International Administrative Tribunals and Cross-Fertilization: Evidence of a Nascent Common Jurisprudence?

Jason Morgan-Foster*

Abstract

The present work concerns International Administrative Tribunals (IATs), the dispute-resolution bodies between staff members and the administration of international organizations, existing at the cross-roads of international law, institutional law, and administrative law. It argues that, contrary to popular belief, the some twenty-five different IATs currently in existence are no longer functioning individually but rather citing to each other with increasing frequency and, in so doing, developing a common jurisprudence of international administrative law.

Over fifty years ago, when only a handful of IATs existed, M.B. Akehurst, a commentator in the field, made the observation that “[n]ational 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” (Akehurst, The Law Governing Employment in International Organizations 263 (1967)).

The present work aims to take stock of whether Akehurst’s statement remains true today, or if the proliferation of tribunals has instead led to divergences in jurisprudence. Much like the debate in international law writ large, the question to be answered is one between fragmentation and universalization. Engaging in a thorough review of all IAT jurisprudence—the first comprehensive study of its kind—the present work argues that indeed Akehurst’s statement has proven correct, perhaps beyond what he could have ever imagined. Far from the divergence and fractures that some have warned against as the number of IATs has grown, there has been a convergence, as IATs have increasingly cited each other in an exercise of reciprocal growth, sharing the task of creating and developing an ever more universal international administrative law.

* Legal Officer/Secretary of the Court, International Court of Justice. The views expressed are those of the author and in no way bind the International Court of Justice.
Table of Contents

I. Introduction............................................................................................................. 341
II. Cross-Fertilization in the Jurisprudence of Each Tribunal............................... 343
   A. The Leaders of Cross-Fertilization ................................................................. 343
      1. World Bank Administrative Tribunal (WBAT) ...................................... 343
      2. International Monetary Fund Administrative Tribunal (IMFAT) .......... 347
      3. United Nations Dispute Tribunal (UNDT) .............................................. 354
      4. United Nations Appeals Tribunal (UNAT) ............................................ 360
      5. Asian Development Bank Administrative Tribunal (ADBAT) ............ 361
      6. Council of Europe Administrative Tribunal (COEAT) ......................... 366
      7. African Development Bank Administrative Tribunal (AfDBAT) .......... 369
   B. Tribunals Regularly Practicing Cross-Fertilization ...................................... 374
      1. NATO Administrative Tribunal (NATO) .............................................. 374
      2. OECD Administrative Tribunal (OECDAT) ......................................... 376
      3. European Bank for Reconstruction and Development Administrative
         Tribunal (EBRDAT) .............................................................................. 378
      4. Commonwealth Secretariat Arbitral Tribunal (CSAT) ......................... 381
      5. European Space Agency Administrative Tribunal (ESAAT) ............... 385
      6. Bank for International Settlements Administrative Tribunal (BISAT) ... 388
   C. Tribunals Employing Cross-Fertilization Least Frequently ......................... 391
      1. International Labour Organization Administrative Tribunal (ILOAT) ... 391
      2. Organization of American States Administrative Tribunal (OASAT) ... 392
      3. Inter-American Development Bank Administrative Tribunal (IDBAT) ... 394
      4. Other administrative tribunals .................................................................. 395
   III. Examination of the Question by Reference to the Most Influential Cases 399
      A. The Most Cited Judgments of International Administrative Tribunals.... 400
         1. de Merode et al. v. World Bank (WBAT, 1981) ................................. 400
         2. A.G. S. v. UNIDO (ILOAT, 2012) ....................................................... 403
         3. Ayoub, Lalou, Montat, Perret-Nguyen and Samson (ILOAT, 1987) .... 403
         4. Lindsey (ILOAT, 1962) ........................................................................ 404
         5. Sheriff (ILOAT, 1956) ........................................................................... 404
         6. Other highly-cited judgments ................................................................ 405
      B. Judgments Cited by at Least Four Other Tribunals ..................................... 407
      C. Judgments Cited by at Least Three Other Tribunals ................................ 411
   IV. Conclusions and Observations ................................................................... 413
I. INTRODUCTION

International Administrative Tribunals (IATs) play a unique role at the crossroads of international law, institutional law, and administrative law. Since international organizations are immune from the jurisdiction of the host State,\(^1\) when a dispute develops between an international civil servant and the employing organization, the staff member cannot simply haul the employer before a national court to resolve it. Thus, the international civil service needs a separate adjudicatory system where the organization is not immune, and IATs have come to fill this role. Beginning with the creation of the Administrative Tribunal of the League of Nations in 1927, which continued as the Administrative Tribunal of the International Labour Organization (ILOAT) upon the dissolution of the League,\(^2\) the number of IATs has now grown to almost thirty.\(^3\)

