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

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CHAPTER 6

OVERALL CONCLUSIONS

I. ANSWERING THE MAIN RESEARCH QUESTION

It is recalled that the main research question posed at the outset of this dissertation was the following:

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

To answer this research question, evidence of the proliferation of IATs was presented in Chapter 2. In Chapters 3 to 5, different aspects of the substantive work of IATs were analysed, with a view to considering the research question from multiple angles. These different angles corresponded to the sub-questions of the research question, which were: (1) To what extent are IATs referring to common principles or a common body of law in reaching their conclusions? (2) Can a common jurisprudence be deduced from the extent to which IATs refer to each other (cross-fertilization)? (3) Can a common jurisprudence be illustrated through an examination of references to a shared set of international human rights instruments?

The coalescence of international administrative law in the jurisprudence of IATs was apparent even from the discussion of sources of law in Chapter 3. In particular, the Chapter focused on the 'universalizing' sources of international administrative law, which are those sources which may be adopted in common by multiple international administrative tribunals. These include general principles of law, international law, and decisions of other international administrative tribunals. The Chapter argued that these sources are being used with increasing frequency by IATs and that this practice is contributing to the creation of a universal law of international justice. For example, the discussion of general principles leaves no doubt that IATs are invoking a common set of such principles with increasing frequency, a significant practice which has led Amerasinghe to conclude that 'these principles … have made it possible to conceive of a *system* of international administrative law, despite the diversity and

individuality of written laws pertaining to the different organisations and the multiplicity of courts applying them.'[1278]

The dissertation then examined the other two 'universalizing' sources identified in Chapter 3, to which it devoted entire chapters: citation to the decisions of other IATs (the practice of which referred to as 'cross-fertilization') and the citation to international law, in particular international human rights instruments. Chapter 4 discussed the practice of cross-fertilization. Conducting a thorough review of the practice of cross-fertilization between IATs, we have seen that virtually all tribunals are citing their peers with increasing regularity, while a certain group have set themselves apart as leaders in this regard. In particular, the WBAT, IMFAT, UNDT, UNAT, ADBAT, ATCE, and AfDBAT practice cross-fertilization very frequently. Not far behind is a second group that regularly practices cross-fertilization, including the NATOAT, OECDAT, EBRDAT, CSAT, ESAAT and ATBIS. We also saw certain key decisions which have become focal points in the sense that many other IATs have cited to them, aiding the 'certain *rapprochement*' among tribunals and the general coalescing of international administrative law. For example, it has become common to cite to the ADBAT's *Amora* Decision when examining the effect of a series of short-term contracts of employment, to the ILOAT's *Ballo* Judgment when analyzing the discretionary power of the administration and to the IMFAT's *Mr. 'F'* Judgment when discussing obligations to staff whose positions have been abolished.

Chapter 5 examined citation by IATs to a common set of international human rights instruments. Reviewing these references by IATs, it has been possible to conclude that human rights instruments are increasingly cited in a variety of important areas of international administrative law. Indeed, IATs are referring to international human rights instruments in certain areas, such as non-discrimination, even in the presence of provisions of the staff regulations providing for the same protection. Following this extensive review, it is clear that international human rights instruments are being systematically applied by tribunals in multiple contexts. Moreover, we have seen that, through this process of citation to international human rights instruments, IATs are developing new rights specific to the international administrative law context. These include, for example, the right to equal pay for equal work, the right to a hearing, the right to a proper and impartial investigation, the right to access to justice, the right

[1278] See *supra* note 538 and accompanying text.

to just and favourable conditions of work and the right to privacy. As cases discussing and applying these rights multiply, IATs are thus actively contributing to the development and understanding of the substance of these rights.

Taken together, the references to and reliance on a common set of general principles and human rights instruments, combined with the overwhelming evidence of cross-fertilization between IATs, makes a strong case that IATs are developing a common body of shared international administrative law. The main research question may therefore be answered as follows:

Answer to the research question

The proliferation of IATs has not led to significant problems of fragmentation. Rather, the various IATs — through the increasing citation to a common set of general principles, the rapidly expanding practice of cross-fertilization among themselves and the regular citation to a common set of international human rights instruments — are developing a common jurisprudence of international administrative law.

