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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I. INTRODUCTION

International Administrative Tribunals (IATs) play a unique role at the crossroads of international law, institutional law, and administrative law. Since international organizations are immune from the jurisdiction of the host State, 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, the number of IATs has now grown to almost thirty.
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 fragmentation7 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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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. Insvs. Bank Y.B. Int’l L. 68 (2018). Indeed, Powers observes in her article that “[i]t is a huge question that deserves a more comprehensive treatment.” Id. at 72.
the divergence and fractures that some have warned against as the number of
IATs has grown, there has been a convergence, as IATs have increasingly cited
each other in an exercise of reciprocal growth, sharing the task of creating and
developing an ever more universal international administrative law.

Part II will consider this phenomenon of “cross-fertilization” through a
review of the jurisprudence of all IATs. Part III will approach the question by
examining the most influential cases in terms of number of times they have been
cited by other IATs and the quantity of other IATs citing to them. Part IV will
offer some concluding observations.

II. CROSS-FERTILIZATION IN THE JURISPRUDENCE OF EACH
TRIBUNAL

The present section will examine the question of cross-fertilization among
IATs by engaging in an exhaustive review of the jurisprudence of all IATs. The
tribunals are presented not based on their age or size of their jurisprudence but
rather based on an appreciation of their contributions to cross-fertilization,
beginning with those tribunals having most actively participated in cross-
fertilization and progressing to those less willing to engage in it.

A. The Leaders of Cross-Fertilization

While it is the premise of this work that virtually all IATs are citing to their
sister tribunals with increasing regularity, some of them are certainly leading this
charge. This subsection reviews the jurisprudence of those tribunals most actively
involved in cross-fertilization, including the World Bank Administrative Tribunal
(WBAT), the International Monetary Fund Administrative Tribunal (IMFAT), the
United Nations Dispute Tribunal (UNDT), the United Nations Appeals Tribunal
(UNAT), the Asian Development Bank Administrative Tribunal (ADBAT), the
Council of Europe Administrative Tribunal (COEAT), and the African
Development Bank Administrative Tribunal (AfDBAT).

1. World Bank Administrative Tribunal (WBAT)

The WBAT was established in 1980. It is the independent judicial forum of
last resort for cases submitted by staff members of the World Bank Group alleging
non-observance of their contracts or terms of employment. It has rendered 692
decisions to date. No tribunal has addressed cross-fertilization between IATs as
directly and clearly as the WBAT in its first case, in the celebrated de Merode
Decision. In that Decision, the WBAT considered the question of cross-
fertilization in detail, and it merits quotation in extenso:

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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.\footnote{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,\footnote{12} thus paving the way for much of the cross-fertilization discussed in the current work.

Although the WBAT did not actually cite any other IATs in its \textit{de Merode} Decision after making this statement—limiting itself to general statements that a given principle “has been applied in many judgments of other international administrative tribunals”\footnote{13}—it has referred to specific decisions of other IATs regularly in subsequent cases.

The WBAT has cited to its sister tribunal the IMFAT a number of times. For example, in the \textit{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.\footnote{14} In the \textit{E} case, the WBAT cited a 2001 IMFAT judgment dealing with the principle of abstention, according to which an administrative tribunal must

\footnotesize{\begin{flushright}
\textit{See, e.g., Mohsin v. Commonwealth Secretariat, Judgment in No. CSAT/3 (No. 1), ¶ 2 (Commonwealth Secretariat Arbitral Trib. Sept. 6, 2001).} \\
\textit{See \textit{de Merode et al., Decision No. 1, ¶ 46 (World Bank Admin. Trib. 1981).} \\
\end{flushright}}
International Administrative Tribunals and Cross-Fertilization

avoid interpreting a decision of a national court. In *Farah Aleem & Irfan Aleem*, the WBAT considered the effect of competing divorce decrees from the United States and Pakistan. 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.

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. 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.” The WBAT also cited to the ILOAT in the *Cissé* case, which concerned a staff member who was a former Prime Minister of Niger. While a staff member for the Bank, he was nominated as a candidate for the Presidency of Niger. 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.”

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


21 Id. ¶ 14.

22 Id. ¶ 23.
deprived staff members of certain benefits, including pension. 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. 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.” 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.

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.” In the FM case, it adopted the definition of constructive dismissal used by the UNDT and UNAT. In the Tanner case, it adopted the UNDT definition of what constitutes a failure to report for duty. In the FA case, it referred to the jurisprudence of both the UNDT and UNAT for the proposition that a sexual relationship between staff members can be established through text and email messages, even in the

absence of physical contact. 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.”

The WBAT also occasionally refers to the jurisprudence of the former UNAdT.

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. 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. 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.

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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.

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.

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, three judgements of the UNAdT and two decisions of the ADBAT. 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, the standing of unsuccessful applicants to bring a claim to the tribunal, the discretion of the administration in selection decisions, and the relationship between that discretion and the terms of the vacancy announcement.

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


40 *Id.* ¶ 10.

41 *Id.* ¶ 68.

42 *Id.* ¶¶ 73, 86.

43 *Id.* ¶¶ 102–03.
ten separate references to the WBAT, for example, it cited to the UNAdT concerning the quasi-judicial nature of the imposition of disciplinary sanctions, and it looked to both the WBAT and the ADBAT for the scrutiny to be applied to the decision to place the staff member on administrative leave.

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


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

47 Id. ¶ 85.

48 Id. ¶¶ 90, 103–07, 174–76.


51 Id. ¶ 100 (citing 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.\textsuperscript{54}

In \textit{GG (No. 2)}, the IMFAT cited six different cases of the WBAT,\textsuperscript{55} three of the ILOAT,\textsuperscript{56} three of the ADBAT,\textsuperscript{57} and one from the European Union Civil Service Tribunal (EUCST).\textsuperscript{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.\textsuperscript{59}

In the 1999 case of Mr. “A”,\textsuperscript{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

\begin{itemize}
  \item \textit{Id.} 212–17.
  \item These also included the \textit{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. \textit{See id.} ¶¶ 24, 66, 187, 249, 271, 302, 362, 440–41, 466.
\end{itemize}
the UNAdT, five judgments of the ILOAT, one decision of the WBAT, and one of the ADBAT. 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. It also referred to two decisions of the ADBAT and two judgments of the ILOAT. 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. In the 2005 case of *Mr. “F”*, 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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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)).


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)).


68 Id. ¶¶ 92–107.

examined no fewer than thirteen decisions of the WBAT\textsuperscript{70} and five judgments of the ILOAT\textsuperscript{71} on the matter, concluding that “[t]he jurisprudence of administrative tribunals accordingly indicates that international organizations must make genuine, serious, and pro-active efforts in reassignment of their employees whose positions have been abolished.”\textsuperscript{72}

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


\textsuperscript{72} Id. ¶ 117.


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

three times. It has also cited to the ADBAT, the AfDBAT, the IMFAT and the COEAT.

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

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

Turning to the actual evidence of cross-fertilization at the UNDT, it has cited to other tribunals so frequently that an exhaustive treatment is not possible. Instead, this section will focus on examples where the UNDT’s reference to the jurisprudence of other IATs was particularly extensive or otherwise significant. These examples show a tribunal with a developed practice of cross-fertilization, including citing to the same judgment of a sister tribunal repeatedly and citing to other tribunals even when a citation to its own jurisprudence would have been available.

For example, the UNDT has cited to the same judgment of the ILOAT on thirty-seven separate occasions to explain the operation of the doctrine of res judicata, in particular in the context of an order concerning the withdrawal of an application. Similarly, in Hassanin, concerning the lawfulness of a decision to

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83 See the CJIL Online publication for an Annex containing a full catalogue of these citations.
terminate a staff member's permanent contract, the UNDT included a section in its judgment entitled "overview of relevant case law" in which, after reviewing the case-law of the UNDT, UNAT, and UNAdT, it considered the jurisprudence of the ILOAT in detail. The UNDT continued to review this ILOAT case law in its judgments in Crotty, Alsado, Wright, Fasanella, Smith and Zachariah.


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, the UNDT cited several judgments of the ILOAT, in particular Judgment 4134 in which ILO staff members were contesting the application of the same post adjustment multiplier in that organization. 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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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.\textsuperscript{95}

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

In \textit{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.\textsuperscript{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.\textsuperscript{101} It concluded that “the thrust of these


judgments is . . . that the relevant material should be provided to the Tribunal, if not to the staff member\textsuperscript{102} and it went on to follow this approach.\textsuperscript{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.\textsuperscript{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

\textsuperscript{102} Id. ¶ 36.