---


3. At the time of this writing, the following international administrative tribunals are functioning: (1) Administrative Tribunal of the International Labour Organization; (2) Council of Europe Administrative Tribunal; (3) Organization of American States Administrative Tribunal; (4) European Space Agency Administrative Tribunal; (5) World Bank Administrative Tribunal; (6) Inter-American Development Bank Administrative Tribunal; (7) Administrative Tribunal of the Bank for International Settlements; (8) Organisation for Economic Co-operation and Development (OECD) Administrative Tribunal; (9) Asian Development Bank Administrative Tribunal; (10) International Monetary Fund (IMF) Administrative Tribunal; (11) Commonwealth Secretariat Arbitral Tribunal; (12) African Development Bank Administrative Tribunal; (13) African Union Administrative Tribunal; (14) Southern Common Market (MERCOSUR) Administrative Tribunal; (15) Administrative Tribunal of the European Bank for Reconstruction and Development (EBRD); (16) European Organisation for the Exploitation of Meteorological Satellites (EUMETSAT) Appeals Board; (17) United Nations Dispute Tribunal; (18) United Nations Appeals Tribunal; (19) Organisation internationale de la francophonie, tribunal de première instance; (20) Organisation internationale de la francophonie, tribunal d'appel; (21) United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) Dispute Tribunal; (22) North Atlantic Treaty Organization (NATO) Administrative Tribunal; (23) European Stability Mechanism Administrative Tribunal; (24) Court of Justice of the European Union (CJEU), General Court, having jurisdiction over administrative law cases; (25) Appeals Board of the European Centre for Medium-Range Weather Forecasts; (26) CARICOM (Caribbean Community) Administrative Tribunal; and (27) European Schools Complaints Board, which has jurisdiction over staff cases as well as, for example, complaints by parents and students. Although the GAVI (Vaccine Alliance) Administrative Tribunal has been mentioned in the literature (See Chris de Cooker, *Proliferation of International Administrative Tribunals*, 12 *Asian J. Int'I. L.* 252, 238 (2022)), no information on it is publicly available. Similarly, the proposed creation in 2022 of the Square Kilometer Array Observatory (SKAO) Administrative Tribunal has been mentioned (id.), but no information is publicly available. The jurisprudence of the European Centre for Medium-Range Weather Forecasts is also not publicly available, although it does appear to exist (See Gregor Wetberg, *Appeals Board: European Centre for Medium-Range Weather Forecasts (ECMWF)*). See also MAX PLANCK ENCYCLOPEDIA OF INTERNATIONAL PROCEDURAL LAW.
The uniqueness of IATs is borne out in the sources of law they apply. On the one hand, as adjudicative bodies between staff members and the organizations in which they work, IATs draw heavily on internal sources, in particular the contract of employment, the staff regulations and staff rules, and administrative issuances of the organization. On the other hand, as tribunals serving international organizations and their international cadre of staff members, IATs also draw on “international law” sources such as those found in Article 38(1) of the Statute of the International Court of Justice, in particular general principles, certain international conventions, and customary international law.

One area that has been overlooked, however, is the extent to which IATs are citing each other and, in so doing, developing a common jurisprudence of international administrative law. This, it could be argued, is rapidly emerging as an important source of law in its own right in many IATs. It is this trend that is the focus of the present work. Over fifty years ago when only a handful of IATs existed, Michael B. Akehurst, a commentator in the field, observed that “[t]he internal 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.”

The present work aims to take stock of whether Akehurst’s statement remains true today, or if the proliferation of tribunals has instead led to divergences in jurisprudence. Much like the debate in international law writ large, the question to be answered is one between fragmentation and universalization. Engaging in a thorough review of all current IAT jurisprudence—the first comprehensive study of its kind—I will argue that indeed Akehurst’s statement has proven correct, perhaps beyond what he could have ever imagined. Far from

---

¶ 16 (Hélène Ruiz Fabri & Rüdiger Wolfrum eds., 2019)). Finally, while the European Schools Complaints Board has jurisdiction over staff complaints, the vast majority of its jurisprudence concerns complaints against the schools by parents, and it is thus not analyzed further here.


5 For a brief treatment of this issue, see Joan S. Powers, The Evolving Jurisprudence of the International Administrative Tribunals: Convergence or Divergence?, Asian Infrs. Invrs. Bank Y.B. Int’l L. 68 (2018). Indeed, Powers observes in her article that “[t]his is a huge question that deserves a more comprehensive treatment.” Id. at 72.


the divergence and fractures that some have warned against as the number of IATs has grown, there has been a convergence, as IATs have increasingly cited each other in an exercise of reciprocal growth, sharing the task of creating and developing an ever more universal international administrative law.

Part II will consider this phenomenon of “cross-fertilization” through a review of the jurisprudence of all IATs. Part 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. Part IV will offer some concluding observations.

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 work 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 (COEAT), and the African Development Bank Administrative Tribunal (AfDBAT).

1. World Bank Administrative Tribunal (WBAT)

The WBAT was established in 1980. It is the independent judicial forum of last resort for cases submitted by staff members of the World Bank Group alleging non-observance of their contracts or terms of employment. It has rendered 692 decisions to date. 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.

---

9 See Powers, supra note 5, at 70.
10 See World Bank Administrative Tribunal, WORLD BANK (2023), https://perma.cc/Q8ZN-V8SN.
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.\textsuperscript{11}

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,\textsuperscript{12} 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 \textit{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”\textsuperscript{13}—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 the \textit{A.A} 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 or under its effective control.\textsuperscript{14} In the \textit{E} case, the WBAT cited a 2001 IMFAT judgment dealing with the principle of abstention, according to which an administrative tribunal must


\textsuperscript{12} See, e.g., Mohsin v. Commonwealth Secretariat, Judgment in No. CSAT/3 (No. 1), ¶ 2 (Commonwealth Secretariat Arbitral Trib. Sept. 6, 2001).

