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

Morgan-Foster, J.G.

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

---

[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

---

[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

---

[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.

---

[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

---

[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

---

[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

---

[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,

---

[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.

---

[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

---

[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.

---

[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]

---

[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]

---

[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]

---

[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

---

[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]

---

[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.