\textsuperscript{103} Id. ¶ 46.

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

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


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


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

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.\footnote{See Administrative Tribunal, ASIAN DEVELOPMENT BANK (2023), https://perma.cc/U6AJ-883Y.} The ADBAT refers to other IATs frequently, with more than a third of its decisions referencing at least one other tribunal. Most of these references were to the jurisprudence of the ILOAT and, to a certain extent, to the WBAT and the UNAdT. Interestingly, despite this history of referring to the UNAdT, the ADBAT has referred hardly at all to the UNDT or UNAT in the new U.N. internal justice system.

From its first Decision in \textit{Lindsey}, when the ADBAT was discussing sources of law, it stated that it would reason “by analogy, from the staff practices of international organizations generally, including the decisions of international administrative tribunals dealing with comparable situations.”\footnote{Lindsey, Decision No. 1, ¶ 4 (Asian Dev. Bank Admin. Trib. 1992).} 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.”\footnote{Id.} Although less celebrated than the WBAT’s similar pronouncement in \textit{de Merode}, one cannot help but notice the similar approach: both tribunals clearly accept and even seem to encourage a practice of cross-fertilization.

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


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.\footnote{Suzuki et al. v. Asian Dev. Bank, Decision No. 82, ¶¶ 35–39 (Asian Dev. Bank Admin. Trib. Jan. 25, 2008).} The Tribunal applied the four-part test of the IMFAT to determine when differential treatment of two groups is justified,\footnote{Id. ¶ 32.} substantiating this with additional examples from the jurisprudence of the WBAT.\footnote{Id. ¶ 35–36.} 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.\footnote{Id. ¶ 27.} It also referred to the \textit{de Merode} Decision of the WBAT, ultimately...
concluding that the ADB’s actions conformed with the requirements of that decision, in that changes to conditions of employment should be made only after careful consideration and adequate consultation.\textsuperscript{123}

In Amora, the ADBAT cited multiple ILOAT judgments and distinguished UNAdT judgments in its conclusion that a staff member’s series of short-term contracts did not reflect the true nature of his employment relationship and he should thus be entitled to pension benefits.\textsuperscript{124} In 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.\textsuperscript{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.\textsuperscript{126}

The ADBAT has often cited other administrative tribunals when considering disciplinary cases. In Abat, for example, it cited to the jurisprudence of the ILOAT, the WBAT, the UNAT and the UNAdT for multiple propositions.\textsuperscript{127} What is interesting about this case is that the Tribunal chose to cite to the jurisprudence of other IATs for relatively common propositions of international administrative law—such as that in disciplinary cases a tribunal should not substitute its discretion or assessment for that of the Director General\textsuperscript{128}—propositions which could surely have been found within its own jurisprudence.

The same phenomenon can be observed in Gnanathurai, another disciplinary case also citing the ILOAT, WBAT and the former UNAdT.\textsuperscript{129} In support of the proposition that administrative disciplinary proceedings require a lower standard of proof than applies in criminal cases, the ADBAT cited first to a judgement of the UNAdT, before referring to one of its own decisions and an ADB administrative issuance, both of which support the same proposition. It then went on to cite yet another judgement of the UNAdT.\textsuperscript{130} The ADBAT also cited the

\begin{footnotes}
\footnotetext{123}{Id. ¶ 28, 38.}
\footnotetext{124}{Amora, Decision No. 24, ¶¶ 24–26, 40 (Asian Dev. Bank Admin. Trib. 1997).}
\footnotetext{125}{Alcartado, Decision No. 41, ¶ 12 (Asian Dev. Bank Admin. Trib. 1998).}
\footnotetext{128}{Id. ¶ 43.}
\footnotetext{130}{Id. ¶ 33.}
\end{footnotes}
ILOAT, WBAT and UNAdT in other disciplinary cases, including *Zaidi*,<sup>131</sup> *Bristol*,<sup>132</sup> *Chaudhry*,<sup>133</sup> and *Ms. M.*<sup>134</sup> In other disciplinary cases, it cited to two of those tribunals.<sup>135</sup>

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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


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. It has heard 738 cases to date. 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, the right of staff members to information, the duty of the organization to provide staff members with procedural guidance, 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, the duty of appointments panels to act impartially, the necessary standard of proof to establish bias, the duty of a decision-maker to withdraw in situations where impartiality may be open


140 See id. ¶ 71.

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 COLLOQUIUM 6 (2017); Sergio Sansotta, The Administrative Tribunal of the Council of Europe, in CURRENT ISSUES IN THE LAW AND PRACTICE OF INTERNATIONAL ADMINISTRATIVE TRIBUNALS 19 (2006).


144 See id. ¶ 62.

145 See id.

146 See id. ¶ 69.

147 See id. ¶ 70.

148 See id. ¶ 73.
to question, and the extent of the principal of res judicata. Clearly, many of these propositions could be supported with precedents in the relatively large jurisprudence of the COEAT. Yet, in this same decision, the Tribunal cited to its own jurisprudence on only four occasions. 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, acquired rights, the principle of equal pay for equal work, and the definition of “spouse” to name only a few.

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149 See id. ¶ 79.
150 See id. ¶ 86.
The COEAT has also occasionally cited to the OECDAT. Like several other tribunals, the COEAT has cited to the UNAdT on multiple occasions but only rarely to the new U.N. internal justice system. Finally, the COEAT has cited to the NATOAT on two occasions, the only IAT yet to have done so.

7. African Development Bank Administrative Tribunal (AfDBAT)

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


the UNAdT, nine references to the IMFAT, six references to the ADBAT, two references to the UNDT, and one reference to the UNAT.\textsuperscript{164} As we have seen with other IATs, there appears to be a noticeable hesitancy to cite the UNDT/UNAT, compared with their predecessor the UNAdT, which the AfDBAT has regularly cited.

Among the AfDBAT Judgments referring to the jurisprudence of other IATs, a few stand out for the sheer number and breadth of citations they contain. The most significant of these is the \textit{D.S.A.} Judgment in 2019, in which the Tribunal cited to no fewer than fourteen different decisions of other IATs. In the case, which concerned a challenge to a decision of the Bank to separate the applicant following the abolition of his post, the AfDBAT cited to the WBAT and the ILOAT concerning the scope of its power of review,\textsuperscript{165} to the WBAT for the standard to determine whether there was a legal basis for the respondent to abolish the position,\textsuperscript{166} to the ILOAT for the proposition that IATs have recognized a general principle that an organization may not immediately terminate a staff member whose post has been abolished if the staff member holds an appointment of indeterminate duration,\textsuperscript{167} to the IMFAT for evidence of an obligation to attempt to reassign staff members whose post has been abolished,\textsuperscript{168} and to the ILOAT concerning the discretion of the head of the administration to accept or reject recommendations made by an Appeals Committee.\textsuperscript{169} It looked to the jurisprudence of both the WBAT and the ILOAT for the test to determine whether an abolition of post was “genuine”\textsuperscript{170} and for the mechanisms with which

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


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


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

\textsuperscript{169} \textit{Id. ¶ 81} (citing Pinto, Decision No. 56, ¶ 11 (World Bank Admin. Trib. 1988); \textit{In re Gale, Judgment No. 474, ¶ 3} (Intl Lab. Org. Admin. Trib. Jan. 28, 1982)).

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


In \textit{Mr. N.O.}, a case in which a staff member was contesting his summary dismissal for serious misconduct, it cited to the jurisprudence of the ADBAT and UNAdT for the proposition that once a \textit{prima facie} case has been established, the burden switches to the staff member to prove his or her innocence.\footnote{See \textit{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)).}

It then looked to the jurisprudence of the WBAT to determine whether the sanction of summary dismissal was proportionate.\footnote{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)).} In \textit{D.T.}, it cited to the ILOAT to establish the requirements for an issue to be \textit{res judicata}, to the WBAT for reviewability of a


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

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B. Tribunals Regularly Practicing Cross-Fertilization

While not engaging in the practice of cross-fertilization as frequently as those tribunals discussed in the previous section, there is a second group of IATs that is nonetheless notable for the regularity with which they have come to cite each other. This subsection reviews the jurisprudence of those tribunals, including the NATO Administrative Tribunal (NATOAT), the OECD Administrative Tribunal (OECDAT), the European Bank for Reconstruction and Development Administrative Tribunal (EBRDAT), The Commonwealth Secretariat Administrative Tribunal (CSAT), the European Space Agency Administrative Tribunal (ESAAT), and the Bank for International Settlements Administrative Tribunal (BISAT).

