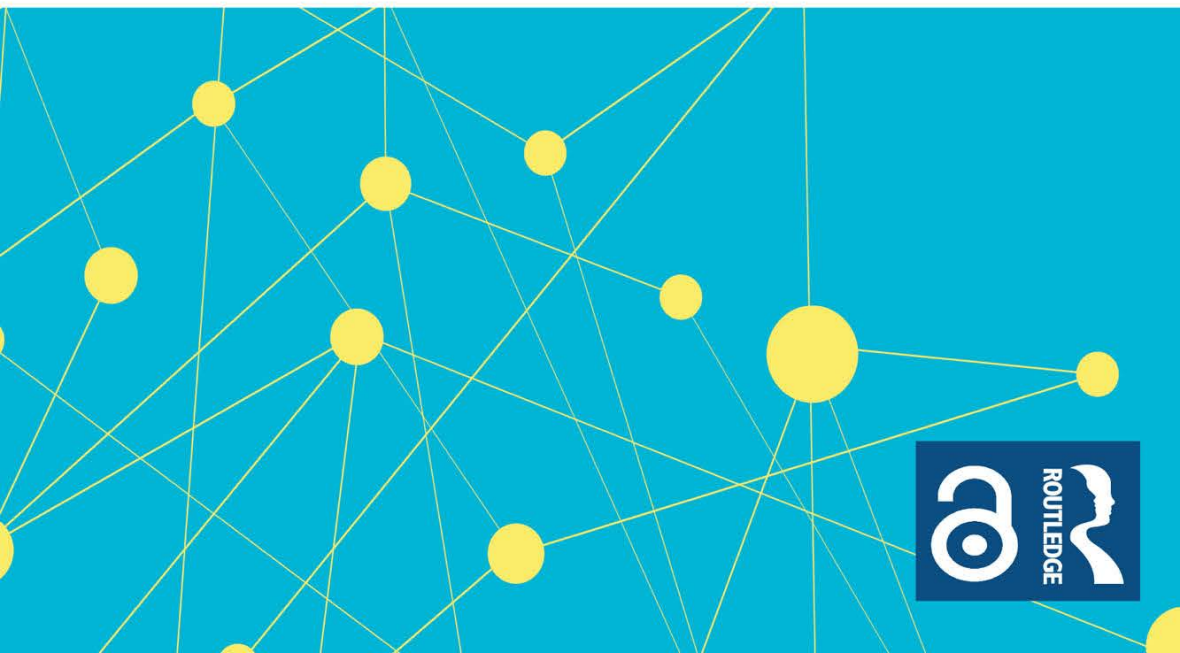
# THE ANATOMY OF INTERNATIONAL ARBITRATION

Edited by
Anna Petrig and Yarik Kryvoi



‘Anna Petrig and Yarik Kryvoi’s *The Anatomy of International Arbitration* is an invaluable contribution to the literature and deserves a place on the desk of all those involved in any form of international arbitration.’

**Christopher Greenwood**, *Arbitrator and Judge of the Iran-US Claims Tribunal, United Kingdom*

‘A most welcome, highly valuable overview and analysis of international arbitration as a widely applied dispute settlement mechanism. By thoughtfully highlighting the commonalities and distinctive features of arbitration across various areas, this book is an essential read for anyone engaged with or curious about international arbitration.’

**Professor Laurence Boisson de Chazournes**, *University of Geneva, Switzerland*

‘This volume offers an original framework for understanding international arbitration. By focusing first on its social and human aspects before developing its doctrinal and procedural framework, Anna Petrig and Yarik Kryvoi—together with a global network of eminent contributors—deliver a work that is both conceptually rich and remarkably accessible.’

**Chiann Bao**, *Independent Arbitrator, Singapore*

‘As a practitioner engaged daily in complex international disputes, I found *The Anatomy of International Arbitration* to be a well-structured and accessible gateway to international arbitration. It is clearly written and easy to navigate, making it a valuable resource for both practitioners and academics.’