\textsuperscript{13} See de Merode et al., Decision No. 1, ¶ 46 (World Bank Admin. Trib. 1981).

avoid interpreting a decision of a national court.\textsuperscript{15} In \textit{Farah Alem} \& \textit{Irfan Alem}, the WBAT considered the effect of competing divorce decrees from the United States and Pakistan.\textsuperscript{16} Even after recalling that a related issue had already been addressed in its own decision in the \textit{E} case, the WBAT referred to and followed the 2001 IMFAT judgment cited in the \textit{E} case, concluding that the retired staff member had no legal basis to evade the U.S. divorce decree.\textsuperscript{17}

The WBAT has cited the jurisprudence of the ILOAT multiple times as well. For example, in \textit{BO}, a 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 that long delays and lack of information in a recruitment proceeding should be compensated.\textsuperscript{18} In the \textit{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.”\textsuperscript{19} The WBAT also cited to the ILOAT in the \textit{Cissé} case, which concerned a staff member who was a former Prime Minister of Niger.\textsuperscript{20} While a staff member for the Bank, he was nominated as a candidate for the Presidency of Niger.\textsuperscript{21} 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.”\textsuperscript{22}

The WBAT has also relied on the jurisprudence of the ADBAT. For example, in the two substantially similar cases of \textit{Vera Carayk} and \textit{Madhusudan}, the WBAT considered claims that the use of successive short-term contracts had

\textsuperscript{15} \textit{E} v. IBRD, Decision No. 325, ¶ 26 (World Bank Admin. Trib. Nov. 12, 2004) (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 Mr. “R” v. IMF, Judgment No. 2002-1, ¶ 146 (Int’l Monetary Fund Admin. Trib. Mar. 5, 2002)).


\textsuperscript{21} \textit{Id.} ¶ 14.

\textsuperscript{22} \textit{Id.} ¶ 23.
deprived staff members of certain benefits, including pension.\textsuperscript{23} The applicants in both cases relied heavily on the \textit{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.\textsuperscript{24} The WBAT commented in both decisions that, “[a]s such, the \textit{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.”\textsuperscript{25} The WBAT stated in both judgments that the \textit{Amora} Decision was “persuasive but clearly distinguishable,” as the applicant in that case was treated as an independent contractor, while the applicant before the WBAT was a staff member, albeit on short-term contracts.\textsuperscript{26}

The WBAT has cited to the tribunals of the U.N. 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 \textit{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.”\textsuperscript{27} In the \textit{FM} case, it adopted the definition of constructive dismissal used by the UNDT and UNAT.\textsuperscript{28} In the \textit{Tanner} case, it adopted the UNDT definition of what constitutes a failure to report for duty.\textsuperscript{29} In the \textit{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.\textsuperscript{30} In the \textit{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.”\textsuperscript{31} The WBAT also occasionally refers to the jurisprudence of the former UNAdT.\textsuperscript{32}

Thus, not only has the WBAT influenced and encouraged cross-fertilization with its pronouncement in its seminal \textit{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 was established in 1994 for the resolution of employment disputes between the International Monetary Fund and its staff members. It has delivered 72 judgments to date.\textsuperscript{33} The IMFAT has cited to other IATs very extensively. Indeed, a review of IMFAT judgments from 1994 to 2020 revealed 375 references to the WBAT, 142 references to the II.OAT, 55 references to the UNAT, 53 references to the ADBAT, 20 references to the UNDT, 9 references to the IDBAT and 5 references to the AfDBAT.\textsuperscript{34} Of these figures, the 375 references to the WBAT are particularly striking, given that the WBAT has only referred to the jurisprudence of the IMFAT on a mere three occasions.\textsuperscript{35} Thus,

\begin{footnotesize}
\begin{enumerate}
\item AI (No. 3) v. IBRD, Decision No. 495, ¶ 25 (World Bank Admin. Trib. Feb. 28, 2014).
\item \textit{See generally IMF Administrative Tribunal, INTERNATIONAL MONETARY FUND, (2023) https://perma.cc/8WKM-FFXF.}
\item Search carried out on Sept. 7, 2021 on combined jurisprudence from 1994 to 2020. 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.
\end{enumerate}
\end{footnotesize}
like the relationship between the ILOAT and the UNDT discussed below, one finds a sort of one-way conversation between these tribunals, strong in one direction and almost non-existent 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 indubitable: 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.

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 nine judgments of the ILOAT, 36 five decisions of the WBAT, 37 three judgements of the UNAdT 38 and two decisions of the ADBAT. 39 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, 40 the standing of unsuccessful applicants to bring a claim to the tribunal, 41 the discretion of the administration in selection decisions, 42 and the relationship between that discretion and the terms of the vacancy announcement. 43

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


39 Id., ¶ 73, 137 (citing Guioguo, Decision No. 59 (Asian Dev. Bank Admin. Trib. 2003); Alexander, Decision No. 40 (Asian Dev. Bank Admin. Trib. 1998)).