II. THE WAY FORWARD: FRAGMENTATION REVISITED

In response to its primary research question, this dissertation has concluded that the proliferation of IATs has not led to significant problems of fragmentation but rather IATs are developing a common jurisprudence of international administrative law. This provides an optimistic snapshot of the current situation, but the question then becomes: where does international administrative law go from here? Returning to the beginning of this work, we noted that public international law also had, and survived, its 'fragmentation crisis'.[1279] In addition to this similarity (i.e. the concerns expressed then in public international law and now in international administrative law about a proliferation of tribunals), the situation two decades ago in public international law and the current situation in international administrative law share other points in common. For example, just as commentators previously discussed the possibility of solving the problem in public international law through the referral of legal questions to the International Court of Justice, or a new body created specifically to decide such questions,[1280] so too have those participating in the debate in international administrative law previously discussed the possibility of referral to a grand panel of senior judges of the UNAdT and the ILOAT and more recently floated the idea of a joint chamber of the ILOAT and UNAT to issue interpretative, preliminary and/or appellate rulings.[1281] Moreover, just as the International Law Commission, in its study of fragmentation in public international law, decided to set aside the question of the proliferation of tribunals in favour of a focus on the

[1279] See *supra* notes 13-28 and accompanying text.

[1280] See K. Oellers-Frahm, 'Multiplication of International Courts and Tribunals and Conflicting Jurisdiction - Problems and Possible Solutions', (2001) 5 *Max Planck Yearbook of United Nations Law* 67, at 91-101; H. Thirlway, 'The proliferation of international judicial organs: institutional and substantive questions: the International Court of Justice and other international courts', in N. Blokker and H. Schermers, eds., *Proliferation of international organizations: legal issues* (2001) 251, at 270-278.

[1281] See supra notes 136 and 155 and accompanying text.

harmonization of the substance of the law itself,[1282] the discussions of the question in international administrative law reached a very similar conclusion. In particular, as discussed above in Chapter 2, discussions that have emerged on at least four occasions (the 1970s, the 1980s, the 2000s, and in 2019) began with proposals to merge tribunals but always ended with the conclusion that the best way forward was to make more modest efforts to harmonize the statutes of existing tribunals or otherwise attempt to harmonize the substantive law applied.[1283]

In light of these numerous similarities between the situation in public international law and that in international administrative law with respect to proliferation and fragmentation, it thus seems logical, to predict what could be in store for international administrative law, to delve a little deeper into this comparison and see how the discourse in public international law developed following its initial 'fragmentation crisis'. The prognosis is promising. Following the doubtful period immediately post-proliferation, a hopeful era for public international law dawned among commentators. The 'pluralist' conception of the international legal system proposed by Burke-White provided one useful model:

> 'The international legal system today appears to be at the center of two opposing sets of forces-one set pushing toward fragmentation, the other toward interconnection and coherence. As these forces interact, a new type of international

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[1282] ILC, Report on the work of the fifty-fourth session, UN document A/57/10 (2002), at 98, para. 505 ('There was agreement in the Study Group that the Commission should not deal with questions of the creation of or relationship among international judicial institutions. It was, however, considered that, to the extent that the same or similar rules of international law could be qualified and applied differently by judicial institutions, problems that might arise from such divergences should be addressed.'); ILC, Report on the work of the fifty-fifth session, UN document A/58/10 (2003), at 96-97, paras. 416-417 ('Commenting on the background to the topic and approaches to be followed, it was noted that an examination of the various statements and written works on the subject of fragmentation revealed that a distinction ought to be drawn between institutional and substantive perspectives. While the former focused on concerns relating to institutional questions of practical coordination, institutional hierarchy, and the need for the various actors—especially international courts and tribunals— to pay attention to each other's jurisprudence, the latter involved the consideration of whether and how the substance of the law itself may have fragmented into special regimes which might be lacking in coherence or were in conflict with each other. … An analysis of the Commission's discussion at its fifty-fourth session (2002) seemed to reveal a preference for a substantive perspective. In the report of the Commission to the General Assembly on the work of its fifty-fourth session, there was agreement that the Commission should not deal with questions concerning the creation of, or the relationship among, international judicial institutions. In other words, the Commission was not being asked to deal with institutional proliferation.'). See also Koskenniemi study, para. 489 ('Following the decision by the Commission in 2002 and 2003, this report set aside the institutional aspects of fragmentation. Instead, it focused on substantive problems, the emergence of "special laws", treaty-regimes, and functional clusters of rules and specialized branches of international law and on their relationship inter se and to general international law.').