**Professor Robert G. Volterra**, *Partner, Volterra Fietta; Visiting Professor, University College London, United Kingdom*

‘*The Anatomy of International Arbitration* is a must have and a must read. It transcends the conventional boundaries of legal literature. This magnum opus, meticulously curated by Anna Petrig and Yarik Kryvoi is not merely a compendium of arbitral wisdom; it actually offers analytical insights and deftly navigates the intricate interplay between established norms and emerging challenges. It provides a kaleidoscopic view that is both panoramic in scope and microscopic in detail. The book’s innovative “anatomical” approach deciphers the complex language of arbitration for neophytes and veterans alike. In essence, this book is an intellectual odyssey and is destined to occupy a hallowed place not just on bookshelves, but in the minds of all who seek to comprehend and shape the evolving narrative of international arbitration.’

**Professor Mohamed S. Abdel Wahab**, *Cairo University, Egypt*

Taylor & Francis
Taylor & Francis Group
http://taylorandfrancis.com

# The Anatomy of International Arbitration

This book offers a clear and intellectually rigorous gateway into international arbitration. The book's original 'anatomical' approach dissects arbitration into its core components to show how this dispute resolution system operates in practice.

The book begins with cross-cutting issues such as sources of law and soft law, institutional and ad hoc arbitration, diversity, digitalisation, review mechanisms, and the enforcement of awards. It then examines eleven arbitration mechanisms, illustrating the diversity of arbitral frameworks—from inter-State, investor-State, and commercial arbitration to specialised areas including maritime, commodities, intellectual property, sports, and business and human rights arbitration. Each arbitration mechanisms chapter covers jurisdiction, procedure, adjudicators, applicable law, review, and the relationship with domestic and international courts.

Written by leading practitioners, academics, and arbitral institutions figures, the volume serves as both an accessible entry point and a comparative resource for scholars, practitioners, and policy-makers.

**Anna Petrig** is Professor of International Law and Public Law at the University of Basel, Switzerland. She has served as a Judge ad hoc at the International Tribunal for the Law of the Sea (ITLOS) and is a member of the Swiss National Group to the Permanent Court of Arbitration (PCA). She is the co-founder and co-director of Arbitration Lab.

**Yarik Kryvoi** is a Senior Fellow at the British Institute of International and Comparative Law (BIICL) and of counsel with Keidan Harisson in London. He is the co-founder and co-director of Arbitration Lab. A Harvard LL.M. and University College London Ph.D. graduate, he specialises in public international law, investor-state and commercial disputes, and legal reform.

Taylor & Francis
Taylor & Francis Group
http://taylorandfrancis.com

# The Anatomy of International Arbitration

**Edited by**
**Anna Petrig and Yarik Kryvoi**

Routledge
Taylor & Francis Group
LONDON AND NEW YORK

First published 2027
by Routledge
4 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

and by Routledge
605 Third Avenue, New York, NY 10158

*Routledge is an imprint of the Taylor & Francis Group, an informa business*

© 2027 selection and editorial matter, Anna Petrig and Yarik Kryvoi; individual chapters, the contributors

The right of Anna Petrig and Yarik Kryvoi to be identified as the authors of the editorial material, and of the authors for their individual chapters, has been asserted in accordance with sections 77 and 78 of the Copyright, Designs and Patents Act 1988.

The Open Access version of this book, available at www.taylorfrancis.com, has been made available under a Creative Commons Attribution-Non Commercial-No Derivatives (CC-BY-NC-ND) 4.0 International license.

Any third party material in this book is not included in the OA Creative Commons license, unless indicated otherwise in a credit line to the material. Please direct any permissions enquiries to the original rightsholder.

Published with the support of the Swiss National Science Foundation.

For Product Safety Concerns and Information please contact our EU representative GPSR@taylorandfrancis.com. Taylor & Francis Verlag GmbH, Kaufingerstraße 24, 80331 München, Germany.

*Trademark notice*: Product or corporate names may be trademarks or registered trademarks, and are used only for identification and explanation without intent to infringe.

*British Library Cataloguing-in-Publication Data*
A catalogue record for this book is available from the British Library

ISBN: 978-1-032-75813-8 (hbk)
ISBN: 978-1-032-81689-0 (pbk)
ISBN: 978-1-003-50089-6 (ebk)

DOI: 10.4324/9781003500896

Typeset in Times New Roman
by Deanta Global Publishing Services, Chennai, India

# Contents

*List of Contributors* *ix*
*Foreword* *xiii*
*Preface and Acknowledgements* *xiv*
*List of Abbreviations* *xvi*

