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

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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 "[i]nternational administrative tribunals behave as if the internal laws of different organizations formed part of a single system of law" and that it was "clear that the internal laws of different organizations bear a remarkable resemblance to each other, and can therefore establish strong precedents for each other" (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.

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Table of Contents

I. INTRODUCTION

International Administrative Tribunals (IATs) play a unique role at the cross-roads 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]

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1 Chittharanjan F. Amerasinghe, *International Administrative Tribunals*, *in* THE OXFORD HANDBOOK OF INTERNATIONAL ADJUDICATION 316, 318–19 (Cesare P.R. Romano et al., eds., 2014).

2 HENRY G. SCHERMERS & NIELS M. BLOKKER, INTERNATIONAL INSTITUTIONAL LAW: UNITY WITHIN DIVERSITY 487 (6th ed. 2018) (citing League of Nations, Official Journal, Special Suppl. No. 54, at 201, 478).

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'L L. 232, 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 Wettberg, *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.[4]

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.[5] 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 "[i]nternational administrative tribunals behave *as if* the internal laws of different organizations formed part of a single system of law" and that it was "clear that the internal laws of different organizations bear a remarkable resemblance to each other, and can therefore establish strong precedents for each other."[6]

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[7] and universalization.[8] 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

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¶ 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.

4 For a detailed description of the sources used by IATs, *see, e.g.*, Chittharanjan F. Amerasinghe, *Sources of International Administrative Law*, *in* INTERNATIONAL LAW AT THE TIME OF ITS CODIFICATION: ESSAYS IN HONOUR OF ROBERTO AGO 67 (1987); Yaraslau Kryvoi, *The Law Applied by International Administrative Tribunals: From Autonomy to Hierarchy*, 47 GEO. WASH. INT'L L. REV. 267, 274–93 (2015).

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. INVS. 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.

6 Michael B. Akehurst, The Law Governing Employment in International Organizations 263 (1967) (emphasis added).

7 *See* Rep. of the Study Group of the Int'l Law Comm'n, U.N. Doc. A/CN.4/L.682 and Add.1 and Corr. 1 (2006).

8 See, e.g., Bruno Simma, Universality of International Law from the Perspective of a Practitioner, 20 EUR. J. INT'L L. 265 (2009).

the divergence and fractures that some have warned against as the number of IATs has grown,[9] 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.[10] 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*:

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9 *See* Powers, *supra* note 5, at 70.

10 *See* World Bank Administrative Tribunal, WORLD BANK (2023), https://perma.cc/Q8ZN-VBSN.

> 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*.[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,[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 *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"[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 *AA* case, it cited the IMFAT to show that the Bank is separate from the staff association and cannot be held liable for its actions unless the staff association acted at the instructions of management or under its effective control.[14] In the *E* case, the WBAT cited a 2001 IMFAT judgment dealing with the principle of abstention, according to which an administrative tribunal must

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11 de Merode et al. v. World Bank, Decision No. 1, ¶¶ 26-28 (World Bank Admin. Trib. June 5, 1981).

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

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

14 AA v. IBRD, Decision No. 384, ¶¶ 28, 49–50 (World Bank Admin. Trib. July 18, 2008).

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

The WBAT has cited the jurisprudence of the ILOAT multiple times as well. For example, in *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.[18] In the *S* case, the WBAT cited a judgment of the ILOAT to support its conclusion that when "staff members are involved in a crime, international administrative tribunals give considerable deference to the management's evaluation of institutional interests."[19] The WBAT also cited to the ILOAT in the *Cissé* case, which concerned a staff member who was a former Prime Minister of Niger.[20] While a staff member for the Bank, he was nominated as a candidate for the Presidency of Niger.[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."[22]

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

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15 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)).

16 Aleem & Aleem v. IBRD, Decision No. 424, ¶¶ 57–62. (World Bank Admin. Trib. Dec. 9, 2009).

17 *Id. See also* Mills v. IBRD, Decision No. 383, ¶¶ 33, 35 (World Bank Admin. Trib. July 18, 2008) (citing Mr. "R", Judgment No. 2001-2 (Int'l Monetary Fund Admin. Trib. 2002); Ms. "M" and Dr. "M", Judgment No. 2006-6 (Int'l Monetary Fund Admin. Trib. Nov. 29, 2006)).

18 BO v. IBRD, Decision No. 453, ¶¶ 66–71 (World Bank Admin. Trib. May 25, 2011) (citing *In re* Giordimaina, Judgment No. 2116 (Int'l Lab. Org. Admin. Trib. Jan. 30, 2002); Mrs. H.J. T. v. IFAD, Judgment No. 2392 (Int'l Lab. Org. Admin. Trib. Feb. 2, 2005)).

19 S v. IBRD, Decision No. 373, ¶ 67 (World Bank Admin. Trib. Dec. 14, 2007) (citing *In re* Duncker, Judgment No. 49 (Int'l Lab. Org. Admin. Trib. Sept. 23, 1960)).

20 Cissé v. IBRD, Decision No. 242, ¶ 3 (World Bank Admin. Trib. Apr. 26, 2001).

21 *Id.* ¶ 14.

22 *Id.* ¶ 23.

deprived staff members of certain benefits, including pension.[23] The applicants in both cases relied heavily on the *Amora* Decision of the ADBAT, in which that tribunal held that if a label given to an employment relationship was merely a device to deny the employee regular staff benefits, it should be disregarded.[24] The WBAT commented in both decisions that, "[a]s such, the *Amora* decision is not binding on the present Tribunal. On the other hand, the Tribunal considers that a harmony of views of similar international jurisdictions is to be welcomed, if possible, and of course the Tribunal will be influenced by persuasive analysis whatever its source."[25] The WBAT stated in both judgments that the *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.[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 *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."[27] In the *FM* case, it adopted the definition of constructive dismissal used by the UNDT and UNAT.[28] In the *Tanner* case, it adopted the UNDT definition of what constitutes a failure to report for duty.[29] In the *FA* case, it referred to the jurisprudence of both the UNDT and UNAT for the proposition that a sexual relationship between staff members can be established through text and email messages, even in the

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23 Caryk v. IBRD, Decision No. 214, ¶ 5 (World Bank Admin. Trib. Oct. 1, 1999); Madhusudan v. IBRD, Decision No. 215, ¶¶ 2–3. (World Bank Admin. Trib. Oct. 1, 1999).

24 Caryk, Decision No. 214, ¶ 13 (World Bank Admin. Trib. 1999); Madhusudan, Decision No. 215, ¶ 25 (World Bank Admin. Trib. 1999) (both cases citing Amora v. Asian Dev. Bank, Decision No. 24 (Asian Dev. Bank Admin. Trib. Jan. 6, 1997)).

25 Caryk, Decision No. 214, ¶ 19 (World Bank Admin. Trib. 1999); Madhusudan, Decision No. 215, ¶ 25 (World Bank Admin. Trib. 1999).

26 Caryk, Decision No. 214, ¶¶ 20–26 (World Bank Admin. Trib. 1999); Madhusudan, Decision No. 215, ¶¶ 26–34 (World Bank Admin. Trib. 1999). *See also* N v. IBRD, Decision No. 362, ¶¶ 36–37 (World Bank Admin. Trib. Mar. 28, 2007) (citing Galang v. Asian Dev. Bank, Decision No. 55 (Asian Dev. Bank Admin. Trib. Aug. 8, 2002) to support a compensation award for moral damage, anxiety and stress caused to a staff member by due process violations during a misconduct investigation).

27 CL v. IBRD, Decision No. 499, ¶ 73 (World Bank Admin. Trib. Sept. 26, 2014) (quoting James v. U.N. Secretary-General, Judgment No. UNDT/2009/025 (U.N. Dispt. Trib. Sept. 30, 2009)) (internal quotation marks omitted).

28 FM v. IBRD, Decision No. 643, ¶ 129 (World Bank Admin. Trib. Nov. 16, 2020) (citing Koda v. U.N. Secretary-General, Judgment No. 2011-UNAT-130 (U.N. App. Trib. July 8, 2011)).

29 Tanner v. IBRD, Decision No. 478, ¶ 30 (World Bank Admin. Trib. Oct. 3, 2013) (citing Amoussouga-Géro v. U.N. Secretary-General, Judgment No. UNDT/2021/050 (U.N. Dispt. Trib. May 3, 2021)).

absence of physical contact.[30] In the *AI (No. 3)* case, it cited the UNAT for the proposition that an applicant cannot use the revision procedure as "a disguised way to criticize the Judgment or to expose grounds to disagree with it."[31] The WBAT also occasionally refers to the jurisprudence of the former UNAdT.[32]

Thus, not only has the WBAT influenced and encouraged cross-fertilization with its pronouncement in its seminal *de Merode* Decision, it has continued to practice cross-fertilization throughout its jurisprudence by citing regularly to a wide variety of different IATs.

2. International Monetary Fund Administrative Tribunal (IMFAT)

The IMFAT 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.[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 ILOAT, 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.[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.[35] Thus,

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30 FA v. IBRD, Decision No. 612, ¶¶ 152–53 (World Bank Admin. Trib. Oct. 25, 2019) (citing Mapuranga v. U.N. Secretary-General, Judgment No. UNDT/2018/132 (U.N. Dispt. Trib. Dec. 14, 2018); Applicant v. U.N. Secretary-General, Judgment No. 2013-UNAT-280 (U.N. App. Trib. Mar. 28, 2013)).

31 AI (No. 3) v. IBRD, Decision No. 495, ¶ 25 (World Bank Admin. Trib. Feb. 28, 2014).

32 *See* G (No. 2) v. IBRD, Decision No. 361, ¶ 30 (World Bank Admin. Trib. Mar. 28, 2007); Z v. IBRD, Decision No. 380, ¶ 20 (World Bank Admin. Trib. Mar. 18, 2008).

33 *See generally IMF Administrative Tribunal*, INTERNATIONAL MONETARY FUND, (2023) https://perma.cc/8WKM-FFXF.

34 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.

35 *See* E, Decision No. 325, ¶ 26 (World Bank Admin. Trib. 2004); Mills, Decision No. 383, ¶¶ 33–35 (World Bank Admin. Trib. 2008); Aleem & Aleem, Decision No. 424, ¶¶ 57–62 (World Bank Admin. Trib. 2009). The extent to which the IMFAT has cited the ADBAT is also notable. As a tribunal with a relatively small jurisprudence, having rendered only 120 decisions since its first case in 1992, other IATs have cited the ADBAT on just a handful of occasions, whereas the IMFAT has cited seventeen different ADBAT judgments, often multiple times: Lindsey v. Asian Dev. Bank, Decision No. 1 (Asian Dev. Bank Admin. Trib. Dec. 18, 1992) (cited in the following IMFAT judgments: Ms. "C" v. IMF, Judgment No. 1997-1; Mr. "R" v. IMF, Judgment No. 2002-1; Ms. "G" and Mr. "H" v. IMF, Judgment No. 2002-3; Ms. "I" v. IMF, Judgment No. 2006-2; Ms. "U" v. IMF, Judgment No. 2006-3; Ms. "M" and Dr. "M" v. IMF, Judgment No. 2006-6; Ms. "EE" v. IMF, Judgment No. 2010-4; Mr. "HH" v. IMF, Judgment No. 2013-4); Bares v. Asian Dev. Bank, Decision No. 5 (Asian Dev. Bank Admin. Trib. May 31, 1995) (cited in the following IMFAT judgments: Mr. "DD" v. IMF, Judgment No. 2007-8; Ms. "EE" v. IMF, Judgment No. 2010-4);

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 indisputable: one can clearly see a tribunal willingly developing its reasoning by reference not just to the occasional external decision but to numerous decisions of several tribunals within the same judgment.

Viswanathan v. Asian Dev. Bank, Decision No. 12 (Asian Dev. Bank Admin. Trib. Jan. 8, 1996) (cited in the following IMFAT judgment: Ms. "G" and Mr. "H" v. IMF, Judgment No. 2002-3); Mesch & Siy v. Asian Dev. Bank (No. 3), Decision No. 18 (Asian Dev. Bank Admin. Trib. Aug. 13, 1996) (cited in the following IMFAT judgments: Estate of Mr. "D" v. IMF, Judgment No. 2001-1; Mr. "P" (No. 2) v. IMF, Judgment No. 2001-2); Chan v. Asian Dev. Bank, Decision No. 20 (Asian Dev. Bank Admin. Trib. Aug. 13, 1996) (cited in the following IMFAT judgment: Mr. "V" v. IMF, Judgment No. 1999-2); Amora, Decision No. 24 (Asian Dev. Bank Admin. Trib. 1997) (cited in the following IMFAT judgment: Mr. "A" v. IMF, Judgment No. 1999-1); De Armas et al. v. Asian Dev. Bank, Decision No. 39 (Asian Dev. Bank Admin. Trib. Aug. 5, 1998) (cited in the following IMFAT judgment: Mr. "R" v. IMF, Judgment No. 2002-1); Alexander v. Asian Dev. Bank, Decision No. 40 (Asian Dev. Bank Admin. Trib. Aug. 5, 1998) (cited in the following IMFAT judgments: Ms. "Z" v. IMF, Judgment No. 2005-4; Mr. M. D'Aoust (No. 2) v. IMF, Judgment No. 2007-3; Ms. C. O'Connor (No. 2) v. IMF, Judgment No. 2011-1); Alcartado v. Asian Dev. Bank, Decision No. 41 (Asian Dev. Bank Admin. Trib. Aug. 5, 1998) (cited in the following IMFAT judgments: Estate of Mr. "D" v. IMF, Judgment No. 2001-1; Ms. "Y" (No. 2) v. IMF, Judgment No. 2002-2; Mr. "O" v. IMF, Judgment No. 2006-1; Ms. "AA" v. IMF, Judgment No. 2006-5; Ms. C. O-Connor (No. 2) v. IMF, Judgment No. 2011-1; Ms. "GG" (No. 2) v. IMF, Judgment No. 2015-3); Toivanen v. Asian Dev. Bank, Decision No. 51 (Asian Dev. Bank Admin. Trib. Sept. 21, 2000) (cited in the following IMFAT judgments: Ms. "T" v. IMF, Judgment No. 2006-2; Ms. "U" v. IMF, Judgment No. 2006-3; Ms. "AA" v. IMF, Judgment No. 2006-5); Galang, Decision No. 55 (Asian Dev. Bank Admin. Trib. 2002) (cited in the following IMFAT judgment: Ms. "EE" v. IMF, Judgment No. 2010-4); Ms. C. v. Asian Dev. Bank, Decision No. 58 (Asian Dev. Bank Admin. Trib. Aug. 8, 2003) (cited in the following IMFAT judgment: Ms. "AA" v. IMF, Judgment No. 2006-5); Guioguio v. Asian Dev. Bank, Decision No. 59 (Asian Dev. Bank Admin. Trib. Aug. 8, 2003) (cited in the following IMFAT judgments: Mr. M. D'Aoust (No. 2) v. IMF, Judgment No. 2007-3; Ms. N. Sachdev v. IMF, Judgment No. 2012-1); de Alwis v. Asian Dev. Bank (No. 3), Decision No. 70 (Asian Dev. Bank Admin. Trib. Jan. 20, 2005) (cited in the following IMFAT judgment: Mr. "KK" v. IMF, Judgment No. 2016-2); Mr. "E" v. Asian Dev. Bank, Decision No. 103 (Asian Dev. Bank Admin. Trib. Feb. 12, 2014) (cited in the following IMFAT judgment: Ms. "GG" (No. 2) v. IMF, Judgment No. 2015-3); Mr. F v. Asian Dev. Bank, Decision No. 104 (Asian Dev. Bank Admin. Trib. Aug. 6, 2014) (cited in the following IMFAT judgment: Ms. "GG" (No. 2) v. IMF, Judgment No. 2015-3); Cruz v. Asian Dev. Bank, Decision No. 115 (Asian Dev. Bank Admin. Trib. July 21, 2018) (cited in the following IMFAT judgment: Mr. "LL" v. IMF, Judgment No. 2019-1).

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

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36 Mr. M. D'Aoust (No. 2) v. IMF, Judgment No. 2007-3, ¶¶ 10, 67–68, 73, 86, 102, 137 (Int'l Monetary Fund Admin. Trib. May 22, 2007) (citing *In re* Der Hovsepian, Judgment No. 1177 (Int'l Lab. Org. Admin. Trib. July 15, 1992); *In re* De Riemaeker (No. 3), Judgment No. 1595 (Int'l Lab. Org. Admin. Trib. Jan. 30, 1997); *In re* Pinto, Judgment No. 1646 (Int'l Lab. Org. Admin. Trib. July 10, 1997); *In re* Cassaignau (No. 4), Judgment No. 1359 (Int'l Lab. Org. Admin. Trib. July 13, 1994); *In re* van der Peet (No. 17), Judgment No. 1316 (Int'l Lab. Org. Admin. Trib. Jan. 31, 1994); *In re* Kirstetter (No. 2), Judgment No. 1223 (Int'l Lab. Org. Admin. Trib. Feb. 10 1993); M. D. S. v. FAO, Judgment No. 2163 (Int'l Lab. Org. Admin. Trib. July 15, 2002); *In re* Vianney, Judgment No. 1158 (Int'l Lab. Org. Admin. Trib. Jan. 29, 1992); R.S. I. v. FAO, Judgment No. 2393 (Int'l Lab. Org. Admin. Trib. Feb. 2, 2005); *In re* Matthews, Judgment No. 2004 (Int'l Lab. Org. Admin. Trib. Jan. 31 2001)).

