineteen times in discussions of the integrity of the U.N. common system, albeit always by the UNDT. The ILOAT Judgment in *Ballo*,[961] concerning the limits of the discretionary authority of the head of an organization, has been cited seventeen times by three tribunals, while its Judgment in *Khelifati*,[962] concerning discretionary authority specifically with regard to disciplinary measures, has been cited eleven times by three tribunals. The ILOAT Judgments in *M.-J. C. et al.* and *I.T.*,[963] concerning due

[957] ILOAT Judgment No. 29 (1957), *In re Sherif*, at 2.

[958] *Ibid.* at 3.

[959] See, e.g., UNDT Judgment No. UNDT/2017/097, *Lloret Alcañiz et al v. UNSG*; UNDT Judgment No. UNDT/2020/106, *Abd Al-Shakour et al. v. UNSG*, para. 114.

[960] ILOAT Judgment No. 4134 (2019), *B. and others et al. v. ILO*.

[961] ILOAT Judgment No. 191 (1972), *In re Ballo.*

[962] ILOAT Judgment No. 207 (1973), *In re Khelifati*.

[963] ILOAT Judgment No. 3238 (2013), *M.-J. C. and others v. Centre for the Development of Enterprise*; ILOAT Judgment No. 3437 (2015), *Mr. I. T. v. Centre for Agricultural and Rural Cooperation*.

process in relation to termination of staff members with indefinite contracts, have been cited nine times, albeit always by the UNDT. The ILOAT Judgment in *Zaunbauer*,[964] concerning duty of care in the abolition of a post, has been cited nine times by two tribunals. Thus, the only case not from the ILOAT in the top ten is the *Amora* Decision of the ADBAT, which has been cited nine times by four different tribunals for the proposition that rights of a regular staff member should be accorded to an individual who has held a series of short-term contracts if his employment is essentially of a permanent nature.[965]

[964] ILOAT Judgment No. 1782 (1998), *In re Zaunbauer.*

[965] ADBAT Decision No. 24 (1997), *Amora v. ADB*.

Top ten most-cited judgments of International Administrative Tribunals

	Judgment	Tribunal (Judgment number)	Number of times cited	Number of Tribunals citing	Main subjects for which it is cited
(1)	*de Merode*	WBAT (Decision 1)	68	10	Acquired rights
(2)	*A.G. S.*	ILOAT (Judgment 3106)	38	2	*Res judicata*
(3)	*Ayoub, Lucal, Montat, Perret-Nguyen and Samson*	ILOAT (Judgment 832)	30	5	Acquired rights; contract of employment; discretion when amending fundamental terms of employment
(4)	*Lindsey*	ILOAT (Judgment 61)	26	3	Acquired rights
(5)	*Sherif*	ILOAT (Judgment 29)	22	1	Acquired rights
(6)	*B and others, A.-M. and others, A.-U. and others*	ILOAT (Judgment 4134)	19	1	Integrity of U.N. common system
(7)	*Ballo*	ILOAT (Judgment 191)	17	3	Discretionary authority of head of Organization
(8)	*Khelifati*	ILOAT (Judgment 207)	11	3	Discretion of head of Organization regarding disciplinary measures
(9)	*Amora*	ADBAT (Decision 24)	9	4	Succession of short-term contracts creating status of staff member
(10)	*M.-J. C. et al.* and *I.T.*	ILOAT (Judgments 3238 and 3437)	9	1	Due process in relation to termination of staff members with indefinite contracts
(10)	*Zaunbauer*	ILOAT (Judgment 1782)	9	2	Duty of care regarding abolition of post

B. Judgments cited by at least four other Tribunals

While the previous section highlighted the ten most-cited judgments in terms of overall number of citations, another important metric to be taken into consideration is the number of other IATs referring to those judgments. This is important because, in the case of overall number of citations presented in the previous section, a large number of citations sometimes result simply from the same IAT (or even the same judge of that IAT) using the same citation repeatedly when making the same point in various judgments. As can be seen in Table 1 above, while one case (*de Merode*) was cited by ten tribunals, there are only two other cases in the top ten which were cited by at least four other tribunals. Indeed, there are three judgments in that list that have only been cited by one other tribunal, albeit many times. In the present section, on the other hand, the judgments in question have proven that they have wide-ranging appeal to different IATs in different parts of the world.

In this regard, eight judgments are reviewed here for having been cited by four or more other IATs (in addition to the three in the top ten which also met this metric). The 1980 Judgment of the ILOAT in *De Los Cabos and Wenger*[966] is regularly cited by IATs with respect to the principle of acquired rights.[967] It was also cited by the ATCE, to support the proposition that measures taken by an organization must be considered in light of the interests of the entire staff.[968]

The 1982 Decision of the WBAT in *Salle*[969] has been cited often in relation to the probationary period of a staff member's employment.[970]

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[966] ILOAT, Judgment No. 391 (1980), *In re de Los Cobos and Wenger.*

[967] See, e.g., UNDT Judgment No. UNDT/2017/097, *Lloret Alcañiz et al. v. UNSG*, para. 124; ADBAT Decision No. 35 (1997), *Mesch & Siy (No.4) v. ADB*, para. 21; CSAT Judgment No. CSAT/7 (2003), *Commonwealth Secretariat Staff Association v. Commonwealth Secretariat*, at 3.

[968] ATCE Decision on Apps. Nos. 492–497/2011, Nos. 504–508/2011, No. 510/2011, No. 512/2011, Nos. 515–520/2011, No. 527/2012 (2012), *Baron v. CESG*, para. 49.

[969] WBAT Decision No. 10 (1982), *Salle v. IBRD*, para. 61.

[970] NATOAT Judgment No. AT-J(2013)0001, *JF v. NATO Support Agency*, para. 49; AfDBAT Judgment No. 50 (2006), *C. A. W. v. AfDB*, para. 58; AfDBAT Judgment No. 103 (2018), *S. M. v. AfDB*, para. 70; CSAT Judgment No. CSAT/1 (1998), *Hans v. Commonwealth Secretariat and Ebert, Regional Director of the Commonwealth Secretariat Youth Programme*, at 3; IMFAT Judgment No. 2006-2, *Ms. 'T' v. IMF*, paras. 36, 42.

The 1985 Judgment of the ILOAT in *Bustos*[971] is regularly cited as an example of when a tribunal may look beyond the language of short-term contracts to the intentions of the parties in order to consider the applicant a staff member.[972]

The 1989 ILOAT Judgment in *Ayoub (No. 2), Von Knorring, Perret-Nguyen (No. 2), and Santarelli*[973] has been cited for its statement that the pension scheme forms part of the administrative arrangements subject to the Noblemaire principle,[974] for the proposition that material unilateral changes to fundamental conditions of employment are unlawful,[975] and for the proposition that an international civil servant need not await the realization of the institution's adverse decision to seek a remedy in respect of it.[976]

The 1992 Judgment of the ILOAT in *Vollering*[977] has been widely referenced in the context of equal treatment and non-discrimination.[978]

The 1981 *Suntharalingam* Decision by the WBAT[979] has been cited by multiple tribunals in describing the substantive contours of abuse of discretion.[980] It has also been used when discussing whether a procedural error can subsequently be cured.[981]

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[971] ILOAT Judgment No. 701 (1985), *In re Bustos*, paras. 8–10.

[972] ADBAT Decision No. 24 (1997), *Amora v. ADB*; IADBAT Judgment in Case No. 80 (2015), *Agusti, Vena, Verdejo-Sancho et al. v. IDB*, at 14; EBRDAT Decision in Case No. 2019/AT/02 (2020), *Appellant v. EBRD*, para. 42; IMFAT Judgment No. 1999-1, *Mr. 'A' v. IMF*, para. 77.

[973] ILOAT Judgment No. 986 (1989), *In re Ayoub (No. 2), Von Knorring, Perret-Nguyen (No. 2), and Santarelli*, paras. 3, 6.

[974] ADBAT Decision No. 98 (2012), *Kalyanaraman v. ADB (No. 2)*, para. 28; UNAT Judgment No. 2010-UNAT-034, *Muthuswami et al. v. UNJSPB*, para. 30.

[975] ATBIS Judgment No. 1/2006 (2007), *X. v. BIS*, at 11.

[976] IMFAT Judgment No. 2005-3, *Baker et al. v. IMF*, para. 20.

[977] ILOAT Judgment No. 1194 (1992), *In re Vollering*.

[978] ADBAT Decision No. 91, *Murray v. ADB*, para. 47; IMFAT Judgment No. 2002-1, *Mr. 'R' v. IMF*, para. 39; ATBIS Judgment No. 1/2006 (2007), *X. v. BIS*, at 17; EBRDAT Decision in Case No. 01/03 (2004) (Liability and Remedy), *C. v. EBRD*, para. 55.

[979] WBAT Decision No. 6 (1981), *Suntharalingam v. IBRD*, paras. 34–38.

[980] NATOAT Judgment No. AT-J(2013)0001, *JF v. NATO Support Agency*, para. 35; IADBAT Judgment in Case No. 23 (1989), *Buria-Hellbeck v. IDB*, at 5; ADBAT Decision No. 3 (1994), *Yan v. ADB*, para. 29.

[981] *AfDBAT* Judgment No. 50 (2006), *C. A. W. v. AfDB*, para. 70.

The 1985 *Buranavanichkit* Decision before the WBAT[982] has been cited for a variety of propositions, including the use of periodic evaluations,[983] the ability of an IAT to fix an amount of compensation without ordering the recission of the contested decision,[984] the reasons for probationary appointments,[985] the possibility of taking deficiencies in interpersonal skills into account in the performance appraisal,[986] and the general proposition that a decision is invalid if it constitutes an abuse of discretion, being arbitrary, discriminatory, improperly motivated, or carried out in violation of a fair and reasonable procedure.[987]

The 1988 *Pinto* Decision of the WBAT[988] has been cited for the general proposition that a decision based on a misuse of discretion which has arbitrary and discriminatory effects on the applicant should be set aside[989] and for the more specific proposition that classification and grading is an exercise of discretionary authority, subject to judicial review only for irregularity.[990] It has also been referred to in a case concerning the reduction of special allowances and interpreted as not laying down any principle that such allowances must be maintained indefinitely.[991]

Finally, the 1989 *de Raet* Decision of the WBAT[992] has been widely cited for the proposition that an IAT will not review the substance of an administrative decision involving

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[982] WBAT Decision No. 7 (1982), *Buranavanichkit v. IBRD*.

[983] ADBAT Decision No. 1 (1992), *Lindsey v. ADB*, para. 7.

[984] *Ibid.*, para. 43.

[985] ADBAT Decision No. 65 (2004), *Yamagishi v. ADB*, para. 44; NATOAT Judgment No. AT-J(2013)0001, *JF v. NATO Support Agency*, para. 48.

[986] IMFAT Judgment No. 1997-1, *Ms. 'C' v. IMF*, para. 36.

[987] IADBAT Judgment in Case No. 23 (1989), *Buria-Hellbeck v. IDB*, at 5.

[988] WBAT Decision No. 56 (1988), *Pinto v. IBRD*.

[989] ADBAT Decision No. 3 (1994), *Yan v. ADB*, para. 29.

[990] AfDBAT Judgment No. 12 (2001), *T. K. v. AfDB*, para. 17; AfDBAT Judgment No. 13 (2001), *B. K. v. AfDB*, para. 31; IMFAT Judgment No. 1996-1, *D'Aoust v. IMF*, para. 23.

[991] CSAT Judgment No. CSAT APL/22 (No. 1) (2014), *Bandara v. Commonwealth Secretariat*, para. 85.

[992] WBAT Decision No. 85 (1989), *de Raet v. IBRD*.

discretion, only whether it constitutes an abuse of discretion.[993] It was also cited by the ADBAT for the concept of shifting of the burden of proof in allegations of abuse of authority.[994]

Taking stock of the above, it is interesting to note that while the ILOAT dominated the list of the ten most-cited judgments, the present set of judgments cited by four or more tribunals is more evenly split between judgments of the ILOAT and decisions of the WBAT. Thus, when one analyzes the question of cross-fertilization through this lens, the strength of the jurisprudence of the WBAT really becomes clear. Indeed, for the reasons mentioned at the outset of this section, this may very well be a better metric to assess how significant a judgment really is in the jurisprudence of IATs.

[993] NATOAT Judgment No. AT-J(2013)0001, *JF v. NATO Support Agency*, para. 36; IMFAT Judgment No. 2002-2, *Ms. 'Y' v. IMF*, para. 64; CARICOM Administrative Tribunal Decision No. 1 (2023), *Rowe v. CARICOM Secretariat*, paras. 49–50.

[994] ADBAT Decision No. 3 (1994), *Yan v. ADB*, para. 20.

Judgments cited by at least four other Tribunals

Judgment	Tribunal (Judgment number)	Tribunals citing the Judgment	Main subjects for which it is cited
de Merode	WBAT (Decision 1)	ADBAT, OASAT, UNDT, UNAT, ATBIS, AfDBAT, CSAT, IDBAT, EBRDAT, IMFAT	Acquired rights
Ayoub, Lucal, Montat, Perret-Nguyen and Samson	ILOAT (Judgment 832)	ADBAT, UNDT, UNAT, ATBIS, ESAAT	Acquired rights; contract of employment; discretion when amending fundamental terms of employment
Amora	ADBAT (Decision 24)	WBAT, IDBAT, EBRDAT, IMFAT	Succession of short-term contracts creating status of staff member
de Los Cabos and Wenger	ILOAT (Judgment 391)	UNDT, CSAT, ADBAT, ATCE	Acquired rights in the context of a reduction in pay
Salle	WBAT (Decision 10)	NATOAT, AfDBAT, CSAT, IMFAT	Termination during the probationary period
Bustos	ILOAT (Judgment 701)	ADBAT, IDBAT, EBRDAT, IMFAT	Succession of short-term contracts creating status of staff member
Ayoub (No. 2), Von Knorring, Perret-Nguyen (No. 2) and Santarelli	ILOAT (Judgment 986)	ADBAT, UNAT, ATBIS, IMFAT	Noblemaire principle and acquired rights
Vollering	ILOAT (Judgment 1194)	ADBAT, ATBIS, EBRDAT, IMFAT	Equal treatment
Suntharalingam	WBAT (Decision 6)	ADBAT, NATOAT, AfDBAT, IDBAT	Termination for unsatisfactory performance; performance evaluations
Buranavanichkit	WBAT (Decision 7)	ADBAT, NATOAT, IDBAT, IMFAT	Termination during the probationary period; performance appraisals
Pinto	WBAT (Decision 56)	ADBAT, AfDBAT, CSAT, IMFAT	Classification and grading as an exercise of discretionary authority
de Raet	WBAT (Decision 85)	ADBAT, NATOAT, IMFAT, CARICOMAT	Shifting of burden of proof in cases of abuse of authority; administrative decisions involving discretion

C. Judgments cited by at least three other Tribunals

Finally, over twenty judgments have been cited by at least three other IATs. It is interesting to note that these judgments are again dominated by two tribunals, including thirteen judgments of the ILOAT[995] and seven decisions of the WBAT.[996] This list also includes one judgement of the UNAdT[997] and one decision of the ADBAT.[998] The table below summarizes these judgments, the IATs which cited them, and the subjects for which they were cited.

[995] ILOAT Judgment No. 122 (1968), *In re Chadsey* (cited by UNDT, ATCE, EBRDAT); ILOAT Judgment No. 179 (1971), *In re Varnet* (cited by UNDT, UNAT, AfDBAT); ILOAT Judgment No. 269 (1976), *In re Gracia de Muñiz* (cited by UNDT, AfDBAT, IMFAT); ILOAT Judgment No. 426 (1980), *In re Settino* (cited by ADBAT, OASAT, ATBIS); ILOAT Judgment No. 442 (1981), *In re Villegas (No. 4)* (cited by ABDAT, OECDAT, CSAT); ILOAT Judgment No. 622 (1984), *In re Sikka (No. 3)* (cited by ADBAT, NATOAT, ATBIS); ILOAT Judgment No. 946 (1988), *In re Fernandez-Caballero* (cited by ATCE, IDBAT, ESAAT); ILOAT Judgment No. 1118 (1991), *In re Niesing (No. 2)* (cited by ADBAT, CSAT, EBRDAT); ILOAT Judgment No. 1712 (1998), *In re Aelvoet (No. 6) and others* (cited by ADBAT, NATOAT, IMFAT); ILOAT Judgment No. 1984 (2000), *In re Walstijn* (cited by UNDT, OECDAT, NATOAT); ILOAT Judgment No. 2004 (2001), *In re Matthews* (cited by WBAT, CSAT, IMFAT); ILOAT Judgment No. 2229 (2003), *R. A.-O. v. UNESCO* (cited by ADBAT, UNDT, UNAT); ILOAT Judgment No. 2967 (2011), *Ms F. L. v. ITU* (cited by UNDT, UNAT, CSAT).

[996] WBAT Decision No. 5 (1981), *Saberi v. IBRD* (cited by ADBAT, AfDBAT, IDBAT); WBAT Decision No. 25 (1985), *Mr. Y v. IFC* (cited by ATBIS, AfDBAT, IMFAT); WBAT Decision No. 28 (1986), *Gyamfi v. IBRD* (cited by ADBAT, OASAT, IMFAT); WBAT Decision No. 29 (1986), *Kirk v. IBRD* (cited by ADBAT, ATBIS, IMFAT); WBAT Decision No. 41 (1987), *Agodo v. IBRD, IFC and IDA* (cited by ADBAT, NATOAT, IDBAT); WBAT Decision No. 85 (1989), *de Raet v. IBRD* (cited by ADBAT, NATOAT, IMFAT); WBAT Decision No. 118 (1992), *Briscoe v. IBRD* (cited by ADBAT, NATOAT, IDBAT).

[997] UNAdT Judgement No. 233 (1978), *Teixeira v. UNSG* (cited by ADBAT, EBRDAT, IMFAT).

[998] ADBAT Decision No. 39 (1998), *De Armas et al. v. ADB* (cited by CSAT, EBRDAT, IMFAT).

Judgments cited by at least three other Tribunals

Judgment	Tribunal (Judgment number)	Other Tribunals citing the Judgment	Main subjects for which it is cited
Chadsey	ILOAT (Judgment 122)	UNDT, ATCE, EBRDAT	Access to the tribunal for non-staff personnel
Varnet	ILOAT (Judgment 179)	UNDT, UNAT, AfDBAT	Impartiality of individuals in position to appraise staff members or candidates
Gracia de Muñiz	ILOAT (Judgment 269)	UNDT, AfDBAT, IMFAT	Requirement to make efforts to find alternate employment for staff declared redundant; scope of review of Director General's decisions
Settino	ILOAT (Judgment 426)	ADBAT, OASAT, ATBIS	Fundamental and essential conditions of employment
Villegas (No. 4)	ILOAT (Judgment 442)	ADBAT, OECDAT, CSAT	Grounds for review of a decision; issuance of interim orders
Sikka (No. 3)	ILOAT (Judgment 622)	ADBAT, NATOAT, ATBIS	No reviewability of general decisions, only individual decisions implementing them; principle of equality
Fernandez-Caballero	ILOAT (Judgment 946)	ATCE, IDBAT, ESAAT	Right of staff members to information; requirement to give reasons for administrative decision
Niesing (No. 2)	ILOAT (Judgment 1118)	ADBAT, CSAT, EBRDAT	Statutory terms subject to unilateral modification, contractual terms are not; no acquired right to periodic adjustment of salary; limited review of tribunal regarding salary and grading systems
Aelvoet (No. 6) and others	ILOAT (Judgment 1712)	ADBAT, NATOAT, IMFAT	Possibility of cause of action even if there is no present injury
van Walstijn	ILOAT (Judgment 1984)	UNDT, OECDAT, NATOAT	Jurisdiction to assess the proportionality of dismissal as a sanction; discretion of disciplinary authority to determine severity of sanction
Matthews	ILOAT (Judgment 2004)	WBAT, CSAT, IMFAT	Gender parity
F. L.	ILOAT (Judgment 2967)	UNDT, UNAT, CSAT	Organization has power to restructure departments, including abolition of posts and redeployment of staff; constructive dismissal
Saberi	WBAT (Decision 5)	ADBAT, AfDBAT, IDBAT	Best practices for erformance appraisals; abuse of discretion
Mr. Y	WBAT (Decision 25)	ATBIS, AfDBAT, IMFAT	Release of liability clauses in separation agreements
Gyamfi	WBAT (Decision 28)	ADBAT, OASAT, IMFAT	Procedural requirements in misconduct investigations; due process in performance evaluation
Agodo	WBAT (Decision 41)	ADBAT, NATOAT, IDBAT	No jurisdiction to adjudicate a general rule, only application of that rule in a particular case
Briscoe	WBAT (Decision 118)	ADBAT, NATOAT, IDBAT	No jurisdiction to adjudicate a general rule, only application of that rule in a particular case
Teixeira	UNAdT (Judgement 233)	ADBAT, EBRDAT, IMFAT	Employment relationship; potential irregularity of recourse to a series of short-term service agreements
De Armas	ADBAT (Decision 39)	CSAT, EBRDAT, IMFAT	Potential discrimination between nternationally-recruited and national staff members

IV. CONCLUSIONS OF CHAPTER 4

Almost sixty years after Akehurst declared that "[i]nternational administrative tribunals behave as if the internal laws of different organizations formed part of a single system of law,"[999] it can now be seen, on the basis of the review of the jurisprudence of all IATs, just how insightful his statement has proven to be.[1000] Cross-fertilization has become a common practice in almost all IATs. Gone are the days when IATs felt the need to justify such practice. Indeed, as we have seen, they now cite each other consistently and unapologetically, often referring to the jurisprudence of their sister tribunals even when there is a case on point in their own jurisprudence.

While virtually all IATs are citing to their peers, they do not do so with the same frequency. A group of tribunals—including the WBAT, IMFAT, UNDT, UNAT, ADBAT, ATCE, and AfDBAT—have set themselves apart as leaders in this practice. In so doing, they are living proof of the 'certain *rapprochement*' foreseen by the WBAT in its seminal *de Merode* Decision[1001] and the 'large measure of "common" law of international organizations' described by the ADBAT in its influential *Lindsey* Decision.[1002]

On the other end of this spectrum, one is struck immediately by the lack of frequency with which the ILOAT cites to other tribunals. Perhaps it does not feel the need to do so, it being the most established tribunal with the largest jurisprudence on which to draw. On the other hand, it may do well to consider the jurisprudence of its peers; as a leading commentator has noted, several organizations have recently withdrawn from its jurisdiction and either set up their own tribunal or accepted the jurisdiction of another tribunal, apparently out of dissatisfaction with the ILOAT's position on a given issue.[1003]

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[999] M.B. Akehurst, *The Law Governing Employment in International Organizations* (1967), 263.

[1000] As de Cooker has stated recently, '[c]onvergence is the natural trend.' de Cooker, *supra* note 7, at 246.

[1001] WBAT Decision No. 1 (1981), *de Merode et al. v. World Bank*, para. 28 (quoted and discussed in *supra* notes 650-652 and accompanying text).

[1002] ADBAT Decision No. 1 (1992), *Lindsey v. ADB*, para. 4 (quoted and discussed *supra* note 748 and accompanying text).

[1003] See de Cooker, *supra* note 7, at 239–41.

It has also been apparent throughout the analysis that while IATs cited to the former UNAdT regularly, they have been much less open to referring to the UNDT and UNAT which replaced that tribunal in the new U.N. internal justice system established in 2009. The reasons for this are unclear, but perhaps one can imagine that the UNAdT held a sort of different status—it being one of the first IATs established, together with the ILOAT—while the UNDT and UNAT came onto the scene alongside many other tribunals. One cannot help but notice, however, that the WBAT, a trend-setter in cross-fertilization since the beginning, has cited to the UNDT and UNAT more often than others have. Perhaps other IATs will eventually follow suit?

As a result of this practice of cross-fertilization, a universal law governing the international civil service has begun to crystalize. Tribunals from the ADBAT to the OASAT, UNDT, EBRDAT, IMFAT and others, when discussing acquired rights, cite systematically to the WBAT's *de Merode* Decision. When examining the effect of a series of short-term contracts of employment, tribunals cite to the ADBAT's *Amora* Decision. When analyzing the discretionary power of the administration, tribunals refer to the ILOAT's *Ballo* Judgment. Concerning obligations to staff whose positions have been abolished, tribunals look to the IMFAT's Judgment in the *Mr. 'F'* case. Through this practice, IATs are defining together which areas of international administrative law are common ground, as evident from the cross-fertilization itself, and which areas remain unique to the internal law of the organization concerned. In so doing, IATs are able to maintain their unique position at the crossroads of international, institutional, and administrative law.

CHAPTER 5

REFERENCE TO INTERNATIONAL HUMAN RIGHTS INSTRUMENTS IN THE JURISPRUDENCE OF INTERNATIONAL ADMINISTRATIVE TRIBUNALS

I. INTRODUCTION

As recently as 2014, Amerasinghe argued that the possibility of applying international law before administrative tribunals was 'a remote one', taking the view that such application would occur, principally, when international law embodied general principles of law, or was incorporated by reference in the written law of the organization[1004]. In this chapter, I set out the argument that, to the contrary, international law is being increasingly recognized as a source of law in its own right to be applied before IATs, and that nowhere can this trend be discerned more clearly than in the direct references to international human rights instruments. The chapter canvasses more than 400 decisions across some twenty IATs[1005] where references to international human rights instruments have appeared.

[1004] C. F. Amerasinghe, 'International Administrative Tribunals', in C. Romano, et al. (eds.), *The Oxford Handbook of International Adjudication* (2014), 324.

[1005] The IATs which have cited international human rights instruments are the ADBAT, AfDBAT, ATBIS, ATCE, CJEU, CSAT, EBRDAT, ESAAT, EUCST, GCEU, IDBAT, ILOAT, IMFAT, MERCOSUR TAL, NATOAT, OASAT, OECDAT, TPIOIF, UNAT, UNDT, UNRWADT and WBAT.

While the application of human rights principles by IATs has been addressed by previous authors,[1006] this contribution aims to provide a comprehensive and current review of the question based on primary sources, i.e. the decisions of IATs themselves. Second, while it has long been accepted that the principles espoused in human rights law can be applied by IATs in the form of general principles, the present chapter focusses specifically on references in the judgments of IATs to actual provisions of international human rights instruments. Thus, 'human rights law' in this chapter should be understood to mean those legal protections of individuals as codified in conventional human rights instruments.

In the following section, I begin by addressing the cases in which IATs have made general comments about the applicability of international human rights law within their respective regimes of international administrative law. Such comments vary widely, ranging from cautious statements that look to human rights law simply to clarify principles implicit in international administrative law[1007] to explicit proclamations that 'the rights set out in international human rights instruments adopted by the General Assembly form part of the basic minimal rights to be accorded to staff members of the United Nations.'[1008] Indeed, as will be seen, one decision of the UNDT even placed human rights law hierarchically above the Staff Regulations,[1009] and another decision considered a violation of human rights law to constitute

[1006] See, e.g., G. Palmieri, 'Fonction publique internationale et droit international des droits de l'homme', in Société Française pour le Droit International, *La soumission des organisations internationales aux normes internationales relatives aux droits de l'homme* (2009) 57, at 59-61; A-M Thévenot-Werner, *Le droit des agents internationaux à un recours effectif : Vers un droit commun de la procédure administrative internationale* (2016), para. 526; A-M Thévenot-Werner, 'Fascicule 110 : Introduction au droit des organisations internationales', in *JurisClasseur Droit International* (updated 8 May 2021), para. 38; A. Plantey and F. Loriot, *Function Publique Internationale* (2005), paras. 152, 182, 328, 358; E. Lagrange and J-M Sorel, *Droit des Organisations Internationales* (2013), paras. 1085-1094 and 1878; M. Beulay, *L'Applicabilité des droits de l'Homme aux organisations internationales* (Doctoral thesis defended on 9 December 2015 at Paris Nanterre), paras. 381-384, 424-426, 429 and 543; S. Dalle-Crode, 'La protection des droits fondamentaux et la sauvegarde de l'intérêt communautaire : le régime spécifique des membres de la haute fonction publique européenne', in *Vers un modèle Européen de fonction publique ? Neuvièmes journées d'études du pôle européen Jean Monnet* (2011), 451-480; M. Helali, 'L'effectivité de la protection des droits fondamentaux des fonctionnaires : Approche transversale entre les organisations européennes' in *Vers un modèle Européen de fonction publique ? Neuvièmes journées d'études du pôle européen Jean Monnet* (2011), 375-394.

[1007] CSAT Judgment No. CSAT/5 (No. 1) (2002), *Faruqi v. Commonwealth Secretariat*, paras. 48-50.

[1008] UNRWADT Judgment No. UNRWA/DT/2013/028, *Thweib and Al Hasanat v. CGUNRWA*, para. 61 (vacated on appeal on other grounds, 2014-UNAT-449, *Thweib and Al Hasanat v. CGUNRWA*).

[1009] UNDT/2012/135, *Manco v. UNSG*, para. 44 (affirmed in 2013-UNAT-342, *Manco v. UNSG*). The UNAT reached the same conclusion in 2012-UNAT-276, *Valimaki-Erk v. UNSG*, para. 45.

'irreparable damage' for purposes of a request for suspension of action, even in the absence of pecuniary harm.[1010]

I then proceed to consider the references to international human rights instruments by IATs in a variety of substantive areas. These substantive areas have been established by examining all cases in which human rights instruments were cited and searching for common issues. Interestingly, it emerges that the vast majority of cases in which international human rights instruments are cited concern three substantive areas: non-discrimination, due process rights and economic rights. The chapter therefore devotes separate sections to these three areas. Section 3 addresses the principle of non-discrimination. It is treated first as it has long been a mainstay of international human rights law and IATs have cited to international human rights instruments extensively in this domain. What is interesting to note about IATs' practice here is that they have often cited to international human rights instruments even though the principle of non-discrimination is systematically codified in the staff regulations of the organizations themselves.

In section 4, I discuss due process rights, another area where IATs have made extensive reference to international human rights instruments. This section begins with due process rights in the context of disciplinary proceedings and then covers other due process rights more generally. We will find that, in some areas, the rights as already codified in international human rights treaties have been cited, such as the 'right to an effective remedy' in UDHR art. 8 and the 'right to work' in UDHR art. 23.1. In other cases, however, IATs have cited international human rights instruments to develop 'new' rights specific to the context of international administrative law. This is the case, for example, with the 'right to access documents', the 'right to a reasoned decision' and the 'right to a decision within a reasonable time', all of which were said by the tribunal in question to be based on the due process protections found in ECHR art. 6.

Section 5 addresses economic rights. This is an area where IATs have been very active more recently and it is submitted that their jurisprudence can provide a useful tool in meeting

[1010] UNDT Order No. 29 (NY/2011), *Jaen v. UNSG*, para. 32.

the challenge of increasing the justiciability of economic, social and cultural rights, which has long been an issue with this set of rights.[1011]

Sections 6 to 9 address several other international human rights which have been referenced by IATs, including privacy rights, expression related rights, the right not to be arbitrarily deprived of nationality and the right to just and favourable conditions of work. With respect to these rights, IATs have often had to engage in balancing exercises between the right at issue and a provision of the staff regulations or rules which appears in tension, such as between the human right to freedom of expression, on the one hand, and provisions in staff regulations requiring an oath not to publicly present the organization in a negative light, on the other hand.

This chapter aims to illustrate two main points. First, it can now safely be said that IATs regularly refer to international human rights instruments, and indeed they have done so in over 400 cases. Gone are the days, so recently recalled by Amerasinghe, when the possibility of an IAT applying international law was 'a remote one.'[1012] Secondly, although tribunals are increasingly referring to human rights instruments in their decisions, their treatment of this body of law is inconsistent, ranging all the way from refusing to acknowledge its direct applicability at all, on one end of the spectrum, to considering it hierarchically superior to other sources of law, on the other end of the spectrum. Moreover, this inconsistent treatment can be seen not only between IATs but even within the jurisprudence of the same tribunal.

[1011] See K. Roth, 'Defending Economic, Social and Cultural Rights: Practical Issues Faced by an International Human Rights Organization', (2004) 26 *Human Rights Quarterly* 63; L. S. Rubenstein, 'How International Human Rights Organizations Can Advance Economic, Social, and Cultural Rights: A Response to Kenneth Roth', (2004) 26 *Human Rights Quarterly* 845; K. Roth, 'Response to Leonard S. Rubenstein', (2004) 26 *Human Rights Quarterly* 873.

[1012] See footnote 1004 and accompanying text.

II. APPLICABILITY OF HUMAN RIGHTS AS A GENERAL MATTER

In several cases, IATs have addressed the applicability of human rights law as a general matter, before entering into their treatment of a specific legal right at issue. This material provides a useful snapshot of the current position of various tribunals as to the applicability of human rights instruments within their respective systems of international administrative law. Four different approaches emerge, which are elaborated on in the present section. First, some IATs have accepted the use of international human rights instruments for the limited purpose of clarifying the meaning or scope of general principles already considered to be applicable in the given jurisdiction. Secondly, moving one step beyond this, some tribunals have used human rights instruments to interpret other applicable law while also emphasising that the human rights instruments themselves should be taken into account. Thirdly, in a growing number of decisions, human rights instruments have been invoked directly in the tribunals' reasoning. Finally, there are some cases in which human rights law is not only cited by IATs but has been hierarchically elevated above other 'traditional' sources of international administrative law. Each of these scenarios will be examined in turn.

First, in some cases IATs have taken a rather cautious approach to international human rights instruments as limited to fleshing out human rights concepts which may be applied before the tribunal in the form of general principles. This has in particular been the longstanding approach of the ILOAT.[1013] For example, in *R. v. IOM*, the ILOAT stated that '[t]he complainant refers to a number of international conventions. … [T]heir terms are only enforceable between the States Parties, but the general principles enshrined therein may also apply to staff relations.'[1014] In *Mr. J.M.W. v. EPO*, the ILOAT stated that 'the EPO as such is not a member of the Council of Europe and is not bound by the [ECHR] in the same way as signatory states. Nevertheless, the general principles enshrined in the Convention, particularly the principles of non-discrimination and the protection of property rights, are part of human rights, which, as declared by both the President of the Office and its Administrative Council in 1994, in compliance with the Tribunal's case law, apply to relations with staff.'[1015]

[1013] See L. Germond, *Les principes généraux selon le Tribunal administratif de l'O.I.T.* (2009), 30-32.

[1014] ILOAT Judgment No. 3726 (2016), *R. v. IOM*, para. 5.

[1015] ILOAT Judgment No. 2292 (2003), *J. M. W. v. EPO*, para. 11.

This practice has also been seen in other IATs. For example, in *Carvalho de Oliveira*, the MERCOSUR TAL stated that its applicable law included 'general principles of law as set forth in international and regional instruments relating to fundamental rights of a universal nature.'[1016] Similarly, in *Faruqi v. Commonwealth Secretariat*, the CSAT emphasized that it was not directly bound by ECHR art. 6 but rather could utilize it as 'but one illustration of an international human rights treaty incorporating principles of fairness which should be adopted by an international arbitral body like the Tribunal'[1017], mentioning also ICCPR art. 14 and IACHR art. 8.[1018] It stated that '[i]t would be inappropriate for the Tribunal to adopt *in toto* any one of these international treaties. Rather, the Tribunal must distil from them the principles that do reflect the essence of international administrative law in regard to the provision of an independent and impartial forum for the resolution of disputes.'[1019] Finally, the UNDT stated in *Obdeijn* that '[i]n the adjudication of employment disputes that come before them, international administrative tribunals may rely on, among other sources, general principles of law—including international human rights law, international administrative law and labour law—which may be derived from, *inter alia*, international treaties and international case law.'[1020]

Secondly, other cases have taken the citation of human rights law perhaps one step further, first emphasizing the utility of referring to human rights instruments in interpreting existing provisions of international administrative law and then adding explicitly that the human rights instruments should be taken into account. For example, in *Tadonki*, the UNDT stated that 'the rules and regulations of the United Nations relating to employment should be interpreted and applied in a manner that takes into account the international human rights

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[1016] MERCOSUR TAL, Judgment No. 2 (2005), *Carvalho de Oliveira v. MERCOSUR*, p. 6. On this basis, the Tribunal applied the principle according to which applicable rules should be interpreted in the manner most favourable to the staff member. As a result, it concluded that it should award the staff member the indemnity prescribed in the case of loss of his post due to restructuring, rather than consider that his fixed term contract had simply expired according to its terms. *Ibid.* at 15-16. The Tribunal followed a similar approach in MERCOSUR TAL, Judgment No. 1 (2005), *Gómez v. MERCOSUR*, pp. 7-8, 21.