1. NATO Administrative Tribunal (NATOAT)

The NATOAT was established in 2013 and is competent to decide any individual dispute brought by a NATO staff member or retired staff member alleging that an administrative decision is not in compliance with the NATO Civilian Personnel Regulations or the terms of his or her appointment. In its first ten years of operation, it rendered 185 judgments. The NATOAT has cited to other tribunals with relative regularity, including forty-five references to the ILOAT, twenty-six references to the WBAT, twenty-one references to the COEAT, nine references to the ESAAT, and four references to the UNAT.

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


187 Search carried out on September 8, 2021, on combined jurisprudence from 2013 to 2019.
It is interesting that the Tribunal would go to such lengths to cite other IATs for such a universally accepted proposition of international administrative law, especially after beginning with a quotation from its own jurisprudence supporting the proposition. Many of these same judgments, moreover, have been cited for this proposition by the ADBAT. Thus, once again, one is left with the feeling that IATs are increasingly citing other Tribunals not so much to fill a gap in their own jurisprudence, or in cases of high uncertainty, but rather in a building momentum of shared jurisprudence creation.

Also of note is the JF Judgment, in which the NATOAT declared that “[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.” These WBAT cases, it might be noted, have also been cited by the ADBAT. The NATOAT further cited to the ILOAT and WBAT in the specific context of discretion involving probationary employees. It cited to the ILOAT with respect to the administration’s discretion to determine the severity of a disciplinary measure and the obligation to provide reasons for an


administrative decision. 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.

2. OECD Administrative Tribunal (OECDAT)

The OECDAT was set up in its present form in 1992, replacing the OECD’s Appeals Board, as an independent body with jurisdiction to rule on disputes between members of staff (or other qualified persons) and the Secretary-General. It has considered 107 cases to date. The OECDAT cites other IATs regularly, including forty-three references to the ILOAT, six references to the ADBAT, two references to the UNDT, four references to the UNAT, three references to the COEAT, and one reference to the WBAT.

The OECDAT carried out its most exhaustive examination of the jurisprudence of other IATs in two parallel cases concerning an increase in health insurance premiums of former staff members, Ms. 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. 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.
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. 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 judgments of the UNAdT. 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.

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. It has also cited to the ILOAT in Mr. W (concerning immunities of staff members), another Mr. W Judgment (concerning the jurisdiction to assess the proportionality of a dismissal as a sanction), Mr. E...
(pension benefits), \(^{207}\) Anonymous Judgment number 73 (discretionary authority of the administration), \(^{208}\) and \(^{209}\) concerning which acts constitute administrative decisions). Also notable is the OECDAT’s citation to the COEAT in \(\text{Mr. D}\) 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, \(\text{Mr. C}\), 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

\(^{207}\) 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).


\(^{211}\) 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.

its purpose and proportionate to the achievement of that purpose. 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.” 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. Following a lengthy analysis of numerous judgments and decisions of the ILOAT, IMFAT, ADBAT, and WBAT, 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. 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 EBRDAT’s jurisdiction is limited to claims brought by staff members. The majority opinion concluded that it did have jurisdiction, citing judgments of the ILOAT and decisions of the ADBAT as support. However, detailed dissenting opinions in two of the cases distinguished those external precedents, pointing to other judgments of the

215 Id. ¶ 88.
216 Id. ¶ 86.
219 Id. at 24–25.
221 Id.
ILOAT and other IATs that reached the opposite conclusion. What is notable for present purposes is that both the majority and dissenting opinions accept the relevance of the jurisprudence of other IATs, using some external precedents as support and distinguishing others on their specific facts; in no case do they simply disregard them as external law.

In addition to these prominent examples engaging with the jurisprudence of other IATs, the EBRDAT often includes at least one reference to another IAT in its decisions. It has cited the ILOAT on several other occasions, frequently providing multiple references to that tribunal. Occasionally, it cites to other tribunals, such as the UNDT, the UNAT, and the IMFAT. Thus, through its detailed engagement in a number of


of decisions—both by the majority and the dissent and both relying on and distinguishing external precedents—and its consistent reliance on other IATs throughout the course of its jurisprudence, the EBRDAT has regularly embraced cross-fertilization.

4. Commonwealth Secretariat Arbitral Tribunal (CSAT)

The CSAT was established in 1995 to hear applications brought by staff members of the Commonwealth Secretariat, by the Commonwealth Secretariat itself, and by any person who enters into a contract with the Commonwealth Secretariat.228 The CSAT also regularly refers to the case law of other IATs. Indeed, in its forty-three judgments, the CSAT has cited other IATs in no fewer than thirty-one of them.229

228 See Statute of the Commonwealth Secretariat Arbitral Tribunal, arts. 1–2 (July 1, 1995).
The CSAT cites to the ILOAT almost as fluidly as it does to its own jurisprudence. In the A. K. case, for example, the Tribunal cited twelve different ILOAT judgments, including well-known cases such as the celebrated Bustani Judgment.  

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,” citing to four ILOAT judgments for this guidance and concluding that “international Administrative Tribunals frequently consider procedural errors arising from claims before them, and do award compensation for such errors.” Following a review of two other ILOAT cases, it concluded that “it is the accepted practice of International Administrative Tribunals to award cost on a discretionary basis.”


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

234 Id. ¶ 4.


also be made of the Faruqi Judgment, where the CSAT referred to two ILOAT judgments to support the proposition that a tribunal’s jurisdiction is limited to the terms of its Statute and the other instruments under which it has been established.\(^{237}\) In nine other judgments, the CSAT cited to at least one and often multiple ILOAT judgments.\(^{238}\)

While the CSAT appears to have a marked preference for the ILOAT, it would be wrong to assume that the CSAT cites exclusively to that tribunal. To the contrary, from its third Judgment, it adopted the pronouncement by the WBAT in *de Merode* that it “is free to take note of solutions worked out in sufficiently comparable conditions by other administrative Tribunals . . . ”\(^{239}\) This comes through in the CSAT jurisprudence, in which the Tribunal regularly makes reference to multiple IATs in the context of a single judgment.\(^{240}\) It is also worth


\(^{239}\) Mohsin, Judgment No. CSAT/3 (No. 1), at 1 (Commonwealth Secretariat Arbitral Trib. 2001) (citing de Merode et al., Decision No. 1 (World Bank Admin. Trib. 1981)).

making special note of two decisions of other IATs that the CSAT has cited repeatedly, the *de Merode* Decision of the WBAT, which the CSAT has cited in six of its judgments,241 and the *Ballo* Judgment of the ILOAT, which the CSAT has

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cited in five different cases. Finally, as with other IATs, one is again struck by how much more the Tribunal cited to the UNAdT than it has to the new U.N. internal justice system.

5. European Space Agency Administrative Tribunal (ESAAT)

The ESAAT was established as an Appeals Board in in 1975 and, despite its name, already functioned from that time as an independent tribunal providing for the settlement of disputes arising between the Agency and staff members or experts in respect of their conditions of service. It was renamed as an Administrative Tribunal in 2021 and has rendered 139 judgments from 1975 to the present.

The ESAAT has cited to other tribunals with relative frequency and is also notable for citing to a wide variety of different tribunals. A review of its jurisprudence from its first case as an Appeals Board concluded in 1976 to the present revealed fourteen references to the ILOAT, five references to the EUMETS Appeals Board, four references to the COEAT, three references to the OECDAT, two references to the NATOAT, and one reference each to the WBAT, the UNAdT, the ADBAT, and the UNDT.