37 *Id.* ¶¶ 73, 86, 137 (citing Hitch v. IBRD, Decision No. 344 (World Bank Admin. Trib. Nov. 4, 2005); Jassal v. IBRD, Decision No. 100 (World Bank Admin. Trib. June 20, 1991); Perea v. IFC, Decision No. 326 (World Bank Admin. Trib. Nov. 12, 2004); Sebastian (No. 2) v. IBRD, Decision No. 57 (World Bank Admin. Trib. May 26, 1988); Nunberg v. IBRD, Decision No. 245 (World Bank Admin. Trib. July 23, 2001)).

38 *Id.* ¶¶ 10, 103 (citing Applicant v. U.N. Secretary-General, Judgement No. 1245 (U.N. Admin. Trib. July 22, 2005); Applicant v. U.N. Secretary-General, Judgement No. 1304 (U.N. Admin. Trib. July 28, 2006); Byaje v. U.N. Secretary-General, Judgement No. 1126 (U.N. Admin. Trib. July 25, 2003)).

39 *Id.* ¶¶ 73, 137 (citing Guioguio, 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.* ¶¶ 102–03.

ten separate references to the WBAT,[44] three to the ADBAT,[45] and one to the UNAdT.[46] For example, it cited to the UNAdT concerning the quasi-judicial nature of the imposition of disciplinary sanctions,[47] 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.[48]

In its 2012 *Sachdev* Judgment, the IMFAT also cited externally fourteen times, including nine decisions of the WBAT,[49] four judgments of the ILOAT,[50] and one decision of the ADBAT.[51] The case concerned a challenge to a decision not to select the applicant for a post and a subsequent decision to abolish the post she encumbered.[52] The Tribunal looked to the work of the WBAT and the ADBAT with respect to the review of selection decisions.[53] It also looked at the

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44 Ms. "EE" v. IMF, Judgment No. 2010-4, ¶ 85 (Int'l Monetary Fund Admin. Trib. Dec. 3, 2010) (citing D v. IFC, Decision No. 304 (World Bank Admin. Trib. Dec. 12, 2003)); *id.* ¶¶ 87, 125 (citing AE v. IBRD, Decision No. 392 (World Bank Admin. Trib. Mar. 25, 2009); AF v. IBRD, Decision No. 393 (World Bank Admin. Trib. Mar. 25, 2009)); *id.* ¶ 101 (citing Koudogbo, v. IBRD, Decision No. 246 (World Bank Admin. Trib. July 23, 2001)); *id.* ¶¶ 103, 248 (citing G v. IBRD, Decision No. 340 (World Bank Admin. Trib. Nov. 4, 2005); N, Decision No. 362 (World Bank Admin. Trib. 2007); BB v. IBRD, Decision No. 426 (World Bank Admin. Trib. Dec. 9, 2009)); *id.* ¶¶ 105–06, 111 (citing Sjamsubahri v. IBRD, Decision No. 145 (World Bank Admin. Trib. Nov. 9, 1995)); *id.* ¶ 187 (citing BF v. IBRD, Decision No. 430 (World Bank Admin. Trib. Mar. 23, 2010)); *id.* ¶ 195 (citing Z, Decision No. 380 (World Bank Admin. Trib. 2008)).

45 *Id.* ¶¶ 90, 174–76 (citing Galang, Decision No. 55 (Asian Dev. Bank Admin. Trib. 2002)); *id.* ¶ 139 (citing Bares, Decision No. 5 (Asian Dev. Bank Admin. Trib. 1995)); *id.* ¶ 189 (citing Lindsey, Decision No. 1 (Asian Dev. Bank Admin. Trib. 1992)).

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.

49 Ms. N. Sachdev v. IMF, Judgment No. 2012-1, ¶ 80 (IMF Admin. Trib. Mar. 6, 2012) (citing de Merode et al., Decision No. 1 (World Bank Admin. Trib. 1981)); *id.* ¶ 100 (citing Hitch, Decision No. 344 (World Bank Admin. Trib. 2005); Jassal, Decision No. 100 (World Bank Admin. Trib. 1991)); *id.* ¶ 171 (citing Njovens v. IBRD, Decision No. 294 (World Bank Admin. Trib. May 20, 2003)); *id.* ¶¶ 212–16 (citing Jakub v. IBRD, Decision No. 321 (World Bank Admin. Trib. Nov. 12, 2004); Marshall v. IBRD, Decision No. 226 (World Bank Admin. Trib. May 18, 2000); F (No. 2) v. IBRD, Decision No. 347 (World Bank Admin. Trib. May 26, 2006); Arellano (No. 2) v. IBRD, Decision No. 161 (World Bank Admin. Trib. June 10, 1997); Marchesini v. IBRD, Decision No. 260 (World Bank Admin. Trib. May 24, 2002)).

50 *Id.* ¶ 100 (citing *In re* Pinto, Judgment No. 1646 (Int'l Lab. Org. Admin. Trib. 1997)); *id.* ¶ 135 (citing R.S. I., Judgment No. 2393 (Int'l Lab. Org. Admin. Trib. 2005)); *id.* ¶ 171 (citing A. M. I. v. IFRC, Judgment No. 2156 (Int'l Lab. Org. Admin. Trib. July 15, 2002)); *id.* ¶ 217 (citing *In re* Hermann, Judgment No. 133 (Int'l Lab. Org. Admin. Trib. Mar. 17, 1969)).

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

52 *Id.* ¶ 2.

53 *Id.* ¶ 100.

jurisprudence 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

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54 *Id.* ¶¶ 212–17.

55 Ms. "GG" (No. 2) v. IMF, Judgment No. 2015-3, ¶¶ 24, 66, 271, 362, 441, 466 (Int'l Monetary Fund Admin. Trib. Dec. 29, 2015) (citing N, Decision No. 362 (World Bank Admin. Trib. 2007); Rendall-Speranza v. IFC, Decision No. 197 (World Bank Admin. Trib. Oct. 19, 1998); Sekabaraga 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)).

56 *Id.* ¶¶ 66, 187, 249, 271 (citing E. D. G. v. FAO, Judgment No. 3318 (Int'l Lab. Org. Admin. Trib. Apr. 28, 2014); H. L. v. WIPO, Judgment No. 3347 (Int'l Lab. Org. Admin. Trib. July 9, 2014); H.F. v. IAEA, Judgment No. 2553 (Int'l Lab. Org. Admin. Trib. July 12, 2006)).

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)).

58 *Id.* ¶ 187 (citing Q v Eur. Comm., Judgment No. F-52/05 (Eur. Civ. Serv. Trib. Dec. 9, 2008)).

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.

60 Mr. "A" v. IMF, Judgment No. 1999-1, ¶¶ 2, 60 (Int'l Monetary Fund Admin. Trib. Aug. 12, 1999).

the UNAdT,[61] five judgments of the ILOAT,[62] one decision of the WBAT,[63] and one of the ADBAT.[64] The 2001 Judgment in *Estate of Mr. "D"* is also notable, in particular for its extensive use of the jurisprudence of the WBAT, referring to eleven different decisions of that tribunal.[65] It also referred to two decisions of the ADBAT[66] and two judgments of the ILOAT.[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.[68] In the 2005 case of *Mr. "F"*,[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

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61 *Id.* ¶ 90 n.19 (citing Bohn, Coeytaux, and Vouillemont v. UNJSPF, Judgement No. 378 (U.N. Admin. Trib. Dec. 5, 1986); Gilbert, Hyde, Ishkinazi, and Michel v. UNJSPF, Judgement No. 379 (U.N. Admin. Trib. Dec. 5, 1986); Zafari v. Commissioner-General of the UNRWA, Judgement No. 461 (U.N. Admin. Trib. Nov. 10, 1989)); *id.* ¶¶ 66, 74 (citing Camargo v. U.N. Secretary-General, Judgement No. 96 (U.N. Admin. Trib. Sept. 29, 1965)); *id.* ¶¶ 88–90 (citing Shkukani v. Commissioner-General of the UNRWA, Judgement No. 628 (U.N. Admin. Trib. Nov. 17, 1993)); *id.* ¶¶ 74–76 (citing Teixeira v. U.N. Secretary-General, Judgement No. 233 (U.N. Admin. Trib. Oct. 13, 1978); Teixeira v. U.N. Secretary-General, Judgement No. 230 (U.N. Admin. Trib. Oct. 14, 1977)).

62 *Id.* ¶¶ 72–73 (citing *In re* Amezketa, Judgment No. 1034 (Int'l Lab. Org. Admin. Trib. June 26, 1990)); *id.* ¶¶ 77–81 (citing *In re* Bustos, Judgment No. 701 (Int'l Lab. Org. Admin. Trib. Nov. 14, 1985)); *id.* ¶¶ 70–71, 91 (citing *In re* Darricades, Judgment No. 67 (Int'l Lab. Org. Admin. Trib. Oct. 26, 1962)); *id.* ¶ 65 (citing *In re* Labarthe, Judgment No. 307 (Int'l Lab. Org. Admin. Trib. June 6, 1977)); *id.* ¶¶ 68–69 (citing *In re* Privitera, Judgment No. 75 (Int'l Lab. Org. Admin. Trib. Sept. 11, 1964)).

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

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

65 Estate of Mr. "D" v. IMF, Judgment No. 2001-1, ¶ 67 (Int'l Monetary Fund Admin. Trib. Mar. 30, 2001) (citing Rae (No. 2) v. IBRD, Decision No. 132 (World Bank Admin. Trib. Dec. 10, 1993)); *id.* ¶ 68 (citing de Jong v. IFC, Decision No. 89 (World Bank Admin. Trib. May 25, 1990)); *id.* ¶ 94 (citing Lewin v. IBRD, Decision No. 152 (World Bank Admin. Trib. Oct. 22, 1996)); *id.* ¶¶ 97, 121 (citing Setia v. IBRD, Decision No. 134 (World Bank Admin. Trib. Dec. 10, 1993)); *id.* ¶¶ 104–05 (citing Yousufzi v. IBRD, Decision No. 151 (World Bank Admin. Trib. Oct. 22, 1996)); *id.* ¶¶ 104, 125 (citing Agerschou v. IBRD, Decision No. 114 (World Bank Admin. Trib. Nov. 13, 1992)); *id.* ¶ 106 (citing A v. IBRD, Decision No. 182 (World Bank Admin. Trib. Nov. 18, 1997); Mustafa v. IBRD, Decision No. 195 (World Bank Admin. Trib. May 15, 1998)); *id.* ¶ 120 (citing Guya v. IBRD, Decision No. 174 (World Bank Admin. Trib. Nov. 18, 1997)); *id.* ¶ 125 (citing Bredero v. IBRD, Decision No. 129 (World Bank Admin. Trib. Dec. 10, 1993)); *id.* ¶¶ 126–127 (citing Robinson v. IBRD, Decision No. 78 (World Bank Admin. Trib. May 5, 1989)).

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

67 *Id.* ¶¶ 93, 96 (citing *In re* Schulz, Judgment No. 575 (Int'l Lab. Org. Admin. Trib. Dec. 20, 1983)); *id.* ¶ 100 (citing *In re* Al-Joundi, Judgment No. 259 (Int'l Lab. Org. Admin. Trib. Oct. 27, 1975)).

68 *Id.* ¶¶ 92–107.

69 Mr. "F" v. IMF, Judgment No. 2005-1 (Int'l Monetary Fund Admin. Trib. Mar. 18, 2005).

examined no fewer than thirteen decisions of the WBAT[70] and five judgments of the ILOAT[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."[72]

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

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70 *Id.* ¶ 48 (citing Fidel v. IBRD, Decision No. 302 (World Bank Admin. Trib. Dec. 12, 2003)); *id.* ¶ 52 (citing Brannigan v. IBRD, Decision No. 165 (World Bank Admin. Trib. June 10, 1997)); *id.* ¶¶ 52, 114 (citing Arellano (No. 2), Decision No. 161 (World Bank Admin. Trib. 1997)); *id.* ¶ 71 (citing Jassal, Decision No. 100 (World Bank Admin. Trib. 1991)); *id.* ¶ 72 (citing Denning v. IBRD, Decision No. 168 (World Bank Admin. Trib. June 10, 1997); Marchesini, Decision No. 260 (World Bank Admin. Trib. 2002); Harou v. IBRD, Decision No. 273 (World Bank Admin. Trib. Sept. 30, 2002); del Campo v. IBRD, Decision No. 292 (World Bank Admin. Trib. May 20, 2003); Njovens, Decision No. 294 (World Bank Admin. Trib. 2003); Taborga v. IBRD, Decision No. 297 (World Bank Admin. Trib. May 20, 2003)); *id.* ¶ 104 (citing Garcia-Mujica v. IBRD, Decision No. 192 (World Bank Admin. Trib. May 15, 1998)); *id.* ¶ 120 (citing Jakub, Decision No. 321 (World Bank Admin. Trib. 2004)); *id.* ¶ 121 (citing Chhabra v. IBRD, Decision No. 139 (World Bank Admin. Trib. Oct. 14, 1994)).

71 *Id.* ¶ 13 n.8 (citing *In re* Malhotra, Judgment No. 1372 (Int'l Lab. Org. Admin. Trib. July 13, 1994)); *id.* ¶¶ 48, 78 (citing J. C. v. CERN, Judgment No. 139 (Int'l Lab. Org. Admin. Trib. Nov. 3, 1969)); *id.* ¶ 60 (citing A. M. I., Judgment No. 2156 (Int'l Lab. Org. Admin. Trib. 2002)); *id.* ¶ 113 (citing *In re* Gracia de Muñiz, Judgment No. 269 (Int'l Lab. Org. Admin. Trib. Apr. 12, 1976)); *id.* ¶ 116 (citing S. S. v. Interpol, Judgment No. 2294 (Int'l Lab. Org. Admin. Trib. Feb. 4, 2004)).

72 *Id.* ¶ 117.

73 Ms. "Y" (No. 2) v. IMF, Judgment No. 2002-2 (Int'l Monetary Fund Admin. Trib. Mar. 5, 2002) (citing Alcartado, Decision No. 41 (Asian Dev. Bank Admin. Trib. 1998); *In re* Diotallevi and Tedjini, Judgment No. 1272 (Int'l Lab. Org. Admin. Trib. July 14, 1993); *In re* Durand-Smet (No. 4), Judgment No. 2040 (Int'l Lab. Org. Admin. Trib. Nov. 3, 2000); *In re* Pary (No. 4), Judgment No. 1500 (Int'l Lab. Org. Admin. Trib. Feb. 1, 1996); de Merode et al., Decision No. 1 (World Bank Admin. Trib. 1981); de Raet v. IBRD, Decision No. 85 (World Bank Admin. Trib. Sept. 22, 1989); Pinto v. IBRD, Decision No. 56 (World Bank Admin. Trib. May 26, 1988); Sebastian (No. 2), Decision No. 57 (World Bank Admin. Trib. 1988); Yousufzi, Decision No. 151 (World Bank Admin. Trib. 1996)).

74 Ms. "AA" v. IMF, Judgment No. 2006-5 (Int'l Monetary Fund Admin. Trib. Nov. 27, 2006) (citing Alcartado, Decision No. 41 (Asian Dev. Bank Admin. Trib. 1998); Ms. C., Decision No. 58 (Asian Dev. Bank Admin. Trib. 2003); Toivanen, Decision No. 51 (Asian Dev. Bank Admin. Trib. 2000); *In re* Saunders (No. 13), Judgment No. 1466 (Int'l Lab. Org. Admin. Trib. Feb. 1, 1996); *In re* Schulz, Judgment No. 575 (Int'l Lab. Org. Admin. Trib. 1983); A, Decision No. 182 (World Bank Admin. Trib. 1997); E, Decision No. 325 (World Bank Admin. Trib. 2004); N v. IBRD, Decision No. 356 (World Bank Admin. Trib. Sept. 28, 2006)).

75 Pyne v. IMF, Judgment No. 2011-2 (Int'l Monetary Fund Admin. Trib. Nov. 14, 2011) (citing *In re* Gracia de Muñiz, Judgment No. 269 (Int'l Lab. Org. Admin. Trib. 1976); Marshall, Decision No. 226 (World Bank Admin. Trib. 2000); Jakub, Decision No. 321 (World Bank Admin. Trib. 2004); F (No. 2), Decision No. 347 (World Bank Admin. Trib. 2006); Arellano (No. 2), Decision No. 161 (World Bank Admin. Trib. 1997); Marchesini, Decision No. 260 (World Bank Admin. Trib. 2002); de Merode et al., Decision No. 1 (World Bank Admin. Trib. 1981); Kepper v. IFC, Decision No. 149 (World Bank Admin. Trib. May 14, 1996)).

external judgments; as well as its 1996 Judgment in *Mr. D'Aoust*,[76] its 1997 Judgment in *Ms. "C"*,[77] and its 2007 Judgment in *Daseking-Frank et al.*,[78] 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[79] as part of a reform to replace the United Nations Administrative Tribunal,[80] which had functioned since 1949.[81] 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.[82] The UNDT has cited to the ILOAT on no fewer than 152 occasions and to the WBAT twenty-

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76 D'Aoust v. IMF, Judgment No. 1996-1 (Int'l Monetary Fund Admin. Trib. Apr. 2, 1996) (citing Pinto, Decision No. 56 (World Bank Admin. Trib. 1988); Schwarzenberg Fonck v. IDB, Judgment in Case No. 2 (Inter-Am. Dev. Bank Admin. Trib. May 14, 1984); *In re* Connolly-Battisti (No. 5), Judgment No. 323 (Int'l Lab. Org. Admin. Trib. Nov. 21, 1977); *In re* Diotallevi and Tedjini, Judgment No. 1272 (Int'l Lab. Org. Admin. Trib. 1993); *In re* Dunand and Jacquemod, Judgment No. 929 (Int'l Lab. Org. Admin. Trib. Dec. 8, 1988); *In re* Garcia, Judgment No. 591 (Int'l Lab. Org. Admin. Trib. Dec. 20, 1983); *In re* Niesing, Peeters and Roussot, Judgment No. 963 (Int'l Lab. Org. Admin. Trib. June 27, 1989)).