[1017] CSAT Judgment No. CSAT/5 (No. 1) (2002), *Faruqi v. Commonwealth Secretariat*, paras. 48-49.

[1018] *Ibid.*, paras. 48-49.

[1019] *Ibid.*, para. 50.

[1020] UNDT/2011/032, *Obdeijn v. UNSG*, para. 31 (internal citations omitted) (affirmed on appeal, 2012-UNAT-201, *Obdeijn v. UNSG*). The Tribunal noted in this respect the UNAT's pronouncement in *Tabari* that the principle of equal pay for work of equal value—referred to in UDHR art. 23.2—applies to UN staff. *Ibid.*

standards. They should not be narrowly construed in view of the well-established principle that statutes should, if possible, be construed so as to conform to international instruments.'[1021]

Thirdly, it is of particular interest to review the numerous decisions which now exist in which international human rights instruments have been invoked directly in a tribunal's reasoning. For example, in *Thweib and Al Hasanat*, the UNRWA Dispute Tribunal stated that 'the rights set out in international human rights instruments adopted by the General Assembly form part of the basic minimal rights to be accorded to staff members of the United Nations, regardless of the country in which the staff members reside and the specific labour laws applicable in that state.'[1022] In *re Franks* and *Vollering*, the ILOAT emphasized that '[t]he law that the Tribunal applies in entertaining claims that are put to it includes not just the written rules of the defendant organisation but the general principles of law and basic human rights.'[1023] In *Makwaka*, the UNDT referred in its analysis to the ICCPR and the ECHR and expressly affirmed their applicability to the case, stating that their 'scope ha[s] expanded from the realm

[1021] UNDT/2009/016, *Tadonki v. UNSG* paras. 8.2.4-8.2.7 (annulled on other grounds, 2010-UNAT-005, *Tandonki v. UNSG*). This position was followed by the UNDT in UNDT/2009/088, *Nogueira v. UNSG*, para. 147.

[1022] UNRWADT Judgment No. UNRWA/DT/2013/028, *Thweib and Al Hasanat v. CGUNRWA*, para. 61 (vacated on appeal on other grounds, 2014-UNAT-449, *Thweib and Al Hasanat v. CGUNRWA*).

[1023] ILOAT Judgment No. 1333 (1994), *In re Franks (No. 2) and Vollering (No. 2)*, para. 5. Ironically, the tribunal made this statement in the context of rejecting the complainants' argument that it should overturn a past judgment because it had not considered human rights law. The cases concerned whether the organization could withhold allowances, such as child allowance, for days when the complainant was not at work because of participation in a strike. In the previous case (*Lammineur*, ILOAT Judgment No. 1041), human rights law was not pleaded and the Tribunal determined, after an analysis of the service regulations, that the organization could withhold the amounts. In *Franks and Vollering*, human rights law was pleaded but the Tribunal reasoned that since its applicable law included human rights law, the *Lammineur* judgment must have implicitly rejected any human rights argument so there was no need to overturn the decision. Human rights law was pleaded in a similar fact scenario in *Cook* by a complainant who had intervened in the *Franks and Vollering* case. The Tribunal concluded that the claim was barred by the principle of *res judicata*. ILOAT Judgment No. 1612 (1997), *In re Cook (No. 4)*, paras. 6-9.

of criminal law to that of civil law, including labor law.'[1024] As a formal matter, multilateral human rights treaties such as the ICCPR and the ECHR cannot bind international organizations which are not parties to them, and the UDHR is itself a non-binding instrument.[1025] It appears, however, in cases like *Makwaka* and many others reviewed in this chapter that IATs are becoming increasingly less formalistic in this regard, referring to a provision in an international human rights instrument descriptively and then going on to decide the case in line with that provision. Thus, while the human rights instrument is not binding on the organization as a formal matter, the result reached is ultimately the same.

A case in which international human rights law took on particular prominence was *Bekele*, in which the Applicant argued before the UNDT that he was arrested by the local police on fabricated charges, was subject to torture and ill-treatment during his detention and that the administration failed to meet various duties incumbent on it to assist him. The UNDT included an entire section in its judgment entitled 'Did the administration act in a manner consistent with its international declarations, covenants and conventions on the protection of human rights?', in which it observed:

> 'The prohibition against cruel, inhuman and degrading treatment is found in most national constitutions. All national and international instruments that prohibit inhuman treatment recognize its absolute, non-derogable character. This non-derogability has also consistently been reiterated by various national and international Courts and Tribunals. Under Article 11 of the Universal Declaration

[1024] UNDT/2013/002, *Makwaka v. UNSG*, para. 38. Followed in UNDT/2013/80, *Austin v. UNSG*, paras. 36-37; UNDT/2013/81, *Conti v. UNSG*, paras. 35-36. Mention could also be made of the *Wamalala* case, in which the UNDT observed that, according to Article 7(g) of the Code of Conduct for Judges adopted by the General Assembly (A/Res/66/106), '[j]udges must … keep themselves informed about relevant development in international administrative and employment law as well as international human rights norms.' The UNDT considered that '[m]aintaining the necessary level of professional competence in these areas surely would also mean applying them in judicial decisions whenever applicable.' UNDT/2012/052, *Wamalala v. UNSG*, para. 27 (reversed on other grounds in 2013-UNAT-300, *Wamalala v. UNSG*). This provision of the Code of Conduct was also cited by the UNDT in *Manco*, in its decision invalidating a policy requiring candidates for appointment holding permanent residence in a country other than their country of nationality to renounce the permanent resident status or provide proof of application for citizenship prior to the appointment. The Tribunal stated that 'in the context of the modern law of employment and human rights, it is inconceivable to countenance a situation where an individual should be sanctioned in his employment opportunities or tenure because he holds one nationality yet resides in another country.' UNDT/2012/135, *Manco v. UNSG*, para. 44 (affirmed in 2013-UNAT-342, *Manco v. UNSG*). The UNAT reached the same conclusion in 2012-UNAT-276, *Valimaki-Erk v. UNSG* para. 45.

[1025] M. Beulay, *L'Applicabilité des droits de l'Homme aux organisations internationales* (Doctoral thesis defended on 9 December 2015 at Paris Nanterre), para. 424.

> of Human Rights (UDHR), everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which they have had all the guarantees necessary for their defence. … Considering that the United Nations is the leading light and promulgator of international conventions and covenants on human rights abuses including all forms of cruel and inhuman treatment, the respondent fell dismally short of his own standards. … The Tribunal finds that the respondent failed to act in a manner consistent with its international declarations, conventions and covenants and with other relevant international legal instruments on the protection of human rights.'[1026]

Fourth and finally, at the far end of this spectrum, there are some cases in which human rights instruments not only were cited but were hierarchically elevated above other 'traditional' sources of international administrative law. In particular, in the *Latimer* case, the UNDT was quite explicit in this regard:

> 'The Tribunal considers … that at the top of the hierarchy of the Organization's internal legislation is the United Nations Charter, … together with other universal conventions/treaties, including but not limited to the Universal Declaration of Human Rights …, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, …, followed by Staff Regulations adopted by the United Nations General Assembly and Staff Rules adopted by the Secretary-General and other relevant resolutions and decisions adopted by the General Assembly, Secretary-General's bulletins and administrative instructions …. Information circulars, office guidelines, manuals, and memoranda are at the bottom of this hierarchy and lack the legal authority vested in properly promulgated administrative issuances.'[1027]

The UNDT's conclusion — that a rule preventing the appointment of family members of staff members was invalid as contrary to human rights law — was struck down by the UNAT on the grounds that the UNDT lacked the power to review a decision of the General Assembly

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[1026] UNDT/2010/175, *Bekele v. UNSG*, paras. 70-73 (affirmed on appeal, 2012-UNAT-190, *Bekele v. UNSG*).

[1027] UNDT/2018/66, *Latimer v. UNSG*, para. 64.

in adopting the rule.[1028] It is interesting to note however that while the UNAT explicitly struck certain paragraphs from the UNDT judgment, it left the above-quoted passage untouched.[1029]

Thus, the cases reviewed in this section show an inconsistent treatment of international human rights instruments by IATs, ranging all the way from refusing to acknowledge the direct applicability of international human rights instruments at all, on the one extreme, to considering them hierarchically superior to other sources of law, on the other. Nevertheless, the overall trend of the cases clearly points to a generally positive reception of international human rights law as codified in international human rights instruments.

[1028] 2019-UNAT-901, *Latimer v. UNSG*, para. 39.

[1029] *Ibid.*, para. 51.

III. NON-DISCRIMINATION

The principle of non-discrimination is a cornerstone of international human rights law. As one commentator recently observed, the principles of equality and non-discrimination 'are the only human rights explicitly included in the UN Charter, and they appear at the beginning of virtually every major human rights instrument.'[1030] It thus comes as no surprise that the substantive human rights principle that is most consistently cited by IATs with reference to human rights instruments is the principle of non-discrimination. While chapter 5 of the present work is dedicated to the principles of equal treatment and non-discrimination in international administrative law as a general matter, this section is limited to examining the cases in which IATs have cited to international human rights instruments to flesh out the contours of the principle of non-discrimination.

Before entering into specific applications of the principle of non-discrimination in which human rights instruments have been referenced, a few examples of general significance should be highlighted. First, it is notable that the IMFAT has distinguished between a general principle of equality of treatment and a principle of non-discrimination that implicates universally accepted principles of human rights. Whereas the Tribunal has established a 'rational nexus' test for assessing classification schemes against a general principle of equality of treatment,[1031] it has applied a stricter standard of review to challenges implicating universally accepted principles of human rights. This can be seen, for example, in the different level of scrutiny it applied in *Ms. 'M' and Dr. 'M' v. IMF* (strict scrutiny of the Fund's discretion because of potential discrimination based on marital status)[1032], on the one hand, with *'BB' v. IMF* (lower level of scrutiny applied because alleged harassment was without discriminatory animus) [1033], on the other hand.

[1030] S. Farrior, *Equality and Non-Discrimination under International Law* (2015), at xi.

[1031] The Tribunal has defined the 'rational nexus' test as follows: 'Respondent's proffered reasons for the distinction in benefits . . . must be supported by evidence. In other words, the Tribunal may ask whether the decision ". . . could . . . have been taken on the basis of facts accurately gathered and properly weighed." . . . Second, the Tribunal must find a ". . . rational nexus between the classification of persons subject to the differential treatment and the objective of the classification." . . . Thus, the Tribunal may consider the stated reasons for the different benefits and assess whether their allocation to the two categories of staff is rationally related to those purposes. . . .'. IMFAT Judgment No. 2002-1, *Mr. 'R' v. IMF*, para. 47. See also IMFAT Judgment No. 2002-3, *Ms. 'G' and Mr. 'H' v. IMF*, paras. 76-80; IMFAT Judgment No. 2010-3, *Billmeier v. IMF*, paras. 80-88; IMFAT Judgment 2010-2, *Faulkner-MacDonagh v. IMF*, paras. 75-84.

[1032] See note 1075 and accompanying text.

[1033] See note 1067 and accompanying text.

Another general example which could be offered is *Galbraith*, a high-profile case brought by an Assistant Secretary-General following his termination by the Secretary-General. In that case, the UNDT cited a multitude of human rights instruments in order to make the point that it had to ensure that the reason for termination was not discriminatory:

> 'In order to respect the fundamental human rights proclaimed by arts. 3–28 of the Universal Declaration of Human Rights, arts. 6–28 of the International Covenant on Civil and Political Rights, arts. 6–12 and 15.1 of the International Covenant on Economic, Social and Cultural Rights, and arts. 2–18 of the European Convention of Human Rights, the Tribunal observes that an appointment cannot be terminated for reasons related to an employee's sex, sexual orientation, genetic characteristics, nationality, age, race, color, ethnicity, religion, pregnancy, political opinion, social origin, disability, family situation or responsibility, or union activity or membership.'[1034]

The Tribunal ultimately concluded that 'the Applicant's fundamental human rights were respected because there [was] no evidence that the Applicant was not terminated in the interest of the mission.'[1035] Mention could also be made of *Mashhour*, where the UNAT looked to the definition of discrimination in CERD when the relevant manuals and office circulars lacked a definition of their own.[1036]

The following sub-sections will examine cases which have cited to international human rights instruments in considering alleged discrimination in specific areas, in particular on the basis of sex/gender, sexual orientation, age, religion, nationality, contractual status and marital status.

[1034] UNDT/2013/102, *Galbraith v. UNSG*, para. 75.

[1035] *Ibid.*, para. 90.

[1036] 2014-UNAT-483, *Mashhour v. UNSG*, paras. 34-41.

A. Sex / Gender

Discrimination based on sex/gender is one of the most widely recognized forms of discrimination, prohibited in numerous human rights instruments, including ICCPR art. 3, ICESCR art. 3, CEDAW arts. 1-16, ACHR art. 2, ECHR art. 14 and UDHR art. 2. In the context of international administrative law, the significance of this category of discrimination is evidenced by its frequent litigation before IATs. The present sub-section will consider this jurisprudence.

There are multiple cases in which IATs have applied human rights provisions regarding non-discrimination on the basis of sex/gender to specific entitlements and benefits, finding that the disparate treatment of men and women constituted a violation of the provision at issue. For example, in *Re Callewaert-Hazebrouck (No. 2)*, a staff member of the International Patent Institute sought to enrol her husband and daughter in the organization's sickness insurance scheme. The Director-General did not allow this, referring to a provision of the staff regulations according to which membership in the scheme was open to 'the staff member, his wife and dependent children' and interpreting this provision to mean that only wives and children of male staff members were eligible to participate in the sickness insurance scheme. The staff member brought an action before the ILOAT, arguing that the organization should 'decline to apply texts which are in flagrant breach of the European Convention on Human Rights, an instrument signed by the governments whose representatives make up the Administrative Council of the Institute.' The ILOAT held that 'to discriminate between male and female staff members … offends against the general principles of law, and particularly of the international civil service, and the Tribunal cannot allow application of a text which so discriminates.' It therefore quashed the decision of the Director-General disallowing the participation of the complainant's husband and daughter.[1037]

Similarly, in *Re Meyler*, the complainant argued that a provision in the UNESCO Staff Rules, according to which a woman (but not a man) would lose non-resident benefits upon marriage to a national of the host country, was contrary to international human rights instruments barring discrimination on the grounds of sex. The ILOAT agreed, stating that the regulatory provision on which that decision had been based 'offended against UNESCO's

[1037] ILOAT Judgment No. 344 (1976), *In re Callewaert-Haezebrouck (No. 2)*, at 4.

constitutional objectives, the Charter of the United Nations, the general principles of law and the law of the international civil service, all of which condemn discrimination on the grounds of sex.'[1038]

In *Artzet*, the applicant argued before the ATCE that a provision which recognized male staff members as 'head of household' in all cases, but only recognized female staff members as such in certain conditions, violated the principle of nondiscrimination based on sex set out in ECHR art. 14, as well as General Assembly Resolution 2263 (XXII) on the elimination of discrimination against women (the case predated the drafting of CEDAW). The CoE Appeals Board agreed with the applicant, stating:

> 'The absence of discrimination based on sex, and equal pay for workers of either sex constitute, at the present time, one of the general principles of law. … [T]he Board notes that Article 14 of the European Convention on Human Rights prohibits, in regard to the rights guaranteed by that Convention, any discrimination based on sex. Moreover, under Article 4, paragraph 3, of the European Social Charter, the Contracting Parties undertake "to recognise the right of men and women workers to equal pay for work of equal value". Now both those texts were drawn up with a view to achieving the aim set forth in Article 1 (b) of the Statute of the Council of Europe, one of the means of so doing being precisely the protection and development of human rights and fundamental freedoms. … The Board adds that the principle of the absence of discrimination based on sex is proclaimed both in Article 26 of the Universal Declaration of Human Rights and in Resolution 2263 (XXII) of the United Nations' General Assembly on the "Elimination of Discrimination with regard to Women'". The Board finds that the distinction of which the appellant complains constitutes a discrimination contrary to the principles set forth above.'[1039]

Thus, the CoE Appeals Board was able to weave together the relevant international human rights instruments with the internal law of the CoE by reasoning that the international human

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[1038] ILOAT Judgment No. 978 (1989), *In re Meyler*, para. 13. The Tribunal set aside the Director-General's decision withholding the complainant's non-resident benefits and ordered the payment of all such benefits as well as 15,000 French Francs in costs.

[1039] ATCE Decision on App. No. 8/1972, *Artzet (I) v. Secretary General*, para. 24-25.

rights instruments 'were drawn up with a view to achieving the aim set forth' in the CoE Statute.

In *Sabbatini, née Bertoni v. European Parliament*, the CJEU considered a somewhat similar fact scenario but with reference to the principle of equal pay for male and female workers in art. 119 of the EEC Treaty. In that case, the applicant was awarded an expatriation allowance on her appointment but it was rescinded on her marriage due to a provision of the Staff Regulations whereby a married person could hold the allowance only if they were the 'head of household.' According to the Staff Regulations applicable at that time, the term 'head of household' normally referred to a married male official, whereas a married female official was considered head of household only in exceptional circumstances. On the basis of the prohibition of discrimination based on sex contained in the EEC Treaty, the CJEU annulled the decision rescinding her expatriation allowance.[1040]

In other cases, the relevance of human rights instruments protecting female workers has been acknowledged as a general matter. Notably, in *Kinglow*, the UNDT referred to '[a] range of international human rights and labour standards [that] protect female workers and promote gender related non-discrimination measures in relation to their reproductive functions, including the right to work.'[1041] In *Hosali*, the UNDT determined that the relevant office circular on gender parity did not apply to a recruitment at the D-2 level and decided that '[t]he legal framework for assessing the lawfulness of the contested selection decision in terms of gender parity and geographical representation is therefore rather the general notions of equality and non-discrimination as pronounced in many international human rights and other resolutions and conventions.'[1042]

Finally, one also finds some examples where human rights provisions appear to have been considered relevant in principle but where the tribunal found no violation on the facts of the case. In *Leguin*, the applicant, a British national working at the Secretariat of the Council of Europe in Strasbourg, argued that her loss of expatriate allowance upon marriage to a French national constituted discrimination based on sex in violation of the ECHR and the European

[1040] CJEU, *Luisa Sabbatini, née Bertoni, v. European Parliament*, Case 20/71 (1972), paras. 1-14.

[1041] UNDT Order No. 155 (NY/2016), *Kinglow v. UNSG*, para. 19.

[1042] UNDT/2024/017, *Hosali v. UNSG*, para. 21 (ultimately concluding on the facts that there had been no violation of gender parity).

Social Charter. The ATCE refused to accept this argument, concluding that the provision at issue 'applies to certain members of Council of Europe staff without distinction of sex' and '[i]f the appellant was refused that allowance following her marriage to a French national, the reason lies solely in the application of a provision in the French Nationality Code in force at the time, which provided that "a woman of foreign nationality who marries a French citizen acquires French nationality upon the celebration of the marriage".'[1043] In *Grant*, the complainant argued that the WHO's refusal to allow parents (both staff members of the UN common system) to share maternity leave between them violated several international instruments on human rights. The ILOAT did not accept this argument on the substance, stating that '[t]he grant of maternity leave is not a form of discrimination against men but mere recognition of the needs specific to a woman when she gives birth. There are both physical and psychological reasons why a woman should be relieved of work before and after birth. The nature of the father's involvement being quite different, like is not being compared with like.'[1044] Even with these cases, while the tribunals did not find a violation on the facts, they appear to have accepted the relevance of the human rights instruments in principle.

B. Sexual orientation

Cases in which applicants have referred to international human rights instruments to support claims of discrimination on the basis of sexual orientation are found within the jurisprudence of the ILOAT and to some extent in the case law of the UNDT/UNAT. For example, in *Mr. E.J.P. v. FAO*, the complainant was denied benefits in respect of his same-sex partner, although the two had been married according to the law of the Netherlands, the staff member's country of nationality. Such discrimination, he asserted, was contrary to the UN Charter, to general principles of law and to international human rights instruments. The Tribunal found for the complainant, although it rejected his argument based on an alleged discriminatory intent of the organization.[1045] Similarly, in *Ms J.L. H. v. IAEA*, the complainant

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[1043] ATCE Decision on App. No. 32/1974, *Leguin v. Secretary General*, at 5.

[1044] ILOAT Judgment No. 1339 (1994), *In re Grant*, para. 7. However, the Tribunal accepted the applicability of international human rights law: In response to the Organization's argument that the complainant had accepted the Staff Regulations and Rules on taking up employment and thus he could not challenge them judicially, on the basis of another source of law such as human rights law, but only seek to have them changed through the staff committee, the Tribunal stated '[t]he contention is mistaken. An official's acceptance of the Regulations and Rules does not preclude his arguing that some provision of them is discriminatory as it affects him.' *Ibid.*, para. 12.

[1045] ILOAT Judgment No. 2590 (2007), *Mr. E. J. P. v. FAO*, paras. B and 6-7.

was lawfully married to her same-sex partner in Canada and was subsequently denied benefits for her spouse. She argued that the 'Agency's narrow interpretation of the term "spouse" is discriminatory and it is contrary not only to the principles established by the Tribunal's case law, but also to the law of the Agency and of the United Nations and to international human rights instruments.'[1046] Referring to its decision in *Mr. E.J.P. v. FAO*, the ILOAT found for the complainant on the main question of whether the Agency had improperly denied her benefits based on an overly-narrow definition of the term 'spouse.' It stopped short, however, of concluding that this constituted discrimination based on her sexual orientation.[1047]

In other cases, the ILOAT has been more reticent to accept claims of discrimination based on sexual orientation supported by reference to international human rights instruments. In *Mr. R. A.-O. v. UNESCO*, for example, the complainant contested a decision refusing to recognize his same-sex Civil Solidarity Contract concluded in France as qualifying for benefits and entitlements to which a staff member would be entitled upon marriage. The complainant argued that this refusal constituted a violation of the principle of non-discrimination enshrined in UDHR art. 7, ECHR art. 14 and 'other international covenants concerning human rights.'[1048] The Tribunal did not directly consider the complainant's arguments based on international human rights instruments, concluding that '[s]ince the UNESCO Administration has simply applied the Staff Rules strictly, it cannot be accused of taking a discriminatory decision against the complainant.'[1049] In *Mr. A.J.H. B. v. ITU*, the complainant was a former staff member, arguing that the organization should retroactively recognize benefits for his spouse, referring to UDHR arts. 2 and 7. The ILOAT dismissed his complaint, stating that '[i]t is true that the case law of the Tribunal on the question of benefits for same-sex partners has developed in the

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[1046] ILOAT Judgment No. 2760 (2008), *Ms J.L. H. v. IAEA*, para. B.

[1047] *Ibid.*, paras. 6-9. Mention could also be made of the decision of the former UNAdT in *Burghuys*, which stated that '[i]nternational agreements regarding civil rights, such as article 26 of the International Covenant on Civil and Political Rights, which concerns equality before and equal protection of the law, …. form part of the identifying principles of the United Nations [and thus] must influence the UNJSPF interpretation of the word spouse.' UNAdT Judgement No. 1063 (2002), *Burghuys v. UNJSPF*, para. V. The tribunal concluded however that the complainant could not prevail because he and his partner were not technically spouses, having entered into a registered partnership rather than a marriage. *Ibid.*, para. VII.

[1048] ILOAT Judgment No. 2193 (2003), *Mr. R. A.-O. v. UNESCO*, para. 5.

[1049] *Ibid.*, para. 11. A strongly-worded dissenting opinion by Justice Hugessen, on the other hand, quoted UDHR art. 2 and ICCPR art. 26, stating that '[i]t is clear from these and other international instruments that the principle of non-discrimination is indeed a fundamental principle of law and, as a result, must prevail over discriminatory staff rules and regulations.' He therefore concluded that the Staff Rules in question were 'unenforceable vis-à-vis the complainant because they [were] contrary to fundamental principles of law' and '[c]onsequently, the impugned decision, being based on these provisions, cannot stand.' *Ibid.*, para. 40.

last decade. … The complainant seeks now to challenge the decision of the Council, the executive body of the ITU, not to amend the Staff Regulations and Staff Rules. The Tribunal acknowledges that the ITU Council is free to make those decisions and that it has no authority to compel it to do otherwise'[1050]. A similar conclusion was reached by UNAT in a case concerning sexual orientation in which the applicant argued that the staff regulations were in conflict with UDHR arts. 1 and 7, and UN Charter art. 8.[1051] The UNAT concluded that while it found 'merit in [the applicant's] line of argument', it did 'not have the prerogative to apply the Charter or the UDHR directly, nor the power to strike down internal or subsidiary legislative provisions conflicting with the norms they enact.'[1052] Similarly, in a case of alleged discrimination on the basis of sexual orientation in which human rights instruments were invoked, the UNDT stated that it was 'obviously bound by norms expressing international standards and competent to refuse to apply a provision that would contradict them' but concluding that 'in the present case, however, it sees no violation of international standards.'[1053]

C. Age

In contrast to the cases dealing with discrimination based on sex/gender discussed above, IATs have been extremely reticent to accept claims of alleged age discrimination in which international human rights instruments have been cited.

In some cases in which applicants supported claims of age discrimination by reference to international human rights provisions, the relevant tribunal found that the human rights provision was not applicable within the internal law of the organization. For example, in *X v.*

[1050] ILOAT Judgment No. 3203 (2013), *Mr. A.J.H. B. (né H.) v. ITU*, paras. B, 1-2 and 9-10. It is noted that, in Judgment No. 2860, referred to in the quotation, the ILOAT concluded 'that the provisions of French law give rise to a relationship of mutual dependence, and accordingly, the complainant and his partner must be regarded as "spouses" under the Staff Regulations and Rules. In these circumstances, the Director General erred in refusing to recognise the status of the complainant and his partner for the purpose of dependency benefits and, therefore, his decision will be set aside.' For a review of the question of the rights of same-sex couples before the ILOAT and the former UN Administrative Tribunal, see D. Gallo, '*International Administrative Tribunals and Their* Non-Originalist *Jurisprudence on Same-Sex Couples: "Spouse" and "Marriage" in Context, Between Social Changes and the Doctrine of Renvoi*' in D. Gallo, L. Paladini and P. Pustorino, eds., *Same-Sex Couples before National, Supranational and International Jurisdictions* (2014), 511-532.

[1051] 2019-UNAT-914, *Oglesby v. UNJSPB*, paras. 16 and 30-34.

[1052] *Ibid.*, para. 37.

[1053] UNDT/2022/129, *Applicant v. UNSG*, para. 47.

OIF, the applicant argued that the mandatory retirement age applied by the OIF constituted age discrimination in violation of UDHR art. 2.1. The TPIOIF refused to accept this argument, stating that the UDHR was not directly applicable to the applicant.[1054] In *MH v. Commonwealth Secretariat*, the applicant cited to jurisprudence of the Human Rights Committee interpreting ICCPR art. 26 to support his position that a mandatory retirement age imposed by the organization amounted to discrimination based on age. The CSAT was clear that '[t]he first observation to make with regard to the above is that the Respondent is an international organization. As such, it is not a party to and is not bound by the International Covenant on Civil and Political Rights.'[1055] It went on to emphasize that it was not 'bound by the findings of the UN Human Rights Committee', even if it then observed that the Committee found no violation of ICCPR art. 26.[1056] It did emphasize however that it 'must deal with applications before it in a manner that is consistent with Commonwealth principles relating to fundamental human rights.'[1057] It also stated that 'its own internal instruments and institutional rules … substantially embrace rules and principles that are not dissimilar to universally applicable human rights principles.'[1058] As it has done in other cases[1059], the CSAT appears to be attempting to strike a balance here, accepting that, formally, international human rights conventions are not binding within the internal justice system of the Commonwealth Secretariat but making clear that many of the principles they contain are applicable nonetheless.

In other cases, tribunals have accepted the applicability of human rights instruments, but found that the alleged discrimination was objectively justified. For example, in *X and Y v. BIS*, the applicants before the ATBIS argued that it would be wrong to interpret the pension regulations in such a way that only the children of those who have retired at compulsory retirement age qualify for a children's annuity because this would amount to age discrimination against younger former staff members.[1060] The ATBIS cited its analysis of the principle of non-

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[1054] TPIOIF Judgment No. 15 (2017), *X v. OIF*, at 9.

[1055] CSAT Judgment No. CSAT/15 (2010), *M. H. v. Commonwealth Secretariat*, para. 54.

[1056] *Ibid.*, para. 58.

[1057] *Ibid.*, para. 49.

[1058] *Ibid.*, para. 54.

[1059] See, e.g., CSAT Judgment No. CSAT/5 (No. 1) (2002), *Faruqi v. Commonwealth Secretariat*, paras. 48-49.

[1060] ATBIS Judgment No. 1/2015, *X and Y v. BIS*, at 18.

discrimination in a previous case[1061] extensively, but noticeably omitted its prior statement that international human rights instruments do not apply within its internal justice system. The Tribunal found that the difference in treatment between the children of those who retired at compulsory retirement age and those who retired early was capable of objective justification, and therefore did not violate the prohibition on non-discrimination.[1062] In *re Maugain*, the complainant argued before the ILOAT that the EPO's staff reporting system violated ECHR art. 6 since it applied one procedure to staff below the age of 50 and another, simpler, procedure to staff over 50. The ILOAT did not accept this argument. Without reaching a conclusion on whether art. 6 did in fact apply to the internal legal order of the EPO, the Tribunal found that 'even supposing that the Convention as such was applicable, the Tribunal's answer to the plea would be that the principles underlying Article 6 are fully recognised in the Service Regulations, which make provision for comments and indeed objections from the staff member, as well as for conciliation proceedings, internal appeal and ultimately appeal to the Tribunal itself.'[1063]

D. Religion

Discrimination on the basis of religion has been addressed in particular by the IMFAT. Although the issue has not arisen frequently, the IMFAT has, in at least one case, directly applied international human rights law in this context. In *Mr. 'F' v. IMF*, the IMFAT observed that discrimination on religious grounds was prohibited by 'universally accepted principles of human rights'[1064]. It stated that a claim of religious discrimination is a 'serious charge that may be subject to particular scrutiny by the tribunal.'[1065] It found that the religious bigotry the applicant suffered in the workplace amounted to harassment and created a hostile work environment, and awarded him USD 100,000 in damages.[1066] In Ms. *'BB' v. IMF*, by contrast, the Tribunal distinguished harassment 'linked to religious intolerance … which … is a form of discrimination prohibited by the Fund's internal law as well as by universally accepted

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[1061] See note 1069 and accompanying text.

[1062] ATBIS Judgment No. 1/2015, *X and Y v. BIS*, at 18-19.

[1063] ILOAT Judgment No. 1144 (1992), *In re Maugain (No. 6)*, para. 6.

[1064] IMFAT Judgment No. 2005-1, *Mr. 'F' v. IMF*, para. 81.

[1065] *Ibid.*, para. 50.

[1066] *Ibid.*, paras. 100-101 and operative paragraph.

principles of human rights,' from 'harassment without discriminatory animus' as was alleged by Ms. 'BB.'[1067] It therefore decided not to award her additional damages.[1068]

E. Nationality

Cases addressing allegations of discrimination on the basis of nationality have been dealt with by several tribunals, including the ATBIS, the ILOAT and the ATCE. In general, these tribunals have been reticent to accept the direct applicability of international human rights instruments when addressing claims of non-discrimination on the basis of nationality, although they have often applied the substantive non-discrimination norm anyway, finding it to be contained in the internal law of the organisation or finding that it formed part of the 'law of the international civil service' or constituted an applicable 'general principle.' For example, in *Applicants 1-42 v. BIS,* the applicants argued that different treatment in the calculation of pensions between Swiss and non-Swiss officials infringed the principle of equal treatment and thus amounted to discrimination based on nationality. Although the ATBIS concluded that international human rights instruments were not directly applicable within the BIS internal justice system, it went on in the next part of its judgment to recognize and apply a principle of equality as a general principle of law and as part of international civil service law[1069]. In *X and Y v. BIS*, the applicants argued that the tax-reimbursement system in the organization was set up in such a way as to leave them at a disadvantage in comparison to their colleagues from the host-State and requested reimbursement of past taxes paid. The ATBIS again refused to apply international human rights law directly, but it applied the substance of that law on the grounds that non-discrimination constituted a general principle.[1070] In *Pagani (I)* before the ATCE, in which the applicant argued that the filling of a post by a French mother-tongue constituted

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[1067] IMFAT Judgment No. 2007-4, *Ms. 'BB' v. IMF*, para. 77.

[1068] *Ibid.*, paras. 88-89.

[1069] ATBIS Judgment No. 1-1998, *Applicants 1-42 v. BIS*, at 13.

[1070] ATBIS Judgment No. 1/1996, *X and Y v. BIS*, para. 3.d. The ILOAT has taken a stricter view on the matter. In *E.E. H. v. EPO*, the complainant challenged the calculation of her years of pensionable service, arguing that the method of calculation used by the organization was contrary to the principle of equal treatment, since German staff members are allowed much more favourable conditions for the transfer of their pension rights, and contrary to the principle of equity and the principles enshrined in the ECHR. The ILOAT flatly refused to accept this argument, stating that '[r]egardless of whether or not the complainant's arguments regarding the inequitable nature of the treatment she received are valid, they cannot prevail over the application of rules which bind the Organisation and which it applied correctly. Neither the plea based on disregard for the principle of equity nor that based on the breach of principles enshrined in the European Convention on Human Rights, to which international organisations such as the EPO are not party, can in any event be admitted.' ILOAT Judgment No. 2236 (2003), *E.E. H. v. EPO*, paras. 4 and 11.

discrimination on grounds of nationality, the ATCE referred to ECHR art. 14 as embodying a general principle of law which must be respected in the CoE but found no violation on the facts of the case.[1071]

F. Contractual status

Although only one case has been identified referring to human rights instruments in alleging discrimination on the basis of contractual status, the tribunal in that cases found a violation. In *C.G. v. Secretary General*, the applicant argued that the CoE Staff Regulations violated the prohibition of discrimination in ECHR art. 14 because only one sanction existed for temporary staff (dismissal) while a range of different sanctions were available to permanent staff, depending on the gravity of the misconduct.[1072] The ATCE accepted this argument, stating that it 'cannot accept that, in the case of proceedings likely to lead to an extremely serious disciplinary measure (termination of the employment contract), temporary staff should be afforded less guarantees than are enjoyed by permanent staff with regard to minor disciplinary measures, such as a written warning or a reprimand, the lightest on the scale appearing in … the Staff Regulations.'[1073]

G. Marital status

Claims of discrimination on the basis of marital status have been addressed with reference to international human rights instruments, for example, by the ATCE, the IMFAT, the ILOAT and the CJEU. In general, the tribunals have accepted the applicability, or at least relevance, of the international human rights norms at issue or at least have been willing to draw inspiration from those instruments without formally applying them. In *Canales*, for example, the applicant before the ATCE argued that granting an orphan's pension only to a child born

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[1071] ATCE Decision on App. No. 76/1981, *Pagani (I) v. Secretary General*, paras. 31-33. See also ATCE Decision on App. No. 100/1984, *Van Lamoen and others v. Secretary General*, paras. 56-65 (following *Pagani* and refusing a discrimination claim based on a difference in pay and benefits between temporary and permanent staff members, concluding that they were not in analogous positions and that this may give rise to differences in treatment which do not amount to discrimination); ATCE Decision on App. No. 149/1987, *Caronjot v. Secretary General*, paras. 36-37 (refusing to recognize a violation of the principle of non-discrimination in the case of a language requirement for translator posts).

[1072] ATCE Decision on App. No. 353/2005, *C. G. v. Secretary General*, para. 28.