In the case, the Tribunal considered whether a change in the method for adjusting pensions affected acquired rights of pensioners. It is interesting to note that the Tribunal first referred to the definition of acquired rights in the ILOAT jurisprudence before going on to cite its own jurisprudence on the same matter. In reaching the conclusion that the method for adjusting pensions was

242 Faruqi, Judgment No. CSAT/5 (No. 2), at 8 (Commonwealth Secretariat Arbitral Trib. 2002); Sumukan Ltd., Judgment No. CSAT/8 (No. 2), ¶ 4.43 (Commonwealth Secretariat Arbitral Trib. 2005); Saddington, Judgment No. CSAT/11, ¶ 13 (Commonwealth Secretariat Arbitral Trib. 2006); Oyas v. Commonwealth Secretariat, Judgment No. CSAT APL/16, ¶ 86 (Commonwealth Secretariat Arbitral Trib. 2011); Ojiambo, Judgment No. CSAT APL/41 (No. 1), ¶ 51 (Commonwealth Secretariat Arbitral Trib. 2018).
245 Search carried out on February 2, 2023 on the combined jurisprudence from 1976 to 2022 (cases 1–139).
not part of the essentials of an employment relationship, the Tribunal cited to the ILOAT, COEAT, NATOAT, and OECDAT.\textsuperscript{248} Similarly, in \textit{Buenadicha et al.}, the Tribunal again considered a challenge to the method for adjusting pensions and, during its discussion of acquired rights, it cited no less than five other IATs.\textsuperscript{249} In still another case concerning the changes to the method for adjusting pensions, the ESSAAT concluded that the applicants, as active staff members, had no personal rights that were directly affected and thus found the application inadmissible, basing this conclusion on decisions of the COEAT, OECDAT, and EUMETSAT.\textsuperscript{250}

In \textit{Buenadicha, Gabriel and Hernandez}, the ESAAT cited and quoted numerous judgments of the ILOAT to support its conclusion that the principle of non-retroactivity was a general principle of law to be applied in the case.\textsuperscript{251} Indeed, the

\begin{itemize}
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Tribunal often cites to the ILOAT, having done so in over ten other cases as well.252

The Tribunal has regularly cited to the Sawelew judgment of the EUMETSAT

for the proposition that applicants for a staff position have standing before the

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competent Appeals Board or Administrative Tribunal.\textsuperscript{253} Finally, it has also occasionally cited the OECDAT,\textsuperscript{254} AfDBAT,\textsuperscript{255} WBAT,\textsuperscript{256} and UNDT.\textsuperscript{257}

6. Bank for International Settlements Administrative Tribunal (BISAT)

The BISAT was established in 1987 to settle any dispute in matters of employment relations that may arise between the Bank and its officials or former officials, or persons claiming through them.\textsuperscript{258} From its inception to the current date, it has rendered only ten judgments.\textsuperscript{259} In this small jurisprudence, one nevertheless finds seventeen references to the ILOAT, two references to the UNDT, five references to the UNAT, five references to the WBAT, two references to the General Court of the Court of Justice of the European Union (CJEU), and two references to the UNAdT.\textsuperscript{260} It interesting to note that, contrary to the trend seen across other tribunals, the BISAT has cited the tribunals of the new U.N. internal justice system much more extensively than the former UNAdT.

The BISAT Judgment in case 1/2018 stands out as a particularly salient example of cross-fertilization. The lengthy Judgment concerning an individual who separated from the organization under disputed circumstances contains multiple references to the jurisprudence of the ILOAT, UNDT, UNAT, WBAT, and the General Court of the CJEU. The Tribunal refers to jurisprudence of

\begin{footnotes}


\item[\textsuperscript{260}] Search carried out on September 8, 2021 on combined jurisprudence from 1996 to 2020.
\end{footnotes}
ILOAT and WBAT in its analysis of the validity of the separation agreement. It cites to judgments of the ILOAT in addressing a question of estoppel, the principle that the staff member is deemed to have knowledge of the applicable staff rules, the obligation of the administration to state reasons for a non-renewal, the substance of the organization’s duty of care, and the nature of the principle of equality. It cites to the UNDT, UNAT, and the ILOAT when considering the existence of a challengeable administrative decision. It cites to the UNAT and the General Court of the CJEU when discussing incidents for which an award of compensation is appropriate. It cites to the UNDT and UNAT when examining


262 Id. ¶ 70 (citing L.F.R., Judgment No. 2435 (Int'l Lab. Org. Admin. Trib. 2005)).

263 Id. ¶ 91 (citing N. O., Judgment No. 2587 (Int'l Lab. Org. Admin. Trib. 2007)).

264 Id. ¶ 125 (citing In re Price (No. 2), Judgment No. 1168, consideration 3 (Int'l Lab. Org. Admin. Trib. July 15, 1992)).

265 Id. ¶ 140 (citing K. (No. 2) v. UNESCO, Judgment No. 3837, consideration 10 (Int'l Lab. Org. Admin. Trib. June 28, 2017)).


And finally, it cites to the WBAT with respect to the applicability of waiver clauses. Indeed, when these citations to other tribunals are considered cumulatively, the BISAT has cited to other IATs in this judgment around twice as frequently as it has cited to its own jurisprudence. It is also worth noting that the BISAT has included at least one reference to the jurisprudence of the ILOAT in virtually every judgment it has rendered, on a great variety of different subjects, including what constitutes injury to a staff member, the principle of equality, the determination of whether a position is existing or newly created, the discretion of the administration in selection decisions, the discretion of the administration to confirm or not a provisional appointment, the non-applicability of discretion when based on incorrect facts, the inability of the administration to alter fundamental conditions of


273 Id. ¶ 67 (citing Gamble, Decision No. 35 (World Bank Admin. Trib. 1987)).


employment, and the requirement that the administration act with reasonable discretion in taking account of its financial interests.

C. Tribunals Employing Cross-Fertilization Least Frequently

Having reviewed the numerous tribunals that engage in cross-fertilization frequently or at least regularly in the past two subsections, this subsection rounds out the picture by reviewing the relatively few tribunals that have been most hesitant to engage in this practice. This includes the International Labour Organization Administrative Tribunal (ILOAT), the Organization of American States Administrative Tribunal (OASAT), and the Inter-American Development Bank Administrative Tribunal (IDBAT).

1. International Labour Organization Administrative Tribunal (ILOAT)

The ILOAT is the oldest continuously functioning administrative tribunal, having been established as the administrative tribunal of the League of Nations on September 26, 1927, serving the League itself and the International Labour Organization (ILO), which had been created in 1919. When the League was dissolved in 1946, the Tribunal was transferred to the ILO, which became a specialized agency of the U.N. In 1949, Article II of the Statute of the ILOAT was amended to permit other international organizations to accept the Tribunal’s jurisdiction. At the time of this writing, fifty-eight organizations have done so, giving the ILOAT a breadth of membership (in terms of type, size, and variety of organizations served) not seen by any other international administrative tribunal.
The ILOAT has cited other IATs extremely sparingly. Indeed, it has emphasized that it “develops its own case law which takes account of the fundamental rights enjoyed by civil servants and the general principles of the international civil service” but that “it is in no way bound by the case law of other international courts.”

The ILOAT has actually referred to a judgment of another international tribunal on its own initiative in only two cases. In *Ms L.S. v. Eurocontrol*, which concerned the denial of reimbursement of medical expenses, the ILOAT followed the practice of the EUCST (without providing a specific case reference) in concluding that the criteria for reimbursement were interdependent and need not all be satisfied. In *Application for the suspension of the execution of Judgment 2867*, it referred to the general practice of the UNDT and UNAT (again without citing a specific case) for the proposition that it could not decide on a stay of execution of its own judgment, since “it is normally the court handling the appeal against the judgment in question which is competent to decide on a request for a stay of execution of the judgment.”

It is certainly striking how rarely the ILOAT has cited to other tribunals, particularly when viewed against the robust growth of this practice within virtually all other tribunals as detailed in the present work. One can only speculate on the reasons for this, but it could be the case that as the most established tribunal with the largest jurisprudence on which to draw, it simply does not need to look to its peers as often as they need to look to its pronouncements. A more pessimistic view would be that it is stubbornly maintaining an outdated practice while other tribunals have modernized. Whatever the reason, an ironic situation has been created, with the ILOAT being the tribunal far and away the most often cited by others but the least likely to cite others itself.

2. Organization of American States Administrative Tribunal (OASAT)

The OASAT was established in 1971 to hear disputes between the Organization of American States (OAS) General Secretariat and members of its staff alleging nonobservance of the terms and conditions of their employment. It has rendered 414 judgments to date.