[1283] See *supra* Chapter 2, Section II.B.

> legal system is emerging-one that is neither fully fragmented nor completely unitary. The emerging system may be best described as pluralist. A pluralist legal system accepts a range of different and equally legitimate normative choices by national governments and international institutions and tribunals, but it does so within the context of a universal system. … To put it more concretely, the pluralist conception of the international legal system recognizes-and possibly thrives on-the diversity of the system.'[1284]

According to this pluralist model, therefore, 'different and equally legitimate' normative choices are made in different legal systems without harm to the overall system. Different outcomes may exist, but they are not cause for concern. Fragmentation ceases to be a dirty word. This already provides one way to conceive of the proliferation of IATs as a potential asset rather than a liability.

But if the proliferation of IATs is truly to result in a common jurisprudence of international administrative law for the long term, something more than mere tolerance of differences is needed. Burke-White hints at this, observing that the system can 'thrive on diversity of the system', but how does it do so? In this regard, Judge Simma has further explained how the proliferation of tribunals in public international law has helped the system to prosper, emphasizing the more interactive discourse being played out by judges, a role previously reserved for scholarly commentators:

> 'Rather than resulting in fragmentation, the emergence of more international courts, combined with an increasing willingness of states to submit their disputes to judicial settlement, has revived international legal discourse. This discourse has gained in frequency and intensity: courts nowadays have a greater say in it compared to doctrine. The more international courts apply a specific rule of international law in the same manner, the more legitimacy it will be accorded, and the more can we be certain about its normative strength. On the other hand, if

[1284] W. Burke-White, 'International Legal Pluralism', (2004) 25(4) *Michigan Journal of International Law* 963, at 977-978.

> various international courts do disagree on a point of law, the ensuing judicial dialogue may possibly further progressive development of the law.'[1285]

Several important points are made here. First, we saw in public international law not only a proliferation of courts and tribunals, but also an increased willingness of States to submit their disputes to judicial settlement. The same is true in international administrative law: the proliferation of IATs has coincided with an increased interest for judicial settlement of administrative law disputes. In this regard, it has been recently noted that in the five-year period from 2018-2023, the ILOAT issued more than twice the number of judgments than it handed down in its first fifty years of operation. Similarly, in their first fifteen years of operation, the UNDT and the UNAT have rendered more judgments than their predecessor, the UNAdT, did in its sixty-year history.[1286] Secondly, the point is made that the increase in tribunals and litigants has led not to fragmentation but rather to a revived international legal discourse. It is hoped that the present dissertation has shown the same trend with respect to international administrative law. Interestingly, Simma argues that as a result of this increased discourse among tribunals, it is in fact the tribunals themselves that replace doctrine as the primary source of discussion and innovation.

Finally, and most importantly, Simma makes the point that is in fact key to understanding why the fragmentation concerns were misguided from the beginning: whether tribunals agree or disagree on a given point of law, the outcome is beneficial either way. If different tribunals agree, then this obviously brings cohesiveness and harmonization to the overall system of international law. But even when they disagree, he argues, the ensuing judicial dialogue can further progressive development of the law. Ultimately, other tribunals will treat the same question and progressive development can occur through an evolutionary process in which future decisions follow the best approach from among the tribunals that have already treated an issue. Jonathan Charney made much the same point when he observed that 'the number of international tribunals appears to pose no threat to the international legal system. In fact, this situation permits a degree of experimentation and exploration. This may lead to developments

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[1285] Simma, 'Universality of International Law from the Perspective of a Practitioner', *supra* note 19, at 279. See also Rao, *supra* note 28, at 930 ('The creation of multiple international judicial tribunals is a function of the ever-expanding nature of international law and that the creation of such tribunals is a sign of the growing maturity of international law. While it is admitted that these tribunals have to be sensitive to the needs of promoting the unity and integrity of international law, a brief look at the available evidence of their functioning so far has revealed no cause for concern of fragmentation.').

[1286] Garrido Muñoz et al., *supra* note 2, at 1.

that generate improvements in international law.'[1287] The substantive phenomenon of 'fragmentation' in the sense of differing outcomes, is thus only temporary as the community of tribunals will eventually settle on the preferred alternative; or, in some cases where differing contexts warrant it, different outcomes will remain without cause for concern.