[1073] *Ibid.*, para. 41. Consequently, the Tribunal cancelled the termination decision and ordered the organization to pay 4000 euros in the appellant's costs. *Ibid.*, paras. 46-48.

in wedlock would introduce discrimination contrary to the ECHR between such a child and a child born out of wedlock. The ATCE agreed. Referring to ECHR art. 14, it stated that the refusal to grant an orphan's pension simply because the parents were not married 'amounts to discrimination between children born in wedlock and children born out of wedlock. There are no objective or reasonable grounds for such discrimination in this case.'[1074]

In *Ms. 'M' and Dr. 'M' v. IMF*, the IMFAT considered whether a pension plan provision discriminated against children born out of wedlock. It stated that the 'very nature of this grave complaint requires a greater degree of scrutiny over the Fund's exercise of its discretion.'[1075] Citing UDHR art. 25, the Tribunal held that 'the Fund's apparent failure to provide consideration to the effect of this classification on children born out of wedlock is not compatible with contemporary standards of human rights.'[1076]

In *Mr. I.M.B. v. IAEA*, the complainant before the ILOAT contested a decision not to pursue his candidacy for a post where his wife held a position, as well as the regulatory text on which that decision was allegedly based.[1077] The Tribunal concluded that the text 'is unenforceable because it is contrary to fundamental principles of law. In fact, the provision improperly discriminates between candidates for appointment based on their marital status and family relationship.'[1078] Interestingly, the Tribunal stated that it did not need to pronounce upon the complainant's main argument, that the regulatory text did not conform to the requirements of another applicable regulatory text, because '[d]iscrimination on such grounds is contrary to the Charter of the United Nations, general principles of law and those which govern the international civil service, as well as international instruments on human rights.'[1079] Although it stated that ICCPR art. 26 was 'not strictly binding on the Agency' it emphasized that it was 'relevant', quoting it in full and taking pains to emphasize that individuals discriminated

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[1074] ATCE Decision on App. No. 154/1988, *Canales v. Secretary General*, paras. 40-44. See also ATCE Decision on App. No. 155/1989, *Andrei v. Secretary General*, para. 43 (reaching the same conclusion with regard to children of divorced parents as compared to children of parents who remain married).

[1075] IMFAT Judgment No. 2006-6, *Ms. 'M' and Dr. 'M' v. IMF*, paras. 117, 124.

[1076] *Ibid.*, paras. 132-133.

[1077] ILOAT Judgment No. 2120 (2002), *Mr. I. M. B. v. IAEA*, para. B.

[1078] *Ibid.*, para. 10.

[1079] *Ibid.*

against on the basis of marital status fell within its protection, even though that category of individuals was not specifically included in the list contained in the provision.[1080]

Finally, in *OY v. European Commission*, the applicant argued that by reasoning that married persons presented a risk of collusion which did not exist in a friendship relationship, the GCEU had infringed the principle of non-discrimination between married and unmarried persons in ECHR art. 21.[1081] The CJEU did not accept this argument, stating that the GCEU had not discriminated between married and unmarried persons merely by attributing weak probative force to a testimonial provided by a spouse.[1082]

H. Concluding observations on non-discrimination

Applicants before IATs have referred to international human rights instruments in making claims of discrimination on many different grounds. It is interesting to note that IATs have been more willing to accept the applicability of international human rights instruments with respect to certain kinds of discrimination — notably discrimination based on sex/gender, religion and marital status — and less likely to find international human rights instruments applicable in cases involving other kinds of discrimination — notably discrimination based on age. This is peculiar, as in many cases the same human rights instruments were cited by the applicants. In still other areas, such as those addressing alleged discrimination based on nationality, the tribunals generally found that the human rights norm prohibiting discrimination was applicable as a general principle or found that it had not been violated on the particular facts of the case due to the existence of an objective reason justifying the differing treatment.

[1080] *Ibid.*, paras. 10-11.

[1081] CJEU, *QY v. European Commission*, Case C-816/18 P (2019), paras. 3-4.

[1082] *Ibid.*, paras. 5-10. See also CJEU, *HK v. European Commission*, Case No. C-460/18 P (2019), paras. 19 and 89-91 (rejecting a claim by the applicant that a requirement that a marriage last one year or more in order to qualify for a survivor's pension amounted to discrimination under art. 21 of the European Charter of Fundamental Rights).

IV. DUE PROCESS IN THE CONTEXT OF DISCIPLINARY PROCEEDINGS

Another area where IATs have consistently referred to international human rights instruments is in the elaboration of due process standards. Whereas the previous section on non-discrimination concerned a substantive right to be applied by the tribunals, the issue of due process rights examined in the present and following sections is particularly interesting because, as procedural rights, they are often invoked by applicants with respect to the manner of functioning of the IATs themselves. The present section considers due process standards in the context of disciplinary proceedings, where they are frequently invoked, before turning in the following section to other due process standards arising in the practice of IATs more broadly.

Due process rights are frequently raised by staff members in disciplinary proceedings. In this context, IATs appear divided: While some tribunals accept the applicability of the package of rights found in provisions such as the ICCPR art. 14.1 and UDHR art. 10, other tribunals have limited the application of those provisions to *bona fide* criminal proceedings.

As an example of the former scenario, in *Mr. J.N.N. v. AfDB*, the applicant sought to challenge a disciplinary procedure to which he had been subject. The organization argued that he was prevented from doing so by virtue of a document he had signed according to which his receipt of termination allowance was conditioned on him 'release[ing] and forever discharg[ing] the African Development Bank from all actions, proceedings, claims and demands that [he] might otherwise have or could have.' The Applicant argued that this release clause should be considered invalid as contrary to due process, observing that he had added the annotation 'with reservations' next to his signature for this reason. The AfDBAT agreed with the applicant, stating that: '[t]he right to defend his/her right is granted to every member of the staff of the Bank by virtue of Article III.1 of the Statute of the Tribunal. This provision reflects Article 10 of the Universal Declaration of Human Rights and Article 14 (1) of the International Covenant on Civil and Political Rights pursuant to which everyone has a right to a judicial proceeding when a binding determination is to be made on his/her civil rights. Access to judicial protection belongs to the core rights of every human person.'[1083] It awarded him 3

[1083] AfDBAT, Judgment No. 25 (2002), *J. N. N. v. AfDB*, para. 42. See also similar reasoning with respect to similarly-situated applicant in AfDBAT Judgment No. 26 (2002), *Komlan v. AfDB*, para. 28.

years' salary for procedural irregularities in the disciplinary procedure.[1084] Similarly, in *AA v. NATO International Staff*, the applicant raised doubts about the competence of the Tribunal, considering that its procedural system was in breach of the principles of a fair trial as enshrined in ECHR art. 6.[1085] The NATOAT stated that '[i]t is not in dispute that an internal justice system of an international organization such as NATO must respect the fundamental right "to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law"' in ECHR art. 6.1.[1086] Following an analysis of the jurisprudence of the ECtHR on the subject of compliance with internal justice systems with due process standards under the ECHR, the Tribunal concluded 'that the NATO Appeals Board, the predecessor of the Tribunal, met the standards of the Convention' and that the NATOAT created in 2013, 'meets *a fortiori* the standards of the European Convention on Human Rights', due to additional procedural guarantees such as increased independence of the tribunal and the holding of oral hearings in public.[1087]

With respect to the latter scenario — i.e. the refusal to apply the package of due process standards found in international human rights instruments outside the criminal context — this is best exemplified by the practice of the UNDT and UNAT. For example, in *Kramo*, the UNDT referred to the findings of the Human Rights Committee on an individual communication, as well as a General Comment by that Committee, for the proposition that the imposition of sanctions against an international civil servant by a disciplinary committee does not amount to a 'criminal charge' or even 'the determination of one's rights and obligations in a suit at law' in the language of ICCPR art. 14.1.[1088] In *Elobaid v. UNSG*, the UNDT elaborated that:

> 'As concerns due process standard in general, it should be noted that the imposition of disciplinary measures on civil servants does not of itself necessarily constitute a determination of one's rights and obligations in a suit at law under art. 14.1 of the International Covenant on Civil and Political Rights (ICCPR), nor does it, except in cases of sanctions that, regardless of their qualification in domestic law, are penal in nature, amount to a determination of a criminal charge within the meaning of the

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[1084] AfDBAT Judgment No. 25 (2002), *J. N. N. v. AfDB*, para. 61.

[1085] NATOAT Judgment No. AT-J(2016)0003, *AA v. NATO International Staff*, para. 13.

[1086] *Ibid.*, para. 33.

[1087] *Ibid.*, para. 38.

[1088] UNDT/2018/122, *Kramo v. UNSG*, para. 27.

> second sentence of art. 14.1. Without more, processes leading to the imposition of a disciplinary measure are not automatically governed by the package of fair trial rights under art. 14 of the ICCPR. The Tribunal considers that, *a maiori ad minus*, this statement is applicable to United Nations administrative processes of issuing a reprimand. As such, what constitutes due process for the application of administrative measures under the United Nations Staff Rules remains to be determined autonomously.'[1089]

Moreover, in *Benamar* before the UNDT, the applicant claimed violations of due process rights codified in UDHR art. 10 and ICCPR art. 14.3, but the Tribunal stated:

> '[W]hile the United Nations Appeals Tribunal has recognized the application of the Universal Declaration of Human Rights by this Tribunal (see *Tabari* 2010-UNAT-030, *Chen* 2011-UNAT-107) neither article 10 of that Declaration nor article 14.3 of the International Covenant on Civil and Political Rights has been violated in the present case. Indeed, those articles are applicable only in the case of judicial proceedings in a criminal context, which is not the case in the present case. The Tribunal is satisfied that the Applicant's rights during the investigation and disciplinary proceedings, which are administrative in nature and do not come under criminal law, were fully respected.'[1090]

Similarly, in *Abdullah*, the applicant argued before the UNAT that the UNRWA Dispute Tribunal had committed an error of procedure by refusing to provide him with an Arabic translation of the Commissioner-General's reply, citing UDHR arts. 6, 7 and 11, as well as ICCPR art. 14.3.f, as conferring on him the entitlement to the requested translation. The UNAT accepted that the instruments could be applicable before it but stated that '[t]he provisions

[1089] UNDT/2017/054, *Elobaid v. UNSG*, para. 53. On appeal, the UNAT emphasized that a reprimand is an administrative measure, not a disciplinary measure (2018-UNAT-822, *Elobaid v. UNSG*).

[1090] UNDT/2017/025, *Benamar v. UNSG*, para. 72.

relied on by Mr. Abdullah, however, relate to the rights of an accused person in criminal matters and, as such, have no application to the present appeal.'[1091]

Mention should also be made of those cases in which IATs have accepted in principle the applicability of international human rights standards on due process but have found no violation of those standards on the facts of the case. For example, in *Bailly*, the OASAT stated that '[t]he rules of process are general principles of universal law, embodied in all the instruments for the protection of human rights, such as the [ACHR]. The purpose of Article 8 of that Convention is to guarantee to a person who is being investigated, whether judicially or administratively, a minimum of rights deemed necessary for him to properly defend himself.'[1092] It went on to find that all due process guaranties had been honoured in the case.[1093] In *Popineau* before the ILOAT, the complainant claimed that a disciplinary procedure to which he was subject had violated his right to a fair trial guaranteed in the UDHR. The ILOAT appeared to accept the applicable law but concluded that '[f]rom scrutiny of the successive stages of the disciplinary proceedings the Tribunal is satisfied that the complainant was able to defend his rights throughout.'[1094]

The following subsections will examine several specific due process rights arising in the context of disciplinary proceedings for which IATs have referred to international human rights instruments: the right to a proper and impartial investigation, the right to a hearing, the right to cross-examination, the presumption of innocence and the right to appeal.

[1091] 2014-UNAT-482, *Abdullah v. CGUNRWA*, paras. 12, 34-35. Within the criminal context, the UNDT has referred to due process rights codified in international human rights instruments. For example, in *Mutiso* it referred to the freedom from arbitrary arrest and detention codified in UDHR art. 9 and ICCPR art. 9.1 in its finding that the handing over of the applicant to the Kenyan police had been improper. The Tribunal referred the matter to the Secretary-General to investigate the situation so that appropriate remedial measures were taken for the protection of staff members and officials based in Nairobi when placed in similar situations. UNDT/2015/059, *Mutiso v. UNSG*, paras. 99-102.

[1092] OASAT Judgment No. 102 (1989), *Tejada Bailly v. OAS Secretary General*, para. 28.

[1093] *Ibid.*, para. 32. Similarly, in *Tejada Bailly*, the OASAT stated that '[t]he rules of process are general principles of universal law, embodied in all the instruments for the protection of human rights, such as the American Convention on Human Rights, or Pact of San José. The purpose of Article 8 of that Convention is to guarantee to a person who is being investigated, whether judicially or administratively, a minimum of rights deemed necessary for him to properly defend himself.' It found that, on the facts of the case, those due process guarantees had been met. OASAT, Judgment No. 102 (1989), *Tejada Bailly v. SG of the OAS*, paras. 28-32.

[1094] ILOAT Judgment No. 1363 (1994), *In re Popineau (Nos. 6, 7 and 8)*, paras. 19-20.

A. Right to a proper and impartial investigation

The right to a proper and impartial investigation, reflected in UDHR art. 10, ECHR art. 6.1 and ICCPR art. 14, has been raised in several cases before different IATs. For example, in *Mustapha*, the UNRWADT found that procedural irregularities in a misconduct investigation caused damage to the applicant and thus ordered that the written censure against him be expunged from his file and that he be paid USD 5000 in moral damages.[1095] In *Flores* before the UNDT, the applicant contested the procedural regularity of a misconduct investigation which led to her dismissal. The UNDT referred to the human right to defend oneself and present evidence in support codified in ICCPR art. 14 and ECHR art. 6. It found that the investigation had not been fair and rescinded the decision to dismiss the applicant.[1096]

In some cases, IATs have appeared willing in principle to apply the right to a proper and impartial investigation contained in international human rights instruments, although not on the facts of the case. For example, in *Mr. F.Z. v. ITU*, the complainant argued that a conflict of interest of one of the members of a commission of enquiry investigating his behaviour should invalidate the conclusions of that commission, citing ECHR art. 6.1 and ICCPR art. 14.1. Although the ILOAT appeared to implicitly accept the applicability of such legal standards as enshrined in those provisions, it found that no bias or conflict of interest had been established on the facts.[1097]

[1095] UNRWADT Judgment No. UNRWA/DT/2014/007, *Mustapha v. CGUNRWA*, para. 58. *See also* UNRWADT Judgment No. UNRWA/DT/2014/008, *Wishah v. CGUNRWA*, para. 85.

[1096] UNDT/2014/025, *Flores v. UNSG*, para. 35 (affirmed in 2015-UNAT-525, *Flores v. UNSG*). Mention could also be made of *Gaete v. IBD* before the IDBAT, in which the applicant argued that an investigation of his conduct violated principles of due process codified in the UDHR, ICCPR, ECHR and ACHR. IDBAT Judgment No. 51 (2004), *Gaete v. IDB*, para. 30. The IDBAT conducted a *de novo* review of the applicant's conduct and found that he had violated several IDB rules. While the Tribunal did not consider his arguments that the original investigation fell short of due process standards, one judge dissented on this point, concluding that 'the law of human rights … also appl[ies] to the Inter-American Development Bank' and that 'the procedure for in-house investigations … suffers in this case from violations of due process of such magnitude that they delegitimize the proceedings conducted by the Auditor General of the Bank to determine whether … Complainant's conduct … violated Bank policies and procedures.' *Ibid.*, dissenting opinion of Judge Jorge Dario Cristaldo Montaner, para. I.

[1097] ILOAT Judgment No. 2391 (2005), *Mr. F. Z. v. ITU*, para. 5.

B. Right to a hearing

The right to a public hearing — contained in ICCPR art. 14.1, ECHR art. 6 and UDHR art. 8 — has arisen frequently before IATs in the context of disciplinary proceedings. For example, in the *C. G.* case, the ATCE considered the case of a temporary staff member who had been dismissed without a meaningful opportunity to provide her position on the allegations against her. The Tribunal observed that ECHR art. 6 'lays down a general principle of law, whereby a person who is accused of misconduct has the right to be heard before a decision is taken. This entails that the person concerned should have the possibility of effectively defending himself or herself.'[1098]

The right to a public hearing contained in international human rights instruments has also been cited by tribunals for the proposition that excluding a party from the hearing is an inappropriate sanction for misconduct. This issue first arose in *Bertucci*, where the Secretary-General argued that the UNDT's prohibiting his appearance before it in the case as a sanction for contempt violated his right to equality before the courts as provided for in ICCPR art. 14.1 The UNAT did not reach the question, as it found that the appeal was interlocutory and as such inadmissible.[1099] When the final judgment in the case was appealed, the Secretary-General again argued that the UNDT had violated the principle of equality of arms and that such an exercise of judicial power was 'ultra vires and constituted a violation of the fundamental rights of the parties.' In answering this plea, the UNAT referred to another provision in an international human rights instrument:

> '[T]he objections raised by the Secretary-General in declining to execute the orders of the UNDT were neither specific nor justified. However, the Statute of the UNDT does not provide for any sanction comprising the exclusion of one party from the proceedings in the event of a refusal to execute an order requiring the disclosure of evidence. Neither the principle of respect for the right to a defence nor the right to an effective remedy before a judge, recognized by Article 8 of the Universal Declaration of Human Rights, imply any recognition that the Tribunal has the

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[1098] ATCE Decision on App. No. 353/2005, *C. G. v. Secretary General*, para. 36. Consequently, the Tribunal cancelled the termination decision and ordered the organization to pay 4000 euros in the appellant's costs. *Ibid.* paras. 46-48.

[1099] 2010-UNAT-062, *Bertucci v. UNSG*, paras. 14, 25.

> power to impose such a sanction in the case of 'disobedience.' The Tribunal is, however, entitled to draw appropriate conclusions from the refusal in its final judgment.'[1100]

In the *El Felou*, *Abdo*, *Ghattas, Abu Ayyash* and *Anabtawi* cases, the UNRWA Dispute Tribunal, following the *Bertucci* Judgment of the UNAT, concluded on the basis of UDHR art. 8 that it should not exclude the respondent from participating in the proceedings even though it would have the authority to do so based on non-respect of time-limits. It stated that implicit in art. 8's right to an effective remedy before a judge was the responsibility of the tribunal to exercise caution when deciding whether to exclude a party from participating in the procedure, even when it may have the authority to do so.[1101]

C. Right to cross-examination

The right to cross examination, contained in particular in ICCPR art. 14.3, has often been applied by IATs in disciplinary proceeedings. For example, in *Liyanarachchige*, the UNDT, considering a summary dismissal for misconduct, cited the ICCPR in stating that the right to cross-examination was 'an essential element of "equality of arms" and thus of a "fair trial"'[1102]. Similarly, in *Kasmani*, the UNDT cited the ECtHR for the proposition that a party should be given an adequate and proper opportunity to challenge and question a witness against him.[1103]

In certain cases, IATs have accepted the applicability of the right but found that the facts of the case did not require its application. For example, in *Gnanathurai*, the applicant

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[1100] 2011-UNAT-121, *Bertucci v. UNSG*, para. 51.

[1101] UNRWADT Judgment No. UNRWA/DT/2013/032, *El Felou v. CGUNRWA*, para. 25; UNRWADT Judgment No. UNRWA/DT/2013/034, *Abdo v. CGUNRWA*, para. 29; UNRWADT Judgment No. UNRWA/DT/2013/36, *Ghattas v. CGUNRWA*, para. 26; UNRWADT Judgment No. UNRWA/DT/2014/011, *Abu Ayyash v. CGUNRWA*, para. 25; UNRWADT Judgment No. UNRWA/DT/2014/012, *Anabtawi v. CGUNRWA*, para. 20. The right to a hearing has also been invoked outside the context of disciplinary proceedings. See, e.g., CSAT Judgment No. CSAT/3 (No. 1) (2001), *Mohsin v. Commonwealth Secretariat*, para. 4 (citing ECHR art. 6 to justify the right of the applicant to a hearing on her complaint alleging discrimination and harassment by her supervisors).

[1102] UNDT/2010/041, *Liyanarachchige v. UNSG*, para. 52 (reversed on the merits on another ground, namely that a decision cannot be based solely on anonymous witness statements, 2010-UNAT-087, *Liyanarachchige v. UNSG*).

[1103] UNDT/2009/017, *Kasmani v. UNSG*, para. 6.5 (citing ECtHR (Plenary), Application No. 11454/85, Judgment, 20 November 1989, *Kostovski v. Netherlands*, para 41).

argued that a misconduct investigation was vitiated by a procedural irregularity because the evidence against him was hearsay and he had not been given the opportunity to confront and cross-examine the witness. The ABDAT cited ICCPR art. 14.3 for the proposition that the right of an accused person to confront witnesses against him and to cross-examine those witnesses is very widely recognised. However, it stated that that right was 'generally prescribed only in criminal prosecutions' whereas 'the ADB disciplinary proceedings are administrative in nature and not criminal prosecutions.'[1104] In *PL v. Headquarters Allied Joint Force Command*, the applicant argued that the proceedings violated the right to a fair trial. He complained, *inter alia*, that the accusations were based only on anonymous testimony that he could therefore neither dispute nor challenge.[1105] The NATOAT, finding that the conclusions of misconduct were not established on the merits in light of the evidence presented, declared that it did not need to examine the applicant's contentions that those conclusions had been reached in an improper way.[1106]

D. Presumption of innocence

The right to be presumed innocent until proven guilty — contained in ECHR art. 6.2, art. 48.1 of the European Charter of Fundamental Rights and ACHR art. 8.2 — has been referenced by both the GCEU and the OASAT. In *Prieto v. European Commission* before the GCEU, the applicant raised possible mismanagement of contracts with the organization, which ultimately led to a criminal investigation in France, for which he was summoned to testify before a French Court.[1107] His request for reimbursement of travel expenses for that journey was refused.[1108] Ultimately, it transpired that the organization's refusal was connected to the fact that it considered the applicant potentially implicated in the misconduct.[1109] The GCEU annulled the decision refusing reimbursement on the basis that the applicant had a right to be presumed innocent.[1110] It noted in this regard that the 'right to the presumption of innocence applies, even

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[1104] ADBAT Decision No. 79 (2007), *Gnanathurai v. ADB*, paras. 35-36.

[1105] NATOAT Judgment No. AT-J(2017)0024, *PL v. Headquarters Allied Joint Force Command*, para. 17.

[1106] *Ibid.*, para. 53.

[1107] GCEU, *Prieto v. European Commission*, Case No. T-61/18 (2019), paras. 4-14.

[1108] *Ibid.*, para. 15.

[1109] *Ibid.*, para. 82.

[1110] *Ibid.*, paras. 89-98.

in the absence of a criminal prosecution, to an official accused of a breach of obligations under the Staff Regulations which is sufficiently serious to warrant an investigation.'[1111] In *Abrão* before the OASAT, the applicant contested the non-renewal of his contract and argued that this was due in part to the fact that the OAS Ombudsperson, who had been made aware of a series of informal complaints against the applicant, had recommended non-renewal to the Secretary-General. The OASAT referred to the presumption of innocence contained in ACHR art. 8.2 and concluded 'that the Secretary General indisputably based his decision not to rehire the complainant on the informal complaints reported to him by the Ombudsperson; by doing so, and even more so by adopting that decision without consulting the IACHR, and without timely notification to the interested party, he failed to consider the guarantee of presumption of innocence and harmed the rights of the Complainant.'[1112]

E. Right to appeal

The right to appeal in disciplinary proceedings, contained in ICCPR art. 14.1, has been applied in the case of *Kashala* before the UNDT, concerning an applicant who had been summarily dismissed, appealed that dismissal, but the appeal was never considered by the Joint Disciplinary Committee. The Tribunal held that the applicant was denied the right to have the disciplinary measure imposed on him reviewed by a supervisory body, basing its decision on ICCPR art. 14.1 and General Comment 32 of the Human Rights Committee.[1113] The UNDT followed this decision in *Ladu*.[1114]

[1111] *Ibid.*, para. 92. See also GCEU, *DI v. European Central Bank*, Case No. T-514/19 (2021), paras. 108-125 (analysing the presumption of innocence by reference to the same human rights instruments but concluding that there had been no violation).

[1112] OASAT Judgment No. 168 (2022), *Abrão v. OAS Secretary General*, paras. 159-160.

[1113] UNDT/2014/023, *Kashala v. UNSG*, para. 32.

[1114] UNDT Order No. 243 (NY/2017), *Ladu v. UNSG*, para. 22.

V. OTHER DUE PROCESS RIGHTS

While the previous section has considered the application of due process in the context of disciplinary proceedings, where it is frequently at issue, IATs have also referred to due process rights in other contexts and have cited international human rights instruments as support. The present section will consider these many other due process rights that have been recognized by IATs with reference to human rights instruments, including the principle of equality of arms, the right of access to documents, the right to an independent and impartial tribunal, the right to receive a reasoned decision, the right to a decision within a reasonable time, the right of access to justice and the right to an effective remedy.

A. Equality of arms

The principle of equality of arms — as codified in ICCPR art. 14.1, ECHR art. 6.1 and ACHR art. 8.1 — has been raised before IATs in several different contexts.

Before the UN internal justice system, arguments based on equality of arms as codified in international human rights instruments have generally been successful. In *Ademagic et al*, for example, the Secretary-General argued on the basis of equality before courts and tribunals protected in ICCPR art. 14.1 that he should be granted more time in oral arguments, in order to properly respond to the arguments raised by the three groups of individual litigants. The UNAT acceded to this request.[1115] In *Morin*, the UNDT engaged in a detailed exegesis of the concept, its basis in international human rights instruments (notably ICCPR art. 14.1, ECHR art. 6.1 and AcHR art. 8.1), and its interpretation by the Human Rights Committee in General Comment No. 31, in particular the latter's conclusion that the concept was not limited to criminal proceedings. The Tribunal stated that '[i]nternational norms and general principles of law may assist the Tribunal in the determination of matters before it. In this way, equality of arms may be seen to be an indivisible element of a fair trial, requiring that a fair balance exist between parties involved in litigation. The principle warrants the assurance that each party to a dispute be able to prepare and present his or her case fully and adequately before the court.

[1115] UNAT Order No. 160 (2013), *Ademagic et al. v. UNSG*, paras. 4 and 6.

The Tribunal, then, must ascertain the proper balance to be struck between the competing interests involved in this case.'[1116]

The ADBAT, in contrast, was not willing to accept an argument based on equality of arms referring to international human rights law, at least in the specific context in which it was advanced. In *Claus*, the applicant argued that the lack of legal representation at the initial stages of the internal justice process was a violation of her international human right to a fair hearing as it was inconsistent with the principle of 'equality of arms.'[1117] The ADBAT disagreed, concluding that '[n]either public international law nor international human rights law ensures a right to legal representation at a stage below the review by a competent, independent and impartial tribunal that issues a reasoned, public decision' and that '[s]ince the ADBAT is such a tribunal, the Bank's decision to keep legal representation out of the internal review process, including in particular the Appeals Committee, … is not unlawful.'[1118] Thus, while the ADBAT did not uphold the applicant's request based on international human rights law on the facts of the case, it clearly stated that it considered this law applicable.

In the EU system, mention could be made of *OZ v. EIB* before the GCEU, in which the applicant claimed that irregularities in an investigation initiated as a result of her sexual harassment complaint infringed the adversarial principle and the principle of equality of arms, in violation of ECHR art. 6 and art. 47 of the European Charter of Fundamental Rights.[1119] The GCEU analysed the facts against the framework of these human rights instruments and concluded that no violation had been established.[1120] This decision was appealed to the CJEU, which emphasised at the outset that 'as the European Union is not a party to the ECHR, it cannot incur liability pursuant to it. Nonetheless, it is apparent from Article 52(3) of the Charter that the meaning and scope of the rights guaranteed by the Charter are the same as those conferred by the corresponding articles of the ECHR. In those circumstances, the first to third grounds of appeal must be examined in the light of the Charter alone.'[1121] Examining the question by reference to the European Charter of Fundamental Rights, it found art. 47

[1116] UNDT/2011/069, *Morin v. UNSG*, paras. 39-46.

[1117] ADBAT Decision No. 105 (2015), *Claus v. ADB*, paras. 35-36.

[1118] *Ibid.*, para. 66.

[1119] GCEU, *OZ v. EIB*, Case No. T-607/16 (2017), paras. 50-51.

[1120] *Ibid.*, paras. 51-62.

[1121] CJEU, *OZ v. EIB*, Case No. C-558/17 P (2019), paras. 38-39.

inapplicable as neither the investigative panel or the EIB President rendering a decision on the panel's recommendation could be considered a 'tribunal' within the meaning of that provision.[1122] However, it found a violation of the right to good administration in art. 41 of the Charter and annulled the decision of the GCEU on this basis.[1123]

B. Right to access documents in the context of tribunal proceedings

The right of access to documents in the context of tribunal proceedings, on the basis of ECHR art. 6, has been claimed in several cases in which international human rights instruments have been explicitly invoked, including before the ATCE, the CJEU and the NATOAT. In *Mayer and Kellens*, the ATCE referred to 'Article 6 of the European Convention on Human Rights, under which equality of arms is a key requirement of a fair hearing' and stated 'that it would be in the interests of the Organisation to regulate the matter of access to documents concerning decisions taken in recruitment and promotion competitions' or 'the Tribunal will be obliged to decide each case on its own merits.'[1124] In *HF v. European Parliament*, the applicant argued before the CJEU that the GCEU's refusal to grant her the records of witness hearings in her harassment complaint amounted to a violation of the right to be heard enshrined in art. 41 of the European Charter of Fundamental Rights.[1125] The CJEU agreed that she should have been given at least an anonymized summary of the witness statements and thus it set aside the GCEU Judgment.[1126] In *PL v. Headquarters Allied Joint Force Command*, the NATOAT ultimately did not reach the question. In that case, the applicant argued with reference to ECHR art. 6 that the proceedings violated his right to a fair trial because, *inter alia*, he had not been given all the documentation that the Administration was using as grounds for its decision to terminate his contract.[1127] The NATOAT, finding that the conclusions of misconduct evidence presented, declared that it did not need to examine the applicant's contentions that those conclusions had been reached in an improper way.[1128]

[1122] *Ibid.*, paras. 47-49.

[1123] *Ibid.*, paras. 51-60.

[1124] ATCE Decision an Apps. Nos. 555/2014 and 556/2014, *Mayer and Kellens v. Secretary General*, paras. 87-88.

[1125] CJEU, *HF v. European Parliament*, Case No. C-570/18 P (2020), para. 53.

[1126] *Ibid.*, paras. 69-70.

[1127] NATOAT Judgment No. AT-J(2017)0024, *PL v. Headquarters Allied Joint Force Command*, para. 17.

[1128] *Ibid.*, para. 53.

C. Right to an independent and impartial tribunal

The right to an independent and impartial tribunal — contained in ICCPR art. 14.1, ECHR art. 6.1 and UDHR art. 10 — has been addressed by the UNDT, the EUCST and the GCEU.

Before the UNDT, the right has been raised several times in cases relating to changes to the salary regime that would affect not only the applicant but also the UNDT judges themselves. In *Lloret Alcaniz*, a case concerning the negative consequences on the overall remuneration of a staff member due to the adoption of the unified salary scale, the UNDT considered in its Order on Recusal whether its members were barred from hearing the case because the adoption of the Unified Salary Scale had the same negative consequences on their own remuneration. The Order, handed down by the President of the UNDT, begins by applying international human rights instruments and stating that 'the Dispute Tribunal, as a whole, is not in a position to provide the Applicant the guarantees of independence and impartiality to which she is entitled under Article [10] of the Universal Declaration of Human Rights and Article 14(1) of the International Covenant on Civil and Political Rights for the determination of her application.'[1129] However, the Order ultimately concludes that, there being no suitable alternative forum, the Tribunal is required under the doctrine of necessity to hear the case to avoid a miscarriage of justice.[1130] A similar situation arose in *Samoulada*, in which the contested decision — to implement a post adjustment change in the Geneva duty station which would result in a pay cut for the applicant — would have had a negative effect on the remuneration of Geneva-based UNDT Judges. In her Order recusing herself from the case, Judge Bravo cited the guarantee to a hearing by an independent and impartial tribunal provided for in UDHR art. 10.[1131] In *Chaoui, Kalotay & Richards*, in which the applicant challenged the decision to implement a change to the post adjustment in the Geneva duty station, the UNDT was faced with a similar issue of conflict of interest; it based its Order recusing Geneva Judges from considering the case in part on UDHR art. 10.[1132]

[1129] UNDT Order No. 113 (GVA/2017), *Lloret Alcaniz v. UNSG*, para. 22. The President further adds that 'the Applicant is also entitled to have her application determined by a competent tribunal, pursuant to the same provisions.' *Ibid.*, para. 23.

[1130] *Ibid.*, para. 37.

[1131] UNDT Order No. 157 (GVA/2017), *Samoulada v. UNSG*, para. 15.

[1132] UNDT Order No. 128 (GVA/2018), *Chaoui, Kalotay & Richards v. UNSG*, para. 14.

Human rights instruments codifying the right to an independent tribunal have also been invoked in other cases involving requests for recusal of a judge. For example, in *Gehr*, a motion for recusal of the judge was filed by the applicant on the ground that the judge had been reversed by the UNAT on a 'fundamental legal principle' and thus would 'be unable to hear and determine the [other] cases [brought by the same Applicant] in an independent and impartial manner.'[1133] Referring to the objective and subjective tests for impartiality elaborated by the ECtHR and adopted by the UNDT in *Campos*, the Tribunal concluded that a judge could not be considered to lack impartiality simply because he had been reversed by the UNAT in a previous case by the same applicant. The Application for recusal was therefore rejected.[1134] In *Rahman*, the UNDT in considering a request for recusal of a judge cited UDHR art. 10, ECHR art. 6.1 and ICCPR art. 14 for the principle that any person whose rights have to be determined is entitled to a fair hearing in public before an independent and impartial tribunal.[1135] Ultimately, it found that there was no conflict of interest on the facts of the case.[1136] In *Campos*, the UNDT considered an application alleging that the administration had interfered in the appointment of the staff representative to the Internal Justice Council (the body mandated with the task of drawing up lists of suitable candidates for judges of the UNDT and UNAT), and that this interference had 'tainted the independence and the impartiality of the new UN system of justice'[1137]. The applicant therefore requested the recusal of all the judges of the UNDT and UNAT.[1138] The UNDT began by citing to UDHR art. 10, ECHR art. 6.1 and ICCPR art. 14, each of which sets out a right to a fair and public hearing by an independent and impartial tribunal.[1139] It then recalled the objective and subjective tests of impartiality elaborated by the ECtHR,[1140] as well as the importance given by the ECtHR to the manner of appointment in determining independence and impartiality.[1141] The UNDT also cited to the ECtHR for the

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[1133] UNDT Order No. 092 (NBI/2013), *Gehr v. UNSG*, para. 4.

[1134] *Ibid.*, paras. 13-21.

[1135] UNDT/2012/136, *Rahman v. UNSG*, para. 18.

[1136] *Ibid.*, paras. 22-26.

[1137] UNDT/2009/005, *Campos v. UNSG*, para. 1.3.

[1138] *Ibid.*

[1139] *Ibid.*, para. 6.1.2.

[1140] *Ibid.*, para. 6.2.

[1141] *Ibid.*, para. 6.2.3 (citing ECtHR (Chamber), Application No. 7819/77, Judgment, 28 June 1984, *Campbell and Fell v. United Kingdom*, para 78).

proposition that the personal impartiality of a judge must be presumed until there is proof to the contrary[1142]. Finding no evidence of lack of impartiality under either the objective or subjective tests, the tribunal rejected the Application.[1143] Once again, although the UNDT rejected the claim on the facts, it left no doubt that it considered international human rights instruments relevant to its decision.