77 Ms. "C" v. IMF, Judgment No. 1997-1 (Int'l Monetary Fund Admin. Trib. Aug. 22, 1997) (citing Lindsey, Decision No. 1 (Asian Dev. Bank Admin. Trib. 1992); Belas-Gianou v. U.N. Secretary-General, Judgement No. 707 (U.N. Admin. Trib. July 28, 1995); Benthin v. U.N. Secretary-General, Judgement No. 700 (U.N. Admin. Trib. July 27, 1995); Safavi v. U.N. Secretary-General, Judgement No. 465 (U.N. Admin. Trib. Nov. 15, 1989); Broemser v. IBRD, Decision No. 27 (World Bank Admin. Trib. Oct. 25, 1985); Buranavanichkit v. IBRD, Decision No. 7 (World Bank Admin. Trib. May 25, 1982); Matta v. IBRD, Decision No. 12 (World Bank Admin. Trib. Oct. 8, 1982)).

78 Daseking-Frank, et al. v. IMF, Judgment No. 2007-1 (Int'l Monetary Fund Admin. Trib. Jan. 24, 2007) (citing Gretz and others v. UNJSPB, Judgement No. 403 (U.N. Admin. Trib. Nov. 12, 1987); de Merode et al., Decision No. 1 (World Bank Admin. Trib. 1981); von Stauffenberg, Ganuelas, and Leach v. World Bank, Decision No. 38 (World Bank Admin. Trib. Oct. 27, 1987); Sebastian (No. 2), Decision No. 57 (World Bank Admin. Trib. 1988); *In re* Berthet (No. 2), Lampinen, Leberman and Schechinger, Judgment 1912 (Int'l Lab. Org. Admin. Trib. Feb. 3, 2000); Crevier v. IBRD, Decision No. 205 (World Bank Admin. Trib. Feb. 3, 1999); Kepper, Decision No. 149 (World Bank Admin. Trib. 1996)).

79 G.A. Res. 63/253, ¶¶ 26–27 (Dec. 24, 2008).

80 *See generally* Rishi Gulati, The Internal Dispute Resolution Regime of the United Nations: Has the Creation of the United Nations Dispute Tribunal and United Nations Appeals Tribunal Remedied the Flaws of the United Nations Administrative Tribunal?, 15 MAX PLANCK Y.B. U.N. L. 489 (2011).

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

82 *See Who Can Use the System*, UNITED NATIONS (2023) https://perma.cc/5TVK-ULGJ.

three times.[83] It has also cited to the ADBAT,[84] the AfDBAT,[85] the IMFAT[86] and the COEAT.[87]

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'.[88]

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.[89] Similarly, in *Hassanin*, concerning the lawfulness of a decision to

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

84 Gatti et al. v. U.N. Secretary-General, Order No. 126 (U.N. Dispt. Trib. May 7, 2013); McKay v. U.N. Secretary-General, Judgment No. UNDT/2012/018 (U.N. Dispt. Trib. Feb. 9, 2012).

85 Nwuke v. U.N. Secretary-General, Judgment No. UNDT/2013/157 (U.N. Dispt. Trib. Dec. 4, 2013).

86 Applicant v. U.N. Secretary-General, Judgment No. UNDT/2013/163 (U.N. Dispt. Trib. Dec. 5, 2013).

87 Mihai v. U.N. Secretary-General, Judgment No. UNDT/2016/087 (U.N. Dispt. Trib. June 22, 2016).

88 Lloret Alcañiz, Zhao, Xie, Kutner, and Kring v. U.N. Secretary-General, Judgment No. UNDT/2017/097, ¶ 88 (U.N. Dispt. Trib. Dec. 29, 2017) (citing Report of the Redesign Panel, U.N. Doc. A/61/205, ¶ 96).

89 *See* Guevara v. U.N. Secretary-General, Judgment No. UNDT/2013/108 (U.N. Dispt. Trib. Aug. 23, 2013); El-Komy v. U.N. Secretary-General, Judgment No. UNDT/2013/122 (U.N. Dispt. Trib. Oct. 9, 2013); El-Komy v. U.N. Secretary-General, Judgment No. UNDT/2013/123 (U.N. Dispt. Trib. Oct. 9, 2013); Applicant v. U.N. Secretary-General, Judgment No. UNDT/2013/125 (U.N.

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]

Dispt. Trib. Oct. 11, 2013); Mabande v. U.N. Secretary-General, Judgment No. UNDT/2013/168 (U.N. Dispt. Trib. Dec. 11, 2013); Yudin v. U.N. Secretary-General, Judgment No. UNDT/2014/008 (U.N. Dispt. Trib. Jan. 28, 2014); Adundo v. U.N. Secretary-General, Judgment No. UNDT/2014/009 (U.N. Dispt. Trib. Jan. 28, 2014); Lamuraglia v. U.N. Secretary-General, Judgment No. UNDT/2014/010 (U.N. Dispt. Trib. Jan. 28, 2014); Adu-Mensah v. U.N. Secretary-General, Judgment No. UNDT/2014/011 (U.N. Dispt. Trib. Jan. 28, 2014); Chaclag v. U.N. Secretary-General, Judgment No. UNDT/2014/012 (U.N. Dispt. Trib. Jan. 28, 2014); Utkina v. U.N. Secretary-General, Judgment No. UNDT/2014/024 (U.N. Dispt. Trib. Jan. 28, 2014); Shrivastava v. U.N. Secretary-General, Judgment No. UNDT/2014/031 (U.N. Dispt. Trib. Mar. 19, 2014); Sprauten v. U.N. Secretary-General, Order No. 113 (NY/2014) (U.N. Dispt. Trib. May 8, 2014); Kodre v. U.N. Secretary-General, Order No. 130 (NY/2014) (U.N. Dispt. Trib. May 29, 2014); Wishart v. U.N. Secretary-General, Order No. 261 (NY/2014) (U.N. Dispt. Trib. Sept. 9, 2014); Gittens v. U.N. Secretary-General, Order No. 350 (NY/2014) (U.N. Dispt. Trib. Dec. 30, 2014); Snit v. U.N. Secretary-General, Order No. 354 (NY/2014) (U.N. Dispt. Trib. Dec. 30, 2014); El Chaar v. U.N. Secretary-General, Order No. 150 (NY/2015) (U.N. Dispt. Trib. July 20, 2015); Chua v. U.N. Secretary-General, Order No. 33 (NY/2016) (U.N. Dispt. Trib. Feb. 5, 2016); Kawas v. U.N. Secretary-General, Order No. 55 (NY/2016) (U.N. Dispt. Trib. Feb. 29, 2016); Al-Midani v. U.N. Secretary-General, Order No. 56 (NY/2016) (U.N. Dispt. Trib. Feb. 29, 2016); Bilbrough v. U.N. Secretary-General, Order No. 68 (NY/2016) (U.N. Dispt. Trib. Mar. 8, 2016); Lawrence v. U.N. Secretary-General, Order No. 133 (NY/2016) (U.N. Dispt. Trib. June 7, 2016); Basnyat v. U.N. Secretary-General, Order No. 207 (NY/2016) (U.N. Dispt. Trib. Aug. 30, 2016); Elimu v. U.N. Secretary-General, Order No. 265 (NY/2016) (U.N. Dispt. Trib. Nov. 25, 2016); Shehadeh v. U.N. Secretary-General, Order No. 52 (NY/2017) (U.N. Dispt. Trib. Mar. 23, 2017); Applicant v. U.N. Secretary-General, Order No. 99 (NY/2017) (U.N. Dispt. Trib. May 23, 2017); Sebillot v. U.N. Secretary-General, Order No. 182 (NY/2017) (U.N. Dispt. Trib. Sept. 7, 2017); Yuen v. U.N. Secretary-General, Order No. 183 (NY/2017) U.N. Dispt. Trib. Sept. 7, 2017); Duong v. U.N. Secretary-General, Order No. 184 (NY/2017) (U.N. Dispt. Trib. Sept. 8, 2017); Menekse v. U.N. Secretary-General, Order No. 226 (NY/2017) (U.N. Dispt. Trib. Oct. 11, 2017); Roy v. U.N. Secretary-General, Order No. 2 (NY/2018) (U.N. Dispt. Trib. Jan. 5, 2018); Kinglow v. U.N. Secretary-General, Order No. 98 (NY/2018) (U.N. Dispt. Trib. May 17, 2018); Chohan v. U.N. Secretary-General, Order No. 115 (NY/2018) (U.N. Dispt. Trib. June 1, 2018); Ndiaye v. U.N. Secretary-General, Order No. 141 (NY/2018) (U.N. Dispt. Trib. July 6, 2018); Malinin v. U.N. Secretary-General, Order No. 215 (NY/2018) (U.N. Dispt. Trib. Oct. 31, 2018); Zilberg v. U.N. Secretary-General, Order No. 216 (NY/2018) (U.N. Dispt. Trib. Oct. 31, 2018).

90 Hassanin v. U.N. Secretary-General, Judgment No. UNDT/2016/181, ¶¶ 87–90 (U.N. Dispt. Trib. Oct. 7, 2016) (citing *In re* Zaunbauer, Judgment No. 1782 (Int'l Lab. Org. Admin. Trib. July 9, 1998); M.-J. C. and others v. Centre for the Dev. of Enterprise, Judgment No. 3238 (Int'l Lab. Org. Admin. Trib. July 4, 2013); I. T. v. Technical Centre for Agricultural & Rural Co-op., Judgment No. 3437 (Int'l Lab. Org. Admin. Trib. Feb. 11, 2015)).

91 Crotty v. U.N. Secretary-General, Judgment No. UNDT/2016/190 (U.N. Dispt. Trib. Oct. 19, 2016); Alsado v. U.N. Secretary-General, Judgment No. UNDT/2016/191 (U.N. Dispt. Trib. Oct. 19, 2016); Wright v. U.N. Secretary-General, Judgment No. UNDT/2016/192 (U.N. Dispt. Trib. Oct. 19, 2016); Fasanella v. U.N. Secretary-General, Judgment No. UNDT/2016/193 (U.N. Dispt. Trib. Oct. 19, 2016); Smith v. U.N. Secretary-General, Judgment No. UNDT/2016/194 (U.N.

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 ILOAT 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,[92] the UNDT cited several judgments of the ILOAT,[93] in particular Judgment 4134 in which ILO staff members were contesting the application of the same post adjustment multiplier in that organization.[94] 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

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Dispt. Trib. Oct. 19, 2016); Zachariah v. U.N. Secretary-General, Judgment No. UNDT/2016/195 (U.N. Dispt. Trib. Oct. 19, 2016). For references to the ILOAT, *see, e.g.*, Crotty, Judgment No. UNDT/2016/190, ¶¶ 57–60, 89–90, 96 (U.N. Dispt. Trib. 2016).

92 *See* Abd Al-Shakour et al. v. U.N. Secretary-General, Judgment No. UNDT/2020/106 (U.N. Dispt. Trib. June 30, 2020); Cardenas Fischer et al. v. U.N. Secretary-General, Judgment No. UNDT/2020/107 (U.N. Dispt. Trib. June 30, 2020); Steinbach v. U.N. Secretary-General, Judgment No. UNDT/2020/114 (U.N. Dispt. Trib. July 10, 2020); Bozic v. U.N. Secretary-General, Judgment No. UNDT/2020/115 (U.N. Dispt. Trib. July 10, 2020); Andres et al. v. U.N. Secretary-General, Judgment No. UNDT/2020/117 (U.N. Dispt. Trib. July 14, 2020); Angelova et al. v. U.N. Secretary-General, Judgment No. UNDT/2020/118 (U.N. Dispt. Trib. July 14, 2020); Andreeva et al. v. U.N. Secretary-General, Judgment No. UNDT/2020/122 (U.N. Dispt. Trib. July 16, 2020); Bozic et al. v. U.N. Secretary-General, Judgment No. UNDT/2020/129 (U.N. Dispt. Trib. July 29, 2020); Angelova et al. v. U.N. Secretary-General, Judgment No. UNDT/2020/130 (U.N. Dispt. Trib. July 29, 2020); Andres et al. v. U.N. Secretary-General, Judgment No. UNDT/2020/131 (U.N. Dispt. Trib. July 29, 2020); Andreeva et al. v. U.N. Secretary-General, Judgment No. UNDT/2020/132 (U.N. Dispt. Trib. July 29, 2020); Abd Al-Shakour et al. v. U.N. Secretary-General, Judgment No. UNDT/2020/133 (U.N. Dispt. Trib. July 29, 2020); Doedens et al. v. U.N. Secretary-General, Judgment No. UNDT/2020/148 (U.N. Dispt. Trib. Aug. 19, 2020); Correia Reis et al. v. U.N. Secretary-General, Judgment No. UNDT/2020/149 (U.N. Dispt. Trib. Aug. 19, 2020); Bettighofer et al. v. U.N. Secretary-General, Judgment No. UNDT/2020/150 (U.N. Dispt. Trib. Aug. 19, 2020); Avognon et al. v. U.N. Secretary-General, Judgment No. UNDT/2020/151 (U.N. Dispt. Trib. Aug. 19, 2020); Alsaqqaf et al. v. U.N. Secretary-General, Judgment No. UNDT/2020/152 (U.N. Dispt. Trib. Aug. 19, 2020); Aligula et al. v. U.N. Secretary-General, Judgment No. UNDT/2020/153 (U.N. Dispt. Trib. Aug. 19, 2020); Aksioutine et al. v. U.N. Secretary-General, Judgment No. UNDT/2020/154 (U.N. Dispt. Trib. Aug. 19, 2020).

93 *In re* Sherif, Judgment No. 29 (Int'l Lab. Org. Admin. Trib. July 13, 1957); *In re* Lindsey, Judgment No. 61 (Int'l Lab. Org. Admin. Trib. Sept. 4, 1962); *In re* Ayoub, Lucal, Montat, Perret-Nguyen and Samson, Judgment No. 832 (Int'l Lab. Org. Admin. Trib. June 5, 1987); *In re* Ashurst, Berthet, Bosshard and Tuli, Judgment No. 1798 (Int'l Lab. Org. Admin. Trib. Jan. 28, 1999); B. and others et al. v. ILO, Judgment No. 4134 (Int'l Lab. Org. Admin. Trib. July 3, 2019).

94 B. and others et al., Judgment No. 4134, 2 (Int'l Lab. Org. Admin. Trib. 2019).

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

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95 Abd Al-Shakour et al., Judgment No. UNDT/2020/106, ¶ 7 (U.N. Dispt. Trib. 2020).

96 *See* Lloret Alcañiz, Zhao, Xie, Kutner, and Kring, Judgment No. UNDT/2017/097 (U.N. Dispt. Trib. 2017); Quijano-Evans & Dedeyne-Amann v. U.N. Secretary-General, Judgment No. UNDT/2017/098 (U.N. Dispt. Trib. Dec. 29, 2017); Mirella, Ben Said, Santini, and Keating v. U.N. Secretary-General, Judgment No. UNDT/2017/099 (U.N. Dispt. Trib. Dec. 29, 2017).

97 *See, e.g.*, Lloret Alcañiz, Zhao, Xie, Kutner, and Kring, Judgment No. UNDT/2017/097, ¶¶ 54–63 (U.N. Dispt. Trib. 2017) (citing *In re* Chadsey, Judgment No. 122 (Int'l Lab. Org. Admin. Trib. Oct. 15, 1968); *In re* Rubio, Judgment No. 1644 (Int'l Lab. Org. Admin. Trib. July 10, 1997)).

98 *See, e.g.*, *Id.* ¶¶ 86–87 (citing *In re* Berlioz, Hansson, Heitz, Pary (No. 2) and Slater, Judgment No. 1265 (Int'l Lab. Org. Admin. Trib. July 14, 1993); B. and others v. ILO, Judgment No. 3883 (Int'l Lab. Org. Admin. Trib. June 28, 2017)).

99 *See, e.g.*, *Id.* ¶¶ 107–22 (citing *In re* Wilcox, Judgment No. 19 (Int'l Lab. Org. Admin. Trib. Apr. 26, 1955); *In re* Sherif, Judgment No. 29 (Int'l Lab. Org. Admin. Trib. 1957); *In re* Poulain d'Andecy, Judgment No. 51 (Int'l Lab. Org. Admin. Trib. Sept. 23, 1960); *In re* Lindsey, Judgment No. 61 (Int'l Lab. Org. Admin. Trib. 1962); *In re* Lamadie (No. 2) and Kraanen, Judgment No. 365 (Int'l Lab. Org. Admin. Trib. Nov. 13, 1978); *In re* Mertens, Judgment No. 370 (Int'l Lab. Org. Admin. Trib. June 18, 1979); *In re* de Los Cobos and Wenger, Judgment No. 391 (Int'l Lab. Org. Admin. Trib. Apr. 24, 1980); *In re* Ayoub, Lucal, Monat, Perret-Nguyen and Samson, Judgment No. 832 (Int'l Lab. Org. Admin. Trib. 1987)).