There is no reason to doubt that this same phenomenon of experimentation can occur with the proliferation of international administrative tribunals. Indeed, it already is occurring. For example, reference could be made to the threshold adopted by various IATs for a promise of the administration to be considered legally binding under the doctrine of legitimate expectations. While IATs generally require a high threshold, they have differed on the details, but their differences may be narrowing.[1288] In particular, the UNAT has historically required an express promise in writing, while the ILOAT has applied a four-part substantive test to establish a promise as legally binding.[1289] But, the process of experimentation is ongoing. First, the UNDT upheld a promise implied from the circumstances,[1290] although this was overturned by the UNAT.[1291] More recently, however, the UNAT appears to have reconsidered its approach finding a legitimate expectation of renewal in the absence of an express promise, referring instead to a 'firm commitment.'[1292] Thus, in a process much akin to that described by Simma and Charney in public international law, the ILOAT, UNDT and UNAT are experimenting with different legal solutions to a problem, sometimes adopting different approaches but, when the tribunals deem it appropriate, ultimately reaching similar positions.

Another area where a lively judicial dialogue is taking place between IATs is with regard to the determination of acquired rights.[1293] First, the WBAT in *de Merode* delineated the distinction between permissible and impermissible amendments to the terms and conditions of employment by drawing a distinction between 'elements' that are 'fundamental and essential

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[1287] J. Charney, 'Is international law threatened by multiple international tribunals?', (1998) 271 *Recueil des cours* 101, at 347.

[1288] See Garrido Muñoz et al., *supra* note 2, at pp. 259-263.

[1289] *Ibid.* (citing 2014-UNAT-411, *Igbinedion v. UNSG*, para. 26; ILOAT Judgment No. 782 (1986), *Gieser v. EMBL*, para. 1. See also ILOAT Judgment No. 3619 (2016), *P. v. EPO*, para. 14; ILOAT Judgment No. 3362 (2014), *O.A.R.P. v. ITU*, para. 9; ILOAT Judgment No. 687 (1985), *Delangue v. EPO*, para. 9).

[1290] UNDT/2013/151, *Hepworth v. UNSG*, paras. 34-36.

[1291] 2015-UNAT-503, *Hepworth v. UNSG*, para. 42.

[1292] Garrido Muñoz et al., *supra* note 2, at 262, citing 2017-UNAT-715, *Charot v. UNSG*, para. 46.

[1293] See Garrido Muñoz et al., *supra* note 2, at 499.

in the balance of rights and duties of the staff member' and 'elements' which are 'less fundamental and less essential in this balance.'[1294] The ILOAT in *Ayoub* took a different, less subjective, approach, establishing a three-pronged test to determine whether a term of employment was 'fundamental and essential', which examined the nature of the altered term, the reason for an amendment, and its consequences.[1295] Both of these approaches have been viewed favourably. As mentioned earlier in this work, the WBAT's *de Merode* Decision has been cited for its 'fundamental and essential' test by the ADBAT, UNDT, ATBIS, AfDBAT, CSAT, IDBAT and IMFAT,[1296] while the ILOAT's three-pronged *Ayoub* test has been referred to by the ADBAT, UNDT, UNAT and ESAAT.[1297] Thus, there already has been a great deal of harmonization and integration due to this extensive cross-fertilization. Moreover, it has been observed that the *de Merode* and *Ayoub* approaches, despite their differences, share much in common with each other and are often cited together.[1298] However, the UNAT then took a decidedly different approach in its *Lloret Alcañiz* Judgment in 2018, in which it concluded that '[a]n "acquired" right should be purposively interpreted to mean a vested right'[1299] and that it was 'essentially an aspect of the principle of non-retroactivity.'[1300] This effectively eliminates the doctrine of acquired rights as a protective mechanism for staff members against unilateral changes to their contract and terms of employment, and it marks a major departure from other tribunals. The moment is ripe therefore for other tribunals to step in and determine which approach is preferable.