References to international human rights instruments have also been made in various other cases before the UNDT involving the right to an independent tribunal. In *Tadonki*, the UNDT referred to UDHR art. 10, ECHR art. 6.1 and ICCPR art. 14 in holding that its interim orders are not to be subject to any form of control by the administration, and thus cannot be interpreted to cease to apply on the conclusion of management evaluation.[1144] Mention could also be made of *Sanwidi*, in which the UNDT referred to the UDHR as a basis for the general statement that '[n]othing and no-one shall constrain or limit the Tribunal's power in its judicial functions to grant full equality to the parties in a fair and public hearing, to be independent and impartial in the determination of rights and obligations of any party.'[1145]

In the EU system, the EUCST has stated that 'the principle of effective judicial protection is a general principle of EU law to which expression is now given by the second paragraph of Article 47 of the Charter, pursuant to which "[e]veryone is entitled to a ... hearing ... by an independent and impartial tribunal ... established by law ..."'.[1146] In the case, in which it had to consider whether a question which had not been raised during the prelitigation procedure was admissible, the EUCST stated that '[a]ccording to the case-law of the European Court of human Rights on the interpretation of Article 6(1) of the ECHR, to which reference must be made in accordance with Article 52(3) of the Charter, the exercise of the right to a tribunal may be subject to limitations, inter alia as to the conditions for the admissibility of an action.'[1147] It further noted however that 'the European Court of Human Rights has stated that the limitations

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[1142] *Ibid.*, para. 7.2.2 (citing ECtHR (Plenary), Application No. 10486/83, Judgment, 24 May 1989, *Hauschildt v. Denmark*, para. 47).

[1143] *Ibid.*, para. 8.1.

[1144] UNDT/2009/058, *Tadonki v. UNSG*, para. 9.5.

[1145] UNDT/2010/036, *Sanwidi v. UNSG*, para. 7.1.3 (reversed in 2010-UNAT-084, *Sanwidi v. UNSG*). This position on independence and impartiality was followed in UNDT/2010/089, *Frechon v. UNSG*, para. 8.1.1.

[1146] EUCST Judgment No. F-26/12 (2014), *Cerafogli v. ECB*, para. 48.

[1147] *Ibid.*, para. 49.

on the right to a tribunal relating to the conditions of admissibility of an action must not restrict or reduce a litigant's access in such a way or to such an extent that the very essence of that right is impaired. Such limitations are not compatible with Article 6(1) ECHR unless they pursue a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the aim pursued.'[1148] Finally, in *FV v. Council of the EU*, the GCEU considered whether a flawed appointment procedure for judges of the EUCST violated the 'principle of the lawful judge' enshrined in ECHR art. 6.1.[1149] Analysing the jurisprudence of the ECtHR in some detail, it concluded that the appointment procedure of the EUCST had not been in accordance with art. 6.1 and thus the decision rendered by the EUCST with respect to the applicant had to be set aside.[1150]

D. Right to receive a reasoned decision

The right to receive a reasoned decision under ECHR art. 6 has been addressed before the GCEU and the ATCE.[1151] In *Gvarmathy v. EU Agency for Fundamental Rights* before the GCEU, the applicant, who was contesting a recruitment exercise, argued that the fact that the EUCST did not rule the authenticity of an evaluation score grid amounted to a failure to give a reasoned decision within the meaning of ECHR art. 6.1 and art. 47 of the European Convention of Human Rights.[1152] The GCEU did not accept this argument, concluding that other information provided had met the duty to provide reasons within the meaning of those instruments.[1153] In *Fernandez-Galleano (II)* before the ATCE, the applicant argued that a

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[1148] *Ibid.*, para. 50. The decision of the EUCST was upheld on appeal on other grounds by the GCEU. See GCEU, *ECB v. Cerafogli*, Case No. T-787/14 P (2016), para. 78.

[1149] GCEU, *FV v. Council of the EU*, Case No. T-639/16 P (2018), para. 72.

[1150] *Ibid.*, paras. 73-80. In a subsequent case involving the same composition of judges in the EUCST, the GCEU raised the question of the regularity of the composition of the EUCST on its own initiative, deciding that it was irregular and setting aside the EUCST decision. CJEU, *Simpson v. Council of the EU and HG v. Council of the EU*, Joined Cases Nos. C-542/18 RX-II and C-543/18 RX-II (2020), paras. 58-59. The GCEU Judgment was considered by the CJEU, which concluded that in the circumstances of the case, the manner of constituting the EUCST had not infringed the applicants' right to a tribunal established by law. It thus set aside the GCEU Judgment. *Ibid.*, paras. 81-83. See also GCEU, *Gyarmathy v. European Monitoring Centre for Drugs and Drug Addiction*, Order in Case No. T-297/16 P (2017), para. 47 (rejecting the applicant's argument of partiality of the EUCST under ECHR art. 6).

[1151] For more on the general duty to provide reasons, see Garrido Muñoz et al., *supra* note 2, Chapter 5, section 5.5.2.

[1152] GCEU, *Gvarmathy v. EU Agency for Fundamental Rights*, Order in Case No. T-196/15 P (2018), para. 48.

[1153] *Ibid.*, para. 51.

selection panel's failure to give reasons why he did not meet the qualifications for a post made access to a tribunal to challenge the decision meaningless and therefore contravened ECHR art. 6. The Tribunal concluded, without specifically analysing art. 6, that the failure to give reasons could not be justified and consequently annulled the Secretary General's decision to reject the staff member's application for the post.[1154] In *Semertzidis*, the applicant argued that a failure to give adequate reasons during disciplinary proceedings should invalidate that process. The ATCE 'note[d] that Article 6, paragraph 1 of the European Convention on Human Rights requires courts to give reasons for their decisions, but [stated] that this cannot be taken to mean that a detailed response is required to every argument. The scope of this requirement may vary depending on the nature of the decision.'[1155] It concluded however that the reasons given by the authority ordering the disciplinary sanction had been clear and sufficiently precise.[1156]

E. Right to a decision within a reasonable time

The right to a decision within a reasonable time, as contained in ECHR arts. 5.3 and 6.1, has been pleaded in cases before the AfDBAT, the CJEU and the ILOAT.[1157]

In *M. X-D-P v. AfDB* before the AfDBAT, the Respondent argued that the five months taken to investigate possible misconduct was consistent with the notion of 'reasonable time' as defined in ECHR arts. 5.3 and 6.1, as interpreted by the ECtHR. The AfDBAT agreed, concluding that the time taken for the disciplinary process was reasonable in the circumstances of the case.[1158] Similarly, in *Jaramillo and others v. EIB*, the CJEU considered whether the time limit for staff members of the EIB to file a complaint before the EUCST was a 'reasonable period' consistent with art. 47 of the Charter of Fundamental Rights of the EU and ECHR art.

[1154] ATCE Decision on App. No. 194/1994, *Fernandez-Galiano (II) v. Secretary General*, paras. 15 and 24-27.

[1155] ATCE Decision on App. No. 501/2011, *Semertzidis v. Secretary General*, para. 43.

[1156] *Ibid.*, para. 45.

[1157] For more on the right to a decision within a reasonable time, see Garrido Muñoz et al., *supra* note 2, Chapter 5, section 5.5.3.

[1158] AfDBAT Judgment No. 81 (2012), *M. X-D-P v. AfDB*, paras. 43, 70. See also AfDBAT Judgment No. 82 (2012), *S. A. O. v. AfDB*, paras. 50, 91-93.

6.1.[1159] It concluded that the Judgment of the GCEU upholding the EUCST's conclusion that the application was out of time affected the consistency of EU law and thus set it aside.[1160] In *BP v. European Union Agency for Fundamental Rights*, in contrast, the CJEU rejected the applicant's argument that the GCEU had breached the right to a fair hearing within a reasonable time, set out in ECHR art. 6 and art. 47 of the Charter, by rendering its order in two years and eight months.[1161]

In *Mr. A.G. S. v. UNIDO*, the complainant argued before the ILOAT that he had been denied a fair hearing within a reasonable time, in violation of ECHR art. 6.1, because the organization had deemed certain of his claims inadmissible two years after he had presented them. The ILOAT refused to accept his reliance on the ECHR, stating that '[r]eliance on the Convention is misplaced as it is not applicable to international organisations. The complainant's rights are those derived from the Staff Regulations and Staff Rules and from the general principles of law applicable to such organisations. However, the complainant was certainly entitled to a determination of his appeal within a reasonable time in accordance with the Staff Regulations and Staff Rules and applicable legal principles.'[1162] Thus, it found the complainant's claim meritorious, but on the basis of the Staff Regulations and Rules, viewed through the lens of general human rights principles, rather than the ECHR. This has become a standard approach of the ILOAT and some other IATs when referring to human rights instruments not directly binding on the organization in question.[1163]

[1159] CJEU, *Arango Jaramillo and others v. European Investment Bank*, Case C-334/12 RX-II (2013), paras. 40-46.

[1160] *Ibid.*, operative clause.

[1161] CJEU, *BP v. European Union Agency for Fundamental Rights*, Order in Case No. C-682/19 P (2020), paras. 51-52. See also GCEU, *WT v. European Commission*, Case No. T-91/20 (2022), paras. 132-150 (recognizing the right but finding it had not been violated on the facts of the case).

[1162] ILOAT Judgment No. 2662 (2007), *Mr. A.G. S. v. UNIDO*, para. 12.

[1163] See P. Bodeau-Livinec and A-M Thévenot-Werner, 'Activité et jurisprudence des tribunaux administratifs des Nations Unies et de l'OIT', (2016) 62 *Annuaire français de droit international* 303, at 336; A-M Thévenot-Werner, 'Fascicule 110 : Introduction au droit des organisations internationales', in *JurisClasseur Droit International* (updated 8 May 2021), para. 38.

F. Right of access to justice

The right to access to justice, grounded in ECHR art. 6.1, has been frequently raised before IATs in several different contexts.[1164] In *Applicant v. UNSG*, for example, the UNDT held that 'each person has the fundamental human right to free access to justice.'[1165] It found that this right included 'the right to file an application in front of an impartial tribunal, and therefore also the right to withdraw that application'[1166]. It reiterated this position in *Dienes*,[1167] *Wilson*,[1168] *Sayrols*,[1169] *Odusote*,[1170] *Malana*,[1171] *Bright*,[1172] *Shehadeh*[1173] and *Shindo*.[1174] In *Wamalala*, the UNDT grounded the right of access to IATs in the human right to work, stating that:

> 'Any person who is aggrieved by any act of the administration should be able to vindicate his/her rights before a judicial body. In matters of employment, Article 6.1 of the International Covenant on Economic, Social and Cultural Rights provides: "The State Parties to the present Covenant recognize the right to work . . . *and will take appropriate steps to safeguard this right*". It is in very exceptional cases that access to a judicial body can be denied and even then there must be valid reasons for such a non-access. What the Applicant is therefore attempting to do is vindicate his rights that he avers were denied to him and that denial has an impact

[1164] For a detailed analysis of the specific context of access to justice for non-staff personnel in the UN system, see Garrido Muñoz et al., *supra* note 2, Chapter 10.

[1165] UNDT Order No. 99 (NY/2016), *Applicant v. UNSG*, para. 41.

[1166] *Ibid.*

[1167] UNDT Order No. 242 (NY/2016), *Dienes v. UNSG*, para. 5.

[1168] UNDT Order No. 270 (NY/2016), *Wilson v. UNSG*, para. 15; UNDT Order No. 272 (NY/2016), *Wilson v. UNSG*, para. 87.

[1169] UNDT Order No. 274 (NY/2016), *Sayrols v. UNSG*, para. 15.

[1170] UNDT Order No. 217 (NY/2017), *Odusote v. UNSG*, para. 6.

[1171] UNDT Order No. 247 (NY/2017), *Malana v. UNSG*, para. 18.

[1172] UNDT Order No. 261 (NY/2017), *Bright v. UNSG*, para. 8.

[1173] UNDT Order No. 7 (NY/2018), *Shehadeh v. UNSG*, para. 12.

[1174] UNDT Order No. 91 (NY/2018), *Shindo v. UNSG*, para. 21.

> on his right to work. He cannot therefore be denied access to the Tribunal in the absence of a clear and express provision to that effect.'[1175]

The right to access to justice has also been applied by IATs several times in the context of external recruitment exercises. This issue has arisen in particular at the ATCE. Following the *Schmitt* and *Verneau* judgments of the ATCE, in which it had been deemed discriminatory for staff members but not external candidates to challenge an external recruitment procedure,[1176] the Staff Regulations were amended on 7 July 2010 to prevent staff members from bringing appeals against 'external recruitment procedures.'[1177] Thus, rather than allowing access to the tribunal for external candidates, the Staff Regulations were amended to prohibit access to the tribunal for internal candidates. In *Cucchetti Rondanini and others*, the applicants, staff members of the CoE, challenged an external recruitment procedure in which their candidacies had been rejected. The Secretary General argued that their appeal to the ATCE was inadmissible because of the above-mentioned provision in the Staff Regulations preventing staff members from bringing appeals against 'external recruitment procedures.' The applicants argued that this amendment violated their right to a fair hearing protected by ECHR Article 6. In a strongly-worded rebuke to the Organisation, the Tribunal agreed, stating:

> 'The Tribunal finds that whilst the Organisation was asked [in the Tribunal's *Schmitt* judgment] to "take whatever positive steps are necessary" [to end discrimination between internal and external candidates,] it opted to get rid of the discrimination in question by curtailing the rights of existing staff members rather than broadening the rights of external candidates. The Tribunal points out that all persons believing themselves to be the victim of an act adversely affecting them are entitled to challenge that act through the courts. That is a general principle which holds good in the member states of the Council of Europe and, in the matter of access to employment in the international civil service, in other international organisations too. In the light of these circumstances the Tribunal cannot accept

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[1175] UNDT/2012/052, *Wamalala v. UNSG*, para. 26 (reversed on other grounds in 2013-UNAT-300, *Wamalala v. UNSG*). See also UNDT Order No. 107 (NY/2019), *Nadeau v. UNSG*, para. 4 (concluding that a denial of the right to counsel of one's own choice, enshrined in ICCPR art. 14.3(b), would 'constitute a severe obstruction to … access to justice').

[1176] ATCE Decision on App. No. 250/1999, *Schmitt v. Secretary General*, paras. 15-16; ATCE Decision on App. No. 413/2008, *Verneau v. Secretary General*, paras. 46-47.

[1177] See ATCE Decision on Apps. Nos. 548-553/2014, *Cucchetti Rondanini and others v. Secretary General*, paras. 62-63.

> the amendment of 7 July 2010 to the Staff Regulations – which is inconsistent not only with its case-law but also with a general principle of law – and consequently, … the Tribunal has a duty to reject it.'[1178]

Human rights instruments have also been referred to in the context of the right of access to justice in claims brought by interns or former interns seeking access to IATs. In particular, in *Di Giacomo*, the applicant, a former intern at the UN, sought access to the UNDT to contest a decision requiring him to be accompanied by a security guard when accessing the UN premises. Under arts. 2.1 and 3.1 of the UNDT Statute, the Tribunal's competence is limited to applications filed by current or former staff members, or those making claims on their behalf. Furthermore, General Assembly Resolution 63/253, by which it adopted the statutes of the UNDT and UNAT, states explicitly that 'interns… shall not have access to the United Nations Dispute Tribunal or the United Nations Appeals Tribunal.' Thus, the Tribunal had no choice but to dismiss the applicant's complaint. However, it included a lengthy *obiter dictum* in which it expounded on relevant human rights instruments relating to the right to an effective remedy, which it considered the limitation on access to violate, including UDHR arts. 8 and 10, as well as ICCPR arts. 2.3 and 14.1. It concluded that '[t]he standard conditions regulating internships … do not include any dispute resolution provisions, and it is unclear to the Tribunal whether the current legal framework in the Organization contains an effective dispute resolution mechanism for interns. No doubt, proper attention should be given to this issue.'[1179]

[1178] *Ibid.*, para. 63.

[1179] UNDT/2011/168, *Di Giacomo v. UNSG*, paras. 46-48 (affirmed in 2012-UNAT-249, *Di Giacomo v. UNSG*) (followed in UNDT/2012/113, *El Moctar v. UNSG*, para. 35, and UNDT/2014/045, *Prisacariu v. UNSG*, para. 24, in the case of officers of local police forces assisting UN peacekeeping missions). A similar conclusion was reached in UNDT/2018/097, *Mindua v. UNSG*, paras. 29-36 with respect to a Judge *ad litem* of the ICTY (citing UDHR art. 10 and ICCPR art. 14.1) (affirmed in 2019-UNAT-921, *Mindua v. UNSG*). While the UNAT in *Gabaldon* did extend its jurisdiction to individuals who were not yet staff members but had received an offer of employment (2011-UNAT-120, *Gabaldon v. UNSG*, paras. 28-30), in *Basenko* it refused to do the same for interns (2011-UNAT-139, *Basenko v. UNSG*, paras. 11-12). Another context in which an applicant was unable to access the tribunal is *Agramunt Font de Mora* before the ATCE, concerning an applicant who was the President of the Parliamentary Assembly of the Council of Europe, attempting to challenge a mechanism established to remove him from office. His arguments based on art. 47 of the Charter of Fundamental Rights of the European Union and ECHR arts. 6.1 and 13 were unsuccessful. See ATCE Decision on App. No. 584/2017, *Agramunt Font de Mora v. Secretary General*, paras. 71-77. Mention could also be made of *L v. European Parliament*, in which the applicant claimed that failure to provide him legal aid violated his right of access to justice under ECHR art. 6. The GCEU accepted the applicability of the right but found that it had not been infringed on the facts of the case. GCEU, *L v. European Parliament*, Order in Case No. T-156/17 (2018), paras. 31-33.

G. Right to an effective remedy

Human rights instruments have been invoked in a number of cases concerning the right to an effective remedy and such claims have frequently been successful. For example, in *Bertucci*, the UNAT cited UDHR art. 8 for the proposition that everyone has the right to an effective remedy, finding that, in order to uphold this right, it could draw an adverse inference from the administration's refusal to disclose evidence.[1180] Similarly, in *Cohen*, the UNAT cited UDHR art. 8 for the proposition that everyone has the right to an effective remedy in the context of a reinstatement case, concluding that '[t]he option given to the Administration, on the basis of article 10(5)(a) of the Statute of the Dispute Tribunal, to pay compensation in lieu of performance of a specific obligation such as reinstatement, combined with the cap fixed in article 10(5)(b), should not render ineffective the right to fair and equitable damages, which is an element of the right to an effective remedy.'[1181] This position was followed by the UNDT in *Ross*.[1182] In *Maina v. UNSG*, the UNDT cited UDHR art. 8 for the proposition that everyone has a right to an effective remedy for acts violating fundamental rights.[1183] The UNDT also referred to the right to an effective remedy in *Kashala* (in the context of the right to work)[1184]. In *Abdullah*, the UNRWA Dispute Tribunal concluded that, in order to uphold the right to an effective remedy enshrined in UDHR art. 8, it 'should exercise its discretion with caution when it comes to excluding a party from participating in the proceedings, even when the Tribunal may have the authority to do so.' It therefore allowed the respondent to participate in the proceedings even though it had filed a pleading late.[1185] In *Nogueira*, the applicant argued that the administration failed to provide him any effective remedy following his report of harassment by his supervisor since it merely thanked him for bringing the issue to its attention without taking further measures. The UNDT agreed, finding a basis for the right to an effective remedy in ICCPR art. 2.3.a, ECHR art. 13 and ACHR art. 25, and concluding that '[t]hus, the

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[1180] Judgment No. 2011-UNAT-121, *Bertucci v. UNSG*, para. 51 (followed in 2013-UNAT-292, *Abu Jarbou v. CGUNRWA*, para. 32).

[1181] 2011-UNAT-131, *Cohen v. UNSG*, para. 18 (followed in UNDT/2018/079, *Koduru v. UNSG*, para. 81).

[1182] UNDT Order No. 010 (NBI/2019), *Ross v. UNSG*, para. 11.

[1183] UNDT Order No. 275 (NBI/2014), *Maina v. UNSG*, para. 70.

[1184] UNDT/2014/23, *Kashala v. UNSG*, para. 34.

[1185] UNRWADT Judgment No. UNRWA/DT/2013/037/Corr.01, *Abdullah v. CGUNRWA*, para. 42 (vacated in part but explicitly affirmed on this point in 2014-UNAT-482, *Abdullah v. CGUNRWA*, para. 32).

notion that where there is breach of a right a remedy must ensue is axiomatic.' The Tribunal consequently ordered the payment of USD 25,000 in compensation.[1186]

[1186] UNDT/2013/026, *Nogueira v. UNSG*, paras. 62 and 80 (affirmed in 2014-UNAT-409, *Nogueira v. UNSG*). Mention should also be made of the *Lesar* case before UNAT, in which the tribunal referred to UDHR art. 8 as codifying the right to an effective remedy but found no violation on the facts of the case. See 2011-UNAT-126, *Lesar v. UNSG*, para. 12 (followed in 2013-UNAT-297, *Likuyani v. UNSG*, para. 14).

VI. ECONOMIC RIGHTS

Economic rights have been long-recognized as particularly challenging to protect and enforce, due to difficulties, real or perceived, with their justiciability.[1187] In the past two decades, however, such rights have been increasingly litigated at the national and international levels.[1188] It is now more widely accepted that, in specific contexts, an economic right such as the right to work can be rendered less abstract and thus justiciable. Since IATs are deciding disputes between staff members and their employer, they provide an ideal forum for the litigation of economic rights, and it perhaps should come as no surprise that IATs have often dealt with such rights. This section reviews economic rights addressed by IATs in which international human rights instruments have been invoked, in particular the right to work, the right to a salary and the right to equal pay for equal work.

A. Right to work

The right to work is contained in UDHR art. 23.1 and ICESCR art. 6.1. These provisions have been cited and applied several times by IATs, in particular by the UNDT. For example, in *Kashala,* the UNDT cited ICESCR art. 6.1 for the proposition that everyone has a right to work.[1189] In *Maina v. UNSG*, the UNDT cited ICESCR art. 6.1 for the proposition that everyone has a right to the opportunity to gain a living by work which he or she freely chooses or accepts, in order to substantiate its finding that the decision to place the applicant on administrative leave without pay was *prima facie* unlawful.[1190] In *Applicant v. UNSG*, the UNDT found that notifying a future (non-UN) employer of a UN-instigated incomplete disciplinary process against a former UN staff member was *prima facie* unlawful because it could have an effect on the former staff member's right to work enshrined in UDHR art. 23.1.[1191] In *Tadonki*, a three-judge panel of the UNDT held that the non-renewal of the applicant's employment contract

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[1187] See K. Roth, 'Defending Economic, Social and Cultural Rights: Practical Issues Faced by an International Human Rights Organization', (2004) 26 *Human Rights Quarterly* 63; L. S. Rubenstein, 'How International Human Rights Organizations Can Advance Economic, Social, and Cultural Rights: A Response to Kenneth Roth', (2004) 26 *Human Rights Quarterly* 845; K. Roth, 'Response to Leonard S. Rubenstein', (2004) 26 *Human Rights Quarterly* 873.

[1188] See M. Langford, ed., *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (2009).

[1189] UNDT/2014/023, *Kashala v. UNSG*, para. 34.

[1190] UNDT Order No. 275 (NBI/2014), *Maina v. UNSG*, paras. 70-73.

[1191] UNDT Order No. 72 (NY/2017), *Applicant v. UNSG*, para. 29.

was unlawful, in part because the right to work codified in UDHR art. 23.1 and ICESCR art. 6, referred to in the *Tadonki* case, had been ignored.[1192]

B. Salary as a human right

The human right to a salary has arisen in particular in IATs situated in the Americas, likely as a result of the codification of this right in ADHR art. 14. In particular, this right was applied by the OASAT in *Torres et al.*, a major case in which a judgment was entered for 479 applicants. In that case, the OASAT considered the Organization's failure to pay cost-of-living-adjustments in accordance with the 'comparator' system then in force. The Organization justified the reduced cost-of-living-adjustments on budgetary shortfalls, due in part to some member States conditioning their membership payments on the use of the funds for specific discretionary spending other than salaries, as well as the Secretary-General's decision to prioritize other expenses, such as prepayment of the mortgage on the headquarters building. The Tribunal refused to accept these justifications, emphasizing that '[s]alary, as the fundamental element of the employment contract, is a human right protected by the various international standards on human rights and in particular Article XIV of the American Declaration of the Rights and Duties of Man.'[1193] The Tribunal therefore held that 'salary and other emoluments owed by the Organization to its staff constitute a basic or essential element of the individual employment contract' and that 'the financial resources of the Organization must be used to pay as a priority what is owed to the staff for the [cost-of-living-adjustment] based on the full comparator.'[1194] The right to salary was also applied by the MERCOSUR TAL in *García*, which stated that its applicable law included general principles of law as set forth in international and regional instruments relating to fundamental rights of a universal nature. It observed that the applicant had provided services for the MERCOSUR Social Institute without receiving any type of remuneration. Considering that the right to salary is a

[1192] UNDT/2013/032, *Tadonki v. UNSG*, paras. 310-314 (the Appeals Tribunal affirmed the decision of the UNDT that the non-renewal was unlawful, but on other grounds, namely that the rebuttal panel had concluded that the applicant 'fully met performance expectations', 2014-UNAT-400, *Tadonki v. UNSG*). The references to human rights in the *Tadonki* Judgment of the UNDT were quoted and adopted in UNDT/2016/094, *Dalgamouni v. UNSG*, para. 121.

[1193] OASAT Judgment No. 124 (1994), *Torres and others v. OAS SG*, Part X.

[1194] *Ibid.*, operative paragraph, points 3-6.

fundamental right protected by international and regional standards, the Tribunal ordered the payment of salary and benefits for the period worked.[1195]

C. Right to equal pay for equal work

Aside from non-discrimination, it is posited that IATs have looked to international human rights instruments more often with regard to the right to equal pay for equal work than in any other area. As a result, this right, relatively infrequently invoked in other contexts, has become a mainstay of the jurisprudence of the international civil service, having been cited and elaborated by the UNDT, UNAT, ILOAT, ADBAT and IDBAT.

For example, the UNDT in *Chen* grounded the right to equal pay for equal work in UDHR art. 23.2, ICESCR art. 7 and the ILO's Equal Remuneration Convention. The Tribunal stated that 'it is clear that the staff of the UN are entitled to expect certain normative implied rights. One of these is the right to equal pay for equal work of equal value. … It is apparent from these references that in the UN context this right is not necessarily limited to equality between genders but refers also to equality for each employee performing a particular defined job'[1196]. The Tribunal stated that the principle 'that persons of equal ability and experience performing the same roles should receive equal treatment … is so fundamental that it can be regarded as being implied into UN employment contracts.'[1197] In *Jaen*, the UNDT referred to the principle of equal pay for work of equal value in ICESCR art. 7 and UDHR art. 23.2 in reaching its finding that irreparable damage could be caused in the absence of interim relief.[1198]

The UNAT, for its part, stated in *Elmi* that the principle of equal pay for equal work 'derives from Article 23(2) of the Universal Declaration of Human Rights, and the Administration is bound to it with regard to the relationship to its staff members.' Thus, it left no doubt that the source of law was an international human rights instrument. On the facts of the case, however, it found that the denial of retroactive promotion 'for pension purposes' did

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[1195] MERCOSUR TAL, Judgment No. 3 (2015), *García v. MERCOSUR Social Institute*, at 5 and 11.

[1196] UNDT/2010/068, *Chen v. UNSG*, paras. 42-43 (affirmed in 2011-UNAT-107, *Chen v. UNSG*).

[1197] *Ibid.*, para. 45. It ordered payment of the difference in salary between the P-3 and P-4 levels for the relevant time, as well as six months net base pay for non-material damage including frustration, humiliation and delays. *Ibid.*, paras. 60-61.

[1198] UNDT Order No. 29 (NY/2011), *Jaen v. UNSG*, para. 32.

not violate the principle because it did not constitute unlawful discrimination, it having concluded that there was a lawful and convincing reason for it.[1199]

In *Ali et al*, the UNAT found that the longstanding failure of the administration to consider the applicants' request for reclassification of their posts, despite evidence that they were performing tasks consistent with a higher grade, amounted to a violation of the principle of equal pay for equal work enshrined in UDHR art. 23.2, as well as violating the principle of non-discrimination in the UDHR and ICESCR.[1200] In *Tabari v. CGUNRWA*, the UNAT also cited UDHR art. 23.2 as authority for the principle of 'equal pay for equal work'[1201]. Finding a violation of that principle, it ordered retroactive payments to be made to the applicant.[1202]

The ILOAT has also considered the right to equal pay for equal work on several occasions with reference to international human rights instruments. For example, in *Mr. P.W. v. UNESCO*, the complainant sought reinstatement of his special post allowance on the basis that he continued to perform the extra duties which had justified the special post allowance in the first place. The Appeals Board was of the view that it was 'just, fair, equitable and consonant with human rights that [he] be paid the remuneration for the additional duties performed by him'[1203]. The ILOAT agreed, justifying its decision with reference to the principle of equal pay for equal work:

> 'The principle of equality directs equal pay for work of equal value. An employer is not absolved from the requirement to ensure equal treatment and equal pay for work of equal value merely because an employee has the right to seek reclassification of his or her post. As it is not in dispute that, notwithstanding the abolition of the post of Administrative Officer, the complainant continues to perform all the duties and discharge all the responsibilities of that post, he is entitled to remuneration commensurate with the value of that work. … [T]he principle of

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[1199] 2016-UNAT-704, *Elmi v. UNSG*, paras. 32-35 (followed in UNDT/2020/063, *Alquza v. UNSG*, para. 32 (upheld on appeal in 2020-UNAT-1065, *Alquza v. UNSG*, pars. 33-34). See also 2021-UNAT-1139, *El-Tabari and Abdullah v. CGUNRWA*, para. 25.

[1200] 2016-UNAT-622, *Aly et al. v. UNSG*, para. 39 (quoted *in extenso* and followed in 2016-UNAT-615, *Ejaz, Elizabeth, Cherian & Cone v. UNSG*, para. 32).

[1201] 2010-UNAT-030, *Tabari v. CGUNRWA*, para. 17.

[1202] *Ibid.*, para. 24. See also 2021-UNAT-1141, *Yusef, El Manasri and Abdulghani v. CGUNRWA*, paras. 38-39 (remanding a case back to the UNRWADT for consideration of the principle of equal pay for equal work).

[1203] ILOAT Judgment No. 2314 (2004), *Mr. P. W. v. UNESCO*, para. 6.

> equal pay for work of equal value requires that, until a proper evaluation of the work performed by the complainant is carried out, he should be remunerated at a rate equivalent to that which he would have received by way of special post allowance for so long as he continues to perform all of the duties and responsibilities of the abolished post.'[1204]

Other complainants invoking the principle of equal pay for equal work with reference to international human rights instruments before the ILOAT have been less successful. In *Tar*, the complainant argued that the post-adjustment multiplier for Geneva violated the right to equal pay for equal work set out in UDHR art. 23.2 because it did not take into account the fact that the ITU in Geneva imposed a 40-hour work week while New York staff members benefited from a 35-hour work week. The ILOAT refused to accept this argument, stating that the claim was 'nothing more than an attempt to challenge the pay scales under the guise of attacking the multiplier.'[1205] A similar challenge to differences in working hours between duty stations based on the principle of equal pay for equal work was made by the complainants in *Derque, Hansson (No. 2), Ilardi, Makai and Seinet*. While implicitly accepting the applicability of the human rights principle, the ILOAT dismissed the complaint on the grounds that the system of post adjustment is 'concerned solely with parity of purchasing power, and is not an appropriate means of securing compensation for differences in working hours between duty stations.'[1206] In *Deville and Gasser and others*, the complainants contested a cost-saving measure of the organization whereby their full-time fixed-term contracts were converted to half-time fixed-term contracts supplemented with half-time temporary contracts which did not carry benefits and were paid on the lowest applicable grade on the pay-scale. They argued that this arrangement violated the principle of equal pay for equal work enshrined in the UDHR, since they were not given equal remuneration for work of equal value.[1207] The ILOAT did not accept this argument, concluding that the 'principle was never intended to apply so as to give rise to a claim by an individual to be paid at the same rate for all work which he or she performs:

[1204] *Ibid.*, paras. 22-23.

[1205] ILOAT Judgment No. 1356 (1994), *In re Tar*, para. 8.

[1206] ILOAT Judgment No. 1460 (1995), *In re Derque, Hansson (No. 2), Ilardi, Makadi and Seinet*, para. 10.

[1207] ILOAT Judgment No. 2097 (2002), *in re Deville, Gasser and others*, para. B.

differential rates for work performed under different conditions, such as overtime to take a common example, are not discriminatory.'[1208]

In *Mesch and Siy (No. 4)*, the ADBAT cited to ICESCR art. 7 for the proposition that employees are entitled to 'equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.'[1209] The Tribunal stated that these fundamental terms of employment 'are so basic that they will always be implied, and perhaps are not even capable of express waiver save in extraordinary circumstances.'[1210] The Tribunal concluded however that reimbursement of national income taxes was not a fundamental and essential condition of employment[1211], a point on which one Judge dissented.[1212]

Finally, the IDBAT in *Etienne* considered a request by the applicant to adjust his pension rights to take into account the effects of severe inflation and currency devaluation in Colombia, where he resided. He argued that this had caused his pension to be worth much less in terms of purchasing power than compared to pensioners in the United States, in violation of the principle of equal pay for equal work. The IDBAT refused to accept this argument, observing that the Bank's 'calculation of pension entitlements and its formula for insulating against local inflationary conditions are the same for all retired staff members regardless of where they have chosen to live' and thus 'there is no unequal treatment'[1213]. One judge dissented, stating that 'reality shows that the revaluation of the Colombian peso and inflation have led to a significant deterioration of the Complainant's retirement income, resulting in a violation of the principle of equal treatment recognized by the International Labour Organization, the international covenants on civil, social, and economic rights, and others.'[1214]

[1208] *Ibid.*, para. 18.

[1209] ADBAT Decision No. 35 (1997), *Mesch and Siy v. ADB (No. 4)*, para. 20.

[1210] *Ibid.*

[1211] *Ibid.*, para. 49.

[1212] *Ibid.*, dissenting opinion of Judge Stern, para. 38.

[1213] IDBAT Judgment in Case No. 67 (2009), *Etienne v. IDB*, para. 3.

[1214] *Ibid.*, at 8 (dissenting opinion of Judge Rodriguez).

VII. PRIVACY RIGHTS

This section reviews privacy rights addressed by IATs in which international human rights instruments have been invoked, in particular the right to privacy and non-interference in private life and the right to marry.

A. Right to privacy and non-interference in private life

International human rights instruments have been cited in relation to the right to privacy and non-interference in private life in a great number of cases before IATs, in a wide variety of contexts, including the anonymization of judgments, the conduct of investigations, the question of holding public hearings, and other areas, from family allowance entitlements to forced eviction.

It is perhaps not surprising that the right to privacy has frequently been invoked in the context of the anonymization of judgments. For example, in *Kaberere* before the CSAT, the applicant requested that a judgment of the tribunal on a previous application he had brought, which had recently been published on the CSAT website, be redacted so that his name was anonymized and replaced with initials. He argued that, '[a]s currently published, the Judgment has the effect of scaring away my potential employers, who themselves will not have the benefit of a deeper explanations [*sic*] of all the issues contained thereof.'[1215] In a ruling by the President of the Tribunal after consultation with other members, the President stated that justifications for redaction 'might include, by way of example only, national security, inter-governmental or commercial confidentiality and respect for private life. Plainly the Tribunal would need to take account of international human rights both in identifying potential justifications and in conducting "balancing exercises" which might arise.'[1216] Thus, he clearly acknowledged both the applicability of human rights law in the internal justice system of the Commonwealth Secretariat and the need to apply it to balance interests related to the question of possible redaction. However, on the facts of the case, he concluded that the 'application to redact d[id] not raise any factor which could qualify as a special justification' because it is 'one of the ordinary hazards of litigation in the democratic world that unfavourable judgments, and

[1215] CSAT Judgment No. CSAT APL/20 (No 1) (2014), *Kaberere v. Commonwealth Secretariat*, para. 3.