100 Bertucci v. U.N. Secretary-General, Order No. 40 (NY/2010), ¶¶ 1–6 (U.N. Dispt. Trib. Mar. 3, 2010).

101 *Id.* ¶¶ 23–35 (citing *In re* Ali Khan, Judgment No. 556 (Int'l Lab. Org. Admin. Trib. Mar. 30, 1983); *In re* Omokolo (Nos. 1 and 2), Judgment No. 1115 (Int'l Lab. Org. Admin. Trib. July 3, 1991); *In re* Der Hovsepian, Judgment No. 1177 (Int'l Lab. Org. Admin. Trib. 1992); *In re* Morris (No. 2), Judgment No. 1323 (Int'l Lab. Org. Admin. Trib. Jan. 31, 1994); *In re* Malhotra, Judgment No. 1372 (Int'l Lab. Org. Admin. Trib. 1994); *In re* Fauquex, Judgment No. 1513 (Int'l Lab. Org. Admin. Trib. July 11, 1996)).

judgments is . . . that the relevant material should be provided to the Tribunal, if not to the staff member"[102] and it went on to follow this approach.[103]

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.[104] 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

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102 *Id.* ¶ 36.

103 *Id.* ¶ 46.

104 In *Woldeselassie*, for example, the UNDT cited multiple ILOAT cases for the simple proposition that theft constitutes an egregious lapse in the integrity expected of an international civil servant (*See* Woldeselassie v. U.N. Secretary-General, Judgment No. UNDT/2010/096, ¶ 55 (U.N. Dispt. Trib. May 21, 2010) (citing K. A. K. v. WHO, Judgment No. 1828 (Int'l Lab. Org. Admin. Trib. Jan. 28, 1999); *In re* Schubert, Judgment No. 1925 (Int'l Lab. Org. Admin. Trib. Feb. 3, 2000); E. B. v. FAO, Judgment No. 2231 (Int'l Lab. Org. Admin. Trib. July 16, 2003)). In *Samardzic et al.*, the UNDT faced the simple task of dismissing an application for being out of time. Yet, in doing so, it first compared the time limits in its Statute to those of the WBAT, the ILOAT and the European Civil Service Tribunal, to show that "the time limits in the United Nations justice system are neither unique nor exceptionally restrictive" (Samardzic et al. v. U.N. Secretary-General, Judgment No. UNDT/2010/019, ¶¶ 22–23 (U.N. Dispt. Trib. Jan. 29, 2010)). It then cited cases of the ILOAT, WBAT and UNAdT which emphasized the importance of time limits. *Id.* ¶¶ 24–26 (citing *In re* Goldschmidt, Judgment No. 752 (Int'l Lab. Org. Admin. Trib. June 12, 1986); Agerschou, Decision No. 114 (World Bank Admin. Trib. 1992); Ya'coub v. Commissioner-General of the UNRWA, Judgement No. 953 (U.N. Admin. Trib. July 28, 2000)). Ironically, the Tribunal then finally lands on a decision from its own jurisprudence for the exact proposition, noting that "[f]inally, the Dispute Tribunal has also already justified time limits." *See id.* ¶ 27 (citing Morsy v. U.N. Secretary-General, Judgment No. UNDT/2009/036 (U.N. Dispt. Trib. Oct. 16, 2009)). In *Obdeijn*, it cited eleven different ILOAT Judgments drawing heavily on the jurisprudence of that tribunal to elaborate and explain rules governing the expiry of fixed-term appointments (Obdeijn v. U.N. Secretary-General, Judgment No. UNDT/2011/032, ¶¶ 24, 36–37, 48, 52 (U.N. Dispt. Trib. Feb. 10, 2011) (citing *In re* Duberg, Judgment No. 17 (Int'l Lab. Org. Admin. Trib. Apr. 26, 1955); *In re* Leff, Judgment No. 18 (Int'l Lab. Org. Admin. Trib. Apr. 26, 1955); *In re* Wilcox, Judgment No. 19 (Int'l Lab. Org. Admin. Trib. 1955); *In re* Bernstein, Judgment No. 21 (Int'l Lab. Org. Admin. Trib. Oct. 29, 1955); *In re* Ballo, Judgment No. 191 (Int'l Lab. Org. Admin. Trib. May 15, 1972); *In re* Pérez del Castillo, Judgment No. 675 (Int'l Lab. Org. Admin. Trib. June 19, 1985); *In re* Bluske, Judgment No. 1154 (Int'l Lab. Org. Admin. Trib. Jan. 29, 1992); *In re* Amira, Judgment No. 1317 (Int'l Lab. Org. Admin. Trib. Jan. 31, 1994); F. J. v. Eurocontrol, Judgment No. 1817 (Int'l Lab. Org. Admin. Trib. Jan. 28, 1999); *In re* Ansorge (No. 3), Judgment No. 1911 (Int'l Lab. Org. Admin. Trib. Feb. 3, 2000); G.E. J. v. ILO, Judgment No. 2499 (Int'l Lab. Org. Admin. Trib. Feb. 1, 2006)). In *Zeid*, it considered the question of compensation to the applicant for substantial or inordinate delay by the organization vis-à-vis various procedures involving staff-members. Even after citing several UNDT and UNAT decisions establishing the principle that such delays should be compensated, the UNDT went on to detail similar cases in the ILOAT and WBAT. *See* Zeid v. U.N. Secretary-General, Judgment No. UNDT/2013/005, ¶¶ 55–61 (U.N. Dispt. Trib. Jan. 17, 2013) (citing C. C. v. WIPO, Judgment No. 2706 (Int'l Lab. Org. Admin. Trib. Feb. 6, 2008); BO, Decision No. 453 (World Bank Admin. Trib. 2011)).

ILOAT case-law with its review of UNDT and UNAT case law, as if it is all coming from the same jurisprudential system.[105]

4. United Nations Appeals Tribunal (UNAT)

The UNAT was established on July 1, 2009, as the appellate level of jurisdiction in the new U.N. internal justice system,[106] hearing appeals primarily from the UNDT and also from the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) Dispute Tribunal. The UNAT has cited other IATs on some thirty occasions. These references are almost exclusively limited to judgments of the ILOAT—a somewhat ironic situation given the fact that the ILOAT almost never cites to the judgments of the U.N. internal justice system. The UNAT has referred to and followed judgments of the ILOAT in a wide variety of areas, including: due process rights,[107] the principle of acquired rights,[108] and the power of the organization to abolish posts,[109] among many others.[110] The UNAT decided in *Sanwidi*, however, that the jurisprudence of its

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105 Wilson v. U.N. Secretary-General, Judgment No. UNDT/2018/136 Corr. 1, ¶¶ 75, 87 (U.N. Dispt. Trib. Dec. 21, 2018). This approach can be contrasted with that in *El-Kholy*, where it stated that it would consider judgments of the ILOAT as persuasive on an issue "[i]n the absence of specific authority from the United Nations Appeals Tribunal." El-Kholy v. U.N. Secretary-General, Judgment No. UNDT/2016/102, ¶ 60 (U.N. Dispt. Trib. July 22, 2016).

106 G.A. Res. 351 A(IV), *supra* note 81, ¶¶ 26–27.

107 *See* Applicant v. U.N. Secretary-General, Judgment No. 2013-UNAT-302, ¶ 37 (U.N. App. Trib. Mar. 28, 2013) (citing Y. G. v. FAO, Judgment No. 2771 (Int'l Lab. Org. Admin. Trib. Feb. 4, 2009)).

108 *See* Alcañiz et al. v. U.N. Secretary-General, Judgment No. 2018-UNAT-840, ¶¶ 86, 90 (U.N. App. Trib. June 29, 2018) (citing *In re* Ayoub, Lucal, Monat, Perret-Nguyen and Samson, Judgment No. 832 (Int'l Lab. Org. Admin. Trib. 1987); P. B. and I. N. v. Eurocontrol, Judgment No. 2632 (Int'l Lab. Org. Admin. Trib. July 11, 2007)). *See also* Quijano-Evans et al. v. U.N. Secretary-General, Judgment No. 2018-UNAT-841 (U.N. App. Trib. June 29, 2018); Mirella et al. v. U.N. Secretary-General, Judgment No. 2018-UNAT-842 (U.N. App. Trib. June 29, 2018).

109 *See* Gehr v. U.N. Secretary-General, 2012-UNAT-236, ¶¶ 25, 29 (U.N. App. Trib. June 29, 2012) (citing F. L. v. ITU, Judgment No. 2967 (Int'l Lab. Org. Admin. Trib. Feb. 2, 2011) and R.C. W. v. FAO, Judgment No. 3084 (Int'l Lab. Org. Admin. Trib. Feb. 8, 2012)). *See also* Pacheco v. U.N. Secretary-General, Judgment No. 2013-UNAT-281, ¶ 22 (U.N. App. Trib. Mar. 28, 2013); Bali v. U.N. Secretary-General, Judgment No. 2014-UNAT-450, ¶ 21 (U.N. App. Trib. June 27, 2014); Matadi et al. v. U.N. Secretary-General, Judgment No. 2015-UNAT-592, ¶ 16 (U.N. App. Trib. Oct. 30, 2015); Toure v. U.N. Secretary-General, Judgment No. 2016-UNAT-660, ¶ 16 (U.N. App. Trib. June 30, 2016); Khalaf v. U.N. Secretary-General, Judgment No. 2016-UNAT-678, ¶ 38 (U.N. App. Trib. June 30, 2016).

110 Other propositions for which the UNAT has looked to the ILOAT include the Noblemaire principle and its application to the pension systems (*see, e.g.,* Muthuswami et al. v. UNJSPB, Judgment No. 2010-UNAT-034, ¶ 30 (U.N. App. Trib. July 1, 2010)), the rate of pre-judgment and post-judgment interest to apply with respect to awards of compensation (*see, e.g.,* Warren v. U.N. Secretary-General, Judgment No. 2010-UNAT-059, ¶ 15 (U.N. App. Trib. July 1, 2010)), balancing the staff-member's right of access to documents with the right of confidentiality (*see, e.g.,* Bertucci

predecessor the UNAdT, though of persuasive value, cannot be a binding precedent for the new Tribunals to follow.[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.[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 *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."[113] It went on to add that "[t]here is, in this sphere, a large measure of 'common' law of international organizations to which, according to the circumstances, the Tribunal will give due weight."[114] Although less celebrated than the WBAT's similar pronouncement in *de Merode*, one cannot help but notice the similar approach: both tribunals clearly accept and even seem to encourage a practice of cross-fertilization.

There are several decisions of the ADBAT which stand out for the extent to which the Tribunal referred to other IATs. In *Mesch and Siy (No. 4)*, the ADBAT cited extensively to the WBAT, the ILOAT, the UNAdT, and the former OECD

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v. U.N. Secretary-General, Judgment No. 2011-UNAT-121, ¶¶ 46, 49 (U.N. App. Trib. Mar. 11, 2011)), the standard of review of classification decisions (*see, e.g.,* Fuentes v. U.N. Secretary-General, Judgment No. 2011-UNAT-105, ¶ 26 (U.N. App. Trib. Mar. 11, 2011)), the requirement to narrowly tailor requests for access to documents (*see, e.g.,* Rangel v. Registrar of the Int'l Ct. of Justice, Order No. 256 (2016), ¶ 5 (U.N. App. Trib. Mar. 24, 2016)), the obligation of the organization to state reasons for its decisions (*see, e.g.,* Hepworth v. U.N. Secretary-General, Judgment No. 2011-UNAT-178, ¶ 32 (U.N. App. Trib. Oct. 21, 2011)), the obligation to provide an opportunity for a staff member to respond to allegations against him/her before terminating an appointment (*see, e.g.,* Ortiz v. Secretary General of the Int'l Civil Aviation Org., Judgment No. 2012-UNAT-231, ¶ 44 (U.N. App. Trib. June 29, 2012)), the obligation to compensate an official placed on leave unlawfully (*see, e.g.,* Lauritzen v. U.N. Secretary-General, Judgment No. 2013-UNAT-282, ¶ 43 (U.N. App. Trib. Mar. 28, 2013)), the role of first-level review as fact-finder (*see, e.g.,* Applicant, Judgment No. 2013-UNAT-302, ¶ 35 (U.N. App. Trib. 2013)), and recusal (*see, e.g.,* Finniss v. U.N. Secretary-General, Judgment No. 2014-UNAT-397, ¶ 22 (U.N. App. Trib. Apr. 2, 2014)).

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

112 *See Administrative Tribunal*, ASIAN DEVELOPMENT BANK (2023), https://perma.cc/U6AJ-883Y.

113 Lindsey, Decision No. 1, ¶ 4 (Asian Dev. Bank Admin. Trib. 1992).

114 *Id.*

Appeals Board .[115] 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.[116] It also cited the UNAT for the proposition that IATs can raise issues *sua sponte*[117] and the ILOAT when discussing when joinder of cases is appropriate.[118]

In *Eisuke Suzuki et al.*, the ADBAT cited several different IATs in considering whether the ADB could treat staff members and pensioners differently with respect to medical insurance coverage.[119] The Tribunal applied the four-part test of the IMFAT to determine when differential treatment of two groups is justified,[120] substantiating this with additional examples from the jurisprudence of the WBAT.[121] 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.[122] It also referred to the *de Merode* Decision of the WBAT, ultimately

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115 Mesch & Siy (No.4) v. Asian Dev. Bank, Decision No. 35, ¶¶ 14, 17–18, 21, 26, 40–42 (Asian Dev. Bank Admin. Trib. Aug. 7, 1997) (concerning whether tax reimbursement on salary constitutes a fundamental and essential condition of employment and citing de Merode et al., Decision No. 1 (World Bank Admin. Trib. 1981); *In re* Lindsey, Judgment No. 61 (Int'l Lab. Org. Admin. Trib. 1962); *In re* de Los Cobos and Wenger, Judgment No. 391 (Int'l Lab. Org. Admin. Trib. 1980); *In re* Settino, Judgment No. 426 (Int'l Lab. Org. Admin. Trib. Dec. 11, 1980); *In re* Alonso (No. 3), Judgment No. 514 (Int'l Lab. Org. Admin. Trib. Nov. 18, 1982); *In re* Niesing (No. 2), Peeters (No. 2) and Roussot (No. 2), Judgement No. 1118 (Int'l Lab. Org. Admin. Trib. July 3, 1991); Kaplan v. U.N. Secretary-General, Judgement No. 19 (U.N. Admin. Trib. Aug. 21, 1953); Davidson v. U.N. Secretary-General, Judgement No. 88 (U.N. Admin. Trib. Oct. 3, 1963); Oummih, Gordon and Gruber v. U.N. Secretary-General, Judgement No. 395 (U.N. Admin. Trib. Nov. 5, 1987); *In re* Hopkins and others, Decision No. 111 (Org. for Economic Coop. and Dev. App. Bd. July 8, 1988)).

116 Perrin, et al. v. Asian Dev. Bank, Decision No. 109, ¶¶ 48–54 (Asian Dev. Bank Admin. Trib. May 6, 2017) (citing *In re* Sikka (No. 3), Judgment No. 622 (Int'l Lab. Org. Admin. Trib. June 5, 1984); *In re* Giroud (No. 2) and Lovrecich, Judgment No. 624 (Int'l Lab. Org. Admin. Trib. Dec. 5, 1984); *In re* F. J. (No. 2), Laurent and van der Sluis, Judgment No. 961 (Int'l Lab. Org. Admin. Trib. June 27, 1989); *In re* Weber, Judgment No. 1463 (Int'l Lab. Org. Admin. Trib. July 6, 1995); *In re* Aelvoet (No. 6) and others, Judgment No. 1712 (Int'l Lab. Org. Admin. Trib. Jan. 29, 1998); D. N. P. v. Eurocontrol, Judgment No. 2822 (Int'l Lab. Org. Admin. Trib. July 8, 2009); E. A. and others v. EPO, Judgment No. 3291 (Int'l Lab. Org. Admin. Trib. Feb. 5, 2014); I. H. T. (No. 17) and others v. EPO, Judgment No. 3427 (Int'l Lab. Org. Admin. Trib. Feb. 11, 2015); Lee v. U.N. Secretary-General, Judgment No. 2014-UNAT-481 (U.N. App. Trib. Oct. 17, 2014); Briscoe v. IBRD, Decision No. 118 (World Bank Admin. Trib. Nov. 13, 1992); Andronov v. U.N. Secretary-General, Judgement No. 1157 (U.N. Admin. Trib. Nov. 20, 2003)).

117 *Id.* ¶ 43 (citing Tintukasiri v. U.N. Secretary-General, Judgment No. 2015-UNAT-526 (U.N. App. Trib. Feb. 26, 2015)).

118 *Id.* ¶ 45 (citing *In re* Hillhouse-Reine and Woess, Judgment No. 1001 (Int'l Lab. Org. Admin. Trib., Jan. 23, 1990); *In re* Horsman, Koper, McNeill and Petitfils, Judgment No. 1203 (Int'l Lab. Org. Admin. Trib. July 15, 1992)).

119 Suzuki et al. v. Asian Dev. Bank, Decision No. 82, ¶¶ 35–39. (Asian Dev. Bank Admin. Trib. Jan. 25, 2008).

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.[123]

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.[124] In *Alcartado*, even after concluding on the basis of its own case law that grievances must be submitted within prescribed time limits, it nevertheless bolstered its conclusion by references to judgments of the ILOAT and decisions of the WBAT.[125] In *Agliam*, it cited to the ILOAT, WBAT and UNAdT for the proposition that the head of an international organization has discretion to transfer its staff.[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.[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[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.[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.[130] The ADBAT also cited the

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123 *Id.* ¶¶ 28, 38.