There are other areas in the current state of international administrative law which are also ready for this experimentation process. For example, while the principle of proportionality is universally acknowledged by IATs as a general principle relevant to the assessment of the lawfulness of a disciplinary measure, tribunals differ on its definition, with some IATs (notably the ADBAT and WBAT) requiring 'significant' or 'clear' disproportionality while others (such as the UNDT, UNAT and usually the ILOAT) requiring a mere 'lack' of proportionality to

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[1294] WBAT Decision No. 1 (1981), *de Merode et al. v. World Bank*, para. 42.

[1295] ILOAT Judgment No. 832 (1987), *In re Ayoub, Lucal, Montat, Perret-Nguyen and Samson*, para. 14.

[1296] See cases cited *supra* notes 930-931.

[1297] See cases cited *supra* notes 948-951.

[1298] See Garrido Muñoz et al., *supra* note 2, at 505-506.

[1299] 2018-UNAT-840, *Lloret Alcañiz v. UNSG*, para. 90.

[1300] *Ibid.,* para. 91.

render a disciplinary measure unlawful.[1301] There are also differences in how IATs establish procedural irregularities which warrant setting aside the procedural decision in question, with the UNAT often requiring evidence of actual harm while the ILOAT has been less formalistic.[1302] IATs also apply different standards of proof in disciplinary proceedings, the ADBAT requiring a 'preponderance of evidence' while the ILOAT requires the much higher level of proof 'beyond a reasonable doubt', and the WBAT applies a standard falling between these two extremes.[1303] And of course, there is the divide between the ILOAT and UNAT on the power of IATs to review 'regulatory decisions' of the General Assembly, which led to the conflicting judgments with which this dissertation began.[1304] In the presence of these different substantive outcomes on such important questions and in light of the many IATs now in existence which could pronounce on these issues, the scene is ripe for further judicial dialogue and ultimately harmonization or at least clarification.

Fostering cohesiveness and harmonization will take effort. Here again, IAT judges can take inspiration from their colleagues in public international law. As former President Higgins observed, '[w]e judges are going to have to learn how to live in this new, complex world, and to regard it as an opportunity rather than a problem: We must read each other's judgments. We must have respect for each other's judicial work. We must try to preserve unity among us unless context really prevents this.'[1305] One factor that could make this process even easier in international administrative law compared with public international law is the possibility and tendency for the same individual to serve as judge in multiple IATs simultaneously. Under those circumstances, it is only natural for them to adopt a conclusion in a given case in a similar way that they have already considered and found convincing in a case before another IAT where they also serve.

Higgins also emphasized the role that counsel can play in the harmonization process, speaking of 'a "bottom-up" integration and application of the jurisprudence of the various courts and tribunals across the spectrum … as able counsel go from one court to another,

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[1301] Garrido Muñoz et al., *supra* note 2, at 295-296.

[1302] *Ibid.* at 184-185.

[1303] *Ibid.* at 290-292.

[1304] See Chapter 1, Section I.

[1305] Higgins, 'A Babel of Judicial Voices? Ruminations from the Bench', *supra* note 19, at 804.

invoking before one body ideas that have been advanced in another.'[1306] Once again, the same holds true for international administrative law. Just as the public international bar is ultimately composed of a small number of highly specialized lawyers practicing before the ICJ, arbitral tribunals and other international courts and tribunals, so it is also the case with international administrative law. The relatively few number of specialists in this field tend to represent clients before multiple IATs. Each time they invoke similar arguments before multiple tribunals, they add harmony to the system of international administrative law overall.

[1306] Higgins, Rosalyn, 'Plenary Address', (2006) 100 *American Society of International Law Proceedings* 387, at 392.

III. RECOMMENDATIONS FOR FUTURE RESEARCH

While this dissertation has endeavored to be self-standing and offer conclusive findings, it also aims to serve as a catalyst for further study of this topic. In this regard, there are at least two areas which could merit additional consideration.

First, if the question of the development of a common jurisprudence of international administrative law is to receive further consideration, one area which is particularly ripe for additional research is that of general principles. While this dissertation considered general principles extensively as a 'universalizing' source of law in Chapter 3, it did not study the question as completely as it did with cross-fertilization and references to international human rights instruments, to which entire chapters are dedicated. With respect to those latter topics, the entire jurisprudence of every existing IAT was searched systematically. General principles were not researched so exhaustively. Thus, although many examples have been presented here, it is highly likely that there are many more in existence and that an even more convincing case could be made for the increased citation to a common set of general principles by IATs and the creation of new general principles specific to international administrative law. These include the principle of acquired rights, legitimate expectation, equal pay for equal work, duty of care, the right to information from the administration and the independence of the organization and its staff from member States, as well as the Noblemaire, Fleming and *patere legem* principles. Certainly, it is these principles specific to international administrative law where the most interesting and fruitful research could be carried out: As different tribunals share this task of developing and relying on new general principles specific to the field, it makes a very strong case that a common law of the international civil service is developing.