[1216] *Ibid.*, paras. 18-19.

unfavourable findings within those judgments, may come to wider notice.'[1217] Similarly, the UNAT denied a request by a staff member that his name be anonymized in a UNDT judgment, reasoning that even if that judgment were affirmed, its conclusions about the staff member's misconduct 'could not be considered harmful to him.'[1218] It therefore considered that there was no violation of the right to non-interference in private life guaranteed by UDHR art. 12.[1219] In *Applicant v. UNSG*, by contrast, the UNDT acceded to the applicant's request for anonymization, basing its decision on the right to protection of private and family life enshrined in UDHR art. 12, ICCPR art. 17, ECHR art. 8 and ACHR art. 17.[1220] The same approach was taken by the UNDT in another case, also called *Applicant v. UNSG*.[1221] On the other hand, the UNDT refused to follow the approach in *Utkina*.[1222]

Another context in which the right to privacy has arisen is the conduct of investigations. For example, in *OZ v. EIB* before the GCEU, the applicant argued that the inclusion in an investigation report of unnecessary comments directly connected with her private life violated her right to privacy enshrined in ECHR art. 8 and art. 7 of the European Charter of Fundamental Rights.[1223] The GCEU analysed the question within the framework of these conventions and concluded that there had been no violation of the right to privacy.[1224] This conclusion was upheld by the CJEU, which observed that the references to matters pertaining to the applicant's private life did not appear to be excessive or irrelevant.[1225] In *M. X-D-P*, the applicant argued before the AfDBAT that the respondent had violated her right to privacy set out in UDHR art. 12 (as well as in the ECHR and ICCPR) during a misconduct investigation by taking into account the special relations she had with a colleague and by examining the lists of her personal effects while moving from Tunis to Madagascar and back. The AfDBAT rejected this

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[1217] *Ibid.*, paras. 20-22 (followed in CSAT Judgment No. CSAT APL/37 (No.2) (2016), *Matus v. Commonwealth Secretariat*, paras. 29-30).

[1218] 2012-UNAT-210, *Finniss v. UNSG*, para. 25.

[1219] *Ibid.*, para. 26.

[1220] UNDT/2013/120, *Applicant v. UNSG*, para. 26.

[1221] UNDT/2013/163, *Applicant v. UNSG*, para. 18.

[1222] UNDT/2014/024, *Utknia v. UNSG*, para. 32 (affirmed in 2015-UNAT-524, *Utknia v. UNSG*).

[1223] GCEU, *OZ v. EIB*, Case No. T-607/16 (2017), para. 66.

[1224] *Ibid.*, paras. 67-83.

[1225] CJEU, *OZ v. EIB*, Case No. C-558/17 P (2019), paras. 71-72. See also GCEU, *QB v. ECB*, Case No. T-827/16 (2018), paras. 76-82 (concluding that while workplace emails could attract the protection of the right to noninterference in private life enshrined in ECHR art. 8, there had been no violation on the facts of the case).

argument, considering that because the alleged misconduct involved colluding with a colleague in the wrongful acceptance of services/gifts from a contractor, it was appropriate both to consider her special relationship with that colleague and to examine the lists of personal effects, in order to determine if the gifts in question were included.[1226]

The right to privacy has also been raised in the context of a request for a private hearing of oral argument. In *Kaylin*, the IDB filed such a request for a private hearing, based on the presence in the case file of confidential documents and on the need to protect the right to confidentiality of persons not party to the case. The applicant opposed the request on the basis of the general rule that the hearing of oral argument be public. The IDBAT decided, considering the exceptional circumstances of the case, that the hearing of oral argument be private, observing in the operative paragraph of its ruling that '[t]his case is closely concerned with intimate events in the life of persons not party to this process and whose right to privacy could be seriously harmed, in violation of the universal principle of human rights which protects it.'[1227]

The right to privacy and non-interference in private life has also been raised in a wide variety of other circumstances. For example, in *Sorinas Balfego*, the applicant argued before the ATCE that limiting the 'family allowance' to married staff members, to the detriment of other co-habiting staff members with children, was a violation of respect for the staff member's private life, a right which is guaranteed by ECHR art. 8. The Tribunal agreed, stating that it cannot 'ignore the realities which have become accepted in this field as a result of widespread socio-economic changes, it being possible in certain circumstances for the concept of 'family life' contained in Article 8 of the European Convention on Human Rights to encompass bonds existing between people who are not bound by the legal bond of marriage.'[1228] In *Mrs. T. D.-N. v. CERN*, the complainant argued before the ILOAT that the accessing of her professional email account, which contained personal emails, by another staff member for professional reasons while she was on sick leave constituted a violation of her right to privacy enshrined in the ECHR art. 8.[1229] The ILOAT did not accept this argument. While it acknowledged, contrary

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[1226] AfDBAT Judgment No. 81 (2012), *M. X-D-P v. AfDB*, paras. 22, 84-86.

[1227] IDBAT Case No. 60 (2007), *Kaylin v. IDB*, paras. 1-3.

[1228] ATCE Decision on App. No. 114/1985, *Sorinas Balfego v. Secretary General*, para. 59.

[1229] ILOAT Judgment No. 2183 (2003), *Mrs T. D.-N. v. CERN*, para. 17.

to the position argued by the organization, that the principle of confidentiality applied to private email messages stored in a professional setting, it found that there was no violation of the applicant's right to privacy because the other staff member, who was her supervisor at the time, had a legitimate professional need to access her email account and had followed the correct protocol to obtain permission for that access .[1230] In *Khisa*, the UNDT concluded that an eviction of a staff member from UN-provided accommodation at a UN peacekeeping mission, carried out by six agents on behalf of the UN, violated the applicant's right to be free from interference with privacy, family or home, codified in ICCPR art. 17.[1231] In *Janoha v. European Commission* before the GCEU, the applicants argued that a reduction in their annual leave entitlement violated their right to non-interference with private life enshrined in ECHR art. 8 and art. 7 of the European Charter of Fundamental Rights.[1232] The GCEU accepted the applicability of these instruments but found that no violation had occurred.[1233]

B. Right to marry

International human rights instruments have also been referenced with regard to the right to marry. This right has been pleaded in relation to the granting of dependency benefits, in particular in *Al Abani* before the UNDT, in which the applicant contested the decision to deny him dependency benefits retroactively to the date of his marriage. This decision had been based on the fact that his country of nationality, Lebanon, had refused to recognize the marriage, conducted in Austria, because it had been a religious ceremony only and not a civil ceremony performed according to Austrian civil law. The applicant argued that the failure to accord him dependency benefits on the basis of Lebanon's decision constituted a violation of his right, enshrined in the UDHR art. 16, to marry without limitation as to religion. The UNDT accepted that the UDHR was applicable, recalling that the UNAT had 'explicitly referred to the Universal Declaration of Human Rights when examining the legality of decisions taken by

[1230] *Ibid.*, para. 20.

[1231] UNDT/2016/197, *Khisa v. UNSG*, para. 48. See also UNDT/2022/074, *Duparc v. UNSG*, para. 109 (placing limits on the administration's managerial discretion to use CCTV to monitor staff, citing UDHR art. 12).

[1232] GCEU, *Janoha v. European Commission*, Case C-517/16 (2018), paras. 59-67.

[1233] *Ibid.*, paras. 68-73. See also GCEU, *XU v. European Commission*, Case No. T-613-21 (2023), paras. 131-151 (also accepting the existence of the right on the basis of the human rights instruments invoked but finding no violation on the facts).

the Administration.'[1234] However, it found that it had no competence to consider whether Lebanon had committed a violation of human rights, observing that the applicant had not, in any case, been precluded from marrying his wife, which he did. The Tribunal emphasized that 'such right to enter into a marriage, without distinction, has to be distinguished from the recognition of said marriage by the Organization, and from what flows from such recognition under its Rules and Regulations.'[1235] This decision was affirmed by the UNAT[1236], although a strongly-worded dissent argued that 'Article 16(1) of the Universal Declaration protects more than the right to enter into marriage; it protects the right to the recognition of the marriage. Marriage is more than a civil or a religious ceremony; it encompasses the recognition of the marriage ceremony by others, including a staff member's employer.'[1237]

[1234] UNDT/2015/089, *Al Abani v. UNSG*, para. 44 (citing 2010-UNAT-030, *Tabari v. CGUNRWA*). For a commentary on this case, see P. Bodeau-Livinec and A-M Thévenot-Werner, 'Activité et jurisprudence des tribunaux administratifs des Nations Unies et de l'OIT', (2016) 62 *Annuaire français de droit international* 303, at 344-345.

[1235] UNDT/2015/089, *Al Abani v. UNSG*, para. 47.

[1236] 2016-UNAT-663, *Al Abani v. UNSG*.

[1237] *Ibid.*, Dissenting opinion of Judge Chapman, para. 17.

VIII. EXPRESSION RELATED RIGHTS

This section reviews expression-related rights addressed by IATs in which international human rights instruments have been invoked, in particular the right to freedom of expression and the right to freedom of association.

A. Freedom of expression

The right to freedom of expression — as embodied in international human rights instruments such as ECHR art. 10, UDHR art. 19 and ACHR art. 13 — has been considered in numerous cases before multiple tribunals, including the OASAT, the GCEU, the NATOAT, the ILOAT, the ATCE, the UNDT and the UNRWADT.

In some such cases, the applicant has been successful and avoided disciplinary sanctions for potentially harmful statements made because the IAT in question found the communications were protected by the right to freedom of expression. For example, the OASAT in *Valverde* held that statements about the administration made by a staff member to the press at a demonstration of the OAS Staff Association did not amount to misconduct because they 'represented the exercise by the Complainant of his inalienable human right, which cannot be waived, of the freedom of opinion and of expression, provided for in Article 13.1 and 13.2 of the ACHR, and in Article IV of the American Declaration of the Rights and Duties of Man.'[1238] Similarly, in *re Dicancro* before the ILOAT, the complainant had been dismissed following his sending of a cable to the staff committee containing criticisms about the administration. He argued that '[u]nderlying the Organization's whole reply is a reactionary desire to restrict freedom of speech'[1239]. The Organization responded that 'there was justification for not extending his appointment and that the decision was in no way incompatible with human rights and dignity.'[1240] The ILOAT found for the complainant, concluding that the statements in the cable were not damaging to the Organization but rather 'to be expected in a document of this sort'; it therefore concluded that the complainant had been 'the victim of a misconceived charge of misconduct' by which he 'must have been caused

[1238] OASAT Judgment No. 125 (1995), *Valverde v. SG of the OAS*, paras. 1-3.

[1239] ILOAT Judgment No. 427 (1980), *In re Dicancro*, para. F.

[1240] *Ibid.*, para. G.

deep distress.'[1241] Finally, the UNDT in *Applicant v. UNSG* pointed to the protection of freedom of expression in the UDHR and stated that '[l]imitations on a staff member's such right should be of an exceptional nature and should only be accepted when he or she is acting in an official capacity or when the image of the Organization is at stake.'[1242]

In other cases, however, IATs have refused to consider that the communications in question were protected. For example, the NATOAT in *JA v. NATO Joint Warfare Centre* cited ECHR art. 10.2 in support of its statement that 'freedom of expression is … not unlimited. National and international law systematically provide that the exercise of this freedom may be subject to restrictions, for example in the interest of security, for the protection of the reputation or rights of others, or for preventing the disclosure of information received in confidence.'[1243] It concluded that '[t]he disclosure of information related to NATO activities cannot be considered in any case as an exercise of its employees' freedom of expression'[1244] and thus upheld the decision to dismiss a staff member who published unsubstantiated critical remarks about the organization on the internet, in violation of her declaration of loyalty and declaration of secrecy.[1245] The ATCE considered the right to freedom of expression in *Kling*, in which the applicant challenged a disciplinary measure imposed on her for having written and published a book which reflected poorly on the image of the Organization. She argued that her actions were an exercise of her freedom of expression protected in ECHR art. 10. The ATCE refused to accept her argument. It observed that art. 10 does not guarantee absolute freedom of expression, but rather takes into account that the exercise of the freedom comes with responsibilities and can be subject to certain conditions and restrictions, as set out in art. 10.2. For the Tribunal, it was clear that, as an international civil servant, the applicant did not benefit from an unlimited freedom of expression.[1246] In a subsequent judgment, it added that, '[h]aving regard to the appellant's arguments concerning her right to free criticism of faiths, and above all to the way in which she balances Article 10 of the European Convention on Human Rights (freedom of expression) against Articles 9 (freedom of thought, conscience and religion) and

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[1241] *Ibid.*, paras. 17 and 19.

[1242] UNDT/2022/048, *Applicant v. UNSG*, para. 210.

[1243] NATOAT Judgment No. AT-J(2013)0007, *JA v. NATO Joint Warfare Centre*, para. 35.

[1244] *Ibid.*

[1245] *Ibid.*, operative paragraph.

[1246] ATCE Decision on App. No. 345/2005, *Kling (III) v. Secretary General*, para. 38.

14 (prohibition of discrimination), the Tribunal points out that disciplinary action may be regarded as a means of protecting both order and the rights and freedoms of others.'[1247]

The GCEU considered a case in which freedom of expression under ECHR art. 10 was invoked in *Skareby v. European External Action Service*. In that case, a staff member was refused permission to publish an article critical of the organization in a magazine and argued that this violated her right to freedom of expression under ECHR art. 10, as well as art. 11 of the European Charter of Fundamental Rights.[1248] The GCEU accepted the applicability of the right to freedom of expression under ECHR art. 10 but noted that it was subject to limitations under art. 10.2, including those necessary 'to preserve the relationship of trust which must exist between the institution and its officials.'[1249] It found on the facts of the case that the paragraphs which the staff member intended to publish were likely seriously to undermine the image and the dignity of the European institutions and therefore upheld the administration's decision not to allow their publication.[1250] This can be contrasted with the *DD* case, in which the GCEU bolstered its own arguments by reference to the right to freedom of expression set out in ECHR art. 10 and art. 11 of the European Charter of Fundamental Rights.[1251] Finally, the UNRWADT was faced with a freedom of expression argument in *Abu Siyam*, in which the applicant was subject to disciplinary measures for a comment he had posted to Facebook which was considered incompatible with the proper discharge of his duties to the Agency. He argued that the comment was protected by the right to freedom of expression enshrined in UDHR art. 19. The UNRWADT did not accept this argument, finding that the comment was incompatible with the regulatory framework of the Agency and the latter was within its discretionary authority to issue him a letter of censure.[1252]

Thus, as has been seen in other substantive areas, IATs when considering the right to freedom of expression have generally accepted the relevance of the international human rights

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[1247] ATCE Decision on App. No. 405/2008, *Kling (IV) v. Secretary General*, para. 62.

[1248] GCEU, *Skareby v. European External Action Service*, Case No. T-585/16 (2017), para. 63.

[1249] *Ibid.*, paras. 77-79.

[1250] *Ibid.*, paras. 89-92. See also GCEU, *DD v. EU Agency for Fundamental Rights*, Case No. T-470/20 (2022), paras. 83-100 (concluding that plagiarism by the applicant was not protected by the right to freedom of expression set out in ECHR art. 10, as well as art. 11 of the European Charter of Fundamental Rights).

[1251] GCEU, *DD v. EU Agency for Fundamental Rights*, Case No. T-632-19 (2021), para. 153.

[1252] UNRWADT Judgment No. UNRWA/DT/2018/018, *Abu Siyam v. CGUNRWA*, paras. 21, 34-36.

instruments invoked by the parties, and in many cases the tribunals themselves have cited to these instruments, even if on the facts of the case they did not always conclude that a violation of those provisions existed.

B. Freedom of association

International human rights instruments codifying the right to freedom of association have been referred to in several cases before IATs, including before the UNDT, the UNAT, the UNRWADT, the IMFAT and the ILOAT.[1253] The UNDT in *Kisambira* stated that, in accordance with general principles of international law and norms (including as expressed in international instruments on the right to freedom of association and collective bargaining), the Respondent had an obligation to facilitate organisational rights.[1254] In *Hassanin*, the UNDT affirmed *Kisambira*, referring also to the right to freedom of association codified in UDHR art. 23.4 and ICCPR art. 22.[1255] In *Trevino*, the UNAT engaged in a detailed discussion of the right of freedom of association by reference to ECHR art. 11, UDHR arts. 20 and 23, and ICCPR art. 22.[1256] The UNRWADT considered the right to freedom of association in *Thweib and Al Hasanat*, in which the applicants contested the conclusions of a disciplinary investigation charging them with misconduct for having participated in a sit-in. The Tribunal cited to ICESCR art. 8.1 for the proposition that the right to strike was a fundamental human right and concluded 'that the Agency failed to establish that the sit-in was an illegitimate exercise of the internationally recognized right to strike and assemble peacefully.'[1257] The IMFAT, for its part, considered the right in *D'Aoust (No. 3) v. IMF*, in which the applicant cited UDHR arts. 20 and 23.4 in his claim that his right to freedom of association had been violated by the choice he had been given between foregoing nomination to the governing board of the Staff Association while retaining his post as a Senior Human Resources Officer or accepting the nomination as well as

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[1253] For a detailed treatment, see L. Levi, 'La Liberté d'association des fonctionnaires internationaux et le droit d'ester en justice des organisations syndicales et professionnelles', in *Les évolutions de la protection juridictionnelle des fonctionnaires internationaux et européens : actes du colloque organisé à Luxembourg les 1 et 2 avril 2011* (2012), 245-259.

[1254] UNDT Order No. 36 (NY/2011), *Kisambira v. UNSG*, para. 23.

[1255] UNDT Order No. 83 (NY/2011), *Hassanin v. UNSG*, paras. 22-23.

[1256] 2022-UNAT-1231, *Trevino v. UNSG*, paras. 58-70.

[1257] UNRWA Dispute Tribunal Judgment No. UNRWA/DT/2013/028, *Thweib and Al Hasanat v. CGUNRWA*, paras. 60-63 (vacated on appeal on other grounds, 2014-UNAT-449, *Thweib and Al Hasanat v. CGUNRWA*).

a transfer to a different post at the same salary and grade level.[1258] The IMFAT found that the Fund had not abused its discretion or violated the applicant's rights, observing that '[a]ny possible adverse consequence to his career is outweighed by the principle of protecting against conflict of interest, an objective that serves both staff and management interests.'[1259] Finally, in *H. (No. 8) v. EPO*, the ILOAT upheld the complainant's right to freedom of association with reference to art. 2(a) of the 1998 ILO Declaration on Fundamental Principles and Rights at Work, ICCPR art. 22 and ICESCR art. 8.[1260]

[1258] IMFAT Judgment No. 2008-1, *Mr. M. D'Aoust (No. 3) v. IMF*, para. 68.

[1259] *Ibid.*, paras. 74, 78-79.

[1260] ILOAT Judgment No. 4482 (2022), *H. (No. 8) v. EPO*, para. 12.

IX. THE RIGHT NOT TO BE ARBITRARILY DEPRIVED OF NATIONALITY

Human rights instruments codifying the right not to be arbitrarily deprived of nationality have been referred to in two cases, both before the ILOAT. In *re Pilowsky*,[1261] the complainant was born in Chile and later granted refugee status in Switzerland, at which time he surrendered his Chilean passport to the Swiss authorities. When applying for a translator post at WIPO, he listed 'Chilean' as his nationality. Following his appointment to the post, the administration took the position that he was a stateless person resident in Switzerland and that he would get neither home leave nor other benefits for expatriates. He was also issued a 'written warning' that his assertion of Chilean nationality in the application form amounted to 'serious misconduct.' The complainant sought withdrawal of the written warning from his records and asked that he be treated as a Chilean citizen as from the date on which he had taken up duty. The ILOAT cited the UDHR for the proposition that the Organization is bound to recognise that 'everyone has the right to a nationality' and that 'no one shall be arbitrarily deprived of his nationality.'[1262] The Tribunal therefore ordered the Organization to pay the complainant CHF 10,000 in moral damages and CHF 6,000 in costs.[1263] The complainant was decidedly less successful in *re Kiewning-Korner Castronovo*, also before the ILOAT, in which she argued that a staff rule according to which she lost her non-local status as a result of her marriage to an Italian national (i.e. the nationality of the host State) violated UDHR art. 15.2, which provides that no one should be arbitrarily deprived of his nationality. The ILOAT refused to accept this argument.[1264]

X. THE RIGHT TO JUST AND FAVOURABLE CONDITIONS OF WORK

Since IATs decide disputes between staff members and their employers, it is logical that the right to just and favourable conditions of work would arise, and indeed this right has been litigated with reference to international human rights instruments in several cases, including before the IDBAT, the ILOAT, the AfDBAT and the UNDT. A direct treatment of international human rights instruments codifying the right to just and favourable conditions of

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[1261] ILOAT Judgment No. 848 (1987), *In re Pilowsky*.

[1262] *Ibid.*, para. 1.

[1263] *Ibid.*, operative clause, subparagraphs 2 and 3.

[1264] ILOAT Judgment No. 168 (1970), *In re Kiewning-Korner Castronovo*, para. 2.

work can be found in the UNDT case of *Bezziccheri*, which centered on whether a claim for compensation for a work-related injury had been filed in a timely manner. While the UNDT concluded that it had, it included a five page section of 'observations' after its conclusion, in which it referred to the right to just and favourable conditions of work enshrined in UDHR art. 23, explained that this right included the right to occupational health and safety, as enshrined in other conventions adopted under the auspices of the ILO, and enjoined the administration for its inadequate approach to ensuring a safe and healthy working environment, in particular by not providing ergonomic workstations.[1265] In other cases in which international human rights instruments have been invoked to support a claim for the right to just and favourable conditions of work, IATs have often honoured the claim but without specific references to the human rights provisions cited by the applicants.[1266]

[1265] UNDT/2014/037, *Bezziccheri v. UNSG*, paras. 65-80.

[1266] See, e.g., IDBAT Judgment No. 47a (2002), *Ballock v. IDB*, at 13; ILOAT Judgment No. 3617 (2016), *G. v. EPO*, paras. 9, 15; ILOAT Judgment No. 2654 (2007), *Miss E. S. R. v. UNESCO*, paras. D and 9-10; AfDBAT Judgment No. 71 (2009), *S. Z. M. v. AfDB*, paras. 4, 27-28, 30.

XI. CONCLUSIONS OF CHAPTER 5

In light of this review of the references to human rights instruments in cases before IATs, it can safely be said that human rights instruments are increasingly cited in a variety of important areas of international administrative law. Certain rights, such as the principle of equal pay for equal work, have been derived by IATs directly from international human rights instruments. In other areas, such as non-discrimination, human rights instruments have been regularly cited by IATs even in the presence of provisions of the staff regulations providing for the same protection. Following this extensive review, it is clear that international human rights instruments are being systematically applied by tribunals in multiple contexts.

Despite the positive reception human rights instruments have now received in IATs, as examined in this chapter, it should not be assumed that it has been welcomed in every instance. Very general and unsubstantiated references to violations of human rights made by the applicants generally have not been specifically addressed by the relevant tribunal.[1267] This is also true of some references to human rights when made by the respondent organization[1268] by an intervenor[1269] or by other bodies such as disciplinary committees.[1270] In other cases, various claimed violations of human rights alleged by the applicant were not address by IATs because

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[1267] ILOAT Judgment No. 736 (1986), *In re Michael*, para. D; ILOAT Judgment No. 1532 (1996), *In re Wassef (No. 10)*, para. B; ILOAT Judgment No. 1843 (1999), *In re Palma (No. 3)*, para. D; ILOAT Judgment No. 2070 (2001), *In re Placci (No. 3)*, para. D; ILOAT Judgment No. 2160 (2002), *Mrs M. P. v. ITU*, para. 7; ILOAT Judgment No. 2473 (2005), *Mr. B. d. P. v. UNESCO*, para. B; ILOAT Judgment No. 2516 (2006), *Mr. M.L.A.B. et al. v. EPO*, para. B; ILOAT Judgment No. 2517 (2006), *Mr. M.B. and Mr. C.L. v. EPO*, para. B; ILOAT Judgment No. 2604 (2007), *Mr. J. M. R. v. IAEA*, para. B; ILOAT Judgment No. 2656 (2007), *Mr. J. M.R. v. IAEA*, para. D; UNRWADT Judgment No. UNRWA/DT/2012/065/Corr.01, *Abu Ruz v. CGUNRWA*, para. 12; UNRWADT Judgment No. UNRWA/DT/2015/012, *Chahrour v. CGUNRWA*, para. 14; UNDT/2017/042/Corr.1, *Nchimbi v. UNSG*, para. 27(a); UNDT/2019/20, *Hailou v. UNSG*, para. 18; 2010-UNAT-043, *Mezoui v. UNSG*, para. 8; 2010-UNAT-074, *Trajanovska v. UNSG*, para. 11; 2013-UNAT-371, *Brisson v. CGUNRWA*, para. 6; 2015-UNAT-568, *Leboeuf et al. v. UNSG*, para. 34; 2015-UNAT-595, *Survo v. UNSG*, para. 64; ATCE Decision on App. No. 590/2018, *Korljan v. Secretary General*, para. 46; ATCE Decision on App. No. 586/2017, *Paolillo v. Secretary General*, para. 33; ATCE Decision on Apps. Nos. 582/2017 and 583/2017, *Brillat (III) and Priore v. Secretary General*, para. 72; ATCE Decision on App. No. 490/2011, *Conrad v. Secretary General*, para. 22; ATCE Decision on App. No. 513/2011, *D. M. v. Governor of the CoE Development Bank*, para. 28; ATCE Decision on App. No. 567/2015, *Skouras v. Secretary General*, paras. 38 and 77; ATCE Decision on Apps. Nos. 133-145/1986, *Ausems and others v. Secretary General*, para. 44; ATCE Decision on App. No. 131/1986, *Koenig v. Secretary General*, para. 26; ILOAT Judgment No. 3058 (2012), *Mr. P. A. v. EPO*, paras. B, C and 2.

[1268] ILOAT Judgment No. 2185 (2003), *Mrs Y. M. d. G. v. UNESCO*, para. E; 2010-UNAT-050, *Ishak v. UNSG*, para. 16; 2010-UNAT-053, *Xu v. UNSG*, para. 9; ATCE Decision on Apps. Nos. 94-99/1983, *Nouari and others v. Secretary General*, paras. 69-70.

[1269] ILOAT Judgment No. 2287 (2004), *Mrs M. P. V. N. v. ILO*, para. F.

[1270] ILOAT Judgment No. 3968 (2018), *H. (Nos. 20 and 21) v. EPO*, paras. 6-10 and 27.

the tribunals found the application inadmissible,[1271] they lacked jurisdiction to hear the complaint,[1272] or it was not necessary to rule on the question in order to decide the case.[1273] In still other cases, applicants have referred to human rights instruments in the context of extreme

[1271] See, for example, ILOAT Judgment No. 777 (1986), *In re Van der peet (No. 7)*, para. 2; ILOAT Judgment No. 967 (1989), *In re Antal*, para. B; ILOAT Judgment No. 1209 (1993), *In re Diallo (No. 2)*, para. 6; ILOAT Judgment No. 1285 (1993), *In re Haile-Mariam*, para. 9; ILOAT Judgment No. 1829 (1999), *In re Müller-Engelmann*, para. B; ILOAT Judgment No. 1919 (2000), *In re Palma (No. 7)*, para. B; ILOAT Judgment 1949 (2000), *In re Palma (No. 9)*, para. B; ILOAT Judgment No. 1976 (2000), *Mrs P. P. v. ITU*, paras. B and 7; ILOAT Judgment No. 2603 (2007), *Mrs Y. M. d. G. v. UNESCO*, paras. B and 5; ILOAT Judgment No. 2650 (2007), *Mr. S. J. K. v. WIPO*, paras. B and 10; ILOAT Judgment No. 2790 (2009), *Mr. K. B. v. UNESCO*, paras. B and 12; ILOAT Judgment No. 2841 (2009), *Mr. E. A. v. UNESCO*, paras. B and 7; ILOAT Judgment No. 3345 (2014), *Mr. I. A. (No. 3) et al., v. WIPO*, paras. A and 11; ILOAT Judgment No. 3626 (2016), *M. v. ILO*, para. 7; ILOAT Judgment No. 3959 (2018), *C. (No. 4) v. EPO*, paras. 3, 6; ILOAT Judgment No. 4002 (2018), *S. (No. 2) v. WIPO*, para. 6; NATOAT Judgment No. AT-J(2022)0012, *MC v. NATO Support and Procurement Agency*, para. 41; NATOAT Judgment No. AT-J(2016)0013, *PL v. Headquarters allied Joint Force Command Brunssum*, paras. 9 and 14; AfDBAT Judgment No. 7 (1999) *B. A. I. v. AfDB*, paras. 17 and 24; UNRWADT Judgment No. UNRWA/DT/2013/020, *Hasan v. CGUNRWA*, para. 10; UNDT/2012/085, *Kmanou v. UNSG*, para. 14; UNDT/2014/026, *Tintukasiri et al v. UNSG*, para. 27.g) (affirmed in 2015-UNAT-526, *Tintukasiri et al v. UNSG*); UNDT/2014/043, *Aliko v. UNSG*, paras. 43 and 49; 2011-UNAT-158, *Laeijendecker v. UNJSPB* paras. 21 and 35; 2015-UNAT-539, *Aliko v. UNSG*, paras. 11, 13 and 34; ATCE Decision on App. No. 466/2010, *Kravchenko v. Secretary General*, paras. 60-64; ILOAT Judgment No. 3190 (2013), *Ms M. P. v. South Centre*, paras. B and 1-9. Mention should also be made of *Mr. E. D. (No. 4) and Mr. W. M. v. EPO*, in which two consecutive Chairmen of the EPO Central Staff Committee ('CSC') forwarded a document to the President of the Office for submission to the meeting of the EPO Administrative Council, requesting the Council to formally recognize the applicability of the European Convention on Human Rights, part I, and the case law of the European Court of Human Rights to the EPO and its staff. It also requested that the necessary actions be taken to ensure that the rights guaranteed by the Convention are given equivalent protection within the EPO. It underlined the absence of a body of human rights law within the EPO and drew attention to the fact that the Tribunal has consistently refused to apply any law not explicitly referred to in the rules of an organisation. The EPO President decided not to submit the CSC document to the Administrative Council on the ground that substantive human rights principles were protected at the EPO and that the ILOAT had repeatedly found that the general principles enshrined in the ECHR applied to relations with the staff in the EPO. However, the President decided to set up a working group which would prepare an in-depth analysis of the legal protection of staff in the EPO, and which would assess the issues raised in the CSC document. Following a request for administrative review, the matter was referred to the Internal Appeals Committee, the majority of which considered that human rights were applied within the EPO by way of a flexible approach to the ECHR, and that the legal protection of the staff was adequately guaranteed by the means of appeal available to them, including recourse to the Tribunal, which satisfied the requirements of Article 6.1 of that Convention. Consequently, according to the Internal Appeals Committee, there was no need to modify the existing rules. The EPO President decided to endorse the majority position of the Appeals Committee and the CSC Chairmen appealed this decision to the ILOAT. The Tribunal, however, found that the two complainants lacked standing to bring the complaints on behalf of the CSC and found the complaints inadmissible. ILOAT Judgment No. 3341 (2014), *Mr. E. D. (No. 4) and Mr. W. M. v. EPO* paras. 5-7.

[1272] ILOAT Judgment No. 1644 (1997), *In re Rubio*, para. 12; ESAAT Decision in Case No. 97 (2016), *Keiffer v. ESA*, paras. 14-15 and 42; WBAT Decision No. 495 (2014), *AI (No. 3) v. IBRD*, paras. 8 and 27; WBAT Decision No. 441 (2010), *Koklar v. IBRD*, paras. 18 and 22; UNDT/2012/038, *El Issawi v. UNSG*, para. 15; UNDT/2012/50, *Kamanou v. UNSG*, para. 19; ILOAT Judgment No. 4041 (2018), *B. v. EPO*, paras. 4-5.

[1273] ILOAT Judgment No. 2237 (2003), *Mr. J.M. W. v. EPO*, para. 8; ILOAT Judgment No. 1320 (1994), *In re Figuera de Perez*, para. 10.

or outlandish accusations against the organization,[1274] or have made exceedingly weak arguments invoking human rights,[1275] all of which have been duly dismissed by the tribunal. It is also worth noting that in certain cases the first instance tribunal in its judgment has relied

[1274] See, for example, ILOAT Judgment No. 1719 (1998), *In re Vollering (No. 12)*, para. D (arguing that the EPO's failure to answer his complaint in English as he had submitted it but rather to answer in French was a breach of his human rights and amounted to 'discriminating or illegal treatment'); ILOAT Judgment No. 1723 (1998), *In re Qureshi (No. 2)*, para. B (claiming that the organization's medical service had misused its authority in an effort to 'torture' or 'assassinate' him); ILOAT Judgment No. 1757 (1998), *In re Hardy (No. 4)*, para. 17 (arguing that his transfer by the Euro-Control to France when his family wished to stay in Luxembourg violated his right to non-interference in his private life enshrined in ECHR art. 8); ILOAT Judgment No. 1845 (1999), *In re Palma (No. 5)*, para. 7 (asking the Tribunal 'denounce to the ILO the European Southern Observatory's (ESO's) willful violation of his human rights in order that the ILO may impose a punitive sanction on the ESO or its member States for the proved breach of international conventions'); ILOAT Judgment No 1948 (2000), *In re Palma (No. 8)*, para. B (same appellant arguing that 'human rights' created a moral duty for the ESO to help staff members); ILOAT Judgment No. 2611 (2007), *Mr. H.-J. M. v. EPO*, para. 8 (arguing that the UDHR and ECHR required that he be heard before 'a competent, independent and impartial national tribunal'); ILOAT Judgment No. 2797 (2009), *Mr. J. B. v. ILO*, para. 19 (arguing without evidence that 'the Organization violated fundamental principles and rights in the field of industrial relations'; ESAAT Decision in Case No. 94 (2014), *X v. ESA*, at 4 (seeking damages of 38 million euros for alleged violations of the principle of non-discrimination, the right to privacy, and the right to a fair and impartial procedure); WBAT Decision No. 251 (2001), *Sharpston v. IBRD*, para. 56 (arguing that the use by the organization of the same psychologist to treat a staff member and clear the staff member for duty amounted to a violation of the right to be free from inhuman treatment or punishment).

[1275] ILOAT Judgment No. 1541 (1996), *In re Popineau (No. 10)*, para. 6 (The complainant argued that the EPO's failure to respond to his internal appeal was discriminatory and a violation of his human rights. While accepting the applicability of the principle of non-discrimination, the ILOAT concluded that there was no violation of that principle because 'the EPO's attitude would be discriminatory and run counter to the principles of equality and equity only if it failed to adopt the above attitude towards someone else who had lodged many internal appeals on the strength of much the same set of facts, including one in disregard of *res judicata*'); WBAT Decision No. 221 (2000), *Yoon v. IBRD*, para. 12 (arguing that that the link between severance and unreduced pension rights was illegal because it was in violation of human rights, in particular her comparison of that choice to the choice 'imposed on slaves between early freedom or food'; UNRWADT Judgment No. UNRWA DT/2011/005, *Abu Awad v. CGUNRWA*, para. 35 (unsubstantiated and unexplained claim that UNRWA was violating UDHR art. 23.2); UNDT/2012/203, *Featherstone v. UNSG*, paras. 12, 25, 27 (dismissing the applicant's argument that a right to receive documents is enshrined in the UDHR); 2011-UNAT-153, *Ahmed v. UNSG*, paras. 21 and 50 (summarily dismissing an applicant's argument that his human rights were violated by refusing him access to the office following the completion of his fixed-term contract); 2014-UNAT-447, *Terragnolo v. UNSG*, para. 31 (arguing that a provision preventing staff members from applying for posts above the next highest grade violated the UDHR); 2015-UNAT-496, *Asariotis v. UNSG*, paras. 10 and 24 (arguing that by not giving candidates for a post the chance to contest the composition of an interview panel, the organization violated their fundamental human rights); 2015-UNAT-533, *Onana v. UNSG*, paras. 29 and 42 (arguing that the UNDT had contravened the UDHR in holding an issue to be *res judicata*); WBAT Judgment No. 219 (2000), *ED v. IBRD*, para. 12 (arguing that requiring him to choose between certain rights offered in a severance package and his otherwise existing pension rights amounted to a denial of an economic right to a decent livelihood); ILOAT Judgment No. 255 (1975), *In re Glynn (No. 3)*, p. 2 (arguing that a performance appraisal that stated simply 'work acceptable' constituted 'a violation of natural justice and human rights'); UNRWADT Judgment No. UNRWA/DT/2013/035, *Riano v. CGUNRWA*, paras. 91 and 96 (arguing that that recordings he had made without the respondent's knowledge, purporting to demonstrate that he was being subject to harassment and abuse of authority, should be admitted into evidence because to require him to have obtained prior consent before making such recordings would not have protected his human right to work 'in an environment free of harassment, abuse of authority and misconduct').

substantially on human rights instruments but the judgment was, for various reasons, vacated on appeal.[1276]

One interesting aspect that emerges from the jurisprudence is the extent to which these human rights instruments are cited and applied as if they were binding on the organization in question even though, as a formal matter, they often are not. Another notable trend is citation of the ECHR and its application by tribunals geographically outside Europe even though other regional human rights instruments contain similar provisions.[1277] One also finds that certain rights have been litigated and applied more frequently in certain tribunals. At times, one can discern a reason for this, such as the more frequent litigation of the right to salary by IATs in the Americas, which can be traced to the codification of that right in the American Declaration on the Rights and Duties of Man. In other cases, the reason that a particular human right is more frequently applied is unclear, but could be attributed to the fact that, once a given tribunal has applied the right once, it is more likely to apply it again, citing its own jurisprudence. In this regard, to name but a few examples, one sees the right to be free from discrimination on the ground of sexual orientation arising much more often in the ILOAT, the right to receive a reasoned decision coming up more often at the ATCE, the right to be free from discrimination on the basis of nationality arising disproportionately often before the ATBIS, the right to be free from religious discrimination arising exclusively in the IMFAT, the right to an independent and impartial tribunal addressed extensively by the UNDT, the right to work coming up most frequently at the UNDT and, as mentioned above, the right to a salary arising in particular in IATs within organizations in the Americas (OASAT and MERCOSUR TAL).