40 Id., ¶ 10.

41 Id., ¶ 68.

42 Id., ¶ 73, 86.

43 Id., ¶ 102–103.
ten separate references to the WBAT, three to the ADBAT, and one to the UNAdT. For example, it cited to the UNAdT concerning the quasi-judicial nature of the imposition of disciplinary sanctions, 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.

In its 2012 Sachdev Judgment, the IMFAT also cited externally fourteen times, including nine decisions of the WBAT, four judgments of the ILOAT, and one decision of the ADBAT. 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 was employed in. The Tribunal looked to the work of the WBAT and the ADBAT with respect to the review of selection decisions. It also looked at the


46 Id. ¶ 85 (citing Kiwanuka v. U.N. Secretary-General, Judgement No. 941 (U.N. Admin. Trib. Nov. 19, 1999)).

47 Id. ¶ 85.

48 Id. ¶¶ 90, 103-07, 174-76.


51 Id. ¶ 100 (citing Guioguo, Decision No. 59 (Asian Dev. Bank Admin. Trib. 2003)).

52 Id. ¶ 2.

53 Id. ¶ 100.
jurisdiction of the WBAT, and to a lesser extent the ILOAT, in considering the
question of reassignment in the case of redundancy. 54

In GG (No. 2), the IMFAT cited six different cases of the WBAT, 55 three of
the ILOAT, 56 three of the ADBAT, 57 and one from the European Union Civil
Service Tribunal (EUCST). 58 These references were made in a wide range of areas,
from the calculation of compensation awards to the evidence necessary to prove
a harassment claim, among many others. 59

In the 1999 case of Mr. “A”, 60 the IMFAT engaged in a highly detailed
examination of the jurisprudence of no less than thirteen other IATs on the
question of its jurisdiction over a contractual worker, reviewing six judgements of

54 Id. ¶¶ 212–17.
55 Ms. “GG” (No. 2) v. IMF, Judgment No. 2015-3, ¶¶ 24, 66, 271, 362, 441, 466 (Int’l Monetary
v. IBRD (Preliminary Objection), Decision No. 494 (World Bank Admin. Trib. Feb. 28, 2014); de
Merode et al., Decision No. 1 (World Bank Admin. Trib. 1981); AK v. IBRD, Decision No. 408
(World Bank Admin. Trib. Dec. 9, 2009); AS v. IBRD, Decision No. 416 (World Bank Admin.
Trib. Dec. 9, 2009)).
57 Id. ¶¶ 271, 302, 440 (citing Mr. “E”, Decision No. 103 (Asian Dev. Bank Admin. Trib. 2014);
Alcartado, Decision No. 41 (Asian Dev. Bank Admin. Trib. 1998); Mr. F, Decision No. 104 (Asian
Dev. Bank Admin. Trib. 2014)).
59 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 id. ¶¶ 24, 66, 187, 249, 271, 302, 362, 440–
41, 466.
the UNAdT,\textsuperscript{61} five judgments of the ILOAT,\textsuperscript{62} one decision of the WBAT,\textsuperscript{63} and one of the ADBAT.\textsuperscript{64} The 2001 Judgment in Estate of Mr. “D”\textsuperscript{65} is also notable, in particular for its extensive use of the jurisprudence of the WBAT, referring to eleven different decisions of that tribunal.\textsuperscript{65} It also referred to two decisions of the ADBAT\textsuperscript{66} and two judgments of the ILOAT.\textsuperscript{67} 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 tribunal’s statute.\textsuperscript{68} In the 2005 case of Mr. “F”\textsuperscript{69} 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


\textsuperscript{63} Id. ¶ 63 (citing Justin v. World Bank, Decision No. 15 (World Bank Admin. Trib. June 5, 1984)).

\textsuperscript{64} Id. ¶ 82–85 (citing Amora, Decision No. 24 (Asian Dev. Bank Admin. Trib. 1997)).


\textsuperscript{66} Id. ¶¶ 92, 95 (citing Alcartado, Decision No. 41 (Asian Dev. Bank Admin. Trib. 1998)); id. ¶¶ 104, 107 (citing Mesch and Sij (No. 3), Decision No. 18 (Asian Dev. Bank Admin. Trib. 1996)).


\textsuperscript{68} Id. ¶¶ 92–107.

examined no fewer than thirteen decisions of the WBAT\textsuperscript{70} and five judgments of the ILOAT\textsuperscript{71} 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."\textsuperscript{72}

In many other cases, the IMFAT cited other IATs extensively, such as its 2002 Judgment in Ms. "Y" (No. 2),\textsuperscript{73} citing nine external judgments; its 2006 Judgment in Ms. "AA"\textsuperscript{74} and its 2011 Judgment in Pyne,\textsuperscript{75} each citing eight


\textsuperscript{72} Id. ¶ 117.


external judgments; as well as its 1996 Judgment in Mr. D’Aoust, its 1997 Judgment in Ms. “C”, and its 2007 Judgment in Daseking Frank et al., each citing seven external judgments.