**Part I**
**Foundations** **1**

1 The Anatomy of International Arbitration 3
ANNA PETRIG

2 Key Concepts of International Arbitration 11
YARIK KRYVOI

**Part II**
**Transversal Topics** **39**

3 The Sociological Evolution of International Arbitration 41
FLORIAN GRISEL

4 Institutional and Ad Hoc Arbitration 56
GREG FULLELOVE AND GALINA BORSHEVSKAYA

5 Digitalization in International Arbitration 74
SIMON BIANCHI

6 Diversity in International Arbitration 90
LIESBETH LIJNZAAD

7 Sources of Law and Soft Law in International Arbitration 105
FELIX DASSER

8 Review Mechanisms in International Arbitration 123
AUGUST REINISCH

9 Enforcement of International Arbitral Awards 137
BERND EHLE

**Part III**
**Arbitration Mechanisms** **153**

10 Inter-State Arbitration 155
MARTIN DOE

11 Law of the Sea Arbitration 174
ANNA PETRIG

12 International Administrative Law and Dispute Resolution 200
DRAŽEN PETROVIĆ

13 Investor-State Arbitration 217
YARIK KRYVOI

14 Business and Human Rights Arbitration 233
URSULA KRIEBAUM

15 Sports Arbitration 250
MARCO VEDOVATTI AND CHRISTOPHER BOOG

16 International Commercial Arbitration 265
KABIR DUGGAL AND PETER L. SCHMIDT

17 Maritime Arbitration 281
JAMES CLANCHY

18 Commodities Arbitration 297
EVA LITINA

19 Construction Arbitration 315
RENATO NAZZINI AND RAQUEL MACEDO MOREIRA

20 Intellectual Property Arbitration 332
IGNACIO DE CASTRO, JUSTINE FERLAND, AND MARGARITA KATO

*Index* *351*

# 12 International Administrative Law and Dispute Resolution

*Dražen Petrović*

## 1. Background and History

Normally, legal disputes are brought before a territorially competent domestic court of justice, or, in some cases, to international courts whose jurisdiction States have accepted, such as the Court of Justice of the European Union (EU) or the European Court of Human Rights (ECtHR). However, it is accepted that subjects of law may, in certain situations, choose an alternative way of resolving their disputes. The reasons for doing so are manifold and may range from the distrust in the ordinary courts to the need for efficiency or confidentiality of the proceedings. Opting for alternative means of dispute settlement is normally based on preference and opportunity. However, for one type of subject of law—international organizations (IOs)—this choice is based on necessity.

The fundamental requisite for IOs is that they are independent from any outside influence. To subject IOs to the jurisdiction of national courts would enable the States, to whose structure those courts belong, to have more influence on the functioning of the organization than any other (member) State. To avoid that, IOs normally enjoy immunity from jurisdiction of national courts or from any national administrative procedure.

The necessity to grant such immunity from jurisdiction was identified by Switzerland when the League of Nations and the International Labour Office established their seat in Geneva in the 1920s.[1] Since the legal status of the League of Nations was not defined by the Versailles Treaty,[2] Switzerland decided to determine its status in Switzerland by analogy to the status of foreign States, which enjoy immunity in accordance with the principle *par in parem non habet imperium.*[3] It granted the League of Nations immunity from the jurisdiction of Swiss courts.[4]

1 See Vittorio Mainetti, 'The League of Nations and the Emergence of Privileges and Immunities of International Organizations' in Roberto Virzo and Ivan Ingravallo (eds), *Evolutions in the Law of International Organizations* (Brill Nijhoff 2015) 324–363.

2 Treaty of Peace between the Allied and Associated Powers and Germany (signed 28 June 1919, entered into force 10 January 1920) 225 CTS 188.

3 Latin: Equals do not have authority over one another. In public international law, it denotes the principle that one sovereign power cannot exercise jurisdiction over another sovereign power.

4 This was done through two *modi vivendi* agreed between the Swiss Federal Council and the Secretary-General of the League of Nations in 1921 and 1926. In this latter document, it was stated that '[t]

DOI: 10.4324/9781003500896-15

This chapter has been made available under a CC BY-NC-ND license.

Since then, a standard clause guaranteeing IOs immunity from jurisdiction has been a part of many headquarters agreements[5] and was included in two major conventions on privileges and immunities, inspiring other similar legal instruments.[6]

To provide access to justice while enjoying immunity from jurisdiction of national courts, IOs[7] should have in place credible alternative means of dispute settlement, in particular for resolving labour disputes. If they do not have any mechanism in place or if they are inadequate, their immunity from jurisdiction may be challenged by national courts.[8] This risk is particularly significant in labour disputes, and there are many examples of national courts denying immunity in this area.