Meanwhile, certain rights derived from international human rights instruments have been regularly pleaded and applied before multiple IATs, to such an extent that it can be said that IATs are actively contributing to the development and understanding of the substance of these

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[1276] UNDT/2013/047, *Khisa v. UNSG*, paras. 35-37, 48-49, 53, 55 (vacated by 2014-UNAT-422, *Khisa v. UNSG*); UNDT/2013/070, *Stoykov v. UNSG*, paras. 41 and 43 (vacated by 2014-UNAT-440, *Stoykov v. UNSG*); UNDT/2013/164, *Cobarrubias v. UNSG*, para. 21 (vacated by 2015-UNAT-510, *Cobarrubias v. UNSG*); UNDT/2017/099, *Mirella et al. v. UNSG*, paras. 47-48 (vacated by 2018-UNAT-842, *Mirella et al., v. UNSG*); UNDT/2018/105, *Kortes v. UNSG*, paras. 41-42, 50-57, 60, 66-67, 76 (vacated by 2019-UNAT-925, *Kortes v. UNSG*); UNDT/2018/136, *Wilson v. UNSG*, para. 80 (vacated by 2019-UNAT-940, *Wilson v. UNSG*).

[1277] For example, in *M. X-D-P v. AfDB*, the AfDBAT concluded that the time taken for a disciplinary process was consistent with the notion of 'reasonable time' as defined in ECHR arts. 5.3 and 6.1. AfDBAT Judgment No. 81 (2012), *M. X-D-P v. AfDB*, paras. 43, 70. See also AfDBAT Judgment No. 82 (2012), *S. A. O. v. AfDB*, paras. 50, 91-93.

rights. These include, for example, the right to equal pay for equal work, the right to a hearing, the right to a proper and impartial investigation, the right to access to justice, the right to just and favourable conditions of work and the right to privacy.

Overall, while the more than 400 decisions cited in this chapter leave little doubt that IATs are increasingly referring to human rights instruments, their treatment of this body of law is inconsistent, ranging all the way from refusing to acknowledge its direct applicability at all, on one end of the spectrum, to considering it hierarchically superior to other sources of law, on the other end of the spectrum. In many other cases, tribunals have accepted the applicability or relevance of international human rights instruments in principle but found it unnecessary to apply them on the facts of the case. Moreover, it is often difficult to distinguish why tribunals have readily accepted human rights instruments in one context, been reticent to do so in another, and have found it unnecessary to do so in yet another. While this state of affairs may appear somewhat unsatisfactory, especially when trying to draw conclusions, this is perhaps a conclusion in itself. Indeed, this is a new and rapidly-developing area of international administrative law. With respect to certain human rights, this jurisprudence is becoming more developed, but in many areas it is still in its infancy. It is hoped that this chapter can serve to provide a useful snapshot of those developments, which may serve as a harbinger for future developments to come.

CHAPTER 6

OVERALL CONCLUSIONS

I. ANSWERING THE MAIN RESEARCH QUESTION

It is recalled that the main research question posed at the outset of this dissertation was the following:

> Research question: What has been the result of the rapid proliferation of IATs? Has the law governing the international civil service become fragmented or have IATs developed a common jurisprudence of international administrative law?

To answer this research question, evidence of the proliferation of IATs was presented in Chapter 2. In Chapters 3 to 5, different aspects of the substantive work of IATs were analysed, with a view to considering the research question from multiple angles. These different angles corresponded to the sub-questions of the research question, which were: (1) To what extent are IATs referring to common principles or a common body of law in reaching their conclusions? (2) Can a common jurisprudence be deduced from the extent to which IATs refer to each other (cross-fertilization)? (3) Can a common jurisprudence be illustrated through an examination of references to a shared set of international human rights instruments?

The coalescence of international administrative law in the jurisprudence of IATs was apparent even from the discussion of sources of law in Chapter 3. In particular, the Chapter focused on the 'universalizing' sources of international administrative law, which are those sources which may be adopted in common by multiple international administrative tribunals. These include general principles of law, international law, and decisions of other international administrative tribunals. The Chapter argued that these sources are being used with increasing frequency by IATs and that this practice is contributing to the creation of a universal law of international justice. For example, the discussion of general principles leaves no doubt that IATs are invoking a common set of such principles with increasing frequency, a significant practice which has led Amerasinghe to conclude that 'these principles … have made it possible to conceive of a *system* of international administrative law, despite the diversity and

individuality of written laws pertaining to the different organisations and the multiplicity of courts applying them.'[1278]

The dissertation then examined the other two 'universalizing' sources identified in Chapter 3, to which it devoted entire chapters: citation to the decisions of other IATs (the practice of which referred to as 'cross-fertilization') and the citation to international law, in particular international human rights instruments. Chapter 4 discussed the practice of cross-fertilization. Conducting a thorough review of the practice of cross-fertilization between IATs, we have seen that virtually all tribunals are citing their peers with increasing regularity, while a certain group have set themselves apart as leaders in this regard. In particular, the WBAT, IMFAT, UNDT, UNAT, ADBAT, ATCE, and AfDBAT practice cross-fertilization very frequently. Not far behind is a second group that regularly practices cross-fertilization, including the NATOAT, OECDAT, EBRDAT, CSAT, ESAAT and ATBIS. We also saw certain key decisions which have become focal points in the sense that many other IATs have cited to them, aiding the 'certain *rapprochement*' among tribunals and the general coalescing of international administrative law. For example, it has become common to cite to the ADBAT's *Amora* Decision when examining the effect of a series of short-term contracts of employment, to the ILOAT's *Ballo* Judgment when analyzing the discretionary power of the administration and to the IMFAT's *Mr. 'F'* Judgment when discussing obligations to staff whose positions have been abolished.

Chapter 5 examined citation by IATs to a common set of international human rights instruments. Reviewing these references by IATs, it has been possible to conclude that human rights instruments are increasingly cited in a variety of important areas of international administrative law. Indeed, IATs are referring to international human rights instruments in certain areas, such as non-discrimination, even in the presence of provisions of the staff regulations providing for the same protection. Following this extensive review, it is clear that international human rights instruments are being systematically applied by tribunals in multiple contexts. Moreover, we have seen that, through this process of citation to international human rights instruments, IATs are developing new rights specific to the international administrative law context. These include, for example, the right to equal pay for equal work, the right to a hearing, the right to a proper and impartial investigation, the right to access to justice, the right

[1278] See *supra* note 538 and accompanying text.

to just and favourable conditions of work and the right to privacy. As cases discussing and applying these rights multiply, IATs are thus actively contributing to the development and understanding of the substance of these rights.

Taken together, the references to and reliance on a common set of general principles and human rights instruments, combined with the overwhelming evidence of cross-fertilization between IATs, makes a strong case that IATs are developing a common body of shared international administrative law. The main research question may therefore be answered as follows:

Answer to the research question

The proliferation of IATs has not led to significant problems of fragmentation. Rather, the various IATs — through the increasing citation to a common set of general principles, the rapidly expanding practice of cross-fertilization among themselves and the regular citation to a common set of international human rights instruments — are developing a common jurisprudence of international administrative law.

II. THE WAY FORWARD: FRAGMENTATION REVISITED

In response to its primary research question, this dissertation has concluded that the proliferation of IATs has not led to significant problems of fragmentation but rather IATs are developing a common jurisprudence of international administrative law. This provides an optimistic snapshot of the current situation, but the question then becomes: where does international administrative law go from here? Returning to the beginning of this work, we noted that public international law also had, and survived, its 'fragmentation crisis'.[1279] In addition to this similarity (i.e. the concerns expressed then in public international law and now in international administrative law about a proliferation of tribunals), the situation two decades ago in public international law and the current situation in international administrative law share other points in common. For example, just as commentators previously discussed the possibility of solving the problem in public international law through the referral of legal questions to the International Court of Justice, or a new body created specifically to decide such questions,[1280] so too have those participating in the debate in international administrative law previously discussed the possibility of referral to a grand panel of senior judges of the UNAdT and the ILOAT and more recently floated the idea of a joint chamber of the ILOAT and UNAT to issue interpretative, preliminary and/or appellate rulings.[1281] Moreover, just as the International Law Commission, in its study of fragmentation in public international law, decided to set aside the question of the proliferation of tribunals in favour of a focus on the

[1279] See *supra* notes 13-28 and accompanying text.

[1280] See K. Oellers-Frahm, 'Multiplication of International Courts and Tribunals and Conflicting Jurisdiction - Problems and Possible Solutions', (2001) 5 *Max Planck Yearbook of United Nations Law* 67, at 91-101; H. Thirlway, 'The proliferation of international judicial organs: institutional and substantive questions: the International Court of Justice and other international courts', in N. Blokker and H. Schermers, eds., *Proliferation of international organizations: legal issues* (2001) 251, at 270-278.

[1281] See supra notes 136 and 155 and accompanying text.

harmonization of the substance of the law itself,[1282] the discussions of the question in international administrative law reached a very similar conclusion. In particular, as discussed above in Chapter 2, discussions that have emerged on at least four occasions (the 1970s, the 1980s, the 2000s, and in 2019) began with proposals to merge tribunals but always ended with the conclusion that the best way forward was to make more modest efforts to harmonize the statutes of existing tribunals or otherwise attempt to harmonize the substantive law applied.[1283]

In light of these numerous similarities between the situation in public international law and that in international administrative law with respect to proliferation and fragmentation, it thus seems logical, to predict what could be in store for international administrative law, to delve a little deeper into this comparison and see how the discourse in public international law developed following its initial 'fragmentation crisis'. The prognosis is promising. Following the doubtful period immediately post-proliferation, a hopeful era for public international law dawned among commentators. The 'pluralist' conception of the international legal system proposed by Burke-White provided one useful model:

> 'The international legal system today appears to be at the center of two opposing sets of forces-one set pushing toward fragmentation, the other toward interconnection and coherence. As these forces interact, a new type of international

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[1282] ILC, Report on the work of the fifty-fourth session, UN document A/57/10 (2002), at 98, para. 505 ('There was agreement in the Study Group that the Commission should not deal with questions of the creation of or relationship among international judicial institutions. It was, however, considered that, to the extent that the same or similar rules of international law could be qualified and applied differently by judicial institutions, problems that might arise from such divergences should be addressed.'); ILC, Report on the work of the fifty-fifth session, UN document A/58/10 (2003), at 96-97, paras. 416-417 ('Commenting on the background to the topic and approaches to be followed, it was noted that an examination of the various statements and written works on the subject of fragmentation revealed that a distinction ought to be drawn between institutional and substantive perspectives. While the former focused on concerns relating to institutional questions of practical coordination, institutional hierarchy, and the need for the various actors—especially international courts and tribunals— to pay attention to each other's jurisprudence, the latter involved the consideration of whether and how the substance of the law itself may have fragmented into special regimes which might be lacking in coherence or were in conflict with each other. … An analysis of the Commission's discussion at its fifty-fourth session (2002) seemed to reveal a preference for a substantive perspective. In the report of the Commission to the General Assembly on the work of its fifty-fourth session, there was agreement that the Commission should not deal with questions concerning the creation of, or the relationship among, international judicial institutions. In other words, the Commission was not being asked to deal with institutional proliferation.'). See also Koskenniemi study, para. 489 ('Following the decision by the Commission in 2002 and 2003, this report set aside the institutional aspects of fragmentation. Instead, it focused on substantive problems, the emergence of "special laws", treaty-regimes, and functional clusters of rules and specialized branches of international law and on their relationship inter se and to general international law.').

[1283] See *supra* Chapter 2, Section II.B.

> legal system is emerging-one that is neither fully fragmented nor completely unitary. The emerging system may be best described as pluralist. A pluralist legal system accepts a range of different and equally legitimate normative choices by national governments and international institutions and tribunals, but it does so within the context of a universal system. … To put it more concretely, the pluralist conception of the international legal system recognizes-and possibly thrives on-the diversity of the system.'[1284]

According to this pluralist model, therefore, 'different and equally legitimate' normative choices are made in different legal systems without harm to the overall system. Different outcomes may exist, but they are not cause for concern. Fragmentation ceases to be a dirty word. This already provides one way to conceive of the proliferation of IATs as a potential asset rather than a liability.

But if the proliferation of IATs is truly to result in a common jurisprudence of international administrative law for the long term, something more than mere tolerance of differences is needed. Burke-White hints at this, observing that the system can 'thrive on diversity of the system', but how does it do so? In this regard, Judge Simma has further explained how the proliferation of tribunals in public international law has helped the system to prosper, emphasizing the more interactive discourse being played out by judges, a role previously reserved for scholarly commentators:

> 'Rather than resulting in fragmentation, the emergence of more international courts, combined with an increasing willingness of states to submit their disputes to judicial settlement, has revived international legal discourse. This discourse has gained in frequency and intensity: courts nowadays have a greater say in it compared to doctrine. The more international courts apply a specific rule of international law in the same manner, the more legitimacy it will be accorded, and the more can we be certain about its normative strength. On the other hand, if

[1284] W. Burke-White, 'International Legal Pluralism', (2004) 25(4) *Michigan Journal of International Law* 963, at 977-978.

> various international courts do disagree on a point of law, the ensuing judicial dialogue may possibly further progressive development of the law.'[1285]

Several important points are made here. First, we saw in public international law not only a proliferation of courts and tribunals, but also an increased willingness of States to submit their disputes to judicial settlement. The same is true in international administrative law: the proliferation of IATs has coincided with an increased interest for judicial settlement of administrative law disputes. In this regard, it has been recently noted that in the five-year period from 2018-2023, the ILOAT issued more than twice the number of judgments than it handed down in its first fifty years of operation. Similarly, in their first fifteen years of operation, the UNDT and the UNAT have rendered more judgments than their predecessor, the UNAdT, did in its sixty-year history.[1286] Secondly, the point is made that the increase in tribunals and litigants has led not to fragmentation but rather to a revived international legal discourse. It is hoped that the present dissertation has shown the same trend with respect to international administrative law. Interestingly, Simma argues that as a result of this increased discourse among tribunals, it is in fact the tribunals themselves that replace doctrine as the primary source of discussion and innovation.

Finally, and most importantly, Simma makes the point that is in fact key to understanding why the fragmentation concerns were misguided from the beginning: whether tribunals agree or disagree on a given point of law, the outcome is beneficial either way. If different tribunals agree, then this obviously brings cohesiveness and harmonization to the overall system of international law. But even when they disagree, he argues, the ensuing judicial dialogue can further progressive development of the law. Ultimately, other tribunals will treat the same question and progressive development can occur through an evolutionary process in which future decisions follow the best approach from among the tribunals that have already treated an issue. Jonathan Charney made much the same point when he observed that 'the number of international tribunals appears to pose no threat to the international legal system. In fact, this situation permits a degree of experimentation and exploration. This may lead to developments

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[1285] Simma, 'Universality of International Law from the Perspective of a Practitioner', *supra* note 19, at 279. See also Rao, *supra* note 28, at 930 ('The creation of multiple international judicial tribunals is a function of the ever-expanding nature of international law and that the creation of such tribunals is a sign of the growing maturity of international law. While it is admitted that these tribunals have to be sensitive to the needs of promoting the unity and integrity of international law, a brief look at the available evidence of their functioning so far has revealed no cause for concern of fragmentation.').

[1286] Garrido Muñoz et al., *supra* note 2, at 1.

that generate improvements in international law.'[1287] The substantive phenomenon of 'fragmentation' in the sense of differing outcomes, is thus only temporary as the community of tribunals will eventually settle on the preferred alternative; or, in some cases where differing contexts warrant it, different outcomes will remain without cause for concern.

There is no reason to doubt that this same phenomenon of experimentation can occur with the proliferation of international administrative tribunals. Indeed, it already is occurring. For example, reference could be made to the threshold adopted by various IATs for a promise of the administration to be considered legally binding under the doctrine of legitimate expectations. While IATs generally require a high threshold, they have differed on the details, but their differences may be narrowing.[1288] In particular, the UNAT has historically required an express promise in writing, while the ILOAT has applied a four-part substantive test to establish a promise as legally binding.[1289] But, the process of experimentation is ongoing. First, the UNDT upheld a promise implied from the circumstances,[1290] although this was overturned by the UNAT.[1291] More recently, however, the UNAT appears to have reconsidered its approach finding a legitimate expectation of renewal in the absence of an express promise, referring instead to a 'firm commitment.'[1292] Thus, in a process much akin to that described by Simma and Charney in public international law, the ILOAT, UNDT and UNAT are experimenting with different legal solutions to a problem, sometimes adopting different approaches but, when the tribunals deem it appropriate, ultimately reaching similar positions.

Another area where a lively judicial dialogue is taking place between IATs is with regard to the determination of acquired rights.[1293] First, the WBAT in *de Merode* delineated the distinction between permissible and impermissible amendments to the terms and conditions of employment by drawing a distinction between 'elements' that are 'fundamental and essential

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[1287] J. Charney, 'Is international law threatened by multiple international tribunals?', (1998) 271 *Recueil des cours* 101, at 347.

[1288] See Garrido Muñoz et al., *supra* note 2, at pp. 259-263.

[1289] *Ibid.* (citing 2014-UNAT-411, *Igbinedion v. UNSG*, para. 26; ILOAT Judgment No. 782 (1986), *Gieser v. EMBL*, para. 1. See also ILOAT Judgment No. 3619 (2016), *P. v. EPO*, para. 14; ILOAT Judgment No. 3362 (2014), *O.A.R.P. v. ITU*, para. 9; ILOAT Judgment No. 687 (1985), *Delangue v. EPO*, para. 9).

[1290] UNDT/2013/151, *Hepworth v. UNSG*, paras. 34-36.

[1291] 2015-UNAT-503, *Hepworth v. UNSG*, para. 42.

[1292] Garrido Muñoz et al., *supra* note 2, at 262, citing 2017-UNAT-715, *Charot v. UNSG*, para. 46.

[1293] See Garrido Muñoz et al., *supra* note 2, at 499.

in the balance of rights and duties of the staff member' and 'elements' which are 'less fundamental and less essential in this balance.'[1294] The ILOAT in *Ayoub* took a different, less subjective, approach, establishing a three-pronged test to determine whether a term of employment was 'fundamental and essential', which examined the nature of the altered term, the reason for an amendment, and its consequences.[1295] Both of these approaches have been viewed favourably. As mentioned earlier in this work, the WBAT's *de Merode* Decision has been cited for its 'fundamental and essential' test by the ADBAT, UNDT, ATBIS, AfDBAT, CSAT, IDBAT and IMFAT,[1296] while the ILOAT's three-pronged *Ayoub* test has been referred to by the ADBAT, UNDT, UNAT and ESAAT.[1297] Thus, there already has been a great deal of harmonization and integration due to this extensive cross-fertilization. Moreover, it has been observed that the *de Merode* and *Ayoub* approaches, despite their differences, share much in common with each other and are often cited together.[1298] However, the UNAT then took a decidedly different approach in its *Lloret Alcañiz* Judgment in 2018, in which it concluded that '[a]n "acquired" right should be purposively interpreted to mean a vested right'[1299] and that it was 'essentially an aspect of the principle of non-retroactivity.'[1300] This effectively eliminates the doctrine of acquired rights as a protective mechanism for staff members against unilateral changes to their contract and terms of employment, and it marks a major departure from other tribunals. The moment is ripe therefore for other tribunals to step in and determine which approach is preferable.

There are other areas in the current state of international administrative law which are also ready for this experimentation process. For example, while the principle of proportionality is universally acknowledged by IATs as a general principle relevant to the assessment of the lawfulness of a disciplinary measure, tribunals differ on its definition, with some IATs (notably the ADBAT and WBAT) requiring 'significant' or 'clear' disproportionality while others (such as the UNDT, UNAT and usually the ILOAT) requiring a mere 'lack' of proportionality to

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[1294] WBAT Decision No. 1 (1981), *de Merode et al. v. World Bank*, para. 42.

[1295] ILOAT Judgment No. 832 (1987), *In re Ayoub, Lucal, Montat, Perret-Nguyen and Samson*, para. 14.

[1296] See cases cited *supra* notes 930-931.

[1297] See cases cited *supra* notes 948-951.

[1298] See Garrido Muñoz et al., *supra* note 2, at 505-506.

[1299] 2018-UNAT-840, *Lloret Alcañiz v. UNSG*, para. 90.

[1300] *Ibid.,* para. 91.

render a disciplinary measure unlawful.[1301] There are also differences in how IATs establish procedural irregularities which warrant setting aside the procedural decision in question, with the UNAT often requiring evidence of actual harm while the ILOAT has been less formalistic.[1302] IATs also apply different standards of proof in disciplinary proceedings, the ADBAT requiring a 'preponderance of evidence' while the ILOAT requires the much higher level of proof 'beyond a reasonable doubt', and the WBAT applies a standard falling between these two extremes.[1303] And of course, there is the divide between the ILOAT and UNAT on the power of IATs to review 'regulatory decisions' of the General Assembly, which led to the conflicting judgments with which this dissertation began.[1304] In the presence of these different substantive outcomes on such important questions and in light of the many IATs now in existence which could pronounce on these issues, the scene is ripe for further judicial dialogue and ultimately harmonization or at least clarification.

Fostering cohesiveness and harmonization will take effort. Here again, IAT judges can take inspiration from their colleagues in public international law. As former President Higgins observed, '[w]e judges are going to have to learn how to live in this new, complex world, and to regard it as an opportunity rather than a problem: We must read each other's judgments. We must have respect for each other's judicial work. We must try to preserve unity among us unless context really prevents this.'[1305] One factor that could make this process even easier in international administrative law compared with public international law is the possibility and tendency for the same individual to serve as judge in multiple IATs simultaneously. Under those circumstances, it is only natural for them to adopt a conclusion in a given case in a similar way that they have already considered and found convincing in a case before another IAT where they also serve.

Higgins also emphasized the role that counsel can play in the harmonization process, speaking of 'a "bottom-up" integration and application of the jurisprudence of the various courts and tribunals across the spectrum … as able counsel go from one court to another,

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[1301] Garrido Muñoz et al., *supra* note 2, at 295-296.

[1302] *Ibid.* at 184-185.

[1303] *Ibid.* at 290-292.

[1304] See Chapter 1, Section I.

[1305] Higgins, 'A Babel of Judicial Voices? Ruminations from the Bench', *supra* note 19, at 804.

invoking before one body ideas that have been advanced in another.'[1306] Once again, the same holds true for international administrative law. Just as the public international bar is ultimately composed of a small number of highly specialized lawyers practicing before the ICJ, arbitral tribunals and other international courts and tribunals, so it is also the case with international administrative law. The relatively few number of specialists in this field tend to represent clients before multiple IATs. Each time they invoke similar arguments before multiple tribunals, they add harmony to the system of international administrative law overall.

[1306] Higgins, Rosalyn, 'Plenary Address', (2006) 100 *American Society of International Law Proceedings* 387, at 392.

III. RECOMMENDATIONS FOR FUTURE RESEARCH

While this dissertation has endeavored to be self-standing and offer conclusive findings, it also aims to serve as a catalyst for further study of this topic. In this regard, there are at least two areas which could merit additional consideration.

First, if the question of the development of a common jurisprudence of international administrative law is to receive further consideration, one area which is particularly ripe for additional research is that of general principles. While this dissertation considered general principles extensively as a 'universalizing' source of law in Chapter 3, it did not study the question as completely as it did with cross-fertilization and references to international human rights instruments, to which entire chapters are dedicated. With respect to those latter topics, the entire jurisprudence of every existing IAT was searched systematically. General principles were not researched so exhaustively. Thus, although many examples have been presented here, it is highly likely that there are many more in existence and that an even more convincing case could be made for the increased citation to a common set of general principles by IATs and the creation of new general principles specific to international administrative law. These include the principle of acquired rights, legitimate expectation, equal pay for equal work, duty of care, the right to information from the administration and the independence of the organization and its staff from member States, as well as the Noblemaire, Fleming and *patere legem* principles. Certainly, it is these principles specific to international administrative law where the most interesting and fruitful research could be carried out: As different tribunals share this task of developing and relying on new general principles specific to the field, it makes a very strong case that a common law of the international civil service is developing.

A second area which could merit research, but which was not attempted in the present dissertation, would be an analysis and comparison of substantive outcomes of IATs. While this dissertation has generally made the case for the development of a common jurisprudence of international administrative law by showing *where* IATs are citing — in particular showing that they are citing to each other and to common general principles and human rights instruments — another research effort could bolster these findings by attempting to show that IATs are reaching common conclusions on common issues, regardless of the route that each individual tribunal may take to reach its conclusions. It appears from the research conducted herein that IATs generally do reach similar conclusions on similar issues the majority of the

time — and that examples like the Geneva Post Adjustment Multiplier cases with which this dissertation opened are in fact rare outliers — but a systematic research effort would be necessary to say this conclusively.

IV. CONCLUDING THOUGHTS

Beginning with a single tribunal in 1927, the field of IATs has undergone tremendous growth, which has accelerated exponentially in the past decades. There are now some thirty tribunals in operation, from small tribunals serving a staff of only some 100 persons to tribunals serving over 50,000 staff members. Through these pages, however, we have seen that while the various IATs differ significantly in age and level of activity, they share many more similarities than differences in terms of substantive activity. Indeed, almost six decades after Akehurst declared that '[i]nternational administrative tribunals behave as if the internal laws of different organizations formed part of a single system of law,'[1307] this dissertation has aimed to show just how insightful his statement has proven to be.[1308] And where the WBAT in *de Merode* stated that '[w]hether these similar features amount to a true *corpus juris* is not a matter on which it is necessary for the Tribunal to express a view',[1309] this dissertation has expressed that view explicitly, offering evidence from several angles that a body of law governing the international civil service has begun to crystallize. Thus, while there have been over the years occasional calls for efforts to harmonize the law applicable to the international civil service through the creation of one 'super-tribunal,'[1310] it is hoped that the findings of this dissertation will put this idea to rest. Likewise, suggestions for the creation of a preliminary ruling procedure whereby questions of public international law could be referred to the ICJ[1311] do not seem appropriate, given the number of times, set out in this dissertation, that IATs have referred

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[1307] M.B. Akehurst, *The Law Governing Employment in International Organizations* (1967), 263.

[1308] As de Cooker has stated recently, '[c]onvergence is the natural trend.' de Cooker, *supra* note 7, at 246.

[1309] WBAT Decision No. 1 (1981), *de Merode et al. v. World Bank*, paras. 26-28.

[1310] See ICJ, *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, ICJ Reports 1973*, at 214 (Declaration of Judge Lachs, calling for an 'improved procedure' to ensure that 'the procedures in question . . . be uniform'); M. Lachs, 'The Judiciary and the International Civil Service: Some Suggestions', in Liber Amicorum Honouring Ignaz Seidl-Hohenveldern(1988), at 311–13; de Cooker, *supra* note 7, at 243–44. Most recently, *see* Initial review of the jurisdictional set-up of the United Nations common system: Report of the Secretary-General, United Nations, document A/75/690, paras. 44–59, 110–14 (Jan. 15, 2021); Review of the jurisdictional set-up of the United Nations common system: Report of the Secretary-General, United Nations, document A/77/222, paras. 67–105 (Aug. 5, 2022).

[1311] See Address to the Plenary Session of the General Assembly of the United Nations by Judge Stephen M. Schwebel, President of the International Court of Justice, 26 October 1999; 'The Proliferation of International Judicial Bodies: The Outlook for the International Legal Order', Speech by His Excellency Judge Gilbert Guillaume, President of the International Court of Justice, to the Sixth Committee of the United Nations, 27 October 2000, p. 7.

to public international law without a single example of a *Tadić*-style conflict with the ICJ's interpretation of that law.[1312]

The approach taken in the present dissertation was not without its limitations, which should be acknowledged. In particular, it has relied on a certain quantitative analysis to make its point, showing for example that there is such an overwhelming number of examples of cross-fertilization that it must certainly mean something. Or that there are so many references to a common set of human rights norms that this must have significance. But it should be acknowledged here that beauty could also be in the eye of the beholder. While the present author sees a clear trend towards a coalescence of international administrative law, the judges on the tribunals themselves rendering these judgments may not have intended it that way. Indeed, even a judge developing or adopting a general principle of international administrative law — which to the present author seems a highly significant universalizing act — may be principally against the idea of the creation of a common body of international administrative law. There may in fact be no such coalescing or harmonizing of the law going on here, at least not intentionally. It could be that the present dissertation has simply gathered a significantly large number of examples to create such a mirage.

It must be reiterated that IATs remain formally separate from one another, existing each within unique jurisdictional limits which do not formally overlap. In light of its horizontal nature and formally non-binding character, the growing relationship between IATs could be compared to the 'inter-judicial dialogue' between high courts of different States.[1313] As Burke-White points out, '[a]s judges engage in this dialogue, … they will be required to develop new understandings of comity that go beyond deference to foreign laws and interests. … Such an expanded doctrine of comity may well hold the key to avoiding the pitfalls of opposing obligations and conflicting judgments.'[1314] Similarly, in her research on a 'global community

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[1312] More generally on this point, see Higgins, 'The ICJ, the ECJ, and the Integrity of International Law', *supra* note 30, at 20 ('I do not share their view that the model of Article 234 (the renumbered Article 177) of the Rome Treaty provides an answer. It is simply cumbersome and unrealistic to suppose that other tribunals would wish to refer points of general international law to the International Court of Justice. Indeed, the very reason for their establishment as separate judicial instances militates against a notion of intra-judicial reference. The better way forward, in my view, is for us all to keep ourselves well informed.').

[1313] See Burke-White, *supra* note 1284, at 971-973 (arguing that '[t]he significance of this interjudicial dialogue cannot be overstated, for it has the potential to preserve the unity of the international legal system in the face of potential fragmentation').

[1314] *Ibid.* at 973.

of courts' focused on the growing dialogue between domestic constitutional courts, Anne-Marie Slaughter has explained that such a community 'embrace[s] a principle of pluralism and legitimate difference, whereby judges acknowledge the validity of different approaches to the same legal problem.'[1315] In doing so, she explains, 'judges are moving to a domestic understanding of transjudicial relations rather than a diplomatic one. Conflict in domestic politics is to be expected and even embraced.'[1316]

The same could be said for the growing interconnectedness of IATs. Like high courts of different sovereign States, they are not bound by each other's pronouncements or even required to acknowledge them, yet they are doing so. Like high courts of sovereign States, they each exist within a formally separate legal system, each with its own particularities and specificities. The caution expressed by the WBAT in *de Merode* remains apt:

> 'The Tribunal does not overlook the fact that each international organization has its own constituent instrument; its own membership; its own institutional structure; its own functions; its own measure of legal personality; its own personnel policy; and that the difference between one organization and another are so obvious that the notion of a common law of international organization must be subject to numerous and sometimes significant qualifications'[1317]

It is not the intention of this dissertation to ignore these facts, not the goal to create one single *supra*-system of international administrative law where one does not exist. Rather, the goal of the present dissertation has been much more modest: It is an attempt to show that, despite being formally separate, the numerous IATs in existence have been informally engaged in an important judicial dialogue. By citing to each other, by referring to common principles and international instruments, and by working out substantive conclusions on similar issues, they have come a long way in developing an international law of the civil service. As the tribunals multiply and their jurisprudence grows, this process has accelerated, but the development of this international law of the civil service is still a work in progress, of which this dissertation

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[1315] A.-M. Slaughter, 'A Global Community of Courts', (2003) 44 *Harvard International Law Journal* 191, at 217.

[1316] *Ibid.*

[1317] WBAT Decision No. 1 (1981), *de Merode et al. v. World Bank*, paras. 26-28.

can only provide a current snapshot. If it has given the reader that, it has succeeded in its mission.

'[T]he vision of a global community of courts may seem a bit starry-eyed, projecting too much too quickly from too little. The language and conception is ambitious, but the reality is there.'[1318]

— Anne-Marie Slaughter, 2003

[1318] Slaughter, *supra* note 1315, at 194.

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SAMENVATTING (DUTCH SUMMARY)

NAAR EEN UNIVERSEEL RECHT VOOR DE INTERNATIONALE AMBTENARIJ
EEN SAMENSMELTING VAN INTERNATIONAAL ADMINISTRATIEF RECHT
TE MIDDEN VAN EEN PROLIFERATIE VAN TRIBUNALEN

Dit proefschrift heeft betrekking op Internationale Administratieve Tribunalen (IAT's), de organen voor de beslechting van geschillen tussen medewerkers en de administratie van internationale organisaties. Aangezien internationale organisaties niet onder de jurisdictie van het gastland vallen, kan een medewerker de internationale organisatie die hem tewerkstelt niet zomaar voor een nationale rechtbank dagen om een geschil te beslechten. De internationale ambtenarij heeft dus een afzonderlijk rechtssysteem nodig waarbij de organisatie geen immuniteit heeft, en IAT's zijn deze rol gaan vervullen. Beginnend met de oprichting van het Administratieve Tribunaal van de Volkenbond in 1927, dat na de ontbinding van de Volkenbond verder ging als het Administratieve Tribunaal van de Internationale Arbeidsorganisatie, is het aantal IAT's nu gegroeid tot bijna dertig.

Dit proefschrift gaat ook over het speciale juridische regime dat door IAT's wordt toegepast, dat bekend staat als internationaal administratief recht. Dit regime bestaat omdat IAT's opereren binnen een unieke juridische ruimte, waarin geschillen worden beslecht tussen een internationale organisatie en een persoon die in dienst is van die organisatie. Geen van beide partijen zijn staten, oorspronkelijk de enige subjecten van internationaal recht, en de juridische kwesties die zich voordoen binnen dit regime hebben specifiek en uniek betrekking op arbeidsgeschillen. Het nationale recht bevat weliswaar materiële regels met betrekking tot arbeidsaangelegenheden, maar roept de vraag op welk nationaal recht moet worden toegepast, aangezien internationale organisaties bestaan uit medewerkers van vele nationaliteiten. Bij toepassing van het nationale recht van de medewerker zouden verschillende medewerkers uitsluitend op grond van hun nationaliteit aan verschillend recht zijn onderworpen. Bij toepassing van het nationale recht van het gastland, zouden internationale ambtenaren onderworpen zijn aan verschillende regels op grond van hun verschillende standplaatsen, zelfs als ze in dezelfde organisatie werkten. Er was dus een autonome reeks regels nodig. Dit geheel van regels is het internationaal administratief recht. Hoewel de precieze aard van dit recht moeilijk te categoriseren is en er ruimte is voor discussie, is het door Amerasinghe, een

vooraanstaand commentator, beschreven als ‘een speciale tak van het internationaal publiekrecht.’