The OASAT has cited to other IATs occasionally, in particular the WBAT and the ILOAT and on one occasion the IMFAT. For example, in *Gómez Pulido*,

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the OASAT cited the WBAT for the proposition that a suspension of a staff member must be carried out scrupulously and in accordance with the due process of law required by the international legal order.\textsuperscript{292} In Brunetti et al., it cited to the de Merode Decision of the WBAT for the proposition that the method of computing tax reimbursement is not an acquired right.\textsuperscript{293} In Romero and Folgate, it cited the WBAT’s de Merode Decision and several ILOAT cases for this proposition and the proposition that staff members may be ordered to repay overpayments made by the administration.\textsuperscript{294} In Bangha, the Tribunal cited and distinguished a judgment of the ILOAT concerning detrimental reliance on the conditions of employment.\textsuperscript{295} In Hebblethwaite et al., by contrast, the OASAT cited the ILOAT approvingly, stating that:

On the basis of the jurisprudence established by the Tribunal of the International Labor Organization, which is one of the most important sources of legal doctrine on the question of the employment relationship of the staff of international organizations, and in view of the opinion of this Tribunal as to the circumstances surrounding these cases, it must be held that the administrative decision to terminate the Complainants’ employment injured them by violating the principle of non-retroactivity and infringing rights deriving from standards that were an integral part of the conditions of their employment.\textsuperscript{296}

In the same Judgment, the OASAT went on to quote large sections of another judgment of the ILOAT in order to distinguish two types of provisions in Staff Regulations and Rules: on the one hand, provisions concerning the structure and functioning of the international civil service which are statutory in character and may be modified at any time in the interest of the service, subject to the principle of non-retroactivity; and, on the other hand, provisions which appertain to the individual terms and conditions of an official, which may be modified only to the extent that they do not infringe the essential terms in consideration of which the official accepted appointment.\textsuperscript{297} The OASAT further quoted this same Judgment for this distinction between provisions in its Pando


\textsuperscript{297} Id. (citing In re Lindsey, Judgment No. 61 (Int’l Lab. Org. Admin. Trib. 1962)).
Finally, in Cárdenas, the OASAT quoted a large passage from a judgment of the IMFAT concerning the principle of the exhaustion of local remedies, even after quoting its own caselaw on the same point.

3. Inter-American Development Bank Administrative Tribunal (IDBAT)

The IDBAT was established in 1981 to resolve disputes between the Bank and its staff members. It has issued 103 judgments to date. References to the jurisprudence of other IATs by the IDBAT are quite limited—it having cited to a decision of another IAT in only about ten of its first 100 judgments. Those ten cases evidence a clear preference of the IDBAT for the jurisprudence of the WBAT. Indeed, while most of the other Tribunals reviewed cite most frequently to the ILOAT, the IDBAT has done so exclusively on only one occasion. In two other cases, it included a citation to the ILOAT alongside citations to the WBAT, one of which citing additionally to the ADBAT. Every other time the IDBAT has cited externally, however, those citations have been exclusively to the jurisprudence of the WBAT, to which it has referred for a wide variety of propositions.

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300 In 1991, the Inter-American Investment Corporation and its staff members also became subject to its jurisdiction. See Administrative Tribunal, IDB, https://perma.cc/2ZMH-3NR8 (last visited Sept. 22, 2023).


304 These include the role of managerial discretion when considering the legality of an administrative decision (see, e.g., Burda-Hellbeck v. IDB, Judgment in Case No. 23, at 5 (Inter-American Dev. Bank Admin. Trib., Nov. 18, 1989); Cressa et al., Ares et al., Canterbury et al., v. IDB, Judgment in Cases Nos. 86, 87, and 89, ¶ 35 (Inter-American Dev. Bank Admin. Trib. Feb. 24, 2017)), limitations on IATs’ jurisdiction ratione materiae (see, e.g., Mostajo de Calle et al. v. IDB, Judgment in Case No. 57, at 14 (Inter-American Dev. Bank Admin. Trib. Nov. 4, 2005)), the obligation of the administration to attempt to find an alternative position for a staff member whose employment was declared redundant (see, e.g., Ponciano v. IDB, Judgment in Case No. 72, at 20 (Inter-American Dev. Bank Admin. Trib. July 15, 2011)), the power of international organizations to amend rules concerning
It is unclear why the IDBAT, and the OASAT, have cited to other IATs so rarely. It is worth considering, however, whether the physical location of these tribunals—both located in Washington, D.C. and thus distant from many of their sister tribunals located in Europe and elsewhere—may be a factor. This could also explain why, when the IDBAT has cited externally, it has done so exclusively to the WBAT, another tribunal located in Washington, D.C. Similarly, the OASAT has shown a preference for the WBAT and another Washington, D.C.-based tribunal, the IMFAT.

4. Other administrative tribunals

There are only a few other tribunals which have rarely cited to their peers. This is the case, for example, with the UNRWA Dispute Tribunal, which seems content to rely almost exclusively on those other tribunals within the same jurisdictional system (in particular, the UNAT, but also the UNDT and the former UNAdT). When it has cited further afield, these have been exclusively to the ILOAT, which it has done on seven occasions.305 A similar remark could be made about the European Schools Complaints Board (which functions as an

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administrative tribunal with respect to staff cases): It has cited relatively frequently to the CJEU and the former EUCST, but never to another administrative tribunal.

The General Court of the CJEU, carrying out the role of administrative tribunal for EU staff since September 2016, has been categorical that the jurisprudence of other IATs is not applicable before it. In its 2017 Judgment in *Arango Jaramillo*, it stated that the jurisprudence of the ILOAT did not constitute a source of EU law and thus could not be invoked except as evidence of a rule or principle recognized in EU law. It thus followed the practice of the former EUCST, which refused to apply the jurisprudence of the ILOAT, stating that “it must be observed that that case-law does not, as such, constitute a source of European Union law.”

The *Tribunal de première instance* of the *Organisation international de la francophonie* (OIF) has also been reticent to cite to other IATs. While it has cited to ILOAT judgments in five cases out of its thirty-seven-case jurisprudence, the only other

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IAT it has ever cited was to the OECDAT in a recent case. The *Tribunal d’Appel* of the OIF, by contrast, appears more willing than the *Tribunal de première instance* to cite to other IATs. In this vein, it has cited to the ILOAT in over half of its...

Judgments, to the OECDAT on three occasions, as well as once each to the WBAT, UNDT, and UNAdT.
The CARICOM administrative tribunal, established in 2020, began its inaugural decision with an analysis of the “law applied by the tribunal,” observing that the preamble to its statute affirmed that its decisions “shall be consistent with the principles of fundamental human rights and taken in accordance with international administrative law.” \(^{314}\) It then identified the decisions of other international administrative tribunals, as far as they were consistent with customary international law, as one of the three sources of international administrative law. \(^{315}\) In considering the substance of the complaint, it went on to cite over fifteen decisions of a wide variety of other IATs for diverse points of law, including abuse of discretion, due process, and non-discrimination. \(^{316}\) While it is too early to draw any conclusions given that this tribunal has only rendered this one decision so far, it certainly seems to have gotten off to a good start, with this initial decision reminiscent of the WBAT’s initial de Merode Decision and the ADBAT’s initial Lindsey Decision.

Finally, a select few tribunals have not cited to other tribunals at all. This is the case for the very small jurisprudence of the MERCOSUR Administrative \(^{317}\) and the EUMETSAT Appeals Board. \(^{318}\)

### III. Examination of the Question by Reference to the Most Influential Cases

While the previous section engaged in an exhaustive examination of cross-fertilization by reference to the jurisprudence of each tribunal, this section seeks to view the question from a different angle, through an examination of the most

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315 Id. ¶ 44.

316 Id. ¶¶ 47–51, 62, 66–69, 81.


318 Judgments 1–19, EUMETSAT APPEALS BOARD, https://perma.cc/2ABW-D9LU (last visited Feb. 23, 2023). It also should be noted that certain other tribunals do not make their jurisprudence publicly available. This is the case for the European Stability Mechanism Administrative Tribunal, the African Union Administrative Tribunal, and the GAVI (Vaccine Alliance) Administrative Tribunal.
influential cases in terms of number of times they have been cited by other IATs and the quantity of other IATs citing to them. Whereas the previous section provided an overall picture of the current state and frequency of cross-fertilization, this section aims to complete the picture by providing more context, in particular the subject matter of the judgments being referred to most often by other IATs and the legal propositions which are most prone to cross-fertilization.

A. The Most Cited Judgments of International Administrative Tribunals

The present subsection discusses the ten most cited IAT judgments. While the WBAT easily holds the top spot with its highly influential *de Merode* Decision, it is striking to note that eight of the other judgments in the top ten were handed down by the ILOAT. Thus, one gains a clear impression that, in terms of most influential jurisprudence, the ILOAT is the leader, alongside the WBAT due to its first seminal decision. The only other IAT which retains a spot in the top ten is the ADBAT with its *Amora* decision in the ninth position. These decisions, and the propositions for which they have been cited, are examined below.