3. United Nations Dispute Tribunal (UNDT)

The UNDT was established, along with the UNAT (discussed below) on July 1, 2009 as part of a reform to replace the United Nations Administrative Tribunal, which had functioned since 1949. It hears cases brought by staff members and former staff members of the U.N. and its separately administered funds and programs, as well as certain other tribunals and entities. The UNDT has cited to the ILOAT on no fewer than 152 occasions and to the WBAT twenty-

---


81 G.A. Res. 351 A(IV) (Nov. 24, 1949).

82 See Who Can Use the System, UNITED NATIONS (2023) https://perma.cc/STVK-UIGJ.
three times. It has also cited to the ADBAT, the AfDBAT, the IMFAT and the COEAT.

Perhaps most notably, the UNDT made this explicit pronouncement on cross-fertilization between it and the ILOAT:

The Tribunal is of the view that although judgments from [the] ILOAT are not binding upon it, they have a persuasive value and warrant consideration, especially when they touch upon issues that affect the common system as a whole. A convergent and uniform interpretation of rules or legal principles applying all across the common system when the factual situations at hand raise similar legal issues is desirable and proper. In this respect, the Redesign Panel on the United Nations system of administration of justice stated in its report . . . that ‘there should be harmonization [of the UNAT and the ILOAT] jurisprudence . . . so as to ensure, so far as is practicable, equal treatment of the staff members of specialized agencies and those of the United Nations itself.’

Turning to the actual evidence of cross-fertilization at the UNDT, 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 thirty-seven separate occasions to explain the operation of the doctrine of res judicata, in particular in the context of an order concerning the withdrawal of an application. Similarly, in Hassanin, concerning the lawfulness of a decision to

---

83 See the CJIL Online publication for an Annex containing a full catalogue of these citations.


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. 90 The UNDT continued to review this ILOAT case law in its judgments in Crotty, Alsado, Wright, Fasanella, Smith and Zachariah. 91


While it is easy to understand why an IAT would cite to a sister tribunal when it faces an issue of first impression, the practice of systematically citing to the jurisprudence of another tribunal evidences a more important phenomenon. Rather than citing to itself after it has established a proposition the first time, the fact that the UNDT has continued citing to a judgment of the IIoAT for as fundamental a concept as the definition of res judicata, or as common an issue in administrative law as termination of contract, can leave little doubt that cross-fertilization is becoming a more common and accepted practice.

In a series of cases involving hundreds of applicants contesting the organization’s decision to implement a post adjustment multiplier determined by the International Civil Service Commission (ICSC) resulting in a substantial pay cut,\(^2\) the UNDT cited several judgments of the IIoAT,\(^3\) in particular Judgment 4134 in which ILO staff members were contesting the application of the same post adjustment multiplier in that organization.\(^4\) This case would seem to mark an important moment in the growth of a regime of cross-fertilization between IATs, in which two separate IATs within the U.N. common system treated a


common question and the second to address the question overtly relied on 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. 95

Likewise, in a series of cases by multiple applicants challenging the 2017 unified salary scale, 96 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, 97 the reviewability of administrative decisions implementing decisions adopted by the General Assembly or ICSC, 98 and the principle of acquired rights. 99

In Bertucci, the UNDT considered whether the deliberations of a selection committee for a high-level post could be disclosed in order to determine whether the committee had been influenced by unproven allegations which were circulating in the public media. 100 In its analysis of the question, the UNDT analyzed the jurisprudence of the ILOAT in great detail, spending over five pages reviewing six key ILOAT cases. 101 It concluded that “the thrust of these

judgments is... that the relevant material should be provided to the Tribunal, if not to the staff member, and it went on to follow this approach.

Multiple cases can also be identified where the UNDT referred to other IATs to establish relatively simple propositions which could have been established by reference to its own jurisprudence or by reasoning on first principles. This is cross-fertilization in its most natural form: rather than a case where the Tribunal is obliged to rely on the jurisprudence of others to fill a gap in its own case-law, here there was substantial internal relevant case-law, which the tribunal reviewed, and it went on to review the work of other tribunals nevertheless. One sees this for example in Wilson, where the UNDT seems to intersperse references to

102 Id. ¶ 36.
103 Id. ¶ 46.
ILOAT case-law with its review of UNDT and UNAT case law, as if it is all coming from the same jurisprudential system.\footnote{Wilson v. U.N. Secretary-General, Judgment No. UNDT/2018/136 Corr. 1, ¶ 75, 87 (U.N. Dispt. Trb. Dec. 21, 2018). This approach can be contrasted with that in ElKholy, where it stated that it would consider judgments of the ILOAT as persuasive on an issue “in the absence of specific authority from the United Nations Appeals Tribunal.” El-Kholy v. U.N. Secretary-General, Judgment No. UNDT/2016/102, ¶ 60 (U.N. Dispt. Trb. July 22, 2016).}

4. United Nations Appeals Tribunal (UNAT)


The UNAT decided in Samwidi, however, that the jurisprudence of its
predecessor the UNAdT, though of persuasive value, cannot be a binding precedent for the new Tribunals to follow.\textsuperscript{111}

5. Asian Development Bank Administrative Tribunal (ADBAT)

The ADBAT was established in 1991 to hear cases brought by staff members of the Bank alleging non-observance of their contracts or terms of employment. It has rendered 128 decisions to date.\textsuperscript{112} 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 \textit{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.”\textsuperscript{113} It went on to add that “[i]n this sphere, a large measure of ‘common’ law of international organizations to which, according to the circumstances, the Tribunal will give due weight.”\textsuperscript{114} Although less celebrated than the WBAT’s similar pronouncement in \textit{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 \textit{Mascio and Sy} (No. 4), the ADBAT cited extensively to the WBAT, the ILOAT, the UNAdT, and the former OECD

\begin{itemize}

\item Sanvidi v. U.N. Secretary-General, Judgment No. 2010-UNAT-084, ¶ 37 (U.N. App. Trib. Oct. 27, 2010)).