Inadequacy of mechanisms for the settlement of disputes can lead, especially in Europe, to a denial of immunity from jurisdiction. This was clearly stated by the ECtHR in a landmark case, *Waite and Kennedy*, requiring 'reasonable alternative means to protect effectively [the applicants'] rights under [Article 6] the [European] Convention [on Human Rights]'.[9] The applicability of a European convention might reflect a highly Eurocentric approach[10] to deal with IOs of a universal character, composed of non-European States. Nevertheless, it is a useful reminder that IOs cannot act with impunity and it amounts to a credible threat that if they do not offer an effective alternative dispute resolution mechanism, their jurisdictional immunity may be challenged before a national court. As Reinisch concluded, to avoid situations in which national courts may be tempted to 'close

---

he Swiss Federal Government recognizes that the League of Nations, which possesses international personality and legal capacity, cannot, in principle, according to the rules of international law, be sued before the Swiss Courts without its express consent.' See League of Nations, Note by the Secretary-General, 'Communications from the Swiss Federal Council concerning the Régime of Diplomatic Immunity of the Staff of the League of Nations' (18 September 1926) LoN Doc C.555/1926.(V).

5 For example, see Agreement between the African Union and the Federal Democratic Republic of Ethiopia on the Headquarters of the African Union (African Union – Ethiopia) (adopted and entered into force 25 April 2008) <https://archives.au.int/handle/123456789/6617> accessed 25 March 2025 art 5; Headquarters Agreement between the Organization of American States and the Government of the United States of America (Organization of American States – United States of America) (adopted 14 May 1992) OEA/SER.D/V.9/92 art IV sec 1.

6 Convention on the Privileges and Immunities of the United Nations (adopted 13 February 1946, entered into force 17 September 1946) 1 UNTS 15, with 162 parties and Convention on the Privileges and Immunities of the Specialized Agencies (adopted 21 November 1947, entered into force 2 December 1948) 33 UNTS 261.

7 The most important element to determine what an international organization (IO) is for the purpose of this chapter will be whether or not the organization concerned enjoys immunity from jurisdiction within a State.

8 Yaraslau Kryvoi, 'Procedural Fairness as a Precondition for Immunity of International Organizations' (2016) 13(2) International Organizations Law Review 255.

9 *Waite and Kennedy v Germany* App no 26083/94 (ECtHR, 18 February 1999) para 68. Confirmed later by *Beer and Regan v Germany* App no 28934/95 (ECtHR, 18 February 1999) para 58.

10 See examples of the case law of France, Italy, and Belgium, given by August Reinisch, 'To What Extent Can and Should National Courts "Fill the Accountability Gap"?' (2013) 10(2) International Organizations Law Review 572, 575 in footnotes 9, 10 and 11.

the accountability gap' by denying their immunity, IOs should eliminate 'accountability gaps' in the first place.[11]

It is against this background that IOs started creating specific mechanisms for resolving labour-related disputes.[12] The most common mechanism is the creation of its own[13] or recognition of an existing international administrative tribunal (IAT).[14] While these tribunals cannot be characterized as arbitral since the parties in disputes before such tribunals do not have much say about their composition, competence, or procedure, they are clearly distinct from ordinary national courts of law and hence represent an alternative mechanism for resolving labor disputes. Alternatively, some organizations opted for arbitration, either for the entire staff or for certain categories of collaboration that do not have the status of staff members. This solution may be problematic. However, to explain fully our concerns would divert the attention from IATs, which is the focus of this chapter.

The first IAT, the Administrative Tribunal of the League of Nations, was established in 1927. It continued its life after the Second World War as the Administrative Tribunal of the International Labour Organization (ILOAT). The latest IAT, called the Organization of the Petroleum Exporting Countries Fund Administrative Tribunal (OPECFAT), was created in 2022. Currently, some 30 IATs operate in the world, but their number is constantly growing, and this figure might quickly become outdated.[15] This trend has its advantages and disadvantages. An obvious advantage is that the creation of an IAT demonstrates a commitment to the rule of law and offers protection of staff rights.

11 ibid 587.