124 Amora, Decision No. 24, ¶¶ 24–26, 40 (Asian Dev. Bank Admin. Trib. 1997).

125 Alcartado, Decision No. 41, ¶ 12 (Asian Dev. Bank Admin. Trib. 1998).

126 Agliam v. Asian Dev. Bank, Decision No. 83, ¶¶ 28–31 (Asian Dev. Bank Admin. Trib. Jan. 25, 2008).

127 Abat v. Asian Dev. Bank, Decision No. 78, ¶¶ 27, 33, 43, 47 (Asian Dev. Bank Admin. Trib. Mar. 7, 2007).

128 *Id.* ¶ 43.

129 Gnanathurai v. Asian Dev. Bank, Decision No. 79, ¶¶ 25, 33, 43 (Asian Dev. Bank Admin. Trib. Aug. 17, 2007).

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]

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131 Zaidi v. Asian Dev. Bank, Decision No. 17, ¶¶ 10, 20, 22, 50, 61 (Asian Dev. Bank Admin. Trib. Aug. 13, 1996).

132 Bristol v. Asian Dev. Bank, Decision No. 75, ¶¶ 29, 51 (Asian Dev. Bank Admin. Trib. Jan. 11, 2006).

133 Chaudhry v. Asian Dev. Bank, Decision No. 23, ¶¶ 21, 35 (Asian Dev. Bank Admin. Trib. Aug. 13, 1996).

134 Ms. M v. Asian Dev. Bank, Decision No. 119, ¶¶ 59, 69, 71, 87, 91, 99, 104, 120 (Asian Dev. Bank Admin. Trib. Oct. 2, 2018).

135 Galang, Decision No. 55, ¶¶ 46–47 (Asian Dev. Bank Admin. Trib. 2002); de Alwis (No. 4) v. Asian Dev. Bank, Decision No. 85, ¶¶ 34, 39 (Asian Dev. Bank Admin. Trib. Jan. 25, 2008).

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

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136 *See* Behuria v. Asian Dev. Bank, Decision No. 8, ¶ 23 (Asian Dev. Bank Admin. Trib. Mar. 31, 1995) (regarding the requirement to respect prescribed time-limits); Cumaranatunge (No. 2) v. Asian Dev. Bank, Decision No. 32, ¶ 5 (Asian Dev. Bank Admin. Trib. Jan. 6, 1997) (balancing the competing interests of privacy and transparency); Viswanathan (No. 2) v. Asian Dev. Bank, Decision No. 33, ¶ 8 (Asian Dev. Bank Admin. Trib. Jan. 6, 1997) (grounds for review of judgments); de Alwis (No. 2) v. Asian Dev. Bank, Decision No. 66, ¶ 17 (Asian Dev. Bank Admin. Trib. July 28, 2004) (grounds for revision of judgments); Haider v. Asian Dev. Bank, Decision No. 43, ¶ 18 (Asian Dev. Bank Admin. Trib. Jan. 7, 1999) (discretionary power of the managerial authority in probationary cases); Soerakoesoemah, et al. v. Asian Dev. Bank, Decision No. 68, ¶ 14 (Asian Dev. Bank Admin. Trib. Jan 20, 2005) (principle that the tribunal is not empowered to rewrite a valid contract); Ahmad v. Asian Dev. Bank, Decision No. 80, ¶ 45 (Asian Dev. Bank Admin. Trib. Aug. 17, 2007) (concerning proportionality), Cahutay v. Asian Dev. Bank, Decision No. 90, ¶ 27 (Asian Dev. Bank Admin. Trib. Jan. 23, 2009) (lack of proportionality as an error in law); Ms. J v. Asian Dev. Bank, Decision No. 116, ¶ 90 (Asian Dev. Bank Admin. Trib. Oct. 2, 2018) (proportionality); Mr. K v. Asian Dev. Bank, Decision No. 117, ¶ 108 (Asian Dev. Bank Admin. Trib. Oct. 2, 2018) (proportionality); Ms. L v. Asian Dev. Bank, Decision No. 118, ¶ 123 (Asian Dev. Bank Admin. Trib. Oct. 2, 2018) (proportionality of a penalty); Murray v. Asian Dev. Bank, Decision No. 91, ¶ 47 (Asian Dev. Bank Admin. Trib. Jan. 23, 2009) (principle of non-discrimination); Kalyanaraman (No. 2) v. Asian Dev. Bank, Decision No. 98, ¶¶ 28–29 (Asian Dev. Bank Admin. Trib. Feb. 8, 2012) (Noblemaire principle); Ms. G (No. 2) v. Asian Dev. Bank, Decision No. 106, ¶ 38 (Asian Dev. Bank Admin. Trib. Sept. 23, 2015) (describing consequences of a staff member's failure to engage in the performance review process); *id.* ¶ 45 (balance between the requirements of due process and confidentiality); Perrin, et al. (No. 3) v. Asian Dev. Bank, Decision No. 113, ¶¶ 52, 60–61, 93 (Asian Dev. Bank Admin. Trib. July 21, 2018) (acquired rights and fundamental conditions of employment).

137 *See* Viswanathan, Decision No. 12, ¶ 13 (Asian Dev. Bank Admin. Trib. 1996) (principle of non-discrimination); Lindsey, Decision No. 1, ¶¶ 12, 35 (Asian Dev. Bank Admin. Trib. 1992); Yan v. Asian Dev. Bank, Decision No. 3, ¶ 29 (Asian Dev. Bank Admin. Trib. Jan. 8, 1994) (discretion given to decisions of the respondent organization); Lindsey, Decision No. 1, ¶ 7 (Asian Dev. Bank Admin. Trib. 1992) (utility of performance appraisals); *id.* ¶ 43 (option of compensation in lieu of specific performance); *id.* ¶ 45 (possibility of causing harm without tangible loss); Wilkinson (No. 2) v. Asian Dev. Bank, Decision No. 34, ¶ 4 (Asian Dev. Bank Admin. Trib. Jan. 6, 1997) (grounds for revision of judgments); Ms. D (No. 3) v. Asian Dev. Bank, Decision No. 111, ¶ 45 (Asian Dev. Bank Admin. Trib. Feb. 28, 2018) (limited scope for the revision of judgments); Mr. E, Decision No. 103, ¶ 54 (Asian Dev. Bank Admin. Trib. 2014) (existence of generally recognized principles of international administrative law); Ms. D (No. 3), Decision No. 111, ¶ 56 (Asian Dev. Bank Admin. Trib. 2018) (determination of the conditions of employment); Yamagishi v. Asian Dev. Bank, Decision No. 65, ¶ 44 (Asian Dev. Bank Admin. Trib. July 28, 2004) (function of the probationary period); Ms. C., Decision No. 58, ¶ 12 (Asian Dev. Bank Admin. Trib. 2003) (legality of settlement agreements); Yan, Decision No. 3, ¶ 31 (Asian Dev. Bank Admin. Trib. 1994) (principle that the tribunal should not substitute its judgment for that of the administration); *id.* ¶¶ 20–21 (shifting of the burden of proof in discrimination cases); Wilkinson v. Asian Dev. Bank, Decision No 10, ¶¶ 7, 17 (Asian Dev. Bank Admin. Trib. Jan. 8, 1996); Yan, Decision No. 3, ¶ 30 (Asian Dev. Bank Admin. Trib. 1994) (discretion of the administration in establishing the grade/classification of a position).

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

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138 *See* Mr. H v. Asian Dev. Bank, Decision No. 108, ¶ 56 (Asian Dev. Bank Admin. Trib. Jan. 6, 2017) (concerning the proportionality of dismissing a staff member for pursuing criminal proceedings against another staff member in national courts).

139 *See* Mr. Ocampo v. Asian Dev. Bank, Decision No. 122, ¶ 14 (Asian Dev. Bank Admin. Trib. Feb. 28, 2019) (exhaustion of internal remedies); Ms. A v. Asian Dev. Bank, Decision No. 87, ¶ 30 (Asian Dev. Bank Admin. Trib. Jan. 23, 2009) (discretion of the administration in making appointment and promotion decisions).

140 Mr. A v. Asian Dev. Bank, Decision No. 77, ¶ 31 (Asian Dev. Bank Admin. Trib. Aug. 2, 2006) (calculation of damages); Shimabuku (Nos. 1 and 2) v. Asian Dev. Bank, Decision No. 72, ¶ 30 (Asian Dev. Bank Admin. Trib. Aug. 19, 2005) (person who claims a contract was signed under duress bears the burden of proving it).

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).

142 *See List of Appeals Brought Before the Tribunal*, COUNCIL OF EUROPE, https://perma.cc/S3PX-RX6U (last visited Sept. 14, 2023).

143 *See* Yuksek (II) v. Secretary-General of the Council of Europe, Decision on App. No. 665/2020, ¶ 56 (Council of Eur. Admin. Trib. Feb. 12, 2021).

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]

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149 *See id.* ¶ 79.

150 *See id.* ¶ 86.

151 *See, e.g.*, Emezie v. Secretary-General of the Council of Europe, Decision on App. No. 344/2005, ¶ 34 (Council of Eur. Admin. Trib. Jan. 20, 2006) (on the right of staff members to information); Spiegel v. Secretary-General of the Council of Europe, Decision on App. No. 320/2003, ¶ 43 (Council of Eur. Admin. Trib. Oct. 8, 2004) (on the duty of appointment panels to act impartially); Beygo (II) v. Secretary-General of the Council of Europe, Decision on Apps. Nos. 211/1995, Nos. 213–214/1995, No. 220/1996, Nos. 222–223/1996, Nos. 227–228/1997, Nos. 229–230/1997, and Nos. 242–243/1998, ¶ 74 (Council of Eur. Admin. Trib. Apr. 28, 1999) (considering requests that a decision-maker withdraw).

152 *See* Yuksek (II), Decision on App. No. 665/2020, ¶¶ 51, 68, 73 and 86 (Council of Eur. Admin. Trib. 2021).

153 *See* Zimmermann v. Secretary-General of the Council of Europe, Decision on App. No. 226/1996, ¶ 29, (Council of Eur. Admin. Trib. Apr. 24, 1997) (citing *In re* Chadsey, Judgment No. 122 (Int'l Lab. Org. Admin. Trib. 1968)).

154 *See* Baron v. Secretary-General of the Council of Europe, Decision on Apps. Nos. 492–497/2011, Nos. 504–508/2011, No. 510/2011, No. 512/2011, Nos. 515–520/2011, No. 527/2012, ¶ 53 (Council of Eur. Admin. Trib. Sept. 26, 2012).

155 *See* Devaux (II) and (III) v. Secretary-General of the Council of Europe, Decision on Apps. No. 587/2018 and No. 588/2018, ¶ 68 (Council of Eur. Admin. Trib. Oct. 8, 2018).

156 *See* Nyctelius v. Secretary-General of the Council of Europe, Decision on App. No. 321/2003, ¶¶ 39–40 (Council of Eur. Admin. Trib. Feb. 4, 2005).

157 The COEAT has also cited to the ILOAT regarding the non-binding nature of opinions of the Disciplinary Board (*see* Roose (I) v. Governor of the Council of Europe Social Development Fund, Decision on Apps. No. 187/1994 and No. 193/1994, ¶ 115 (Council of Eur. Admin. Trib. Sept. 29, 1995); Ernould (I) v. Governor of the Council of Europe Social Development Fund, Decision on Apps. No. 189/1994 and No. 195/1994, ¶ 143 (Council of Eur. Admin. Trib. Sept. 5, 1994); Lelégard (I) v. Governor of the Council of Europe Social Development Fund, Decision on Apps. No. 190/1994, No. 196/1994, No. 197/1994, and No. 201/1995, ¶ 160 (Council of Eur. Admin. Trib. Apr. 25, 1994); and Marechal v. Governor of the Social Development Fund of the Council of Europe, Decision on App. No. 208/1995, ¶ 61 (Council of Eur. Admin. Trib. Mar. 29, 1996)), breach of professional duties as a disciplinary offence (*see* Ernould (I), Decision on Apps. No. 189/1994 and No. 195/1994, ¶ 140 (Council of Eur. Admin. Trib. 1994); Lelégard (I), Decision on Apps. No. 190/1994, No. 196/1994, No. 197/1994, and No. 201/1995, ¶ 157 (Council of Eur. Admin. Trib. 1994); and Marechal, App. No. 208/1995, ¶ 59 (Council of Eur. Admin. Trib. 1996)), lack of proportionality as an error of law (*see* Ernould (I), Decision on Apps. No. 189/1994 and No. 195/1994, ¶ 155 (Council of Eur. Admin. Trib. 1994); Lelégard (I), Decision on Apps. No.

190/1994, No. 196/1994, No. 197/1994, and No. 201/1995, ¶ 178 (Council of Eur. Admin. Trib. 1994); Fender (I) v. Secretary-General of the Council of Europe, Decision on App. No. 178/1994, ¶ 42 (Council of Eur. Admin. Trib. Mar. 2, 1994); Martz v. Secretary-General of the Council of Europe, Decision on App. No. 624/2019, ¶ 62 (Council of Eur. Admin. Trib. Apr. 6, 2020); and Marechal, Decision on App. No. 208/1995, ¶ 88 (Council of Eur. Admin. Trib. 1996)), respect for staff members' dignity (*see* Girasoli v. Secretary-General of the Council of Europe, Decision on App. No. 266/2001, ¶ 37 (Council of Eur. Admin. Trib. Oct. 12, 2001)), the ongoing interest of a retired staff member in exposing a breach of due process (*see* Peukert (III) v. Secretary-General of the Council of Europe, Decision on App. No. 267/2001, ¶ 24 (Council of Eur. Admin. Trib. Jan. 31, 2002)), establishing harassment through an accumulation of events (*see* Parienti v. Secretary-General of the Council of Europe, Decision on App. No. 285/2001, ¶ 39 (Council of Eur. Admin. Trib. May 16, 2003)), burden of proof on the party pleading harassment or other inappropriate behavior (*see* Parienti, Decision on App. No. 285/2001, ¶ 58 (Council of Eur. Admin. Trib. 2003); X v. Secretary-General of the Council of Europe, Decision on App. No. 605/2019, ¶ 63 (Council of Eur. Admin. Trib. Oct. 31, 2019)), the dependent-child allowance (*see* ERB v. Secretary-General of the Council of Europe, Decision on App. No. 293/2002, ¶ 51 (Council of Eur. Admin. Trib. June 27, 2002)), consent to an administrative decision rendering a challenge to it inadmissible (*see* Dăgăliţă v. Secretary-General of the Council of Europe, Decision on App. No. 392/2007, ¶¶ 40–41 (Council of Eur. Admin. Trib. Feb. 29, 2008)), the principle that communications are deemed effective when sent, not when actually read (*see* Švarca v. Secretary-General of the Council of Europe, Decision on App. No. 416/2008, ¶ 34 (Council of Eur. Admin. Trib. June 24, 2009)), the discretion of the administration with regard to application of the principle of equal treatment (*see* Devaux (II), Decision on Apps. No. 587/2018 and No. 588/2018, ¶ 68 (Council of Eur. Admin. Trib. 2018)), the applicability of general principles of law and basic human rights principles (*see id.* ¶ 98), the duty of the employer to inform officials in advance of any action that may imperil their rights or harm their interests (*see id.* ¶ 108), the principle that there is no promise of renewal of fixed-term contracts (*see id.* ¶ 109), the organization's duties in the context of an investigation of harassment (*see* Bauer v. Governor of the Council of Europe Development Bank, App. No. 594/2018, ¶ 60 (Council of Eur. Admin. Trib. June 20, 2019)), the principle that there is no need to prove intent in a harassment claim (*see id.* ¶ 61), proportionality in disciplinary measures (*see id.* ¶ 63), compliance with time limits (*see* Ana v. Secretary-General of the Council of Europe, Decision on App. No. 603/2019, ¶ 47 (Council of Eur. Admin. Trib. Oct. 31, 2019)), the principle that a practice cannot become legally binding if it contravenes a written rule already in force (*see* Ubowksa (I) v. Secretary-General of the Council of Europe, Decision on App. No. 617/2019, ¶ 29 (Council of Eur. Admin. Trib. Dec. 17, 2019); and Zrvandyan v. Secretary General of the Council of Europe, Decision on App. No. 638/2020, ¶ 49 (Council of Eur. Admin. Trib. Nov. 30, 2020)), the proposition that there is no need for administration to provide further reasons when accepting the recommendations of an internal appeals body (*see* Martz, Decision on App. No. 624/2019, ¶ 55 (Council of Eur. Admin. Trib. 2020)), the discretion of administration, subject to the principle of proportionality (*see id.* ¶ 61), the proposition that practice can be created by an announcement, by an administrative circular, or otherwise (*see* Zrvandyan, Decision on App. No. 638/2020, ¶ 49 (Council of Eur. Admin. Trib. Nov. 2020)), the proposition that the performance appraisal is generally the responsibility of a staff-member's immediate supervisor (*see* Levertova v. Governor of the Council of Europe Development Bank, Decision on App. No. 650/2020, ¶ 52 (Council of Eur. Admin. Trib. Feb. 12, 2021)), the discretion of the controlling authority (*see* Peukert (I) v. Secretary-General of the Council of Europe, Decision on Apps. Nos. 115–117/1985, ¶ 97 (Council of Eur. Admin. Trib. Feb. 14, 1986); Fuchs (II) v. Secretary-General of the Council of Europe, Decision on App. No. 130/1985, ¶ 46 (Council of Eur. Admin. Trib. Nov. 10, 1986); and Bartsch (II) and Peukert (II) v. Secretary-General of the Council of Europe, Decision on Apps. Nos. 147–148/1986, ¶ 51 (Council of Eur. Admin. Trib. Mar. 31, 1987)), administrative review of the organization's discretionary authority (*see* Peukert (I), Decision on Apps. Nos. 115–117/1985, ¶ 99 (Council of

The COEAT has also occasionally cited to the OECDAT.[158] Like several other tribunals, the COEAT has cited to the UNAdT on multiple occasions[159] but only rarely to the new U.N. internal justice system.[160] Finally, the COEAT has cited to the NATOAT on two occasions,[161] 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."[162] It has rendered 163 judgments to date.[163]

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

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Eur. Admin. Trib. 1986); Fuchs (II), Decision on App. No. 130/1985, ¶ 48 (Council of Eur. Admin. Trib. 1986); Koenig v. Secretary-General of the Council of Europe, Decision on App. No. 131/1986, ¶ 49 (Council of Eur. Admin. Trib. July 25, 1986); Bartsch (II) and Peukert (II), Decision on Apps. Nos. 147–148/1986, ¶ 53 (Council of Eur. Admin. Trib. 1987); and Beygo (I) v. Secretary-General of the Council of Europe, Decision on App. No. 166/1990, ¶ 40 (Council of Eur. Admin. Trib. June 26, 1992)), the principle that an authority is bound by its own rules (*see* Peukert (I), Decision on Apps. Nos. 115–117/1985, ¶ 100 (Council of Eur. Admin. Trib. 1986); and Bartsch (II) and Peukert (II), Apps. Nos. 147–148/1986, ¶ 54 (Council of Eur. Admin. Trib. 1987)), and the importance of impartiality in recruitment procedures (*see* Feriozzi-Kleijssen v. Secretary-General of the Council of Europe, App. No. 172/1993, ¶ 31 (Council of Eur. Admin. Trib. Mar. 25, 1994)).