\item See Administrative Tribunal, \textit{ASIAN DEVELOPMENT BANK} (2023), https://perma.cc/U6A8-885Y.


\item Id.

\end{itemize}
Appeals Board. 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. It also cited the UNAT for the proposition that IATs can raise issues *sua sponte* and the ILOAT when discussing when joinder of cases is appropriate.

In *Lisuke 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. The Tribunal applied the four-part test of the IMFAT to determine when differential treatment of two groups is justified, substantiating this with additional examples from the jurisprudence of the WBAT. In the same decision, it referred to the ILOAT for the proposition that the ADB could reserve its rights to change the terms of its medical plan. It also referred to the *de Merode* Decision of the WBAT, ultimately

---


120 *Id.* ¶ 32.

121 *Id.* ¶¶ 35-36.

122 *Id.* ¶ 27.
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.\textsuperscript{125}

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.\textsuperscript{124} In Alcainado, even after concluding on the basis of its own case law that grievances must be submitted within prescribed time limits, it nevertheless bolstered its conclusion by references to judgments of the ILOAT and decisions of the WBAT.\textsuperscript{125} In Agiam, it cited to the ILOAT, WBAT and UNAdT for the proposition that the head of an international organization has discretion to transfer its staff.\textsuperscript{126}

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.\textsuperscript{127} 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\textsuperscript{128}—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.\textsuperscript{129} 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 proposition. It then went on to cite yet another judgement of the UNAdT.\textsuperscript{130} The ADBAT also cited the

\textsuperscript{122} Id. ¶ 28, 38.
\textsuperscript{125} Alcainado, Decision No. 41, ¶ 12 (Asian Dev. Bank Admin. Trib. 1998).
\textsuperscript{128} Id. ¶ 43.
\textsuperscript{130} Id. ¶ 33.
ILOAT, WBAT and UNAdT in other disciplinary cases, including *Zaidi*,131 *Bristol*,132 *Chaudhry*,133 and *Ms. M*.134 In other disciplinary cases, it cited to two of those tribunals.135

---


In a great many other decisions, the ADBAT has cited to at least one decision of another IAT, including those of the ILOAT, \textsuperscript{136} WBAT, \textsuperscript{137} OECDAT, \textsuperscript{138} IMFAT, \textsuperscript{139} and UNAdT. \textsuperscript{140} \\


6. Council of Europe Administrative Tribunal (COEAT)

The COEAT was established in 1965 to resolve disputes brought by staff members of the Council of Europe and the Council of Europe Development Bank alleging violations of their contracts or terms of employment.\(^{141}\) It has heard 738 cases to date.\(^{142}\)

The COEAT is notable 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 that the administration should be flexible when determining whether a communication from a staff member constitutes a request to review an administrative decision,\(^{143}\) the right of staff members to information,\(^{144}\) the duty of the organization to provide staff members with procedural guidance,\(^{145}\) 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,\(^{146}\) the duty of appointments panels to act impartially,\(^{147}\) the necessary standard of proof to establish bias,\(^{148}\) the duty of a decision-maker to withdraw in situations where impartiality may be open

---


\(^{141}\) From 1965 until April 5, 1994, it was known as the Council of Europe Appeals Board. See Council of Europe, Common Focus and Autonomy of International Administrative Tribunals: International Colloquy 6 (2017); Sergio Sansotta, The Administrative Tribunal of the Council of Europe, in Current Issues in the Law and Practice of International Administrative Tribunals 19 (2006).


\(^{144}\) See id. ¶ 62.

\(^{145}\) See id.

\(^{146}\) See id. ¶ 69.

\(^{147}\) See id. ¶ 70.

\(^{148}\) See id. ¶ 73.
to question,\(^{149}\) and the extent of the principal of *res judicata.*\(^{150}\) Clearly, many of these propositions could be supported with precedents in the relatively large jurisprudence of the COEAT.\(^{151}\) Yet, in this same decision, the Tribunal cited to its own jurisprudence on only four occasions.\(^{152}\) The fact that the Tribunal chose instead to cite repeatedly to the ILOAT shows indeed just how far the use of cross-fertilization has come.

The COEAT has also cited the ILOAT for many other propositions, including access to justice,\(^{153}\) acquired rights,\(^{154}\) the principle of equal pay for equal work,\(^{155}\) and the definition of “spouse”,\(^{156}\) to name only a few.\(^{157}\)

\(^{149}\) *See id.* ¶ 79.

\(^{150}\) *See id.* ¶ 86.