When it comes to cross-fertilization among IATs, there is no more significant and celebrated decision than the 1981 *de Merode* Decision of the WBAT, the first decision rendered by that Tribunal. The case concerned whether the implementation of decisions of the Executive Director regarding tax reimbursement and salary adjustment amounted to non-observance by the Bank of the contracts or terms of employment of the applicants. It is significant both for what it says about cross-fertilization and for the wellspring of cross-fertilization it has created. The former point has already been discussed, in particular the WBAT’s important statement that “the judgments of one tribunal may refer to the jurisprudence of another” and that “[s]ome of these judgments even go so far as to speak of general principles of international civil service law or of a body of rules applicable to the international civil service,” as well as its observation of “a certain rapprochement” among the jurisprudences of the various IATs.

Equally significant is the extent that other IATs have referred to the *de Merode* decision. Indeed, it has been cited an incredible sixty-eight times by no fewer than ten other IATs, far and away more than any other single decision in international administrative law. Other IATs most commonly refer to *de Merode* for the

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320 *Id.*, ¶ 28.
proposition that fundamental and essential terms and conditions of employment cannot be unilaterally amended.\(^{321}\) They also regularly refer to it in relation to the principle of acquired rights,\(^ {322}\) the discretionary power of the administration and


the proper standard for exercising that power, 323 the requirement that reforms to administrative procedures be carefully implemented, 324 the principle of non-discrimination, 325 administrative practice as a source of law, 326 and the proposition that the employment relationship of international civil servants is governed by the internal law prevailing within the organization in which they work. 327 It has also been referred to on occasion for a wide variety of other propositions, including the prohibition of non-retroactive application of laws, 328 the existence of generally recognized principles of international administrative law, 329 the periodic
adjustment of salaries, the possible existence of terms and conditions of employment outside the principle contractual instruments, the right of access to an IAT as a fundamental right of international civil servants, requests for oral hearings, and the prevalence of cross-fertilization among IATs. It is worth noting that the case also provides one of the most exhaustive and systematic treatments of sources of law in any IAT decision. Overall, there is no doubt that the de Merode Decision stands alone in international administrative law as the single most seminal case. Indeed, it has been observed that the Decision directly influenced the drafting of the Statute of the IMFAT.

2. A.G. S. v. UNIDO (ILOAT, 2012)

The A.G. S. Judgment by the ILOAT has only been cited by two other IATs—the UNDT and the AfDBAT—but they have cited it with such frequency, thirty-eight times, that it is behind only de Merode in terms of overall prevalence. While the case is substantively interesting for the tension it illustrates between the need to protect freedom of association and freedom of expression, on the one hand, and the Organization’s duty of care concerning the applicant’s professional reputation, on the other hand, it has always been cited in the context of the principle of res judicata, in particular the tribunal’s conclusion that the existence of an earlier judgment concerning the same applicant and facts did not constitute a res judicata because the earlier judgment only concerned the receivability of the application.

3. Ayoub, Lucal, Montat, Perret-Nguyen and Samson (ILOAT, 1987)

The case of Ayoub et al. before the ILOAT concerned changes to the calculation of pension benefits, which the applicants alleged affected their acquired rights. Its discussion of acquired rights has been cited by the

334 Mohsin, Judgment No. CSAT/3 (No. 1), ¶ 2 (Commonwealth Secretariat Arbitral Trib. 2001).
335 For a complete discussion of this aspect of the de Merode case, see C.F. Amerasinghe, The Implications of the de Merode Case for International Administrative Law, 43 HEIDELBERG J. INT’L L. 16 (1983).
ADBAT, the UNDT, the UNAT, and the ESAAT. It has also been frequently cited by the UNDT in the context of the meaning of the phrase “contract of employment.” The BISAT cites to it for the proposition that fundamental terms of employment may only be amended according to reasonably exercised discretion.

4. Lindsey (ILOAT, 1962)

The Lindsey Decision concerned changes to the pension regime applicable at the International Telecommunications Union, which the applicant claimed violated his acquired rights. The Tribunal drew a distinction between statutory terms, which pertain to the structure and functioning of the international civil service and which are subject to unilateral modification, on the one hand, and contractual terms, which pertain to the individual terms and conditions of an official in consideration of which he or she accepted the appointment, and which are not subject to unilateral modification, on the other hand. The decision has been cited approvingly by both the OASAT and the ADBAT for this distinction between statutory terms and contractual terms. In contrast, the UNDT has concluded that Lindsey’s distinction between contractual and statutory elements is not enough, in itself, to determine acquired rights, in that modifications would be allowed even affecting contractual obligations so long as they do not infringe “essential” or “fundamental” terms of appointment.

5. Sherif (ILOAT, 1956)

The Sherif Judgment of the ILOAT arose out of a decision to terminate a staff-member’s employment for unsatisfactory employment. The applicant argued that the decision violated his contract of employment and his acquired rights, since the provision of the Staff Regulations under which he was terminated

was added after he took up employment. The Tribunal clarified that the principle of acquired rights did not prevent changes to the Staff Regulations but rather that such changes could not have retroactive effect. Thus, it espoused a distinction between contractual elements (in the contract of employment) which were to be considered acquired rights, and statutory elements (in the Staff Regulations and Rules) which were subject to change. This distinction has since been disregarded by IATs in favor of a more nuanced approach which examines the substance of the right in question. The Sherif case has been cited repeatedly, especially by the UNDT, as an example of the “old” distinction.

6. Other highly-cited judgments

Among the five remaining judgments found in the top ten, four are also from the ILOAT. For example, the ILOAT Judgment in B and others, A.-M. and others, and A.-U. and others, concerning a complaint by Geneva-based staff members of the ILO challenging a downward adjustment in their salaries, has been cited nineteen times in discussions of the integrity of the U.N. common system, albeit always by the UNDT. The ILOAT Judgment in Ballo, concerning the limits of the discretionary authority of the head of an organization, has been cited seventeen times by three tribunals, while its Judgment in Khelifati, concerning discretionary authority specifically with regard to disciplinary measures, has been cited eleven times by three tribunals. The ILOAT Judgments in M.-J. C. et al. and I.T. concerning due process in relation to termination of staff members with indefinite contracts, have been cited nine times, albeit always by the UNDT. The ILOAT Judgment in Zaunbauer, concerning duty of care in the abolition of a post, has been cited nine times by two tribunals. Thus, the only case not from the ILOAT in the top ten is the Amora Decision of the ADBAT, which has been cited nine times by four different tribunals for the proposition that rights of a regular staff member should be accorded to an individual who has held a series of short-term contracts if his employment is essentially of a permanent nature.

349 Id. at 3.
Table 1: Top ten most-cited judgments of International Administrative Tribunals

<table>
<thead>
<tr>
<th></th>
<th>Judgment</th>
<th>Tribunal and Judgment Number</th>
<th>Number of times cited</th>
<th>Number of Tribunals citing</th>
<th>Main subjects for which it is cited</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>de Merode</td>
<td>WBAT Decision No. 1</td>
<td>68</td>
<td>10</td>
<td>Acquired rights</td>
</tr>
<tr>
<td>2</td>
<td>A.G. S.</td>
<td>ILOAT Judgment No. 3106</td>
<td>38</td>
<td>2</td>
<td>Res judicata</td>
</tr>
<tr>
<td>3</td>
<td>Ayoub, Lucal, Montat, Perret-Nguyen and Samson</td>
<td>ILOAT Judgment No. 832</td>
<td>30</td>
<td>5</td>
<td>Acquired rights; contract of employment; discretion when amending fundamental terms of employment</td>
</tr>
<tr>
<td>4</td>
<td>Lindsey</td>
<td>ILOAT Judgment No. 61</td>
<td>26</td>
<td>3</td>
<td>Acquired rights</td>
</tr>
<tr>
<td>5</td>
<td>Sherif</td>
<td>ILOAT Judgment No. 29</td>
<td>22</td>
<td>1</td>
<td>Acquired rights</td>
</tr>
<tr>
<td>6</td>
<td>B and others, A.-M. and others, A.-U. and others</td>
<td>ILOAT Judgment No. 4134</td>
<td>19</td>
<td>1</td>
<td>Integrity of U.N. common system</td>
</tr>
<tr>
<td>7</td>
<td>Ballo</td>
<td>ILOAT Judgment No. 191</td>
<td>17</td>
<td>3</td>
<td>Discretionary authority of Head of Organization</td>
</tr>
<tr>
<td>8</td>
<td>Khelifati</td>
<td>ILOAT Judgment No. 207</td>
<td>11</td>
<td>3</td>
<td>Discretion of Head of Organization regarding disciplinary measures</td>
</tr>
<tr>
<td>9</td>
<td>Amora</td>
<td>ADBAT Decision No. 24</td>
<td>9</td>
<td>4</td>
<td>According rights of regular staff member to succession of short-term contracts</td>
</tr>
<tr>
<td>10</td>
<td>M.-J. C. et al. and I.T.</td>
<td>ILOAT Judgments Nos. 3238 and 3437</td>
<td>9</td>
<td>1</td>
<td>Due process in relation to termination of staff members with indefinite contracts</td>
</tr>
</tbody>
</table>
B. Judgments Cited by at Least Four Other Tribunals