Dit proefschrift gaat over beide onderwerpen — IAT's en het recht dat door hen wordt toegepast, internationaal administratief recht — en meer in het bijzonder over de wijze waarop de IAT’s daaraan vormgeven. Het feit dat elke IAT eigen jurisprudentie heeft ontwikkeld, is niet verrassend. Dit is immers wat alle rechtbanken en tribunalen doen. Dit proefschrift zoekt echter naar datgene wat het collectieve werk van het groeiende aantal IAT's overstijgt. Het zoekt naar een geheel dat groter is dan de som der delen, met als doel om tussen het snel groeiende aantal tribunalen een ontluikende gemeenschappelijke jurisprudentie van internationaal administratief recht aan het licht te brengen.

In het bijzonder beoogt dit proefschrift de volgende onderzoeksvraag te beantwoorden: *Wat is het resultaat geweest van de snelle proliferatie van IAT's? Is het recht dat van toepassing is op het internationale ambtenarenapparaat gefragmenteerd geraakt of hebben IAT's een gemeenschappelijke jurisprudentie ontwikkeld op het gebied van internationaal administratief recht?*

Om deze onderzoeksvraag te kunnen beantwoorden is een grondig begrip van IAT's noodzakelijk. De hoofdstukken 2 en 3 zijn hieraan gewijd. Hoofdstuk 2 schetst de institutionele evolutie van internationale administratieve tribunalen. Daarin wordt uitgelegd dat IAT’s inmiddels standaardonderdelen zijn geworden van veel internationale organisaties, maar dat dit niet altijd het geval is geweest. Lange tijd bestond slechts een handvol IAT's en in de tijd daarvoor was de behoefte aan IAT's niet eens duidelijk en zelfs niet algemeen geaccepteerd of erkend. Dit hoofdstuk gaat dieper in op deze kwesties en schetst de institutionele ontwikkeling van IAT's in de internationale gemeenschap. Het begint met een bespreking van de behoefte aan IAT's en de juridische grondslag voor hun oprichting. Daarna wordt gekeken naar de toename van het aantal IAT's en de langlopende debatten over hun mogelijke fusie of harmonisatie van hun werk. Het hoofdstuk bespreekt vervolgens de herziening van gerechtelijke uitspraken door het Internationaal Gerechtshof en de groei van de beroepstribunalen daarna. Na een korte beschrijving van de werking van een typische IAT, geeft het hoofdstuk een overzicht van elk van de verschillende bestaande IAT's.

Hoofdstuk 3 onderzoekt de rechtsbronnen die door IAT's worden toegepast. Deze bronnen worden gegroepeerd in twee wezenlijk verschillende categorieën: ‘op zichzelf staande’ en ‘universaliserende’ bronnen. De op zichzelf staande bronnen van internationaal administratief recht zijn de bronnen die specifiek zijn voor een bepaalde organisatie, met inbegrip van de arbeidsovereenkomst, het personeelsstatuut en het personeelsreglement, de bulletins, circulaires, handboeken en publicaties van de organisatie, het oprichtingsbesluit van de organisatie; besluiten en resoluties van het plenaire orgaan van de organisatie of een ander besluitvormingsorgaan en de praktijk van de organisatie. Vervolgens onderzoekt het hoofdstuk de ‘universaliserende’ bronnen van internationaal administratief recht, dat wil zeggen de bronnen, waarnaar steeds vaker wordt verwezen, die ‘naar buiten gericht’ zijn en die dus door meerdere IAT's gezamenlijk kunnen worden overgenomen. Hieronder vallen algemene rechtsbeginselen, internationaal recht en beslissingen van andere internationale administratieve tribunalen. Deze ‘universaliserende’ bronnen leiden ertoe dat een universeel recht voor het internationale ambtenarenapparaat gestalte krijgt, zo concludeert het hoofdstuk.

Het tweede deel van dit proefschrift is gewijd aan het beantwoorden van de hierboven gestelde onderzoeksvraag. Deze vraag is verder onderverdeeld in drie subvragen: *(1) In welke mate verwijzen IAT's naar gemeenschappelijke principes of een gemeenschappelijk corpus van recht bij het bereiken van hun conclusies? (2) Kan een gemeenschappelijke jurisprudentie worden afgeleid uit de mate waarin IAT's naar elkaar verwijzen (kruisbestuiving)? (3) Kan een gemeenschappelijke jurisprudentie worden geïllustreerd door een onderzoek van verwijzingen naar een gedeelde set van internationale mensenrechteninstrumenten?* Het proefschrift begint de eerste deelvraag al te beantwoorden in hoofdstuk 3 met de bespreking van ‘universaliserende’ rechtsbronnen. In het bijzonder toont het aan dat IAT's verwijzen naar een gemeenschappelijke set van algemene principes en een gemeenschappelijk rechtscorpus (internationaal recht) om tot hun conclusies te komen.

Gelet op de inhoudelijke omvang, wijdt het proefschrift vervolgens volledige hoofdstukken aan het beantwoorden van de tweede en derde deelvraag van de onderzoeksvraag. Hoofdstuk 4 behandelt het fenomeen van ‘kruisbestuiving’, dat wil zeggen dat een IAT in zijn redenering verwijst naar een beslissing van een andere IAT. Eerst wordt de jurisprudentie van de tribunalen die het meest actief betrokken zijn bij kruisbestuiving onder de loep genomen, waaronder het Administratieve Tribunaal van de Wereldbank, het Administratieve Tribunaal van het Internationaal Monetair Fonds, het Geschillengerecht van

de Verenigde Naties, het VN-Tribunaal van Beroep, het Administratieve Tribunaal van de Aziatische Ontwikkelingsbank, het Administratieve Tribunaal van de Raad van Europa en het Administratieve Tribunaal van de Afrikaanse Ontwikkelingsbank. Vervolgens wordt de jurisprudentie beoordeeld van de tribunalen die regelmatig aan kruisbestuiving doen, waaronder het Administratieve Tribunaal van de NAVO, het Administratieve Tribunaal van de Organisatie voor Economische Samenwerking en Ontwikkeling, het Administratieve Tribunaal van de Europese Bank voor Wederopbouw en Ontwikkeling, het Administratieve Tribunaal van het Gemenebestsecretariaat, het Administratieve Tribunaal van het Europese Ruimteagentschap en het Administratieve Tribunaal van de Bank voor Internationale Betalingen. Tot slot wordt gekeken naar de tribunalen die het meest terughoudend zijn geweest met deze praktijk, waaronder het Administratieve Tribunaal van de Internationale Arbeidsorganisatie, het Administratieve Tribunaal van de Organisatie van Amerikaanse Staten en het Administratieve Tribunaal van de Inter-Amerikaanse Ontwikkelingsbank. De tweede helft van het hoofdstuk onderzoekt de kwestie van kruisbestuiving aan de hand van de meest invloedrijke zaken. Het hoofdstuk concludeert dat de praktijk van kruisbestuiving leidt tot de uitkristallisatie van een universeel recht dat het internationale ambtenarenapparaat regelt.

Hoofdstuk 5 gaat in op de praktijk van IAT's die verwijzen naar internationale mensenrechteninstrumenten. In dit hoofdstuk worden meer dan 400 beslissingen van zo'n twintig IAT's onder de loep genomen waarin wordt verwezen naar internationale mensenrechteninstrumenten. Interessant genoeg blijkt dat de overgrote meerderheid van de zaken waarin internationale mensenrechteninstrumenten worden aangehaald, betrekking heeft op drie belangrijke gebieden: non-discriminatie, rechten op een eerlijk proces en economische rechten. Het hoofdstuk wijdt daarom aparte paragrafen aan deze drie gebieden en gaat vervolgens in op verschillende andere internationale mensenrechten waarnaar IAT's verwijzen, zoals het recht op privacy, het recht op vrije meningsuiting, het recht om niet willekeurig van de nationaliteit beroofd te worden en het recht op rechtvaardige en gunstige arbeidsvoorwaarden. Het hoofdstuk concludeert dat IAT's nu weliswaar regelmatig verwijzen naar internationale mensenrechteninstrumenten, maar dat de toepassing van deze rechtsbron inconsistent is, variërend van sommige uitspraken waarin wordt geweigerd om de directe toepasbaarheid ervan te erkennen tot andere uitspraken waarin het als hogere rechtsbron wordt beschouwd.

Aan de hand van de bevindingen in de hoofdstukken 2 tot en met 5 geeft hoofdstuk 6 een antwoord op de hoofdonderzoeksvraag. In dit verband wordt geconcludeerd dat de proliferatie van IAT's niet tot grote fragmentatieproblemen heeft geleid. De verschillende IAT's ontwikkelen eerder een gemeenschappelijke jurisprudentie van internationaal administratief recht door steeds vaker te verwijzen naar gemeenschappelijke algemene principes, door de snel groeiende praktijk van kruisbestuiving en door de frequente verwijzing naar gemeenschappelijke internationale mensenrechteninstrumenten. Het hoofdstuk gaat vervolgens in op de mogelijke toekomst van het internationaal administratief recht, waarbij gebruik wordt gemaakt van de ervaring van het internationaal publiekrecht toen dit de groeipijnen van fragmentatie en proliferatie doormaakte. Het eindigt met enkele aanbevelingen voor toekomstig onderzoek en conclusies.

CURRICULUM VITAE

Jason Morgan-Foster is a Legal Officer and Secretary of the Court at the International Court of Justice. From 2015-2018, he served as Chairman of the Court's Conciliation Committee, the body which constituted at that time the first level of recourse for staff members in the Court's system of internal justice, with appeal to the United Nations Appeals Tribunal. He has also served as Co-Secretary of the Court's Rules Committee since 2010 and was closely involved in the major reform of the Court's internal justice mechanisms leading to the acceptance by the Court of the jurisdiction of the United Nations Dispute Tribunal in January 2019. He previously worked for the secretariat of the United Nations Administrative Tribunal and in the Codification Division of the United Nations Office of Legal Affairs.

Jason completed a Bachelors Degree *Magna cum laude* in Romance Languages from The Colorado College, where he was a Boettcher scholar, and a Juris Doctor *Cum laude* from the University of Michigan Law School, where he was a Fulbright scholar. He began his initial research on the current topic in 2016 and formally enrolled as an external PhD candidate at the Grotius Centre of Leiden Law School of Leiden University in 2024 under the supervision of Prof. dr. N.M. Blokker and Prof. dr. E.C.P.D.C. De Brabandere.

Jason is co-author of *The Law and Practice of International Administrative Tribunals* (Cambridge University Press, 2025). He has also published in the *European Journal of International Law*, the *Yale Human Rights and Development Law Journal*, the *Michigan Journal of International Law* and the *Chicago Journal of International Law*. His work has been translated into Italian and Russian.

Jason served on the editorial board of the *Leiden Journal of International Law* from 2013 to 2023 and was a corresponding editor of *International Legal Materials* from 2007 to 2021. He is a member of the New York bar.

ANNEX

CROSS-FERTILIZATION BY REFERENCE TO EACH JUDGMENT

Citations to the ILOAT

ILOAT judgment number and name	Citing tribunal decision number
17 — *Duberg*	UNDT/2011/032; UNDT/2019/188; CSAT 12 (No. 1)
18 — *Leff*	UNDT/2011/032; UNDT/2019/188
19 — *Wilcox*	UNDT/2011/032; UNDT/2017/097; UNDT/2017/098; UNDT/2017/099; UNDT/2019/188
21 — *Bernstein*	UNDT/2011/032; UNDT/2019/188
25 — *Hoefnagels*	AfDBAT 22
28 — *Waghorn*	CSAT 11
29 — *Sherif*	UNDT/2020/106; UNDT/2020/107; UNDT/2020/114; UNDT/2020/115; UNDT/2020/117; UNDT/2020/118; UNDT/2020/122; UNDT/2020/129; UNDT/2020/130; UNDT/2020/131; UNDT/2020/132; UNDT/2020/133; UNDT/2020/148; UNDT/2020/149; UNDT/2020/150; UNDT/2020/151; UNDT/2020/152; UNDT/2020/153; UNDT/2020/154; UNDT/2017/097; UNDT/2017/098; UNDT/2017/099
49 — *Duncker*	WBAT 373
51 — *Poulain d'Andecy*	UNDT/2017/097; UNDT/2017/098; UNDT/2017/099; COEAT 115/1985; COEAT 116/1985; COEAT 117/1985; COEAT 147-148/1986
56 — *Pinto*	AfDBAT 138
61 — *Lindsey*	ADBAT 35; OASAT 12; OASAT 30; OASAT 117; UNDT/2017/097; UNDT/2017/098; UNDT/2017/099; UNDT/2020/106; UNDT/2020/107; UNDT/2020/114; UNDT/2020/115; UNDT/2020/117; UNDT/2020/118; UNDT/2020/122; UNDT/2020/129; UNDT/2020/130; UNDT/2020/131 UNDT/2020/132; UNDT/2020/133; UNDT/2020/148; UNDT/2020/149 UNDT/2020/150; UNDT/2020/151; UNDT/2020/152; UNDT/2020/153; UNDT/2020/154
67 — *Darricades*	EBRDAT 2019/AT/06; IMFAT 1999-1
69 — *Kissuan*	AfDBAT 103
75 — *Privitera*	IMFAT 1999-1
77 — *Rebeck*	CSAT 3 (No. 1)
85 — *Jurado*	BISAT 1/1999
87 — *Di Giuliomaria*	IMFAT 2008-1
107 — *Passacantando*	COEAT 172/1993
112 — *Crapon de Caprona*	ADBAT 43
122 — *Chadsey*	UNDT/2011/168; UNDT/2017/097; UNDT/2017/098; UNDT/2017/099; COEAT 226/1996; EBRDAT 2019/AT/06
132 — *Tarrab*	COEAT 115/1985; COEAT 116/1985; COEAT 117/1985; COEAT 130/1985; COEAT 147-148/1986
133 — *Hermann*	IMFAT 2012-1

ILOAT judgment number and name	Citing tribunal decision number
139 — *J.C.*	IMFAT 2005-1
151 — *Silow*	COEAT 115/1985; COEAT 116/1985; COEAT 117/1985; COEAT 130/1985; COEAT 147-148/1986
152 — *Kersaudy*	2012-UNAT-231; AfDBAT 50
179 — *Varnet*	UNDT/2014/066; UNDT/2015/054; UNDT/2018/136; UNDT/2019/010; 2014-UNAT-397; AfDBAT 23
182 — *Glynn*	BISAT 1/2005
191 — *Ballo*	ADBAT 15 (dissent); UNDT/2011/032; UNDT/2012/029; UNDT/2013/150; UNDT/2016/058; UNDT/2016/101; COEAT 115/1985; COEAT 116/1985; COEAT 117/1985; COEAT 130/1985; COEAT 131/1986; COEAT 147-148/1986; COEAT 166/1990; CSAT 5 (No. 2); CSAT 8 (No. 2); CSAT 11; CSAT 16; CSAT 41 (No. 1)
195 — *Chawla*	CSAT 2 (No. 2)
197 — *Sternfield*	COEAT 650/2020
202 — *Malic*	COEAT 172/1993
203 — *Ferrecchia*	ADBAT 90; COEAT 178/1995; COEAT 189-195/1994; COEAT 190-196-197/1994, 201/1995; COEAT 208/1995
207 — *Khelifati*	ADBAT 78 ; ADBAT 79 ; ADBAT 116 ; ADBAT 117 ; ADBAT 118 ; ADBAT 119; COEAT 187-193/1994; COEAT 189-195/1994; COEAT 190-196-197/1994, 201/1995; COEAT 208/1995; NATOAT 7 (2013)
209 — *Lindsey (No. 2)*	ESAAT 132
219 — *Herouan*	COEAT 293/2002
226 — *Schawalder-Vrancheva*	AfDBAT 50
229 — *Hrdina*	CSAT 3 (No. 1)
232 — *Diaz*	ADBAT 75
247 — *Nemeth*	COEAT 189/1994; COEAT 195/1994; COEAT 190/1994; COEAT 196/1994; COEAT 197/1994; COEAT 201/199; COEAT 208/1995
259 — *Ab Joundi*	AfDBAT 42; IMFAT 2001-1
269 — *Garcia de Muñiz*	UNDT/2011/045; AfDBAT 138; IMFAT 2005-1; IMFAT 2011-2
307 — *Labarthe*	UNDT/2010/191; IMFAT 1999-1
320 — *Ghattar*	CSAT 2 (No. 2)
323 — *Connolly-Battisti (No. 5)*	IMFAT 1996-1; IMFAT 1997-2
325 — *Verdrager*	UNDT/2013/151; UNDT/2015/091
342 — *Price (No. 2)*	AfDBAT 12
344 — *Callewaert-Haezebrouck (No. 2)*	BISAT 1/2018
357 — *ASP*	ESAAT 132
361 — *Schofield*	ADBAT 55
364 — *Fournier D'Albe*	AfDBAT 77
365 — *Lamadie (No. 2) and Kraanen*	UNDT/2017/097; UNDT/2017/098; UNDT/2017/099
367 — *Sita Ram*	CSAT 21; CSAT 22 (No. 2)
368 — *Elsen and Elsen-Drouot*	ADBAT 113
370 — *Molinier et al.*	UNDT/2017/097; UNDT/2017/098; UNDT/2017/099
375 — *Duran*	IMFAT 2003-1
391 — *De Los Cobos and Wenger*	ADBAT 35; UNDT/2017/097; UNDT/2017/098; UNDT/2017/099; COEAT 492-497/2011, 504-508/2011, 510/2011, 512/2011, 515-520/2011, 527/2012; CSAT 7
396 — *Guisset*	COEAT 266/2001
402 — *Grasshoff (Nos. 1 and 2)*	UNDT/2012/018; UNDT Order 126 (NY/2013)

ILOAT judgment number and name	Citing tribunal decision number
405 — *Rudin (No. 2)*	COEAT 115/1985; COEAT 116/1985; COEAT 117/1985; COEAT 130/1985; COEAT 147-148/1986
426 — *Settino*	ADBAT 35; ADBAT 113; OASAT 140; BISAT 1/2006
427 — *Dicancro*	CSAT 40 (No. 2); CSAT 41 (No. 2)
431 — *Rosescu*	UNDT/2010/040; CSAT 12 (No. 2)
440 — *Molina*	CSAT 1
442 — *Villegas (No. 4)*	ADBAT 33; ADBAT 48; ADBAT 66; OECDAT 79; CSAT 5 (No. 1)
447 — *Quinones*	AfDBAT 22
460 — *Rombach*	CSAT 12 (No. 2)
469 — *O'Connell*	CSAT 12 (No. 1)
473 — *Haas*	IMFAT 2001-2
474 — *Gale*	AfDBAT 22; AfDBAT 138; CSAT 40
475 — *Lakey*	AfDBAT 129
477 — *Schaffter*	WBAT 242
480 — *Dicantro*	UNDT/2010/040
486 — *Leger*	UNDT/2012/135; UNDT/2014/007
495 — *Olivares Silva*	UNDT Order 010 (NBI/2011); IMFAT 2008-1
496 — *García and Márquez (No. 2)*	IMFAT 2008-1
498 — *Tarrab*	IMFAT 2002-1
509 — *Villegas*	OECDAT 90
514 — *Alonso (No. 3)*	ADBAT 35; OASAT 140
515 — *Vargas*	ADBAT 24
529 — *Ayvangar*	CSAT 27; CSAT 28
538 — *Djoehana (No. 2)*	ADBAT 53; CSAT 12 (No. 2)
544 — *Bordeaux*	ESAAT 96
553 — *Usakligil (No. 2)*	COEAT 665/2020
556 — *Ali Khan*	UNDT Order 40 (NY/2010)
557 — *Ali Khan (No. 2)*	ADBAT 32
575 — *Schulz*	ADBAT 8; IMFAT 2001-1; IMFAT 2006-5
585 — *Michl*	ADBAT 8
591 — *Garcia*	AfDBAT 12 IMFAT 1996-1
592 — *Byrne-Sutton*	AfDBAT 25; AfDBAT 26; CSAT 12 (No. 1)
607 — *Verron*	UNDT/2009/036
614 — *Ali Khan (No. 3)*	BISAT 1/1999; UNRWADT 2021/043; UNRWADT 2021/063
622 — *Sikka (No. 3)*	ADBAT 109; NATOAT 15 (2018); NATOAT 16 (2018); NATOAT 19 (2018); BISAT 1/1999
624 — *Giroud (No. 2) and Lovrecich*	ADBAT 109
631 — *Go*	UNDT/2014/082
634 — *Zahawi (No. 2)*	ADBAT 8
647 — *Andres*	AfDBAT 123
663 — *Kern (Nos. 2, 3, 4 and 5)*	NATOAT 15 (2018); NATOAT 16 (2018); NATOAT 19 (2018)
675 — *Perez de Castillo*	UNDT Order 010 (NBI/2011); UNDT/200/017; UNDT/2009/63; UNDT/2011/032; UNDT/2012/049; UNDT/2013/151; ESAAT 96
676 — *Brocard*	ADBAT 41

ILOAT judgment number and name	Citing tribunal decision number
701 — *Bustos*	ADBAT 24; IDBAT 80; EBRDAT 2019/AT/02; EBRDAT 2019/AT/03; EBRDAT 2019/AT/04; EBRDAT 2019/AT/05; EBRDAT 2019/AT/06; IMFAT 1999-1
703 — *Gross*	CSAT 14 (No. 1)
724 — *Hakin*	UNDT/2010/078
726 — *Andres (No. 2)*	ADBAT 113
743 — *Flick*	COEAT 293/2002
758 — *Thresher*	UNDT/2009/036
764 — *Berte (No. 2)*	BISAT 1/1999
767 — *Chachelin*	ESAAT 112-114
775 — *Angius*	AfDBAT 42
782 — *Geiser*	CSAT 11; ESAAT 106
802 — *Van der Peet*	UNDT Order 42 (GVA/2010); AfDBAT 21
809 — *Najman*	COEAT 266/2001
831 — *Abdilleh and Salah*	ADBAT 98
832 — *Ayoub, Lucal, Montat, Perret-Nguyen and Samson*	ADBAT 113; UNDT/2017/097; UNDT/2017/098; UNDT/2017/099; UNDT/2020/106; UNDT/2020/107; UNDT/2020/114; UNDT/2020/115; UNDT/2020/117; UNDT/2020/118; UNDT/2020/122; UNDT/2020/129; UNDT/2020/130; UNDT/2020/131; UNDT/2020/132; UNDT/2020/133; UNDT/2020/148; UNDT/2020/149; UNDT/2020/150; UNDT/2020/151; UNDT/2020/152; UNDT/2020/153; UNDT/2020/154; 2018-UNAT-840; 2018-UNAT-841; 2018-UNAT-842; BISAT 1/2006; ESAAT 122-128; ESAAT 132; ESAAT 138
845 — *West (No. 5)*	UNRWADT 2021/043; UNRWADT 2021/063
856 — *Renault*	AfDBAT 123
874 — *Cachelin (No. 2)*	UNDT/2010/011
885 — *West (No. 10)*	AfDBAT 121
891 — *Morris*	ADBAT 24
929 — *Dunaud and Jacquemod*	AfDBAT 12; IMFAT 1996-1
931 — *Bakker*	CSAT 2 (No. 2); CSAT 43
933 — *Van der Peet (No. 12)*	2018-UNAT-843
934 — *Van der Peet (No. 13)*	EBRDAT 2019/AT/07
946 — *Fernandez-Caballero*	COEAT 665/2020; IDBAT 42; ESAAT 96
961 — *F.J. (No. 2), Laurent and Van der Sluis*	ADBAT 109
963 — *Niesing, Peeters & Roussot*	IMFAT 1996-1; ESAAT 112-114
978 — *Meyler*	IMFAT 2011-1
986 — *Ayoub (No. 2), Von Knorring, Perret-Nguyen (No. 2) and Santarelli*	ADBAT 98; 2010-UNAT-034; BISAT 1/2006; IMFAT 2005-3; IMFAT 2006-4
990 — *Cuvillier (No. 3)*	ESAAT 132
1001 — *Hillhouse-Reine and Woess*	ADBAT 109
1115 — *Omokolo (Nos 1 and 2)*	UNDT Order 40 (NY/2010)
1018 — *Saunders (No. 4)*	ADBAT 83; ADBAT 104
1034 — *Amezketa*	IMFAT 1999-1
1052 — *James*	CSAT 37 (No. 2)
1053 — *Beetle et al*	OASAT 140
1070 — *S.C.*	COEAT 624/2019

ILOAT judgment number and name	Citing tribunal decision number
1075 — *Leonor*	BISAT 1/2018
1077 — *Barahona (Janice)*	COEAT 665/2020
1085 — *Saunoi (No. 4)*	ADBAT 17; ADBAT 23
1111 — *Durand*	OASAT 140
1118 — *Niesing (No. 2)*	ADBAT 35; CSAT 7; EBRDAT 2020/AT/02
1127 — *Verlaeken-Engels*	ADBAT 43
1128 — *Williams*	ESAAT 96
1130 — *Godin, Ledrut (No. 3) and Verschelden*	ESAAT 112-114
1147 — *Raths*	UNDT/2015/086
1154 — *Bluske*	UNDT Order 154 (NY/2018); UNDT/2011/032; ESAAT 96
1158 — *Vianney*	CSAT 2 (No. 2); IMFAT 2007-3
1168 — *Price (No. 2)*	BISAT 1/2018
1177 — *Der Hovsepian*	UNDT Order 40 (NY/2010); IMFAT 2007-3
1178 — *Leonor (No. 2)*	OECDAT 79
1194 — *Vollering*	ADBAT 91; BISAT 1/1999; EBRDAT 01/03 (Liability and Remedy); IMFAT 2002-1; IMFAT 2002-3
1195 — *Zayed*, 1195	OASAT 140
1203 — *Horsman, Kaper, McNeill and Petitfils*	ADBAT 109; UNRWADT 2012/18
1212 — *Schickel-Zuber*	AfDBAT 50
1216 — *J.-F. S.*	AfDBAT 119; IMFAT 2004-1
1223 — *Kirstetter (No. 2)*	IMFAT 2007-3
1226 — *Georgiadis and others*	OECDAT 85; OECDAT 86; OECDAT 88; OECDAT 89; BISAT 1/2006
1234 — *Crockett*	UNDT/2014/082
1260 — *Fagotto*	CSAT 5 (No. 1)
1263 — *Louis (No. 3)*	IMFAT 2004-1
1265 — *Berliez, Hansson, Heitz, Pary (No. 2) and Slater*	UNDT/2017/097; UNDT/2017/098; UNDT/2017/099
1272 — *Diotallevi and Tedjini*	IMFAT 1996-1; IMFAT 2002-2
1279 — *Almazan-Aguirre and others*	ESAAT 96; ESAAT 118
1284 — *Fahmy (No. 2)*	OECDAT 79
1298 — *Ahmad (No. 2)*	UNDT/2009/088; ESAAT 96
1301 — *Lochner*	ADBAT 106
1306 — *Der Hovsepian (No. 2)*	AfDBAT 21
1316 — *Van der Peet (No. 17)*	IMFAT 2007-3
1317 — *Amira*	UNDT/200/017; UNDT/2009/63; UNDT/2011/032; UNDT/2012/049; UNDT/2013/151; UNDT/2014/085; CARICOMAT 1
1323 — *Morris (No. 2)*	UNDT Order 40 (NY/2010)
1330 — *Bangasser, Dunand, Marguet-Cusack and Sheeran (No. 2)*	NATOAT 15 (2018); NATOAT 16 (2018); NATOAT 19 (2018)
1333 — *Franks and Vollering*	COEAT 587/2018; COEAT 588/2018
1338 — *Manaktala (No. 3)*	COEAT 665/2020
1340 — *Vollering (No. 3)*	UNDT Order 185 (NBI/2020)
1347 — *Yath-Cruces*	OASAT 140
1359 — *Cassaignau (No. 4)*	IMFAT 2007-3

ILOAT judgment number and name	Citing tribunal decision number
1366 — *Kigaraba*	OASAT 140 ; BISAT 1/1999
1372 — *Malhotra*	UNDT Order 40 (NY/2010) ; IMFAT 2005-1
1380 — *Schimmell*	CSAT 2 (No. 2)
1385 — *Burt*	ADBAT 24; EBRDAT 2019/AT/02; EBRDAT 2019/AT/03; EBRDAT 2019/AT/04; EBRDAT 2019/AT/05
1392 — *Raths and others*	OECDAT 85; OECDAT 86; OECDAT 88; OECDAT 89
1396 — *Clark*	COEAT 392/2007
1408 — *Frints-Humblet*	UNDT/2010/206; UNDT/2013/090
1441 — *Sock*	COEAT 187-193/1994; COEAT 189-195/1994; COEAT 190-196-197/1994, 201/1995; COEAT 208/1995
1446 — *Agoncillo and others*	OECDAT 85; OECDAT 86; OECDAT 88; OECDAT 89
1461 — *Borrello and Chant*	UNDT/2010/011; IMFAT 2019-1
1463 — *Weber*	ADBAT 109
1466 — *Saunders*	IMFAT 2006-5
1486 — *Wassef (No. 8)*	UNRWADT 2012/01
1500 — *Pary (No. 4)*	IMFAT 2002-2
1509 — *Zhu*	CSAT 5 (No. 1)
1513 — *Fauqex*	UNDT Order 40 (NY/2010)
1536 — *Rauf*	BISAT 1/1999
1543 — *Popineau (No. 12)*	2018-UNAT-843
1546 — *Randriamanantenasoa*	ESAAT 96
1549 — *Lopez-Coterels*	COEAT 267/2001
1553 — *Moreno de Gomez*	OECDAT 91
1583 — *Nouel*	ESAAT 96
1595 — *De Riemaker (No. 3)*	IMFAT 2007-3
1610 — *Del Valle Franco Fernandez*	AfDBAT 103; AfDBAT 104; ESAAT 112-114
1644 — *Rubio*	UNDT/2017/097; UNDT/2017/098; UNDT/2017/099
1646 — *Pinto*	IMFAT 2007-3; IMFAT 2012-1; IMFAT 2017-2
1669 — *Meyers*	UNRWADT 2020/073
1682 — *Argos*	CSAT 7
1696 — *Re Felkai*	CSAT 37 (No. 2)
1698 — *Mitastein (No. 3)*	ESAAT 131
1699 — *Halloway*	COEAT 665/2020
1712 — *Aelvoet (No. 6) and others*	ADBAT 109; NATOAT 15 (2018); IMFAT 2005-3; IMFAT 2006-4
1715 — *Geyer (No. 2)*	COEAT 321/2003
1734 — *Kowasch*	OECDAT 75
1740 — *Beuchat*	COEAT 416/2008
1745 — *De Roos*	AfDBAT 138
1750 — *Peroni*	UNDT Order 010 (NBI/2011)
1752 — *Qin (Nos 1 and 2)*	OECDAT 79
1755 — *Goettgens*	OECDAT 66
1757 — *Hardy (No. 4)*	ADBAT 83
1764 — *Martínez-García*	UNDT/2012/142
1782 — *Zaunbauer*	UNDT/2016/190; UNDT/2016/191; UNDT/2016/192; UNDT/2016/193; UNDT/2016/194; UNDT/2016/195; UNDT/2016/102; UNDT/2016/181; ESAAT 102

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1798 — *Ashurst, Berthet, Bosshard and Tuli*	UNDT/2020/106; UNDT/2020/107; UNDT/2020/114; UNDT/2020/115; UNDT/2020/117; UNDT/2020/118; UNDT/2020/122
1806 — *Gran Olsen (Nos. 1 and 2)*	IMFAT 2008-1
1815 — *Gutiérrez*	2011-UNAT-121
1817 — *Miss F. J.*	UNDT/2011/032
1821 — *Allaert and Warmels (No. 3)*	EBRDAT 2020/AT/02
1825 — *Belser (No. 2), Bossung (No. 2) and Lederer (No. 2)*	IMFAT 2004-1
1827 — *Ochani*	IMFAT 2007-4
1828 — *Ms. K. A. K.*	UNDT/2010/096
1845 — *Palma (No. 5)*	AfDBAT 33
1884 — *Vollering (No. 15)*	UNDT Order 59 (NY/2010)
1897 — *Cervantes (No. 4)*	CSAT 15
1911 — *Ansorge (No. 3)*	UNDT/2011/032
1912 — *Berthet (No. 2) and others*	CSAT 7 IMFAT 2007-1
1916 — *Dekker (No. 2)*	COEAT 392/2007
1917 — *Dekker (No. 3)*	ADBAT 82; OECDAT 85; OECDAT 86; OECDAT 88; OECDAT 89
1925 — *Schubert*	UNDT/2010/096
1952 — *Curina (No. 2)*	OECDAT 79
1979 — *Bousquet (No. 4) and others*	ESAAT 112-114
1984 — *van Walstijn*	UNDT/2012/169; OECDAT 61; NATOAT 7 (2013)
2004 — *Matthews*	WBAT 453; CSAT 3 (No. 2); IMFAT 2007-3
2040 — *Durand-Smet*	IMFAT 2002-2; IMFAT 2005-2
2059 — *Abdur (No. 2), Drechsler (No. 2) and Zeller (No. 2)*	OECDAT 79
2066 — *Tekouk*	OECDAT 90
2067 — *Annabi (No. 2)*	COEAT 285/2001
2076 — *Trambelland*	UNDT/2010/011; IMFAT 2019-1
2089 — *Berthet (No. 3), Delius, Glöckner (No. 6), Robrahn and Stegmüller (No. 2)*	ESAAT 122-128; ESAAT 138
2092 — *Spaans*	NATOAT 23 (2017); AfDBAT 138
2097 — *Deville and others*	ADBAT 68; ADBAT 98
2100 — *Guastavi*	COEAT 285/2001
2107 — *Donoghoe*	UNDT/2009/088
2116 — *Giordimaina*	WBAT 453; UNDT Order 010 (NBI/2011); UNDT/2013/005
2120 — *I. M. B.*	UNDT/2018/066; IMFAT 2006-6
2124 — *N. K.*	UNDT/2011/032
2138 — *M.H.J.*	CSAT 5 (No. 2)
2156 — *A.M.I.*	IMFAT 2005-1; IMFAT 2012-1
2158 — *P.G.L.B.*	OECDAT 79
2163 — *M.D.S.*	IMFAT 2007-3
2170 — *A.E.L.*	IMFAT 2012-2
2178 — *M. L. M.*	UNDT/2011/202
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2190 — *F. Z.*	2018-UNAT-843 OECDAT 60
2193 — *R. A.-O.*	COEAT 321/2003
2200 — *M. P.*	CSAT 14 (No. 2)
2207 — *T.*	AfDBAT 138
2229 — *R.A.-O.*	ADBAT 83; UNDT/2017/054; 2011-UNAT-121
2231 — *E. B.*	UNDT/2010/096
2232 — *Bustani*	CSAT 14 (No. 2)
2261 — *H. K.*	NATOAT 23 (2017); CSAT 14 (No. 2)
2294 — *S.S.*	IMFAT 2005-1
2297 — *C.F.*	AfDBAT 42
2313 — *Z. P.*	COEAT 587/2018; COEAT 588/2018; CSAT 18
2315 — *Mr. A. V.*	2011-UNAT-121
2316 — *A. E. L.*	UNDT/2018/049; IMFAT 2004-1
2324 — *E. C.*	2013-UNAT-282; AfDBAT 90
2339 — *T. N.*	NATOAT 23 (2017)
2345 — *E.K.*	COEAT 665/2020
2351 — *M. H. D.*	UNDT/2012/142
2361 — *A. T.*	OECDAT 79
2370 — *M. H. L. d. M.*	UNDT/2009/095
2377 — *A. F.*	CSAT 15; ESAAT 102
2392 — *H.J. T.*	WBAT 453
2393 — *R.S.I.*	IMFAT 2007-3; IMFAT 2012-1
2396 — *T. B.*	UNDT Order 185 (NBI/2020)
2351 — *M. H. D.*	UNDT Order 185 (NBI/2020)
2403 — *F. M.*	UNDT/2018/099
2414 — *A. E. L. (No. 3)*	UNDT Order 255 (NBI/2014); UNDT Order 243 (NBI/2015); UNDT/2009/088; UNDT/2013/150; UNDT/2014/034
2420 — *S.B. and others*	ESAAT 88-89
2423 — *P.E. D. and A. K.*	ADBAT 98
2435 — *L.F.R.*	BISAT 1/2018; CSAT 14 (No. 2)
2439 — T.B.	ESAAT 112-114
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2495 — *J.G. B.*	ADBAT 80; ADBAT 85
2499 — *G.E. J.*	UNDT/2011/032
2510 — *W.G.*	UNDT/2015/122; UNDT/2015/123; BISAT 1/2005
2522 — *A.F.*	BISAT 1/2005
2537 — *G.L.N.N.*	OECDAT 79
2553 — *H.F.*	IMFAT 2015-3
2555 — *D.A.D.*	UNDT/2012/101
2562 — *J.A.S.*	UNDT/2015/086
2563 — *A.W.*	UNDT/2015/086
2567 — *S.M. S.*	OECDAT 79
2578 — *M.A.*	OECDAT 79
2583 — *P.H. C. and others*	NATOAT 15 (2018); NATOAT 16 (2018); NATOAT 19 (2018)
2584 — *L.A.M.*	OECDAT 90
2586 — *Mr. G.I.*	OECDAT 79