158 *See* Smyth v. Secretary-General of the Council of Europe, Decision on App. No. 209/1995, ¶ 33 (Council of Eur. Admin. Trib. Apr. 29, 1996) (concerning the interpretation of pension rules); Fuchs and others v. Secretary-General of the Council of Europe, Decision on Apps. Nos. 231-38/1997, ¶¶ 51, 57–58 (Council of Eur. Admin. Trib. Jan. 29, 1998) (concerning comparing English and French languages versions of a report).

159 *See* Peukert (I), Decision on Apps. Nos. 115–117/1985 (Council of Eur. Admin. Trib. 1986); Fuchs (II), Decision on App. No. 130/1985 (Council of Eur. Admin. Trib. 1986); Bartsch (II) and Peukert (II), Decision on Apps. Nos. 147–148/1986 (Council of Eur. Admin. Trib. 1987); Beygo (I), Decision on App. No. 166/1990 (Council of Eur. Admin. Trib. 1992); Roose (I), Decision on Apps. No. 187/1994 and No. 193/1994 (Council of Eur. Admin. Trib. 1995); Ernould (I), Decision on Apps. No. 189/1994 and 195/1994 (Council of Eur. Admin. Trib. 1994); Lelégard (I), Decision on Apps. No. 190/1994, No. 196/1994, No. 197/1994, and No. 201/1995 (Council of Eur. Admin. Trib. 1994); Marechal, Decision on App. No. 208/1995 (Council of Eur. Admin. Trib. 1996); and Bouillon (II) v. Secretary-General of the Council of Europe, Decision on App. No. 212/1995 (Council of Eur. Admin. Trib. May 25, 1995).

160 *See* Brechenmacher (II) v. Secretary-General of the Council of Europe, Decision on App. No. 622/2019, ¶ 89 (Council of Eur. Admin. Trib. Feb. 5, 2020).

161 *See* Stevens v. Secretary-General of the Council of Europe, Decision on Apps. Nos. 101–113/1984, ¶ 65 (Council of Eur. Admin. Trib. May 15, 1985); Devaux (II) and (III), Decision on Apps. No. 587/2018 and No. 588/2018, ¶ 109 (Council of Eur. Admin. Trib. 2018).

162 *See Organisational Structure Administrative Tribunal*, AFRICAN DEVELOPMENT BANK, https://perma.cc/7MJ3-E82D (last visited Sept. 14, 2023).

163 *See Administrative Tribunal Judgments*, AFRICAN DEVELOPMENT BANK, https://perma.cc/9F3Z-DTYF (last visited Sept. 14, 2023).

the UNAdT, nine references to the IMFAT, six references to the ADBAT, two references to the UNDT, and one reference to the UNAT.[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 *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,[165] to the WBAT for the standard to determine whether there was a legal basis for the respondent to abolish the position,[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,[167] to the IMFAT for evidence of an obligation to attempt to reassign staff members whose post has been abolished,[168] and to the ILOAT concerning the discretion of the head of the administration to accept or reject recommendations made by an Appeals Committee.[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"[170] and for the mechanisms with which

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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.

165 *See* D.S.A. v. Afr. Dev. Bank, Judgment No. 138, ¶ 17 (Afr. Dev. Bank Admin. Trib. July 24, 2020) (citing DV v. IFC, Decision No. 551, ¶ 50 (World Bank Admin. Trib. Nov. 4, 2016); R (No. 2) v. WHO, Judgment No. 4099, consideration 3 (Int'l Lab. Org. Admin. Trib. Feb. 6, 2019)).

166 *Id.* ¶ 20 (citing DI v. IBRD, Decision No. 533, ¶ 85 (World Bank Admin. Trib. Apr. 8, 2016); Marchesini, Decision No. 260, ¶ 30 (World Bank Admin. Trib. 2002); DD v. IBRD, Decision No. 526, ¶¶ 58–59 (World Bank Admin. Trib. Nov. 13, 2015)).

167 *Id.* ¶¶ 71–72 (citing *In re* Gracia de Muñiz, Judgment No. 269, consideration 2 (Int'l Lab. Org. Admin. Trib. 1976); *In re* de Roos, Judgment No. 1745, consideration 7 (Int'l Lab. Org. Admin. Trib. July 9, 1998); O. T. v. FAO, Judgment No. 2207, consideration 9 (Int'l Lab. Org. Admin. Trib. Feb. 3, 2003)).

168 *Id.* ¶ 73 (citing Mr. "F", Judgment No. 2005-1, ¶ 117 (Int'l Monetary Fund Admin. Trib. 2005)).

169 *Id.* ¶ 81 (citing Pinto, Decision No. 56, ¶ 11 (World Bank Admin. Trib. 1988); *In re* Gale, Judgment No. 474, ¶ 3 (Int'l Lab. Org. Admin. Trib. Jan. 28, 1982)).

170 *See id.* ¶ 21 (citing Husain v. IBRD, Decision No. 266, ¶ 32 (World Bank Admin. Trib. May 24, 2002); DV, Decision No. 551, ¶¶ 58–59 (World Bank Admin. Trib. 2016)); *id.* ¶ 30 (citing *In re* Spaans, Judgment No. 2092 (Int'l Lab. Org. Admin. Trib. Jan. 30, 2002)).

the administration must comply when reassigning staff members whose posts have been abolished.[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.[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 him or herself.[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 *prima facie* case has been established, the burden switches to the staff member to prove his or her innocence.[174] It then looked to the jurisprudence of the WBAT to determine whether the sanction of summary dismissal was proportionate.[175] In *D.T.*, it cited to the ILOAT to establish the requirements for an issue to be *res judicata*, to the WBAT for reviewability of a

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171 *See id.* ¶ 68 (citing DI, Decision No. 533, ¶¶ 118–22 (World Bank Admin. Trib. 2016)); *id.* ¶ 69 (citing P.-M. (No. 2) v. WHO, Judgment No. 3688 (Int'l Lab. Org. Admin. Trib. July 6, 2016)).

172 *See* T. K. v. Afr. Dev. Bank, Judgment No. 12, ¶ 17 (Afr. Dev. Bank Admin. Trib. Apr. 12, 2001) (citing *In re* Price (No. 2), Judgment No. 342 (Int'l Lab. Org. Admin. Trib. May 8, 1978); *In re* Garcia, Judgment No. 591 (Int'l Lab. Org. Admin. Trib. 1983); *In re* Dunand and Jacquemod, Judgment No. 929 (Int'l Lab. Org. Admin. Trib. 1988); Moser v. U.N. Secretary-General, Judgement No. 388 (U.N. Admin. Trib. June 4, 1987); Pinto, Decision No. 56 (World Bank Admin. Trib. 1988); and D'Aoust, Judgment No. 1996-1 (Int'l Monetary Fund Admin. Trib. 1996)).

173 *See* C. A. W. v. Afr. Dev. Bank, Judgment No. 50, ¶¶ 58, 69–70 (Afr. Dev. Bank Admin. Trib. May 11, 2006) (citing Suntharalingam v. IBRD, Decision No. 6, ¶¶ 34–36 (World Bank Admin. Trib. Nov. 27 1981); Salle v. IBRD, Decision No. 10, ¶ 59 (World Bank Admin. Trib. Oct. 8, 1982); Samuel-Thambiah v. IBRD, Decision No. 133, ¶ 133 (World Bank Admin. Trib. Dec. 10, 1993); Zwaga v. IBRD, Decision No. 225, ¶¶ 32, 54–56 (World Bank Admin. Trib. Jan. 28, 2000); *In re* Kersaudy, Judgment No. 152 (Int'l Lab. Org. Admin. Trib. May 26, 1970); *In re* Schawalder-Vrancheva (No. 2), Judgment No. 226 (Int'l Lab. Org. Admin. Trib. May 6, 1974); *In re* Schickel-Zuber, Judgment No. 1212, ¶ 3 (Int'l Lab. Org. Admin. Trib. Feb. 10, 1993)).

174 *See* N. O. v. Afr. Dev. Bank, Judgment No. 62, ¶ 82 (Afr. Dev. Bank Admin. Trib. Aug. 8, 2008) (citing Omosola v. U.N. Secretary-General, Judgement No. 484, ¶ 2 (U.N. Admin. Trib. Oct. 19, 1990); Edongo v. U.N. Secretary-General, Judgement No. 987, ¶ 66 (U.N. Admin. Trib. Nov. 22, 2000); Gnanathurai, Decision No. 79, ¶ 33 (Asian Dev. Bank Admin. Trib. 2007)).

175 *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

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176 *See* D. T. v. Afr. Dev. Bank, Judgment No. 119, ¶¶ 33–34, 64, 66, 70 (Afr. Dev. Bank Admin. Trib. Apr. 19, 2019) (citing A.G. S. v. UNIDO, Judgment No. 3106, ¶ 4 (Int'l Lab. Org. Admin. Trib. July 4, 2012); J.-F. S. v. Int'l Crim. Police Org., Judgment No. 1216 (Int'l Lab. Org. Admin. Trib. Feb. 10, 1993); R. S. v. IAEA, Judgment No. 2745, ¶ 13 (Int'l Lab. Org. Admin. Trib. July 9, 2008); Saberi v. IBRD, Decision No. 5, ¶ 24 (World Bank Admin. Trib. Nov. 27, 1981); and Mendez v. U.N. Secretary-General, Judgement No. 268, at 391 (U.N. Admin. Trib. May 8, 1981)).

177 *See* J. N. N. v. Afr. Dev. Bank, Judgment No. 25, ¶¶ 47–48 (Afr. Dev. Bank Admin. Trib. July 19, 2002) (citing the WBAT and ILOAT); Komlan v. Afr. Dev. Bank, Judgment No. 26, ¶¶ 33–34 (Afr. Dev. Bank Admin. Trib. July 19, 2002) (citing the WBAT and ILOAT); M. B. v. Afr. Dev. Bank, Judgment No. 42, ¶¶ 43, 45 (Afr. Dev. Bank Admin. Trib. Dec. 1, 2005) (citing the ILOAT and WBAT); B. L. M. v. Afr. Dev. Bank, Judgment No. 65, ¶ 30 (Afr. Dev. Bank Admin. Trib. Nov. 25, 2008) (citing the UNAdT and ABDAT); H. N. M. v. Afr. Dev. Bank, Judgment No. 70, ¶ 64 (Afr. Dev. Bank Admin. Trib. Nov. 13, 2009) (citing the UNAdT and WBAT); S. M. v. Afr. Dev. Bank, Judgment No. 103, ¶ 70 (Afr. Dev. Bank Admin. Trib. Jan. 26, 2018) (citing the ILOAT and WBAT).

178 *See* A. C. v Afr. Dev. Bank, Judgment No. 22, ¶¶ 27–29, 32, 38–39 (Afr. Dev. Bank Admin. Trib. Nov. 9 , 2001) (citing Pinto, Decision No. 56, ¶ 11 (World Bank Admin. Trib. 1988); *In re* Gale, Judgment No. 474, ¶ 3 (Int'l Lab. Org. Admin. Trib. 1982); *In re* Hoefnagels, Judgment No. 25 (Int'l Lab. Org. Admin. Trib. Sept. 12, 1957); and *In re* Quiñones, Judgment No. 447 (Int'l Lab. Org. Admin. Trib. May 14, 1981)); Jenkins-Johnston v. Afr. Dev. Bank, Judgment No. 38, ¶¶ 51–52 (Afr. Dev. Bank Admin. Trib. Dec. 1, 2005) (citing Carew v. IBRD, Decision No. 142, ¶ 30 (World Bank Admin. Trib. May 19, 1995); Kwakwa, Decision No. 300 (World Bank Admin. Trib. 2003); and D, Decision No. 304 (World Bank Admin. Trib. 2003)); A. R. R. v. Afr. Dev. Bank, Judgment No. 77, ¶¶ 26–33 (Afr. Dev. Bank Admin. Trib. July 15, 2011) (citing C.-A. M. v. WIPO, Judgment No. 2962 (Int'l Lab. Org. Admin. Trib. Feb. 2, 2011); Messrs M. A. and others v. Eurocontrol, Judgment No. 2722 (Int'l Lab. Org. Admin. Trib. July 9, 2008); B. E.-C. v. IFRC, Judgment No. 2912, ¶ 4 (Int'l Lab. Org. Admin. Trib. July 8, 2010); and *In re* Fournier D'Albe, Judgment No. 364, ¶ 8 (Int'l Lab. Org. Admin. Trib. Nov. 13, 1978)); S. O. v. Afr. Dev. Bank, Judgment No. 91, ¶ 30 (Afr. Dev. Bank Admin. Trib. June 12, 2015) (citing C. T. v. AITIC, Judgment No. 2781 (Int'l Lab. Org. Admin. Trib. Feb. 4, 2008); A. N. v. UNESCO, Judgment No. 3330 (Int'l Lab. Org. Admin. Trib. Apr. 28, 2014); and A. S. v. UPU, Judgment No. 3333 (Int'l Lab. Org. Admin. Trib. July 9, 2014)); M. M. v. African Legal Support Facility, Judgment No. 127, ¶¶ 29, 43, 49 (Afr. Dev. Bank Admin. Trib. Oct. 18, 2019) (citing S. K. v. CTBTO PrepCom, Judgment No. 3172 (Int'l Lab. Org. Admin. Trib. Nov. 2, 2012); S. (No. 2) v. WTO, Judgment 3914 (Int'l Lab. Org. Admin. Trib. Jan. 24, 2018); and D. v. WHO, Judgment No. 3582 (Int'l Lab. Org. Admin. Trib. Feb. 3, 2016)); W. B. O.-O. v. Afr. Dev. Bank, Judgment No. 21, ¶ 8 (Afr. Dev. Bank Admin. Trib. Nov. 9, 2001) (citing *In re* van der Peet (No. 10), Judgment 802 (Int'l Lab. Org. Admin. Trib. Mar. 13, 1987); and *In re* Der Hovsepian (No. 2), Judgment No. 1306 (Int'l Lab. Org. Admin. Trib. Jan. 31, 1994)); and D. T. v. African Dev. Bank, Judgment No. 111, ¶ 24 (Afr. Dev. Bank Admin. Trib. July 4, 2018) (citing Vick v. IBRD, Decision No. 295 (World Bank Admin. Trib. May 20, 2003); and Malik v. IBRD, Decision No. 333 (World Bank Admin. Trib. May 13, 2005)).

at least one other IAT,[179] for a great variety of different propositions, ranging from jurisdiction *ratione personae* over external candidates to a selection procedure (citing the ILOAT),[180] to the binding nature of a negotiated settlement (citing the WBAT),[181] to causing reputational damage to the institution as a grounds for summary dismissal (citing the ADBAT),[182] to the prohibition of discrimination