While the previous section highlighted the ten most-cited judgments in terms of overall number of citations, another important metric to be taken into consideration is the number of other IATs referring to those judgments. This is important because, in the case of overall number of citations presented in the previous section, a large number of citations sometimes result simply from the same IAT (or even the same judge of that IAT) using the same citation repeatedly when making the same point in various judgments. As can be seen in Table 1 above, while one case (de Merode) was cited by ten tribunals, there are only two other cases in the top ten which were cited by at least four other tribunals. Indeed, there are three judgments in that list that have only been cited by one other tribunal, albeit many times. In the present section, on the other hand, the judgments in question have proven that they have wide-ranging appeal to different IATs in different parts of the world.

In this regard, eight judgments are reviewed here for having been cited by four or more other IATs (in addition to the three in the top ten which also met this metric). The 1980 Judgment of the ILOAT in De Los Cabos and Wenger\(^{357}\) is regularly cited by IATs with respect to the principle of acquired rights.\(^{358}\) It was also cited by the COEAT, to support the proposition that measures taken by an organization must be considered in light of the interests of the entire staff.\(^{359}\)

The 1982 Decision of the WBAT in Salle\(^{360}\) has been cited often in relation to the probationary period of a staff member’s employment.\(^{361}\)

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The 1985 Judgment of the ILOAT in *Bustos*[^62] is regularly cited as an example of when a tribunal may look beyond the language of short-term contracts to the intentions of the parties in order to consider the applicant a staff member.[^363]

The 1989 ILOAT Judgment in *Ayoub (No. 2), Von Knorring, Perret-Nguyen (No. 2), and Santarelli*[^364] has been cited for its statement that the pension scheme forms part of the administrative arrangements subject to the Noblemaire principle,[^365] for the proposition that material unilateral changes to fundamental conditions of employment are unlawful,[^366] and for the proposition that an international civil servant need not await the realization of the institution’s adverse decision to seek a remedy in respect of it.[^367]

The 1992 Judgment of the ILOAT in *Vollering*[^368] has been widely referenced in the context of equal treatment and non-discrimination.[^369]

The 1981 *Suntharalingam* Decision by the WBAT[^370] has been cited by multiple tribunals in describing the substantive contours of abuse of discretion.[^371] It has also been used when discussing whether a procedural error can subsequently be cured.[^372]

The 1985 *Buranavanichkit* Decision before the WBAT[^373] has been cited for a variety of propositions, including the use of periodic evaluations,[^374] the ability of an IAT to fix an amount of compensation without ordering the recission of the


[^373]: Buranavanichkit, Decision No. 7 (World Bank Admin. Trib. 1982).

contested decision,375 the reasons for probationary appointments,376 the possibility of taking deficiencies in interpersonal skills into account in the performance appraisal,377 and the general proposition that a decision is invalid if it constitutes an abuse of discretion, being arbitrary, discriminatory, improperly motivated, or carried out in violation of a fair and reasonable procedure.378

The 1988 Pinto Decision of the WBAT379 has been cited for the general proposition that a decision based on a misuse of discretion which has arbitrary and discriminatory effects on the applicant should be set aside380 and for the more specific proposition that classification and grading is an exercise of discretionary authority, subject to judicial review only for irregularity.381 It has also been referred to in a case concerning the reduction of special allowances and interpreted as not laying down any principle that such allowances must be maintained indefinitely.382

Finally, the 1989 de Raet Decision of the WBAT383 has been widely cited for the proposition that an IAT will not review the substance of an administrative decision involving discretion, only whether it constitutes an abuse of discretion.384 It was also cited by the ADBAT for the concept of shifting of the burden of proof in allegations of abuse of authority.385

Taking stock of the above, it is interesting to note that while the ILOAT dominated the list of the ten most-cited judgments, the present set of judgments cited by four or more tribunals is more evenly split between judgments of the ILOAT and decisions of the WBAT. Thus, when one analyzes the question of cross-fertilization through this lens, the strength of the jurisprudence of the WBAT really becomes clear. Indeed, for the reasons mentioned at the outset of this section, this may very well be a better metric to assess how significant a judgment really is in the jurisprudence of IATs.

375 Id. ¶ 43.
379 Pinto, Decision No. 56 (World Bank Admin. Trib. 1988).
382 Bandara, Judgment No. CSAT APL/22 (No. 1), ¶ 85 (Commonwealth Secretariat Arbitral Trib. 2014).
### Table 2: Judgments cited by at least four other Tribunals

<table>
<thead>
<tr>
<th>Judgment</th>
<th>Tribunal and Judgment Number</th>
<th>Tribunals citing the Judgment</th>
<th>Main subjects for which it is cited</th>
</tr>
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<tbody>
<tr>
<td>de Merode</td>
<td>WBAT Decision No. 1</td>
<td>ADBAT, OASAT, UNDT, UNAT, BISAT, AfDBAT, CSAT, IDBAT, EBRDAT, IMFAT</td>
<td>Acquired rights</td>
</tr>
<tr>
<td>Ayoub, Lucal, Montat, Perret-Nguyen and Samson</td>
<td>ILOAT Judgment No. 832</td>
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</tr>
<tr>
<td>Amora</td>
<td>ADBAT Decision No. 24</td>
<td>WBAT, IDBAT, EBRDAT, IMFAT</td>
<td>According rights of regular staff member to succession of short-term contracts</td>
</tr>
<tr>
<td>de Los Cabos and Wenger</td>
<td>ILOAT Judgment No. 391</td>
<td>UNDT, CSAT, ADBAT, COEAT</td>
<td>Acquired rights in the context of a reduction in pay</td>
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<td>Salle</td>
<td>WBAT Decision No. 10</td>
<td>NATOAT, AfDBAT, CSAT, IMFAT</td>
<td>Termination during the probationary period</td>
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<td>Bustos</td>
<td>ILOAT Judgment No. 701</td>
<td>ADBAT, IDBAT, EBRDAT, IMFAT</td>
<td>Succession of short-term contracts creating status of staff member</td>
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<tr>
<td>Ayoub (No. 2), Von Knorring, Perret-Nguyen (No. 2) and Santarelli</td>
<td>ILOAT Judgment No. 986</td>
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<td>Noblemaire principle and acquired rights</td>
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<td>Vollering</td>
<td>ILOAT Judgment No. 1194</td>
<td>ADBAT, BISAT, EBRDAT, IMFAT</td>
<td>Equal treatment</td>
</tr>
<tr>
<td>Suntharalingam</td>
<td>WBAT Decision No. 6</td>
<td>ADBAT, NATOAT, AfDBAT, IDBAT</td>
<td>Termination for unsatisfactory performance; use of performance evaluations</td>
</tr>
<tr>
<td>Buranavanchkit</td>
<td>WBAT Decision No. 7</td>
<td>ADBAT, NATOAT, IDBAT, IMFAT</td>
<td>Termination during the probationary period; performance appraisals</td>
</tr>
</tbody>
</table>
C. Judgments Cited by at Least Three Other Tribunals

Finally, over twenty judgments have been cited by at least three other IATs. It is interesting to note that these judgments are again dominated by two tribunals, including thirteen judgments of the ILOAT and seven decisions of the WBAT. This list also includes one judgement of the UNAdT and one decision of the ADBAT. The table below summarizes these judgments, the IATs which cited them, and the subjects for which they were cited.