The COEAT has also occasionally cited to the OECDAT. Like several other tribunals, the COEAT has cited to the UNADT on multiple occasions but only rarely to the new U.N. internal justice system. Finally, the COEAT has cited to the NATOAT on two occasions, the only IAT yet to have done so.

7. African Development Bank Administrative Tribunal (AfDBAT)

The AfDBAT was established in 1998 “to hear and pass judgment upon any application by a staff member contesting an administrative decision for non-observance of the contract of employment or terms of appointment of such staff member.” It has rendered 163 judgments to date.

References to the case law of other IATs in the jurisprudence of the AfDBAT are numerous. Indeed, a review of its jurisprudence revealed 118 references to the ILOAT, fifty-one references to the WBAT, fifteen references to

---


the UNAdT, nine references to the IMFAT, six references to the ADBAT, two references to the UNDT, and one reference to the UNAT.\textsuperscript{164} As we have seen with other IATs, there appears to be a noticeable hesitancy to cite the UNDT/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 \textit{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,\textsuperscript{165} to the WBAT for the standard to determine whether there was a legal basis for the respondent to abolish the position,\textsuperscript{166} to the ILOAT for the proposition that IATs have recognized a general principle that an organization may not immediately terminate a staff member whose post has been abolished if the staff member holds an appointment of indeterminate duration,\textsuperscript{167} to the IMFAT for evidence of an obligation to attempt to reassign staff members whose post has been abolished,\textsuperscript{168} and to the ILOAT concerning the discretion of the head of the administration to accept or reject recommendations made by an Appeals Committee.\textsuperscript{169} It looked to the jurisprudence of both the WBAT and the ILOAT for the test to determine whether an abolition of post was “genuine”\textsuperscript{170} and for the mechanisms with which

\textsuperscript{164} Search carried out on September 8, 2021 on combined jurisprudence July 1999 to December 2020. It should be noted that the figures cited represent the total number of hits for each IAT in the AfDBAT jurisprudence, some of which are citations by the parties. Even when disregarding citations by the Parties, however, the AfDBAT has itself cited to other IATs in 42 out of its first 132 decisions, or roughly about one third of cases.


\textsuperscript{168} \textit{Id.} ¶ 73 (citing \textit{Mr. “F”}, Judgment No. 2005-1, ¶ 117 (\textit{Int’l Monetary Fund Admin. Trib. 2005})).


the administration must comply when reassigning staff members whose posts have been abolished.\textsuperscript{171}

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.\textsuperscript{172} 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 himself or herself.\textsuperscript{173} 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 ADBAT and UNAdT for the proposition that once a \textit{prima facie} case has been established, the burden switches to the staff member to prove his or her innocence.\textsuperscript{174} It then looked to the jurisprudence of the WBAT to determine whether the sanction of summary dismissal was proportionate.\textsuperscript{175} In D.T., it cited to the ILOAT to establish the requirements for an issue to be \textit{res judicata}, to the WBAT for reviewability of a


\textsuperscript{175} \textit{See id.} ¶¶ 85–88 (citing Kwakwa v. IFC, Decision No. 300 (World Bank Admin. Trib. July 19, 2003); D, Decision No. 304 (World Bank Admin. Trib. 2003)).
decision by the President and to the UNADT for how to measure
discrimination.176

In a further six cases, the AfDBAT has cited to at least two other IATs in
the course of its judgment.177 In an additional seven cases, it has cited two or more
decisions of another IAT.178 And in some twenty other judgments, it has cited to


at least one other IAT, for a great variety of different propositions, ranging from jurisdiction ratione personae over external candidates to a selection procedure (citing the ILOAT), to the binding nature of a negotiated settlement (citing the WBAT), to causing reputational damage to the institution as a grounds for summary dismissal (citing the ADBAT), to the prohibition of discrimination

---


(citing the UNAdT), to the obligation to attempt to reassign staff members following the abolition of their posts (citing the IMFAT).

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 Administrative Tribunal (CSAT), the European Space Agency Administrative Tribunal (ESAAT), and the Bank for International Settlements Administrative Tribunal (BISAT).

1. NATO Administrative Tribunal (NATOAT)

The NATOAT was established in 2013 and is competent to decide any individual dispute brought by a NATO staff member or retired staff member alleging that an administrative decision is not in compliance with the NATO Civilian Personnel Regulations or the terms of his or her appointment. In its first ten years of operation, it rendered 185 judgments. 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 COEAT, nine references to the ESAAT, and four references to the UNAT.

In one notable judgment involving three parallel cases, each with numerous applicants, the NATOAT reviewed the jurisprudence of multiple IATs (including twelve judgments of the ILOAT, seven of the WBAT, as well as decisions of the COEAT and the Appeals Board of the ESA) for the widely accepted proposition that a decision of a legislative body cannot be reviewed by an administrative tribunal, absent an administrative decision applying it in the context of an

---


187 Search carried out on September 8, 2021, on combined jurisprudence from 2013 to 2019.
individual case. It is interesting that the Tribunal would go to such lengths to cite other IATs for such a universally accepted 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. 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 declared that “there is consensus among international administrative tribunals that a decision in the exercise of discretion is subject to only limited review by a tribunal” and that “tribunals will not substitute their own view for the organizations’ assessments,” supporting these statements with case law from the ILOAT and WBAT before concluding that “the NATO Administrative Tribunal concurs with these approaches.” These WBAT cases, it might be noted, have also been cited by the ADBAT. The NATOAT further cited to the ILOAT and WBAT in the specific context of discretion involving probationary employees. It cited to the ILOAT with respect to the administration’s discretion to determine the severity of a disciplinary measure and the obligation to provide reasons for an

---


2. OECD Administrative Tribunal (OECDAT)

The OECDAT was set up in its present form in 1992, replacing the OECD’s Appeals Board, as an independent body with jurisdiction to rule on disputes between members of staff (or other qualified persons) and the Secretary-General. It has considered 107 cases to date. 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 COEAT, and one reference to the WBAT.