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179 *See* B. K. v. Afr. Dev. Bank, Judgment No. 13, ¶ 31 (Afr. Dev. Bank Admin. Trib. July 25, 2001) (citing Pinto, Decision No. 56, ¶ 11 (World Bank Admin. Trib. 1988)); Asongwed v. Afr. Dev. Bank, Judgment No. 23, ¶ 39 (Afr. Dev. Bank Admin. Trib. Nov. 9, 2001) (citing *In re* Varnet, Judgment No. 179 (Int'l Lab. Org Admin. Trib. Nov. 8, 1971)); J. A. v. Afr. Dev. Bank, Judgment No. 32, ¶¶ 26–27 (Afr. Dev. Bank Admin. Trib. Dec. 19, 2003) (citing Mr. "X" v. IMF, Judgment No. 1994-1 (Int'l Monetary Fund Admin. Trib. Aug. 31, 1994)); B. A. I. v. Afr. Dev. Bank, Judgment No. 33, ¶ 23 (Afr. Dev. Bank Admin. Trib. July 23, 2004) (citing *In re* Palma (No. 5), Judgment No. 1845 (Int'l Lab. Org. Admin. Trib. July 8, 1999)); K. S. v. Afr. Dev. Bank, Judgment No. 44, ¶¶ 59–62 (Afr. Dev. Bank Admin. Trib. Dec. 1, 2005) (distinguishing practice of the ILOAT and WBAT); Bate v. Afr. Dev. Bank, Judgment No. 64, ¶ 25 (Afr. Dev. Bank Admin. Trib. Nov. 25, 2008) (citing de Merode et al., Decision No. 1 (World Bank Admin. Trib. 1981)); Arbibou v. Afr. Dev. Bank, Judgment No. 74, ¶ 17 (Afr. Dev. Bank Admin. Trib. June 29, 2010) (citing Messrs M. A. and others, Judgment No. 2722 (Int'l Lab. Org. Admin. Trib. 2008)); L. T. K. M. v. Afr. Dev. Bank, Judgment No. 76, ¶ 54 (Afr. Dev. Bank Admin. Trib. July 15, 2011) (citing M. d R. C. e S. d V. v. WMO, Judgment No. 2861, ¶ 53 (Int'l Lab. Org. Admin. Trib. July 8, 2009)); A. K. v. Afr. Dev. Bank, Judgment No. 89, ¶ 17 (Afr. Dev. Bank Admin. Trib. Dec. 12, 2014) (citing van Gent (No. 5) v. IBRD, Decision No. 20, ¶ 26 (World Bank Admin. Trib. Mar. 22, 1985)); S. G. v. Afr. Dev. Bank, Judgment No. 90, ¶ 36 (Afr. Dev. Bank Admin. Trib. Dec. 12, 2014) (citing E. C. v. OPCW, Judgment No. 2324, ¶ 13 (Int'l Lab. Org. Admin. Trib. July 14, 2004)); B. O. v. Afr. Dev. Bank, Judgment No. 95, ¶ 93 (Afr. Dev. Bank Admin. Trib. Nov. 30, 2016) (citing Gnanathurai, Decision No. 79 (Asian Dev. Bank Admin. Trib. 2007)); Bate v. Afr. Dev. Bank, Judgment No. 97, ¶ 165 (Afr. Dev. Bank Aug. 14, 2007) (citing P.-M. (No. 2), Judgment No. 3688 (Int'l Lab. Org. Admin. Trib. 2016)); S. A. v. Afr. Dev. Bank, Judgment No. 104, ¶ 54 (Afr. Dev. Bank Admin. Trib. Jan. 26, 2018) (citing *In re* del Valle Franco Fernandez, Judgment No. 1610 (Int'l Lab. Org. Admin. Trib. Jan. 30, 1997)); K. K. D. F. v. Afr. Dev. Bank, Order No. 114, ¶ 2 (Afr. Dev. Bank Admin. Trib. Feb. 4, 2019) (citing de Merode et al., Decision No. 1 (World Bank Admin. Trib. 1981)); A. O. v. Afr. Dev. Bank, Judgment No. 129, ¶ 36 (Afr. Dev. Bank Admin. Trib. Oct. 18, 2019) (citing *In re* Lakey, Judgment No. 475 (Int'l Lab. Org. Admin. Trib. Jan. 28, 1982)); R. I. U. v. Afr. Dev. Bank, Judgment No. 131, ¶ 23 (Afr. Dev. Bank Admin. Trib. Oct. 18, 2019) (citing V.C. B. v. EFTA, Judgment No. 3126, consideration 17 (Int'l Lab. Org. Admin. Trib. July 4, 2012)); H. B. v. Afr. Dev. Bank, Judgment 134, ¶ 49 (Afr. Dev. Bank Admin. Trib. July 24, 2020) (citing Mendez, Judgement No. 268, at 391 (U.N. Admin. Trib. 1981)); I. G. v. Afr. Dev. Bank, Judgment No. 136, ¶ 36 (Afr. Dev. Bank Admin. Trib. July 24, 2020) (citing Mr. "F", Judgment No. 2005-1, ¶ 117 (Int'l Monetary Fund Admin. Trib. 2005)); A. A. v. Afr. Dev. Bank, Judgment No. 137, ¶ 41 (Afr. Dev. Bank Admin. Trib. July 24, 2020) (citing Mr. "F", Judgment No. 2005-1, ¶ 117 (Int'l Monetary Fund Admin. Trib. 2005)); H. G. v. Afr. Dev. Bank, Judgment No. 142, ¶ 24 (Afr. Dev. Bank Admin. Trib. Dec. 11, 2020) (citing A. N., Judgment No. 3330, consideration 2 (Int'l Lab. Org. Admin. Trib. 2014)).

180 *See* B. A. I., Judgment No. 33, ¶ 23 (Afr. Dev. Bank Admin. Trib. 2004) (citing *In re* Palma (No. 5), Judgment No. 1845 (Int'l Lab. Org. Admin. Trib. 1999)).

181 *See* A. K., Judgment No. 89, ¶ 17 (Afr. Dev. Bank Admin. Trib. 2014) (citing van Gent (No. 5), Decision No. 20, ¶ 26 (World Bank Admin. Trib. 1985)).

182 *See* B. O., Judgment No. 95, ¶ 93 (Afr. Dev. Bank Admin. Trib. 2016) (citing Gnanathurai, Decision No. 79 (Asian Dev. Bank Admin. Trib. 2007)).

(citing the UNAdT),[183] to the obligation to attempt to reassign staff members following the abolition of their posts (citing the IMFAT).[184]

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.[185] In its first ten years of operation, it rendered 185 judgments.[186] 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.[187]

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

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183 *See* H. B., Judgment 134, ¶ 49 (Afr. Dev. Bank Admin. Trib. 2020) (citing Mendez, Judgement No. 268, at 391 (U.N. Admin. Trib. 1981)).

184 *See* I. G., Judgment No. 136, ¶ 36 (Afr. Dev. Bank Admin. Trib. 2020) (citing Mr. "F", Judgment No. 2005-1, ¶ 117 (Int'l Monetary Fund Admin. Trib. 2005)).

185 *See NATO Administrative Tribunal*, NATO, https://perma.cc/NPP7-NF9M (last visited Sept. 14, 2023).

186 *See Statistics of Judgments and Orders of the NATO Administrative Tribunal 2013-2022*, NORTH ATLANTIC TREATY ORGANIZATION, https://perma.cc/BS8V-YH62 (last visited Sept. 14, 2023).

187 Search carried out on September 8, 2021, on combined jurisprudence from 2013 to 2019.

individual case.[188] 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.[189] 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 "[t]here is consensus among international administrative tribunals that a decision in the exercise of discretion is subject to only limited review by a tribunal" and that "tribunals will not substitute their own view for the organizations' assessments," supporting these statements with case law from the ILOAT and WBAT before concluding that "[t]he NATO Administrative Tribunal concurs with these approaches."[190] These WBAT cases, it might be noted, have also been cited by the ADBAT.[191] The NATOAT further cited to the ILOAT and WBAT in the specific context of discretion involving probationary employees.[192] It cited to the ILOAT with respect to the administration's discretion to determine the severity of a disciplinary measure[193] and the obligation to provide reasons for an

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188 *See* A et al. v. NATO International Staff, Judgment No. AT-J(2018)0015, ¶¶ 85–94 (N. Atl. Treaty Org. Admin. Trib. Aug. 30, 2018); SD v. NATO International Staff, Judgment No. AT-J(2018)0016, ¶¶ 77–87 (N. Atl. Treaty Org. Admin. Trib. Aug. 30, 2018); and EB v. NATO International Staff, Judgment No. AT-J(2018)0019, ¶¶ 64–69 (N. Atl. Treaty Org. Admin. Trib. Sept. 5, 2018). In the same three parallel cases, moreover, the Tribunal cited to both the COEAT and the UNAT to support the proposition, also widely accepted, that it can raise questions of its own competence *sua sponte*. *See* A et al., Judgment No. AT-J(2018)0015, ¶ 75 (N. Atl. Treaty Org. Admin. Trib. 2018); SD, Judgment No. AT-J(2018)0016, ¶ 66 (N. Atl. Treaty Org. Admin. Trib. 2018); and EB, Judgment No. AT-J(2018)0019, ¶ 56 (N. Atl. Treaty Org. Admin. Trib. 2018).

189 *See* Perrin, et al, Decision No. 109, ¶¶ 48–54 (Asian Dev. Bank Admin. Trib. 2017).

190 *See* JF v. NATO Support Agency, Judgment No. AT-J(2013)0001, ¶¶ 34–37 (N. Atl. Treaty Org. Admin. Trib. Oct. 21, 2013) (citing J.H. V.M. v. EPO, Judgment No. 3214 (Int'l Lab. Org. Admin. Trib. July 4, 2013); A. S. v. IOM, Judgment No. 3217 (Int'l Lab. Org. Admin. Trib. July 4, 2013); O. S. v. EPO, Judgment No. 3228 (Int'l Lab. Org. Admin. Trib. July 4, 2013); Suntharalingam, Decision No. 6 (World Bank Admin. Trib. 1981); and de Raet, Decision No. 85 (World Bank Admin. Trib. 1989)).

191 *See* Lindsey, Decision No. 1 (Asian Dev. Bank Admin. Trib. 1992); Yan, Decision No. 3 (Asian Dev. Bank Admin. Trib. 1994).

192 *See* JF, Judgment No. AT-J(2013)0001, ¶¶ 47–49 (N. Atl. Treaty Org. Admin. Trib. 2013) (citing C. G. v. ESO, Judgment No. 2599 (Int'l Lab. Org. Admin. Trib. Feb. 7, 2007); Buranavanichkit, Decision No. 7 (World Bank Admin. Trib. 1982); and Salle, Decision No. 10, (World Bank Admin. Trib. 1982)).

193 *See* JA v. NATO Joint Warfare Centre, Judgment No. AT-J(2013)0007, ¶ 39 (N. Atl. Treaty Org. Admin. Trib. Nov. 14, 2013) (citing *In re* Khelifati, Judgment No. 207 (Int'l Lab. Org. Admin. Trib. May 14, 1973); *In re* van Walstijn, Judgment No. 1984 (Int'l Lab. Org. Admin. Trib. July 12, 2000);

administrative decision.[194] Finally, in determining what precedential value to give to the jurisprudence of the former NATO Appeals Board, the NATOAT looked to a judgment of the UNAT which examined this question with respect to the UNAdT.[195]

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.[196] It has considered 107 cases to date.[197] 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.[198]

The OECDAT carried out its most exhaustive examination of the jurisprudence of other IATs in two parallel cases concerning an increase in health insurance premiums of former staff members, *Ms. AA* and *Mr. KK*. The Tribunal found that while the applicants may have had an acquired right to health insurance, they had no acquired right to continue paying the same premium for that health insurance.[199] 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.[200]

S. N.-S. v. FAO, Judgment No. 2773 (Int'l Lab. Org. Admin. Trib. Feb. 4, 2009); and C. C. v. UNESCO, Judgment No. 2944 (Int'l Lab. Org. Admin. Trib. July 8, 2010)).

194 *See* MK v. NATO Headquarters Allied Air Command, Judgment No. AT-J(2017)0023, ¶ 41 (N. Atl. Treaty Org. Admin. Trib. Nov. 21, 2017) (citing T. N. v. EPO, Judgment No. 2339 (Int'l Lab. Org. Admin. Trib. July 14, 2004); *In re* Spaans, Judgment No. 2092 (Int'l Lab. Org. Admin. Trib. 2002); and H. K. v. FAO, Judgment No. 2261 (Int'l Lab. Org. Admin. Trib. July 16, 2003)).

195 *See* ZS v. NATO International Staff, Judgment No. AT-J(2014)0009, ¶ 25 (N. Atl. Treaty Org. Admin. Trib. Apr. 24, 2014) (citing Sanwidi, Judgment No. 2010-UNAT-084, ¶ 37 (U.N. App. Trib. 2010)).

196 *About the OECD Administrative Tribunal*, ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, https://perma.cc/45LJ-SEMM (last visited Oct. 10, 2023).

197 *OECD Administrative Tribunal*, ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, https://perma.cc/9BZB-SQ7L (last visited Sept. 14, 2023).

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

199 AA v. Secretary-General, Judgment in Cases No. 85 and No. 88 (Org. for Economic Coop. and Dev. Admin. Trib. Apr. 23, 2018); and KK v. Secretary-General, Judgment in Cases No. 86 and No. 89 (Org. for Economic Coop. and Dev. Admin. Trib. Apr. 23, 2018).

200 *See* AA, Judgment in Cases No. 85 and No. 88 (Org. For Economic Coop. and Dev. Admin. Trib. 2018); and KK, Judgment in Cases No. 86 and No. 89 (Org. For Economic Coop. and Dev Admin Trib. 2018) (citing *In re* Georgiadis, Kazinetz, McCallum and Polycarpou, Judgment No. 1226 (Int'l Lab. Org. Admin. Trib. Feb. 10, 1994); *In re* Raths (No. 2), Judgment No. 1392 (Int'l Lab. Org. Admin. Trib. Feb. 1, 1995); *In re* Agoncillo, Colatosti, Gilland, Jacobsen, Palluel and Pappalardo, Judgment No. 1446 (Int'l Lab. Org. Admin. Trib. July 6, 1995); *In re* Dekker (No. 3), Judgment No. 1917 (Int'l Lab. Org. Admin. Trib. Feb. 3, 2018); Prévost v. Secretary-General, Decision on App.

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.[201]

In several other judgments, the OECDAT has cited to more than one other IAT. For example, in *Mr. AA*, the OECDAT cited multiple judgments of the ILOAT, decisions of the WBAT and judgements of the UNAdT.[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.[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.[204] It has also cited to the ILOAT in *Mr. W* (concerning immunities of staff members),[205] another *Mr. W* Judgment (concerning the jurisdiction to assess the proportionality of a dismissal as a sanction),[206] *Mr. E*

Nos. 477–484/2011 (Council of Eur. Admin. Trib. Apr. 20, 2012); Brannan and others v. Secretary-General, Decision on App. Nos. 571–576/2017 and 578/2017 (Council of Eur. Admin. Trib. Nov. 14, 2017); and Suzuki et al., Decision No. 82 (Asian Dev. Bank Admin. Trib. 2008)).

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.

202 *See* AA v. Secretary-General, Judgment in Case No. 91, ¶¶ 56, 59, 77, 78, 84 (Org. for Economic Coop. and Dev. Admin. Trib. Feb. 1, 2019).

203 *See id.* ¶¶ 56, 59, 77, 84. *See also* XXX v. Secretary-General, Judgment in Case No. 75, ¶ 10 (Org. for Economic Coop. and Dev. Admin. Trib. Feb. 6, 2014) (citing *In re* Kowasch, Judgment No. 1734 (Int'l Lab. Org. Admin. Trib. July 9, 1998); R.S. K. v ICC, Judgment No. 3027 (Int'l Lab. Org. Admin. Trib. July 6, 2011); and Zewdu v. U.N. Secretary-General, Judgment No. UNDT/2011/043 (U.N. Dispt. Trib. Mar. 2, 2011)); XXX v. Secretary-General, Judgment in Case No. 77, ¶ 30 (Org. for Economic Coop. and Dev. Admin. Trib. Dec. 3, 2014) (citing P.A.C. R. v. IPO, Judgment No. 3268 (Int'l Lab. Org. Admin. Trib. Feb. 5, 2014); and Mandol v. U.N. Secretary-General, Judgment No. UNDT/2011/013 (U.N. Dispt. Trib. Jan. 13, 2011)); and AA v. Secretary-General, Judgment in Case No. 90, ¶ 33 (Org. for Economic Coop. and Dev. Admin. Trib. Oct. 3, 2018) (citing L.A. M. v. UNESCO, Judgment No. 2584 (Int'l Lab. Org. Admin. Trib. Feb. 7, 2007); *In re* de Villegas (No. 5), Judgment No. 509 (Int'l Lab. Org. Admin. Trib. June 3, 1982); *In re* Tekouk, Judgment No. 2066 (Int'l Lab. Org. Admin. Trib. July 12, 2001); Hilpern v. U.N. Secretary-General, Judgment No. 57 (U.N. Admin. Trib. Sept. 9, 1955); and Guillot v. Commission of the European Communities, Judgment in Case No. 53/72, 1974 Eur. Ct. Rep. 791 (Second Chamber 1974)).

204 *See* XXX v. Secretary-General, Judgment in Case No. 79, ¶¶ 54–58 (Org. for Economic Coop. and Dev. Admin. Trib. Aug. 7, 2015).

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

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),[207] Anonymous Judgment number 73 (discretionary authority of the administration),[208] and *AA* (concerning which acts constitute administrative decisions).[209] Also notable is the OECDAT's citation to the COEAT in *Mr. D* to show the application of a provision on the postponement of adjustments to the salary scale.[210] The fact that the Tribunal also cited to one of its own judgments for the same proposition demonstrates that it is not citing other IATs to fill a gap, but rather because it feels that it is appropriate to do so and that there is a value add by citing an additional tribunal, even when an internal precedent is squarely on point. This can only be considered evidence of a nascent shared jurisprudence of international administrative law.