<table>
<thead>
<tr>
<th>Pinto</th>
<th>WBAT Decision No. 56</th>
<th>ADBAT, AfDBAT, CSAT, IMFAT</th>
<th>Classification and grading as an exercise of discretionary authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>de Raet</td>
<td>WBAT Decision No. 85</td>
<td>ADBAT, NATOAT, IMFAT, CARICOMAT</td>
<td>Shifting of burden of proof with respect to abuse of power; administrative decisions involving discretion</td>
</tr>
</tbody>
</table>

Table 3: Judgments cited by at least three other Tribunals

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<table>
<thead>
<tr>
<th>Judgment</th>
<th>Tribunal and Judgment Number</th>
<th>Other Tribunals citing the Judgment</th>
<th>Main subjects for which it is cited</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chadsey</td>
<td>ILOAT Judgment No. 122</td>
<td>UNDT, COEAT, EBRDAT</td>
<td>Access to the tribunal, in particular for non-staff personnel</td>
</tr>
<tr>
<td>Varnet</td>
<td>ILOAT Judgment No. 179</td>
<td>UNDT, UNAT, AfDBAT</td>
<td>Impartiality of individuals in position to appraise staff members or candidates</td>
</tr>
<tr>
<td>Gracia de Muñiz</td>
<td>ILOAT Judgment No. 269</td>
<td>UNDT, AfDBAT, IMFAT</td>
<td>Requirement that organization make efforts to find alternate employment for staff declared redundant; scope of review of decisions of the Director General</td>
</tr>
<tr>
<td>Settino</td>
<td>ILOAT Judgment No. 426</td>
<td>ADBAT, OASAT, BISAT</td>
<td>Fundamental and essential conditions of employment</td>
</tr>
<tr>
<td>Villegas (No. 4)</td>
<td>ILOAT Judgment No. 442</td>
<td>ADBAT, OECDAT, CSAT</td>
<td>Grounds for review of a decision; issuance of interim orders</td>
</tr>
<tr>
<td>Sikka (No. 3)</td>
<td>ILOAT Judgment No. 622</td>
<td>ADBAT, NATOAT, BISAT</td>
<td>No reviewability of general decisions, but individual decisions implementing them may be reviewed; principle of equality</td>
</tr>
<tr>
<td>Fernandez-Caballero</td>
<td>ILOAT Judgment No. 946</td>
<td>COEAT, IDBAT, ESAAT</td>
<td>Right of staff members to information; requirement that administration give reasons for administrative decision</td>
</tr>
<tr>
<td>Niesing (No. 2)</td>
<td>ILOAT Judgment No. 1118</td>
<td>ADBAT, CSAT, EBRDAT</td>
<td>Statutory terms subject to unilateral modification vs. contractual terms which are not; no acquired right to periodic adjustment of salary; limited review of tribunal regarding salary and grading systems</td>
</tr>
<tr>
<td>Aelvoet (No. 6) and others</td>
<td>ILOAT Judgment No. 1712</td>
<td>ADBAT, NATOAT, IMFAT</td>
<td>Possibility of cause of action even if there is no present injury</td>
</tr>
<tr>
<td>van Walstijn</td>
<td>ILOAT Judgment No. 1984</td>
<td>UNDT, OECDAT, NATOAT</td>
<td>Jurisdiction to assess the proportionality of dismissal as a sanction; discretion of disciplinary authority to determine severity of sanction</td>
</tr>
<tr>
<td>Matthews</td>
<td>ILOAT Judgment No. 2004</td>
<td>WBAT, CSAT, IMFAT</td>
<td>Gender parity</td>
</tr>
<tr>
<td>Case</td>
<td>IAT</td>
<td>UNAT, CSAT</td>
<td>Summary</td>
</tr>
<tr>
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<td>--------------------------------------------------------------------------</td>
</tr>
<tr>
<td>F. L.</td>
<td>ILOAT Judgment No. 2967</td>
<td>UNDT, UNAT, CSAT</td>
<td>Organization has power to restructure departments, including abolition of posts and redeployment of staff; constructive dismissal</td>
</tr>
<tr>
<td>Saberi</td>
<td>WBAT Decision No. 5</td>
<td>ADBAT, AfDBAT, IDBAT</td>
<td>Best practices for performance appraisals; abuse of discretion</td>
</tr>
<tr>
<td>Mr. Y</td>
<td>WBAT Decision No. 25</td>
<td>BISAT, AfDBAT, IMFAT</td>
<td>Separation agreements including release of liability clauses</td>
</tr>
<tr>
<td>Gyamfi</td>
<td>WBAT Decision No. 28</td>
<td>ADBAT, OASAT, IMFAT</td>
<td>Procedural requirements in misconduct investigations; due process in the performance evaluation</td>
</tr>
<tr>
<td>Agodo</td>
<td>WBAT Decision No. 41</td>
<td>ADBAT, NATOAT, IMFAT</td>
<td>No jurisdiction to adjudicate a general rule, only application of that rule in a particular case</td>
</tr>
<tr>
<td>Briscoe</td>
<td>WBAT Decision No. 118</td>
<td>ADBAT, NATOAT, IMFAT</td>
<td>No jurisdiction to adjudicate a general rule, only application of that rule in a particular case</td>
</tr>
<tr>
<td>Teixeira</td>
<td>UNAdT Judgement No. 233</td>
<td>ADBAT, EBRDAT, IMFAT</td>
<td>Employment relationship as independent contractor or staff member; potential irregularity of recourse to a series of short-term service agreements</td>
</tr>
<tr>
<td>De Armas</td>
<td>ADBAT Decision No. 39</td>
<td>CSAT, EBRDAT, IMFAT</td>
<td>Internationally recruited staff-members and potential discrimination vis-à-vis national staff members</td>
</tr>
</tbody>
</table>

**IV. Conclusions and Observations**

Fifty years after Akehurst declared that “[i]nternational administrative tribunals behave as if the internal laws of different organizations formed part of a single system of law,” it can now be seen, on the basis of the review of the jurisprudence of all IATs, just how insightful his statement has proven to be. Cross-fertilization has become a common practice in almost all IATs. Gone are the days when IATs felt the need to justify such practice. Indeed, as we have seen, they now cite each other consistently and unapologetically, often referring to the jurisprudence of their sister tribunals even when there is a case on point in their own jurisprudence.

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391 As de Cooker has stated recently, “[c]onvergence is the natural trend.” de Cooker, supra note 3, at 246.
While virtually all IATs are citing to their peers, they do not do so with the same frequency. A group of tribunals—including the WBAT, IMFAT, UNDT, UNAT, ADBAT, COEAT, and AfDBAT—have set themselves apart as leaders in this practice. In so doing, they are living proof of the “certain rapprochement” foreseen by the WBAT in its seminal de Merode Decision and the “large measure of ‘common’ law of international organizations” described by the ADBAT in its influential Lindsey Decision.

On the other end of this spectrum, one is struck immediately by the lack of frequency with which the ILOAT cites to other tribunals. Perhaps it does not feel the need to do so, it being the most established tribunal with the largest jurisprudence on which to draw. On the other hand, it may do well to consider the jurisprudence of its peers; as a leading commentator has noted, several organizations have recently withdrawn from its jurisdiction and either set up their own tribunal or accepted the jurisdiction of another tribunal, apparently out of dissatisfaction with the ILOAT’s position on a given issue.

It has also been apparent throughout the analysis that while IATs cited to the former UNAdT regularly, they have been much less open to referring to the UNDT and UNAT which replaced that tribunal in the new U.N. internal justice system established in 2009. The reasons for this are unclear, but perhaps one can imagine that the UNAdT held a sort of different status—it being one of the first IATs established, together with the ILOAT—while the UNDT and UNAT came onto the scene alongside many other tribunals. One cannot help but notice, however, that the WBAT, a trend-setter in cross-fertilization since the beginning, has cited to the UNDT and UNAT more often than others have. Perhaps other IATs will eventually follow suit?

While there have been over the years occasional calls for efforts to harmonize the law applicable to the international civil service through the creation of one “super-tribunal,” it is hoped that the findings of this article will put this idea to rest. Indeed, as a result of this practice of cross-fertilization, a universal

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394 See de Cooker, supra note 3, at 239–41.
law of internal justice has begun to crystallize. Tribunals from the ADBAT to the OASAT, UNDT, EBRDAT, IMFAT and others, when discussing acquired rights, cite systematically to the WBAT’s *de Merode* Decision. When examining the effect of a series of short-term contracts of employment, tribunals cite to the ADBAT’s *Amora* Decision. When analyzing the discretionary power of the administration, tribunals refer to the ILOAT’s *Ballo* Judgment. Concerning obligations to staff whose positions have been abolished, tribunals look to the IMFAT’s Judgment in the Mr. ‘F’ case. Through this practice, IATs are defining together which areas of international administrative law are common ground, as evident from the cross-fertilization itself, and which areas remain unique to the internal law of the organization concerned. In so doing, IATs are able to maintain their unique position at the crossroads of international, institutional, and administrative law.