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2615 — *A. S.*	CSAT 14 (No. 2)
2632 — *P. B. et al.*	2018-UNAT-840; 2018-UNAT-841
2633 — *J. W. et al.*	NATOAT 15 (2018); NATOAT 16 (2018); NATOAT 19 (2018)
2636 — *B. F.*	CSAT 14 (No. 2)
2655 — *F. B.-B. and C.*	CSAT 14 (No. 2)
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2678 — *E. S.*	CSAT 12 (No. 2)
2682 — *R.M. C.S. et al.*	UNDT/2011/198; UNDT/2013/090
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2700 — *P. S.*	ADBAT 106
2706 — *C. C.*	UNDT/2013/005
2722 — *M. A. et al.*	UNDT Order 50 (GVA/2010); UNDT/2010/019; AfDBAT 74; AfDBAT 77
2745 — *R. S.*	AfDBAT 119; CSAT 14 (No. 2)
2762 — *A. W.*	UNDT/2010/011
2771 — *Y. G.*	UNDT/2017/051; 2013-UNAT-302
2773 — *S. N.-S.*	NATOAT 7 (2013)
2781 — *Mr. C.T.*	AfDBAT 91
2782 — *F. S.*	UNDT/2010/011
2807 — *R. M.-V.*	2011-UNAT-105; UNRWADT 2022/04
2822 — *D. N. P.*	ADBAT 109
2829 — *S. G. G.*	UNRWADT 2013/038
2830 — *S. G. G.*	ESAAT 102
2839 — *K. J. L.*	UNDT/2017/008
2856 — *J. L.*	UNDT/2015/122; UNDT/2015/123
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2879 — *C. C.*	UNDT Order 185 (NBI/2020)
2882 — *S.G.G.*	EBRDAT 2016/AT/01
2912 — *Mr. B. E.-C.*	AfDBAT 77
2913 — *S. M.-S.*	UNDT Order 185 (NBI/2020)
2914 — *H. M.-N.*	UNDT Order 185 (NBI/2020)
2920 — *H. S.*	ESAAT 129; ESAAT 131; ESAAT 137
2933 — *B. D.*	UNDT/2011/045; UNDT/2012/008
2937 — *ILO* v. *Ms J.S.*	OECDAT 79
2944 — *C. C.*	NATOAT 7 (2013); ESAAT 108-109
2951 — *Mr. T.K.*	IMFAT 2011-1
2953 — *L. P.*	NATOAT 15 (2018); NATOAT 16 (2018); NATOAT 19 (2018)
2956 — *P. W. V.*	UNDT/2013/133
2957 — *C. R.*	OECDAT 79
2959 — *I.K.M.*	IMFAT 2013-2; IMFAT 2017-2
2962 — *Mr. C.-A. M.*	AfDBAT 77
2967 — *F. L.*	UNDT/2013/069; UNDT/2015/122; UNDT/2015/123; 2012-UNAT-236; CSAT 17
2977 — *L. S.*	BISAT 1/2011

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3005 — *Miss D*	OECDAT 73
3016 — *M.-O. D.*	UNDT/2011/152
3027 — *M.*	OECDAT 75
3034 — *G. A., et al.*	COEAT 587/2018; COEAT 588/2018
3041 — A.E. R.	UNDT/2014/082; 2011-UNAT-178
3045 — *M. S.*	OECDAT 79; NATOAT 15 (2018); NATOAT 16 (2018); NATOAT 19 (2018)
3064 — *R. M.*	UNDT/2015/059
3067 — *E.E.É A.*	COEAT 665/2020
3073 — *E.A. M.-P.*	UNDT/2018/136
3074 — *D.E. H.*	UNDT/2013/090
3083 — *C. U.*	UNDT Order 185 (NBI/2020)
3084 — *R.C. W.*	UNDT/2013/069; UNDT/2017/008; 2012-UNAT-236
3106 — *A.G. S.*	UNDT/2013/108; UNDT/2013/122; UNDT/2013/123; UNDT/2013/125; UNDT/2013/168; UNDT/2014/008; UNDT/2014/009; UNDT/2014/010; UNDT/2014/011; UNDT/2014/012; UNDT/2014/024; UNDT/2014/031; UNDT Order 113 (NY/2014); UNDT Order 130 (NY/2014); UNDT Order 261 (NY/2014); UNDT Order 350 (NY/2014); UNDT Order 354 (NY/2014); UNDT Order 150 (NY/2015); UNDT Order 33 (NY/2016); UNDT Order 55 (NY/2016); UNDT Order 56 (NY/2016); UNDT Order 68 (NY/2016); UNDT Order 133 (NY/2016); UNDT Order 207 (NY/2016); UNDT Order 265 (NY/2016); UNDT Order 52 (NY/2017); UNDT Order 99 (NY/2017); UNDT Order 182 (NY/2017); UNDT Order 183 (NY/2017); UNDT Order 184 (NY/2017); UNDT Order 226 (NY/2017); UNDT Order 2 (NY/2018); UNDT Order 98 (NY/2018); UNDT Order 115 (NY/2018); UNDT Order 141 (NY/2018); UNDT Order 215 (NY/2018); UNDT Order 216 (NY/2018); AfDBAT 119
3108 — *S. K.*	2013-UNAT-302
3126 — *V.C. B.*	AfDBAT 131
3141 — *I. T.*	OECDAT 93
3170 — *Miss A.P.*	EBRDAT 2017/AT/02
3172 — *S.K.*	AfDBAT 127
3214 — *J.H. V.M.*	NATOAT 1 (2013)
3217 — *A. S.*	NATOAT 1 (2013)
3228 — *O. S.*	NATOAT 1 (2013)
3233 — *V. S.-M.*	OECDAT 77
3238 — *M.-J. C. et al.*	UNDT/2016/181; UNDT/2016/190; UNDT/2016/191; UNDT/2016/192; UNDT/2016/193; UNDT/2016/194; UNDT/2016/195; UNDT/2016/102; UNDT/2020/032
3268 — *P.A.C. R.*	OECDAT 77
3274 — *É.H.*	EBRDAT 2020/AT/02
3291 — *E. A. et al.*	ADBAT 109; ESAAT 98-100; ESAAT 119
3305 — *S. M.-S.*	OECDAT 79
3318 — *E.D.G.*	IMFAT 2015-3
3330 — *Ms. A. N.*	AfDBAT 91; AfDBAT 142
3331 — *Mr. J.D.M.L. B.*	AfDBAT 91
3342 — *E. D. et al.*	UNDT/2015/086

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3344 — *I. A. et al.*	UNDT/2015/086
3347 — *H.L.*	CSAT 22 (No. 2); IMFAT 2015-3
3359 — *B.L.M. C. and D.D.N. N.*	UNDT/2018/097; 2019-UNAT-921
3365 — *S. M.-S.*	EBRDAT 2019/AT/08
3380 — *D.C. P.*	COEAT 665/2020
3385 — *O. V.*	OECDAT 79
3391 — *R.K. S.*	OECDAT 79; NATOAT 15 (2018); NATOAT 16 (2018); NATOAT 19 (2018)
3392 — *S.K. M.*	OECDAT 79
3427 — *I. H. T. et al.*	ADBAT 109
3437 — *I. T.*	UNDT/2016/190; UNDT/2016/191; UNDT/2016/192; UNDT/2016/193; UNDT/2016/194; UNDT/2016/195; UNDT/2016/102; UNDT/2016/181; UNDT/2020/032
3440 — *E.O.G.*	CSAT 37 (No. 2)
3444 — *A. M. E. F.*	COEAT 587/2018; COEAT 588/2018
3459 — *L.K.*	EBRDAT 2019/AT/06
3487 — *R. (No. 2)*	UNAT Order No. 256 (2016)
3551 — *K.*	EBRDAT 2019/AT/06
3582 — *D.*	AfDBAT 127
3593 — *E.*	BISAT 1/2018
3613 — *P (Nos. 1, 2 and 3)*	IMFAT 2019-1
3628 — *A (No. 75)*	NATOAT 15 (2018); NATOAT 16 (2018); NATOAT 19 (2018)
3640 — *P.*	COEAT 594/2018
3651 — *A.*	COEAT 603/2019
2660 — *D.*	BISAT 1/2018
3680 — *V.K.*	COEAT 638/2020; BISAT 1/2018
3686 — *M.*	NATOAT 15 (2018)
3688 — *P-M (No. 2)*	AfDBAT 97; AfDBAT 138
3692 — *B. (No. 2)*	COEAT 594/2018
3701 — *T. S.*	ADBAT 117; ADBAT 119
3736 — *G (No. 3) and J*	NATOAT 15 (2018); NATOAT 16 (2018); NATOAT 19 (2018)
3740 — *B, S and T.*	NATOAT 15 (2018); NATOAT 16 (2018); NATOAT 19 (2018)
3750 — *M.*	BISAT 1/2018
3758 — *P. (No. 7)*	IDBAT 88
3811 — *H. (No. 3)*	NATOAT 15 (2018); NATOAT 16 (2018); NATOAT 19 (2018)
3837 — *K (No. 2)*	BISAT 1/2018
3838 — *S.*	UNDT Order 154 (NY/2018) UNDT/2019/057
3861 — *L.G.*	COEAT 587/2018; COEAT 588/2018
3868 — *S.*	EBRDAT 2019/AT/09; EBRDAT 2020/AT/04
3870 — *B. Y.*	ESAAT 106
3871 — *G.*	ESAAT 106
3883 — *B. and others*	NATOAT 15 (2018); NATOAT 16 (2018); NATOAT 19 (2018)
3884 — *C.-S.*	ESAAT 112-114
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3914 — *S. (No. 2)*	AfDBAT 127; CARICOMAT 1
3953 — *A.F.A.*	COEAT 624/2019
3958 — *C. (No. 3)*	COEAT 665/2020
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4028 — *D. (No. 3), D. (No. 4) and F.*	ESAAT 138
4029 — *A.*	COEAT 617/2019; COEAT 638/2020
4036 — *S. (Nos. 1 and 2)*	OECDAT 91
4045 — *D.*	EBRDAT 2019/AT/06
4097 — *N. (No. 2)*	COEAT 605/2019
4099 — *R (No. 2)*	AfDBAT 138 AfDBAT 140
4134 — *B and others, A.-M. and others, A.-U. and others*	UNDT/2020/106; UNDT/2020/107; UNDT/2020/114; UNDT/2020/115; UNDT/2020/117; UNDT/2020/118; UNDT/2020/122; UNDT/2020/129; UNDT/2020/130; UNDT/2020/131; UNDT/2020/132; UNDT/2020/133; UNDT/2020/148; UNDT/2020/149; UNDT/2020/150; UNDT/2020/151; UNDT/2020/152; UNDT/2020/153; UNDT/2020/154
4147 — *M.C.P.J.*	COEAT 624/2019
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4234 — *C.d.L. (No. 3)*	COEAT 665/2020
4240 — *N.*	COEAT 665/2020
4365 — *M.*	UNRWADT 2020/073
4380 — *B.*	ESAAT 138

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1 — *De Merode*	ADBAT 12; ADBAT 17; ADBAT 23; ADBAT 35; ADBAT 82; ADBAT 15; (dissent); ADBAT 103; ADBAT 111; OASAT 95 ; OASAT 140; UNDT/2011/032; UNDT/2011/188; UNDT/2011/189; UNDT/2011/198; UNDT/2012/029; UNDT/2013/090; UNDT/2017/097; UNDT/2017/098; UNDT/2017/099; UNDT/2020/039; UNDT/2020/106; UNDT/2020/107; UNDT/2020/114; UNDT/2020/115; UNDT/2020/117; UNDT/2020/118; UNDT/2020/122; UNDT/2020/129; UNDT/2020/130; UNDT/2020/131; UNDT/2020/132; UNDT/2020/133; UNDT/2020/148; UNDT/2020/149; UNDT/2020/150; UNDT/2020/151; UNDT/2020/152; UNDT/2020/153; UNDT/2020/154; 2018-UNAT-840; 2018-UNAT-841; 2018-UNAT-842; BISAT 1/2006; AfDBAT 64; AfDBAT 114 (Order); CSAT 3 (No. 1); CSAT 7; CSAT 11; CSAT 12 (No. 2); CSAT 15; CSAT 41 (No. 1); IDBAT 86; IDBAT 87; IDBAT 89; EBRDAT 01/03 (Liability and Remedy); EBRDAT 2006/AT/04; IMFAT 1997-2; IMFAT 2002-1; IMFAT 2002-2; IMFAT 2002-3; IMFAT 2007-1; IMFAT 2011-2; IMFAT 2012-1; IMFAT 2013-2; IMFAT 2014-2; IMFAT 2015-1; IMFAT 2015-3; IMFAT 2016-5
2 — *Skandera*	ADBAT 1
4 — *Scott*	IMFAT 2013-1
5 — *Saberi*	ADBAT 1; ADBAT 3; AfDBAT 119; IDBAT 23
6 — *Suntharalingam*	ADBAT 1; ADBAT 3; NATOAT 1 (2013); AfDBAT 50; IDBAT 23
7 — *Buranavanichkit*	ADBAT 1; ADBAT 65; NATOAT 1 (2013); IDBAT 23; IMFAT 1997-1
9 — *Skandera*	ADBAT 34; IDBAT 23
10 — *Salle*	NATOAT 1 (2013); AfDBAT 50; AfDBAT 103; CSAT 1; IMFAT 2006-2; IMFAT 2006-3; IMFAT 2013-4
12 — *Matta*	ADBAT 1; IMFAT 1997-1
13 — *Van Gent (No. 2)*	ADBAT 111; IMFAT 2004-1
14 — *Gregorio*	IDBAT 91
15 — *Justin*	IMFAT 1999-1
16 — *X*	ADBAT 1; ADBAT 3
20 — *Y*	AfDBAT 89
23 — *Einthoven*	ADBAT 83
25 — *Mr. Y*	BISAT 1/2018; AfDBAT 25; AfDBAT 26; IMFAT 1999-2
26 — *Mendaro*	IMFAT 2006-6
27 — *Broemser*	ADBAT 1; IMFAT 1997-1
28 — *Gyamfi*	ADBAT 1; OASAT 93; IMFAT 2007-4
29 — *Kirk*	ADBAT 58; BISAT 1/2018; IMFAT 1999-2
30 — *Thompson*	ADBAT 1
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35 — *Gamble*	BISAT 1/2018
38 — *von Stauffenberg et al.*	IMFAT 2007-1
41 — *Agodo*	ADBAT 109; NATOAT 15 (2018); NATOAT 16 (2018); NATOAT 19 (2018); IDBAT 57
51 — *Berg*	ADBAT 109; NATOAT 15 (2018); NATOAT 16 (2018); NATOAT 19 (2018)
52 — *Vandenheede*	ADBAT 109; NATOAT 15 (2018); NATOAT 16 (2018); NATOAT 19 (2018)
53 — *Harrison*	IMFAT 2013-2
54 — *Knox*	ADBAT 109; NATOAT 15 (2018); NATOAT 16 (2018); NATOAT 19 (2018)
56 — *Pinto*	ADBAT 3; AfDBAT 12; AfDBAT 13; CSAT 22 (No. 1); IMFAT 1996-1; IMFAT 2002-2

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58 — *Apkarian*	ADBAT 3
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81 — *Bertrand*	ADBAT 3
85 — *De Raet*	ADBAT 3; NATOAT 1 (2013); IMFAT 2002-2; IMFAT 2005-2; IMFAT 2005-4; CARICOMAT 1
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92 — *Lindsay*	ADBAT 3; ADBAT 10
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118 — *Briscoe*	ADBAT 109; NATOAT 15 (2018); NATOAT 16 (2018); NATOAT 19 (2018); IDBAT 57
119 — *Canada*	ADBAT 109; NATOAT 15 (2018); NATOAT 16 (2018); NATOAT 19 (2018)
126 — *Tuluy*	ADBAT 109; NATOAT 15 (2018); NATOAT 16 (2018); NATOAT 19 (2018)
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139 — *Chhabra*	IMFAT 2005-1; IMFAT 2007-2
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142 — *Carew*	ADBAT 17; ADBAT 78; ADBAT 79; AfDBAT 38
143 — *Planthara*	ADBAT 17; ADBAT 75; ADBAT 119
145 — *Sjamsubahri*	IMFAT 2010-4
149 — *Kepper*	IMFAT 2007-1; IMFAT 2011-2
151 — *Yousufzi*	UNDT/2010/019; UNDT/2016/015; IMFAT 2001-1; IMFAT 2002-2
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153 — *Courtney (No. 2)*	IMFAT 2003-1; IMFAT 2003-2; IMFAT 2007-6; IMFAT 2017-1
157 — *McNeill*	IMFAT 2006-2; IMFAT 2006-3; IMFAT 2013-4; IMFAT 2016-2
158 — *Smith*	UNDT/2011/061
159 — *Brebion*	IMFAT 2013-2
161 — *Arellano (No. 2)*	IDBAT 72; IMFAT 2005-1; IMFAT 2011-2; IMFAT 2012-1
164 — *Romain (No. 2)*	IMFAT 2006-2; IMFAT 2006-3
165 — *Brannigan*	AfDBAT 138; IMFAT 2005-1
168 — *Denning*	IMFAT 2005-1
174 — *Guya*	IMFAT 2001-1
176 — *Barnes*	IDBAT 86; IDBAT 87; IDBAT 89; IMFAT 2007-2
177 — *Shenouda*	IMFAT 2003-1; IMFAT 2003-2; IMFAT 2007-6
182 — *A*	IMFAT 2001-1; IMFAT 2003-1; IMFAT 2003-2; IMFAT 2006-5; IMFAT 2007-6
192 — *Garcia-Mujica*	CARICOMAT 1
195 — *Mustafa*	IMFAT 2001-1
197 — *Rendall-Speranza*	IDBAT 74; IMFAT 2015-3
205 — *Crevier*	IMFAT 2007-1
209 — *Bigman*	IMFAT 2015-1

WBAT decision number and name	Citing tribunal decision number
210 — *Mould*	ADBAT 82; IMFAT 2002-1; IMFAT 2002-3; IMFAT 2006-6
211 — *JJ*	IMFAT 2014-1
212 — *Brebion (No. 2)*	ADBAT 82
213 — *Degiacomi*	IMFAT 2015-1
214 — *Caryk*	IDBAT 88
215 — *Madhusudan*	EBRDAT 2019/AT/06
217 — *Visser*	IMFAT 2015-1
225 — *Zwaga*	AfDBAT 50
226 — *Marshall*	IMFAT 2011-2; IMFAT 2012-1; CARICOMAT 1
245 — *Nunberg*	IMFAT 2005-2; IMFAT 2005-4; IMFAT 2007-3; IMFAT 2011-1
246 — *Koudogbo*	IDBAT 74; IMFAT 2010-4
253 — *Prescott*	IDBAT 80
258 — *Baartz (No. 2)*	IMFAT 2004-1
260 — *Marchesini*	AfDBAT 138; IMFAT 2005-1; IMFAT 2011-2; IMFAT 2012-1
266 — *Husain*	AfDBAT 138
273 — *Harou*	UNDT/2010/026; IMFAT 2005-1
292 — *del Campo*	IMFAT 2005-1
294 — *Njovens*	IMFAT 2005-1; IMFAT 2012-1
295 — *Randall G. Vick*	AfDBAT 111
297 — *Taborga*	IMFAT 2005-1
299 — *Kopliku*	IMFAT 2015-1
300 — *Kwakwa*	AfDBAT 38; AfDBAT 62
302 — *Fidel*	IMFAT 2005-1
304 — *D*	AfDBAT 38; AfDBAT 62; IMFAT 2007-4; IMFAT 2010-4
309 — *Bernstein*	IMFAT 2006-6; IMFAT 2007-2
315 — *Desthuis-Francis*	
320 — *Malekpour*	AfDBAT 42
321 — *Jakub*	IMFAT 2005-1; IMFAT 2011-2; IMFAT 2012-1; IMFAT 2013-2
323 — *O*	AfDBAT 42
325 — *E*	IMFAT 2006-5
326 — *Perea*	IMFAT 2007-3
327 — *O*	IMFAT 2007-8
333 — *Malik*	AfDBAT 111
337 — *O*	EBRDAT 2017/AT/02; IMFAT 2014-1
338 — *Prasad*	AfDBAT 70
340 — *G*	IMFAT 2010-4
344 — *Hitch*	IMFAT 2007-3; IMFAT 2012-1
347 — *F (No. 2)*	IMFAT 2011-2; IMFAT 2012-1
349 — *J*	UNDT/2013/006
352 — *K*	ADBAT 119
356 — *N*	IMFAT 2006-5
362 — *N*	IMFAT 2010-4; IMFAT 2015-3
366 — *Applicant*	UNDT/2013/038
380 — *Z*	IMFAT 2010-4
387 — *Liu*	UNDT/2010/026
392 — *AE*	IDBAT 86; IDBAT 87; IDBAT 89; IMFAT 2010-4
393 — *AF*	IMFAT 2010-4

WBAT decision number and name	Citing tribunal decision number
408 — *AK*	IMFAT 2015-3
416 — *AS*	IMFAT 2015-3
423 — *BA*	CSAT 16; CSAT 27
424 — *Aleem and Aleem*	IMFAT 2017-1
426 — *BB*	IMFAT 2010-4
427 — *BC*	ADBAT 119; UNDT/2013/071
430 — *BF*	IMFAT 2010-4
434 — *BG*	EBRDAT 2017/AT/02; IMFAT 2014-1
441 — *Koçlar*	IMFAT 2015-1
447 — *Yoon*	IDBAT 86; IDBAT 87; IDBAT 89
453 — *BO*	UNDT/2013/005
464 — *BT*	IMFAT 2013-4
472 — *M (No. 2)*	OECDAT 91
481 — *BY*	IMFAT 2016-2
483 — *CD*	IMFAT 2014-1; IMFAT 2016-2
484 — *Lecuona*	IMFAT 2017-1
487 — *CG*	UNDT/2015/059; AfDBAT 133
489 — *CH*	UNDT/2015/059
494 — *Sekabaraga*	IMFAT 2015-3
513 — *CS*	CARICOMAT 1
516 — *CW*	IDBAT 86; IDBAT 87; IDBAT 89
523 — *DA*	IDBAT 86; IDBAT 87; IDBAT 89
526 — *DD*	AfDBAT 138
529 — *Alrayes*	IMFAT 2019-1
533 — *DI*	AfDBAT 138
548 — *DJ*	CARICOMAT 1
551 — *DV*	AfDBAT 138; AfDBAT 140

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UNAdT judgement	Citing tribunal decision number
4 — *Howrani and 4 others*	CSAT 12 (No. 1)
15 — *Robinson*	IMFAT 2008-1
17 — *Moser*	AfDBAT 12
19 — *Kaplan*	ADBAT 35
52 — *Zimmet*	COEAT 115/1985; COEAT 116/1985; COEAT 117/1985; COEAT 130/1985; COEAT 147-148/1986
53 — *Wallach*	ADBAT 17; ADBAT 23
56 — *Aglion*	CSAT 11
57 — *Hilpern*	OECDAT 90
88 — *Davidson*	ADBAT 35
92 — *Higgins*	CSAT 14 (No. 1)
96 — *Camargo*	IMFAT 1999-1
167 — *Rodriguez*	ADBAT 77
176 — *Fayad*	ADBAT 24
183 — *Lindblad*	CSAT 40 CSAT 43
192 — *Levcik*	CSAT 14 (No. 1)
210 — *Reid*	COEAT 187-193/1994; COEAT 189-195/1994; COEAT 190-196-197/1994, 201/1995; COEAT 208/1995
230 — *Teixeira*	ADBAT 24
233 — *Teixeira*	ADBAT 24; EBRDAT 2019/AT/06; IMFAT 1999-1
237 — *Powell*	WBAT 361
266 — *Capio*	COEAT 212/1995
268 — *Mendez*	AfDBAT 119; AfDBAT 134
276 — *Badr*	ADBAT 24
312 — *Roberts*	COEAT 166/1990
340 — *Lebaga*	CSAT 40; CSAT 43
343 — *Talwar*	CSAT 15
378 — *Bohn*	IMFAT 1999-1
379 — *Gilbert*	IMFAT 1999-1
395 — *Oummih*	ADBAT 35
403 — *Gretz*	IMFAT 2007-1
408 — *AK*	CARICOMAT 1
445 — *Morales*	ADBAT 75; ADBAT 119
461 — *Zafari*	IMFAT 1999-1
465 — *Safavi*	IMFAT 1997-1; IMFAT 2003-1; IMFAT 2003-2
484 — *Omosola*	AfDBAT 62
490 — *Liu*	ADBAT 75; ADBAT 119; AfDBAT 133
506 — *CP*	CARICOMAT 1
542 — *Pennachi*	ADBAT 55
546 — *DO*	CARICOMAT 1
592 — *ET*	CARICOMAT 1
615 — *Leo*	ADBAT 55
627 — *FK*	CARICOMAT 1
628 — *Shkukani*	IMFAT 1999-1

UNAdT judgement	Citing tribunal decision number
700 — *Benthin*	IMFAT 1997-1
707 — *Belas-Gianou*	IMFAT 1997-1
742 — *Manson*	CSAT 20
850 — *Patel*	AfDBAT 65
874 — *Abbas*	ADBAT 72
890 — *Augustine*	ADBAT 55
924 — *Ishak*	IMFAT 2008-1
935 — *Ismail*	AfDBAT 123
941 — *Kiwanuka*	IMFAT 2003-1; IMFAT 2007-4; IMFAT 2010-4
954 — *Saaf*	ADBAT 83
987 — *Edongo*	ADBAT 79; AfDBAT 62; AfDBAT 65
1050 — *Ogalle*	ADBAT 78; ADBAT 79
1066 — *Ragan*	ADBAT 85
1090 — *Berg*	AfDBAT 65
1126 — *Biaje*	IMFAT 2007-3
1157 — *Andronov*	ADBAT 109
1244 — *Applicant*	WBAT 380
1245 — *Alves*	IMFAT 2007-3
1272 — *Applicant*	AfDBAT 70
1304 — *Capt*	IMFAT 2007-3

Citations to the ADBAT

ADBAT decision number and name	Citing tribunal decision number
1 — *Lindsey*	EBRDAT 01/03 (Liability and Remedy); IMFAT 1997-1; IMFAT 2002-1; IMFAT 2002-3; IMFAT 2006-2; IMFAT 2006-3; IMFAT 2006-6
5 — *Bares*	UNDT/2012/018; UNDT Order 126 (NY/2013); IMFAT 2007-8; IMFAT 2010-4
12 — *Viswanathan*	IMFAT 2002-3
18 — *Mesch and Siy (No. 3)*	IMFAT 2001-1; IMFAT 2001-2
20 — *Chan*	IMFAT 1999-2
24 — *Amora*	WBAT 214; WBAT 215; IDBAT 80; EBRDAT 2019/AT/02; EBRDAT 2019/AT/03; EBRDAT 2019/AT/04; EBRDAT 2019/AT/05; EBRDAT 2019/AT/06; IMFAT 1999-1
39 — *De Armas*	CSAT 42; EBRDAT 01/03 (Liability and Remedy); IMFAT 2002-1
40 — *Alexander*	IMFAT 2005-4; IMFAT 2007-3; IMFAT 2011-1
41 — *Alcartado*	IMFAT 2001-1; IMFAT 2002-2; IMFAT 2006-1; IMFAT 2006-5; IMFAT 2011-1; IMFAT 2015-3
51 — *Toivanen*	IMFAT 2006-2; IMFAT 2006-3; IMFAT 2006-5
55 — *Galang*	WBAT 362; IMFAT 2010-4
58 — *Ms. C*	IMFAT 2006-5
59 — *Guioguio*	IMFAT 2007-3; IMFAT 2012-1
70 — *H.N.M.*	IMFAT 2016-2
79 — *Gnanathurai*	AfDBAT 62; AfDBAT 65; AfDBAT 95
82 — *Suzuki*	OECDAT 85; OECDAT 86; OECDAT 88; OECDAT 89
103 — *Mr E*	IMFAT 2015-3
104 — *Mr. F*	IMFAT 2015-3
115 — *Cruz*	IMFAT 2019-1

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UNDT decision number and name	Citing tribunal decision number
James, UNDT/2009/025	WBAT 499
Mensah, UNDT/2010/202	EBRDAT 2020/AT/03
Mandol, UNDT/2011/013	OECDAT 77
Zewdu, UNDT/2011/043	OECDAT 75
Hallal, UNDT/2011/046	COEAT 622/2019
Corbett, UNDT/2011/195	CSAT 16 (No. 2)
Yisma, UNDT Order 63 (NY/2011)	IMFAT 2013-4
Kamanou, UNDT/2012/050	WBAT 478
Simmons, UNDT/2013/050	BISAT 1/2018
Gehr, UNDT/2013/166	BISAT 1/2018
Lloret Alcaniz et al., UNDT/2017/097	ILOAT 4381
Quijana Evans et al., UNDT/2017/098	ESAAT 101
Mapuranga, UNDT/2018/132	WBAT 612
UNAT decision number and name	Citing tribunal decision number
2010-UNAT-059 (*Warren*)	IMFAT 2019-1
2010-UNAT-084 (*Sanwidi*)	NATOAT 9 (2014)
2010-UNAT-095 (*Antaki*)	BISAT 1/2018
2011-UNAT-116 *(Iskandar*)	AfDBAT 121
2011-UNAT-130 (*Koda*)	WBAT 643
2011-UNAT-153 (*Ahmed*)	CARICOMAT 1
2012-UNAT-201 (*Obdeijn*)	BISAT 1/2018
2013-UNAT-280 (*Applicant*)	WBAT 612
2013-UNAT-298 (*Morsy*)	BISAT 1/2018
2013-UNAT-393 (*Applicant*)	WBAT 495
2014-UNAT-411 (*Igbinedion*)	CARICOMAT 1
2014-UNAT-481 (*Lee*)	ADBAT 109
2015-UNAT-503 (*Hepworth*)	CARICOMAT 1
2015-UNAT-518 (*Oummih*)	BISAT 1/2018
2015-UNAT-526 (*Tintukasiri et al*)	ADBAT 109; NATOAT 15 (2018); NATOAT 16 (2018); NATOAT 19 (2018)
2015-UNAT-553 (*Dia*)	IMFAT 2019-1
2015-UNAT-582 (*Kacan*)	CARICOMAT 1
2017-UNAT-802 (*Riecan*)	EBRDAT 2019/AT/09
2018-UNAT-840 (*Lloret Alcaniz et al.*)	ILOAT 4381
2019-UNAT-960 (*Abdeljalil*)	CARICOMAT 1

Citations to the IMFAT

IMFAT judgment number and name	Citing tribunal decision number
1994-1 — *Mr. X*	AfDBAT 32
1996-1 — *D'Aoust*	AfDBAT 12; EBRDAT 01/03 (Liability and Remedy)
1999-1 — *Mr. A.*	EBRDAT 2019/AT/06
1999-2 — *Mr. V*	WBAT 384
2001-2 — *Mr. P*	WBAT 325; WBAT 383; WBAT 424
2002-1 — *Mr. R*	ADBAT 82; EBRDAT 01/03 (Liability and Remedy)
2002-3 — *Ms G*	EBRDAT 01/03, (Jurisdiction)
2005-1 — *F*	AfDBAT 136; AfDBAT 137; AfDBAT 138; CSAT 33
2005-2 — *Ms. W*	OASAT 166
2005-2 (Order) — *Mr. F*	UNDT Order 42 (GVA/2010)
2006-6 — *Ms. M and Dr. M*	WBAT 383
2007-3 — *D'Aoust (No. 2)*	ADBAT 87
2010-1 — *Ms. C. O'Connor*	ADBAT 122
2013-4 — *Mr. HH*	UNDT/2013/163

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COEAT decision number and name	Citing tribunal decision number
188/1994 — *Keller*	UNDT/2016/087
231-238/1997 — *Fuchs and others*	OECDAT 50
447-484/2011 — *Prévost and others*	OECDAT 85; OECDAT 86; OECDAT 88; OECDAT 89; ESAAT 112-114
571-576 and 578/2017 — *Brannan and others*	OECDAT 85; OECDAT 86; OECDAT 88; OECDAT 89; NATOAT 15 (2018); NATOAT 16 (2018); NATOAT 19 (2018)
640/2020 — *Parsons and others*	ESAAT 122-128; ESAAT 136; ESAAT 138
OECDAT judgment number and name	**Citing tribunal decision number**
24/25 — *Billaud/Bessoles*	COEAT 231-238/1997; ESAAT 67-69
61 — *Mr. W*	ADBAT 108
94 — *Mr AA, Mr BB, Ms CC, Ms DD, Mr EE*	ESAAT 122-128
96 — *Ms AA, Mr BB, Mr CC, Ms DD, Mr EE, Ms FF, Ms GG, Mr HH*	ESAAT 136
125 — *Pierre*	COEAT 209/1995
OASAT judgment number and name	**Citing tribunal decision number**
89 — *Suárez de Castro*	IMFAT 2008-1
94 — *Kouyoumdjian*	IMFAT 1997-2
117 — *Pando*	IMFAT 1997-2
118 — *Gutiérrez*	IMFAT 1997-2
IDBAT judgment number and name	**Citing tribunal decision number**
1 — *Schwarzenberg Fonck*	IMFAT 1996-1; IMFAT 1997-2
23 — *Arminda Buria-Hellbeck*	ILOAT 2861 (dissent)
80 — *Agusti, Vena, Verdejo-Sancho et al.*	CARICOMAT 1
80-Rev — *Agusti, Vena, Verdejo-Sancho et al.*	CARICOMAT 1
80b — *Agusti, Vena, Verdejo-Sancho et al.*	CARICOMAT 1
100 — *BD*	CARICOMAT 1
101 — *TS*	CARICOMAT 1
104 — *Vélez-Grajales*	CARICOMAT 1
NATOAT judgment number and name	**Citing tribunal decision number**
Appeals Board 80 — *Salacon and others*	COEAT 101-113/1984
2014/1011 — *RR*	COEAT 587/2018; COEAT 588/2018
2020/1303 — *G et al.*	ESAAT 122-128; ESAAT 138
AfDBAT judgment number and name	**Citing tribunal decision number**
44 — *K.S.*	ESAAT 96
85 — *J.B.*	UNDT/2013/157
GCEU (post 2016)	**Citing tribunal decision number**
Judgment in Case T-275/17, *Curto*	BISAT 1/2018
CJEC	**Citing tribunal decision number**
Judgment of 11 July 1974 in Case 53-72, *Guillot*	OECDAT 90
EUMETS Appeals Board	**Citing tribunal decision number**
Decision No. 7 (2020)	ESAAT 129; ESAAT 131; ESAAT 137
Decision No. 9-14 (2021)	ESAAT 136; ESAAT 138
EUCST	**Citing tribunal decision number**
EUCCT F-52/05, *Q v EC Commission*	IMFAT 2015-3