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

The EBRDAT was constituted as an administrative tribunal in its current form in 2007.[211] 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.[212] From its inception to date, it has rendered fifty-one judgments.[213]

The EBRDAT regularly references the jurisprudence of other IATs. Indeed, in an early case, *Mr. C*, the EBRDAT referred to multiple judgments and decisions of the IMFAT, ADBAT, ILOAT, and WBAT concerning what constituted unjustified discrimination and when express differentiation can be justified,[214] concluding that differentiation was justified only when it was rationally related to

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

208 *See* XXX v. Secretary-General, Judgment in Case No. 73, ¶ 30 (Org. for Economic Coop. and Dev. Admin. Trib. Feb. 7, 2014).

209 *See* AA v. Secretary-General, Judgment in Case No. 93, ¶ 62 (Org. for Economic Coop. and Dev. Admin. Trib. Oct. 26, 2020).

210 *See* D v. Secretary-General, Judgment in Case No. 50, at 4 (Org. for Economic Coop. and Dev. Admin. Trib. Mar. 8, 2001).

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

212 *Id.*

213 *Id.*

214 *See* C. v. EBRD, Decision in Case No. 01/03 (Liability and Remedy), ¶¶ 55–60 (Eur. Bank for Reconstr. and Dev. Admin. Trib. Jan. 9, 2004) (citing Mr. "R", Judgment No. 2002-1 (Int'l Monetary Fund Admin. Trib. 2002); D'Aoust, Judgment No. 1996-1 (Int'l Monetary Fund Admin. Trib. 1996); Lindsey, Decision No. 1 (Asian Dev. Bank Admin. Trib. 1992); *In re* Vollering, Judgment No. 1194 (Int'l Lab. Org. Admin. Trib. July 15, 1992); and de Merode et al., Decision No. 1 (World Bank Admin. Trib. 1981)).

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 EBRD ultimately distinguished these cases on the facts, concluding that the individual in question had freely negotiated the terms of the contract as an independent contractor.[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 *de facto* staff member of the Bank, even though the EBRADAT'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

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215 *Id.* ¶ 88.

216 *Id.* ¶ 86.

217 *See* Appellant v. EBRD, Decision in Case No. 2019/AT/06, Section 6.3.4 (Eur. Bank for Reconstr. and Dev. Admin. Trib. Oct. 4, 2019).

218 *Id.* at 14–15 and 23–25 (citing *In re* Darricades, Judgment No. 67 (Int'l Lab. Org. Admin. Trib. 1962); *In re* Chadsey, Judgment No. 122 (Int'l Lab. Org. Admin. Trib. 1968); *In re* Bustos, Judgment No. 701 (Int'l Lab. Org. Admin. Trib. 1985); L. K. v. EPO, Judgment No. 3459 (Int'l Lab. Org. Admin. Trib. Feb. 11, 2015); K. v. WHO, Judgment No. 3551 (Int'l Lab. Org. Admin. Trib. June 30, 2015); D. v. EPO, Judgment No. 4045 (Int'l Lab. Org. Admin. Trib. June 26, 2018); Madhusudan, Decision No. 215 (World Bank Admin. Trib. 1999); Teixeira, Judgement No. 233 (U.N. Admin. Trib. 1978); Mr. "A", Judgment No. 1999-1 (Int'l Monetary Fund Admin. Trib. 1999); and Amora, Decision No. 24 (Asian Dev. Bank Admin. Trib. 1997)).

219 *Id.* at 24–25.

220 Appellant v. EBRD, Decision in Case No. 2019/AT/02, ¶ 71 (Eur. Bank for Reconstr. and Dev. Admin. Trib. Feb. 20, 2020); Appellant v. EBRD, Decision in Case No. 2019/AT/03, ¶ 44 (Eur. Bank for Reconstr. and Dev. Admin. Trib. Feb. 20, 2020); Appellant v. EBRD, Decision in Case No. 2019/AT/04, ¶ 42; (Eur. Bank for Reconstr. and Dev. Admin. Trib. Feb. 20, 2020); and Appellant v. EBRD, Decision in Case No. 2019/AT/05, ¶ 41 (Eur. Bank for Reconstr. and Dev. Admin. Trib. Feb. 20, 2020) (all citing *In re* Burt, Judgment No. 1385 (Int'l Lab. Org. Admin. Trib. Feb. 1, 1995); *In re* Bustos, Judgment No. 701 (Int'l Lab. Org. Admin. Trib. 1985); and Amora, Decision No. 24 (Asian Dev. Bank Admin. Trib. 1997)).

221 *Id.*

ILOAT and other IATs that reached the opposite conclusion.[222] 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.[223] It also regularly cites to the WBAT.[224] Occasionally, it cites to other tribunals, such as the UNDT,[225] the UNAT,[226] and the IMFAT.[227] Thus, through its detailed engagement in a number

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222 *See* Appellant, Decision in Case No. 2019/AT/04, ¶¶ 23–54 (Eur. Bank for Reconstr. and Dev. Admin. Trib. 2020) (de Cooker, dissenting); and Appellant, Decision in Case No. 2019/AT/05, ¶¶ 29–50 (Eur. Bank for Reconstr. and Dev. Admin. Trib. 2020) (de Cooker, dissenting).

223 *See* Grassi v. EBRD, Decision in Case No. 2016/AT/01, ¶ 33 (Eur. Bank for Reconstr. and Dev. Admin. Trib. Jan. 18, 2016) (citing S. G. G. v. WIPO, Judgment No. 2882 (Int'l Lab. Org. Admin. Trib. Feb. 3, 2010)); Appellant vs. EBRD, Decision in Cases Nos. 2019/AT/07 and 2020/AT/05 (Preliminary Decision), ¶ 56 (Eur. Bank for Reconstr. and Dev. Admin. Trib. Aug. 29, 2022) (citing *In re* van der Peet (No. 13), Judgment No. 934 (Int'l Lab. Org. Admin. Trib. Dec. 8, 1988)); Appellant v. EBRD, Decision in Case No. 2019/AT/08, ¶¶ 65, 106 (Eur. Bank for Reconstr. and Dev. Admin. Trib. July 27, 2020) (citing G. M. v. IAEA, Judgment No. 4207 (Int'l Lab. Org. Admin. Trib. Feb. 10, 2020); and S. M.-S. v. WHO, Judgment No. 3365 (Int'l Lab. Org. Admin. Trib. July 9, 2014)); and Appellant v. EBRD, Decision in Case No. 2020/AT/02, ¶¶ 58–59 (Eur. Bank for Reconstr. and Dev. Admin. Trib. May 8, 2020) (citing *In re* Niesing (No. 2), Peeters (No. 2) and Roussot (No. 2), Judgment No. 1118 (Int'l Lab. Org. Admin. Trib. 1991); *In re* Allaert and Warmels (No. 3), Judgment No. 1821 (Int'l Lab. Org. Admin. Trib. Jan. 28, 1999); and É. H. v. Eurocontrol, Judgment No. 3274 (Int'l Lab. Org. Admin. Trib. Feb. 5, 2014)).

224 *See* Appellant v. EBRD, Decision in Case No. 2006/AT/04 (Liability), ¶ 72 (Eur. Bank for Reconstr. and Dev. Admin. Trib. Jan. 5, 2007) (citing de Merode et al., Decision No. 1 (World Bank Admin. Trib. 1981)); A. v. EBRD, Decision in Case No. 2017/AT/02, ¶ 27 (Eur. Bank for Reconstr. and Dev. Admin. Trib. Apr. 18, 2017) (citing BG v. IFC, Decision No. 434 (World Bank Admin. Trib. Oct. 29, 2010); and O v. IBRD, Decision No. 337 (World Bank Admin. Trib. Nov. 4, 2005)); Appellant v. EBRD, Decision in Case No. 2017/AT/03, ¶ 4.11 (Eur. Bank for Reconstr. and Dev. Admin. Trib. May 23, 2017) (citing Agerschou, Decision No. 114 (World Bank Admin. Trib. 1992)). On one occasion, the EBRDAT cited to both the ILOAT and WBAT. *See* Appellant v. EBRD, Decision in Case No. 2020/AT/04, ¶ 47 (Eur. Bank for Reconstr. and Dev. Admin. Trib. Apr. 14, 2020) (citing S. v. WTO, Judgment No. 3868 (Int'l Lab. Org. Admin. Trib. June 28, 2018)) and ¶ 60 (citing Lewin, Decision No. 152 (World Bank Admin. Trib. 1996)).

225 *See* Appellant v. EBRD, Decision in Case No. 2020/AT/03, ¶ 51 (Eur. Bank for Reconstr. and Dev. Admin. Trib. Apr. 30, 2020) (citing Mensah v. U.N. Secretary-General, Judgment No. UNDT/2010/202 (U.N. Dispt. Trib. Nov. 19, 2010)).

226 *See* Appellant v. EBRD, Decision in Case No. 2019/AT/09, ¶ 53 (Eur. Bank for Reconstr. and Dev. Admin. Trib. Mar. 6, 2020) (citing Riecan v. U.N. Secretary-General, Judgment No. 2017-UNAT-802 (U.N. App. Trib. Oct. 27, 2017)).

227 *See* Appellant v. EBRD, Decision in Cases No. 2018/AT/01 and No. 2018/AT/04, at 8 (Eur. Bank for Reconstr. and Dev. Admin. Trib. Dec. 27, 2018) (distinguishing IMFAT case law). *See also id.* at 16 (Wolf, dissenting) (citing Mr. "R", Judgment No. 2002-1 (Int'l Monetary Fund Admin. Trib. 2002)).

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]

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228 *See* Statute of the Commonwealth Secretariat Arbitral Tribunal, arts. 1–2 (July 1, 1995).

229 Hans v. Commonwealth Secretariat and Ebert, Regional Director of the Commonwealth Secretariat Youth Programme, Judgment No. CSAT/1 (Commonwealth Secretariat Arbitral Trib. Oct. 1998); Mohsin, Judgment No. CSAT/3 (No. 1) (Commonwealth Secretariat Arbitral Trib. 2001); Mohsin v. Commonwealth Secretariat, Judgment No. CSAT/3 (No. 2) (Commonwealth Secretariat Arbitral Trib. Nov. 9, 2001); Faruqi v. Commonwealth Secretariat, Judgment No. CSAT/5 (No. 1) (Commonwealth Secretariat Arbitral Trib. Feb. 23, 2002); Faruqi v. Commonwealth Secretariat, Judgment No. CSAT/5 (No. 2) (Commonwealth Secretariat Arbitral Trib. Nov. 22, 2002); Commonwealth Secretariat Staff Ass'n v. Commonwealth Secretariat, Judgment No. CSAT/7 (Commonwealth Secretariat Arbitral Trib. Oct. 10, 2003); Sumukan Ltd. v. Commonwealth Secretariat, Judgment No. CSAT/8 (No. 2) (Commonwealth Secretariat Arbitral Trib. Apr. 25, 2005); Saddington v. Commonwealth Secretariat, Judgment No. CSAT/11 (Commonwealth Secretariat Arbitral Trib. June 2006); Ayeni v. Commonwealth Secretariat, Judgment No. CSAT/12 (No. 1) (Commonwealth Secretariat Arbitral Trib. Oct. 12, 2007); Ayeni v. Commonwealth Secretariat, Judgment No. CSAT/12 (No. 2) (Commonwealth Secretariat Arbitral Trib. Aug. 22, 2008); Keeling v. Commonwealth Secretariat, Judgment No. CSAT/14 (No. 1) (Commonwealth Secretariat Arbitral Trib. June 2009); A K v. Commonwealth Secretariat, Judgment No. CSAT/14 (No. 2) (Commonwealth Secretariat Arbitral Trib. June 2010); M H v. Commonwealth Secretariat, Judgment No. CSAT/15 (Commonwealth Secretariat Arbitral Trib. June 2010); Oyas v. Commonwealth Secretariat, Judgment No. CSAT APL/16 (Commonwealth Secretariat Arbitral Trib. Aug. 26, 2011); Oyas v. Commonwealth Secretariat, Judgment No. CSAT APL/16 (No. 2) (Commonwealth Secretariat Arbitral Trib. May 21, 2012); C H v. Commonwealth Secretariat, Judgment No. 17 (Commonwealth Secretariat Arbitral Trib. Jan. 10, 2012); P H v. Commonwealth Secretariat, Judgment No. CSAT APL/18 (Commonwealth Secretariat Arbitral Trib. May 30, 2012); Kaberere v. Commonwealth Secretariat, Judgment No. 20 (Commonwealth Secretariat Arbitral Trib. July 26, 2013); Addo v. Commonwealth Secretariat, Judgment No. CSAT APL/21 (Commonwealth Secretariat Arbitral Trib. Apr. 9, 2014); Bandara v. Commonwealth Secretariat, Judgment No. CSAT APL/22 (No. 1) (Commonwealth Secretariat Arbitral Trib. July 18, 2014); Singh v. Commonwealth Secretariat, Judgment No. CSAT APL/27 (Commonwealth Secretariat Arbitral Trib. May 8, 2015); Dogra v. the Commonwealth Secretariat, Judgment No. CSAT APL/28 (Commonwealth Secretariat Arbitral Trib. May 8, 2015); Akintade v. Commonwealth Secretariat, Judgment No. CSAT APL/33 (Commonwealth Secretariat Arbitral Trib. Apr. 29, 2016); Matus v. Commonwealth Secretariat, Judgment No. CSAT APL/37 (No. 2) (Commonwealth Secretariat Arbitral Trib. Dec. 1, 2016); Venuprasad v. Commonwealth Secretariat, Judgment No. CSAT APL/40 (Commonwealth Secretariat Arbitral Trib. Apr. 16, 2018); Venuprasad v. Commonwealth

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.[230] 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,[231] and claims of constructive dismissal, for which the Tribunal also cited to five ILOAT judgments.[232] In the *Saroha* case, it cited six ILOAT judgments in the course of its four-page Judgment. [233] 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,"[234] 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."[235] 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".[236] Mention could

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Secretariat, Judgment No. CSAT APL/40 (No. 2) (Commonwealth Secretariat Arbitral Trib. Sept. 21, 2018); Ojiambo v. Commonwealth Secretariat, Judgment No. CSAT APL/41 (No. 1) (Commonwealth Secretariat Arbitral Trib. Dec. 14, 2018); Ojiambo v. Commonwealth Secretariat, Judgment No. CSAT APL/41 (No. 2) (Commonwealth Secretariat Arbitral Trib. May 24, 2019); HH, HL & DW v. Commonwealth Secretariat, Judgment No. CSAT APL/42 (Commonwealth Secretariat Arbitral Trib. Oct. 11, 2019); Commonwealth Secretariat v. Venuprasad, Judgment No. CSAT APL/43 (Commonwealth Secretariat Arbitral Trib. July 26, 2019).

230 A K, Judgment No. CSAT/14 (No. 2) ¶ 50 (Commonwealth Secretariat Arbitral Trib. 2010) (citing Bustani v. OPCW, Judgment No. 2232 (Int'l Lab. Org. Admin. Trib. July 16, 2003)). For more on the *Bustani* decision, *see* Jan Klabbers, *The Bustani Case before the ILOAT: Constitutionalism in Disguise?*, 53 INT'L & COMP. L.Q. 455 (2004).

231 A K , Judgment No. CSAT/14 (No. 2) ¶ 51 (Commonwealth Secretariat Arbitral Trib. 2010) (citing S. C. v. WHO, Judgment No. 2602 (Int'l Lab. Org. Admin. Trib. Feb. 7, 2007); M. A. and others v. ITU, Judgment No. 2609 (Int'l Lab. Org. Admin. Trib. Feb. 7, 2007); A. S. v. CERN, Judgment No. 2615 (Int'l Lab. Org. Admin. Trib. Feb. 7, 2007); B. F. v. WIPO, Judgment No. 2636 (Int'l Lab. Org. Admin. Trib. July 11, 2007); F. B.-B. and M. C. v. CERN, Judgment No. 2655 (Int'l Lab. Org. Admin. Trib. July 11, 2007)).

232 *Id.* ¶ 62 (citing M. P. v. ITU, Judgment No. 2200 (Int'l Lab. Org. Admin. Trib. Feb. 3, 2003); H. K., Judgment No. 2261 (Int'l Lab. Org. Admin. Trib. 2003); L.F.R. v. ITU, Judgment No. 2435 (Int'l Lab. Org. Admin. Trib. July 6, 2005); R. S., Judgment No. 2745 (Int'l Lab. Org. Admin. Trib. 2008); N. O. v. IFRC, Judgment No. 2587 (Int'l Lab. Org. Admin. Trib. Feb. 7, 2007)).

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

234 *Id.* ¶ 4.

235 *Id.* (citing *In re* Chawla, Judgment No. 195 (Int'l Lab. Org. Admin. Trib. Nov. 13, 1972); *In re* Vianney, Judgment No. 1158 (Int'l Lab. Org. Admin. Trib. 1992); *In re* Schimmel, Judgment No. 1380 (Int'l Lab. Org. Admin. Trib. Feb. 1, 1995); *In re* Matthews, Judgment No. 2004 (Int'l Lab. Org. Admin. Trib. 2001)).

236 *Id.* ¶ 6. (citing *In re* Ghaffar, Judgment No. 320 (Int'l Lab. Org. Admin. Trib. Nov. 21, 1977); *In re* Bakker, Judgment No. 931 (Int'l Lab. Org. Admin. Trib. Dec. 8, 1988)).