A second area which could merit research, but which was not attempted in the present dissertation, would be an analysis and comparison of substantive outcomes of IATs. While this dissertation has generally made the case for the development of a common jurisprudence of international administrative law by showing *where* IATs are citing — in particular showing that they are citing to each other and to common general principles and human rights instruments — another research effort could bolster these findings by attempting to show that IATs are reaching common conclusions on common issues, regardless of the route that each individual tribunal may take to reach its conclusions. It appears from the research conducted herein that IATs generally do reach similar conclusions on similar issues the majority of the

time — and that examples like the Geneva Post Adjustment Multiplier cases with which this dissertation opened are in fact rare outliers — but a systematic research effort would be necessary to say this conclusively.

IV. CONCLUDING THOUGHTS

Beginning with a single tribunal in 1927, the field of IATs has undergone tremendous growth, which has accelerated exponentially in the past decades. There are now some thirty tribunals in operation, from small tribunals serving a staff of only some 100 persons to tribunals serving over 50,000 staff members. Through these pages, however, we have seen that while the various IATs differ significantly in age and level of activity, they share many more similarities than differences in terms of substantive activity. Indeed, almost six decades after Akehurst declared that '[i]nternational administrative tribunals behave as if the internal laws of different organizations formed part of a single system of law,'[1307] this dissertation has aimed to show just how insightful his statement has proven to be.[1308] And where the WBAT in *de Merode* stated that '[w]hether these similar features amount to a true *corpus juris* is not a matter on which it is necessary for the Tribunal to express a view',[1309] this dissertation has expressed that view explicitly, offering evidence from several angles that a body of law governing the international civil service has begun to crystallize. Thus, while there have been over the years occasional calls for efforts to harmonize the law applicable to the international civil service through the creation of one 'super-tribunal,'[1310] it is hoped that the findings of this dissertation will put this idea to rest. Likewise, suggestions for the creation of a preliminary ruling procedure whereby questions of public international law could be referred to the ICJ[1311] do not seem appropriate, given the number of times, set out in this dissertation, that IATs have referred

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[1307] M.B. Akehurst, *The Law Governing Employment in International Organizations* (1967), 263.

[1308] As de Cooker has stated recently, '[c]onvergence is the natural trend.' de Cooker, *supra* note 7, at 246.

[1309] WBAT Decision No. 1 (1981), *de Merode et al. v. World Bank*, paras. 26-28.

[1310] See ICJ, *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, ICJ Reports 1973*, at 214 (Declaration of Judge Lachs, calling for an 'improved procedure' to ensure that 'the procedures in question . . . be uniform'); M. Lachs, 'The Judiciary and the International Civil Service: Some Suggestions', in Liber Amicorum Honouring Ignaz Seidl-Hohenveldern(1988), at 311–13; de Cooker, *supra* note 7, at 243–44. Most recently, *see* Initial review of the jurisdictional set-up of the United Nations common system: Report of the Secretary-General, United Nations, document A/75/690, paras. 44–59, 110–14 (Jan. 15, 2021); Review of the jurisdictional set-up of the United Nations common system: Report of the Secretary-General, United Nations, document A/77/222, paras. 67–105 (Aug. 5, 2022).

[1311] See Address to the Plenary Session of the General Assembly of the United Nations by Judge Stephen M. Schwebel, President of the International Court of Justice, 26 October 1999; 'The Proliferation of International Judicial Bodies: The Outlook for the International Legal Order', Speech by His Excellency Judge Gilbert Guillaume, President of the International Court of Justice, to the Sixth Committee of the United Nations, 27 October 2000, p. 7.

to public international law without a single example of a *Tadić*-style conflict with the ICJ's interpretation of that law.[1312]