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. A-L 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. It supported this conclusion with a review of multiple judgments of the ILOAT and decisions of the COEAT as well as a decision of the ADBAT.

---


198 Search carried out on September 8, 2021 on combined jurisprudence from 1992 to 2020.


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.\textsuperscript{201}

In several other judgments, the OECDAT has cited to more than one other IAT. For example, in Mr. \textit{AA}, the OECDAT cited multiple judgments of the ILOAT, decisions of the WBAT and judgements of the UNAdT.\textsuperscript{202} 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 Statute—which clearly would have sufficed—but bolstered this with citations to judgments of the ILOAT and the UNAdT.\textsuperscript{203}

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.\textsuperscript{204} It has also cited to the ILOAT in \textit{Mr. W} (concerning immunities of staff members),\textsuperscript{205} another \textit{Mr. W} Judgment (concerning the jurisdiction to assess the proportionality of a dismissal as a sanction),\textsuperscript{206} \textit{Mr. E}

\textsuperscript{201} 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.


\textsuperscript{205} See W. v. Secretary-General, Judgment in Case No. 60, ¶ 3 (Org. for Economic Coop. and Dev. Admin. Trib. Mar. 7, 2006).

\textsuperscript{206} See W. v. Secretary-General, Judgment in Case No. 61, ¶ 7 n.2 (Org. for Economic Coop. and Dev. Admin. Trib. Mar. 7, 2006).
(pension benefits), Anonymous Judgment number 73 (discretionary authority of the administration), and A4 (concerning which acts constitute administrative decisions). Also notable is the OECDAT’s citation to the COEAT in Mr. D to show the application of a provison on the postponement of adjustments to the salary scale. The fact that the Tribunal also cited to one of its own judgments for the same proposition demonstrates that it is not citing other IAT’s 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.

3. European Bank for Reconstruction and Development Administrative Tribunal (EBRDAT)

The EBRDAT was constituted as an administrative tribunal in its current form in 2007. It hears appeals against administrative decisions once staff members have exhausted all appropriate channels for review under the administrative review process in place at the Bank. From its inception to date, it has rendered fifty-one judgments.

The EBRDAT regularly references the jurisprudence of other IAT’s. 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 whether differentiation could be justified, concluding that differentiation was justified only when it was rationally related to

207 See E. v. Secretary-General, Judgment in Case No. 66, at 8 (Org. for Economic Coop. and Dev. Admin. Trib. Apr. 12, 2010).


211 See Administrative Tribunal, EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT, https://perma.cc/L2A8-6LFR (last visited Sept. 21, 2023) (stating that “decisions prior to 2007 were adopted under the previous Grievance and Appeals Procedures”).

212 Id.

213 Id.

its purpose and proportionate to the achievement of that purpose.\(^{215}\) 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.”\(^{216}\) 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.\(^{217}\) Following a lengthy analysis of numerous judgments and decisions of the ILOAT, IMFAT, ADBAT, and WBAT,\(^{218}\) the EBRDAT 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.\(^{219}\) 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 \textit{de facto} staff member of the Bank, even though the EBRDAT’s jurisdiction is limited to claims brought by staff members.\(^{220}\) The majority opinion concluded that it did have jurisdiction, citing judgments of the ILOAT and decisions of the ADBAT as support.\(^{221}\) However, detailed dissenting opinions in two of the cases distinguished those external precedents, pointing to other judgments of the

\(^{215}\) \textit{Id.} ¶ 88.

\(^{216}\) \textit{Id.} ¶ 86.


\(^{218}\) \textit{Id.} at 24–25.

ILOAT and other IATs that reached the opposite conclusion. 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. Occasionally, it cites to other tribunals, such as the UNDT, the UNAT, and the IMFAT. 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 was established in 1995 to hear applications brought by staff members of the Commonwealth Secretariat, by the Commonwealth Secretariat itself, and by any person who enters into a contract with the Commonwealth Secretariat.228 The CSAT also 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.229

228 See Statute of the Commonwealth Secretariat Arbitral Tribunal, arts. 1–2 (July 1, 1995).
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 well-known cases such as the celebrated Bustani Judgment. 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, and claims of constructive dismissal, for which the Tribunal also cited to five ILOAT judgments. In the Santha case, it cited six ILOAT judgments in the course of its four-page Judgment. 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,” 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.” 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.”

---


233 Mohsin, Judgment No. CSAT/3 (No. 2) (Commonwealth Secretariat Arbitral Trib. 2001).

234 Id. ¶ 4.