The approach taken in the present dissertation was not without its limitations, which should be acknowledged. In particular, it has relied on a certain quantitative analysis to make its point, showing for example that there is such an overwhelming number of examples of cross-fertilization that it must certainly mean something. Or that there are so many references to a common set of human rights norms that this must have significance. But it should be acknowledged here that beauty could also be in the eye of the beholder. While the present author sees a clear trend towards a coalescence of international administrative law, the judges on the tribunals themselves rendering these judgments may not have intended it that way. Indeed, even a judge developing or adopting a general principle of international administrative law — which to the present author seems a highly significant universalizing act — may be principally against the idea of the creation of a common body of international administrative law. There may in fact be no such coalescing or harmonizing of the law going on here, at least not intentionally. It could be that the present dissertation has simply gathered a significantly large number of examples to create such a mirage.

It must be reiterated that IATs remain formally separate from one another, existing each within unique jurisdictional limits which do not formally overlap. In light of its horizontal nature and formally non-binding character, the growing relationship between IATs could be compared to the 'inter-judicial dialogue' between high courts of different States.[1313] As Burke-White points out, '[a]s judges engage in this dialogue, … they will be required to develop new understandings of comity that go beyond deference to foreign laws and interests. … Such an expanded doctrine of comity may well hold the key to avoiding the pitfalls of opposing obligations and conflicting judgments.'[1314] Similarly, in her research on a 'global community

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[1312] More generally on this point, see Higgins, 'The ICJ, the ECJ, and the Integrity of International Law', *supra* note 30, at 20 ('I do not share their view that the model of Article 234 (the renumbered Article 177) of the Rome Treaty provides an answer. It is simply cumbersome and unrealistic to suppose that other tribunals would wish to refer points of general international law to the International Court of Justice. Indeed, the very reason for their establishment as separate judicial instances militates against a notion of intra-judicial reference. The better way forward, in my view, is for us all to keep ourselves well informed.').

[1313] See Burke-White, *supra* note 1284, at 971-973 (arguing that '[t]he significance of this interjudicial dialogue cannot be overstated, for it has the potential to preserve the unity of the international legal system in the face of potential fragmentation').

[1314] *Ibid.* at 973.

of courts' focused on the growing dialogue between domestic constitutional courts, Anne-Marie Slaughter has explained that such a community 'embrace[s] a principle of pluralism and legitimate difference, whereby judges acknowledge the validity of different approaches to the same legal problem.'[1315] In doing so, she explains, 'judges are moving to a domestic understanding of transjudicial relations rather than a diplomatic one. Conflict in domestic politics is to be expected and even embraced.'[1316]

The same could be said for the growing interconnectedness of IATs. Like high courts of different sovereign States, they are not bound by each other's pronouncements or even required to acknowledge them, yet they are doing so. Like high courts of sovereign States, they each exist within a formally separate legal system, each with its own particularities and specificities. The caution expressed by the WBAT in *de Merode* remains apt:

> 'The Tribunal does not overlook the fact that each international organization has its own constituent instrument; its own membership; its own institutional structure; its own functions; its own measure of legal personality; its own personnel policy; and that the difference between one organization and another are so obvious that the notion of a common law of international organization must be subject to numerous and sometimes significant qualifications'[1317]

It is not the intention of this dissertation to ignore these facts, not the goal to create one single *supra*-system of international administrative law where one does not exist. Rather, the goal of the present dissertation has been much more modest: It is an attempt to show that, despite being formally separate, the numerous IATs in existence have been informally engaged in an important judicial dialogue. By citing to each other, by referring to common principles and international instruments, and by working out substantive conclusions on similar issues, they have come a long way in developing an international law of the civil service. As the tribunals multiply and their jurisprudence grows, this process has accelerated, but the development of this international law of the civil service is still a work in progress, of which this dissertation

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[1315] A.-M. Slaughter, 'A Global Community of Courts', (2003) 44 *Harvard International Law Journal* 191, at 217.

[1316] *Ibid.*

[1317] WBAT Decision No. 1 (1981), *de Merode et al. v. World Bank*, paras. 26-28.

can only provide a current snapshot. If it has given the reader that, it has succeeded in its mission.

'[T]he vision of a global community of courts may seem a bit starry-eyed, projecting too much too quickly from too little. The language and conception is ambitious, but the reality is there.'[1318]

— Anne-Marie Slaughter, 2003

[1318] Slaughter, *supra* note 1315, at 194.