12 See Dražen Petrović, 'L'importance du Tribunal administratif de l'Organisation internationale du Travail sur l'immunité des organisations internationales en Suisse' in Antoine Eigenmann, Charles Poncet and Bernard Ziegler (eds), *Mélanges en l'honneur de Claude Rouiller* (Helbing Lichtenhahn 2016) 181–194.

13 Such as the Administrative Tribunals of the International Monetary Fund (IMFAT), the World Bank (WBAT), the European Bank for Reconstruction of Development (EBRDAT), the African Development Bank (AfDBAT), the Asian Development Bank (AsDBAT), the Inter-American Development Bank (IADBAT), the Islamic Development Bank, the North Atlantic Treaty Organization (NATOAT), the Organisation for Economic Co-operation and Development (OECDAT), the Bank for International Settlements (BISAT), the Commonwealth Secretariat (CSAT), the Organization of American States (OASAT), and the European Stability Mechanism (ESMAT).

14 59 organizations recognized the competence of the ILOAT (see website of ILO <www.ilo.org/ilo-administrative-tribunal/organizations-recognizing-jurisdiction> accessed 25 March 2025); the World Meteorological Organization (WMO) recognized both the UN Dispute Tribunal (UNDT) and the UN Appeals Tribunal (UNAT), while the International Fund for Agricultural Development (IFAD), the Universal Postal Union (UPU), the International Maritime Organization (IMO), and the International Civil Aviation Organization (ICAO) recognized the UNAT; the Council of Europe, the Council of Europe Development Bank, the Central Commission for the Navigation of the Rhine, the Hague Conference on Private International Law, and the Intergovernmental Organisation for International Carriage by Rail (OTIF) are under the jurisdiction of the Council of Europe Administrative Tribunal (CoEAT).

15 For a list and links to their websites, please see website of OASAT <www.oas.org/ext/en/main/oas/our-structure/agencies-and-entities/tribad/Links> accessed 25 March 2025 and website of CoEAT <www.coe.int/en/web/tribunal/other-courts> accessed 25 March 2025.

A major disadvantage is that the same States, as members of different organizations, adopt different rules regarding the competence of various IATs. This creates a risk of fragmentation based on the limits prescribed by the Statute of a given IAT. An example is the impossibility for certain tribunals to reinstate officials, leave the choice of remedy to the executive head, or limit material damage to a maximum of two years' salary. Other tribunals might have these competences. Another example is that certain tribunals can only examine administrative acts, which prevents them from examining acts adopted by bodies composed of member states. Such variations in the Statutes of IATs may compromise the very concept of international civil service as a whole as we know it since the creation of the League of Nations, because IATs will offer different protection depending on their Statutes.[16]

The IATs apply a set of rules peculiar to each organization, and they deal with internal labour disputes between the administration of IOs, as employers, and the staff of the organization, as employees. While one could think that both categories are well defined, this is not always the case. Not only can the status of 'staff members' or 'officials' depend on several factors,[17] but even the notion of an 'employing organization' may be a source of dispute.[18] There may also be confusion when officials are employed formally by one IO, but they work for another IO.[19]

As it was stated above, some organizations have also opted to recognize the IAT of another organization. IATs that are open for recognition of other organizations are the ILOAT, United Nations Dispute Tribunal (UNDT), United Nations Appeals Tribunal (UNAT), and Council of Europe Administrative Tribunal (CoEAT). In these cases, it is the host organization that adopts the necessary legal framework for the functioning of the tribunal on aspects such as how other organizations would recognize its jurisdiction, elect the judges, and finance those tribunals (e.g., cost-sharing methods, if any). However, even in these situations, the applicable law for those IATs is always the internal rules of the organization which employs the official.

16 See Chris de Cooker, 'Proliferation of International Administrative Tribunals' (2022) 12(2) Asian Journal of International Law 232.

17 See below Section 4.

18 For example, in Judgment 2867 the ILOAT declared itself competent to hear a dispute between IFAD and a former staff member of the Global Mechanism of the United Nations Convention to Combat Desertification (housed by IFAD), since it found that the complainant was a staff member of IFAD. IFAD challenged this finding before the ICJ, but the ICJ found that the ILOAT was right. See *Judgment no 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development* (Advisory Opinion) [2012] ICJ Rep 10.

19 For example, *A v World Health Organisation* Judgment no 4526 (ILOAT, 6 July 2022), *C (No 2) v Global Fund to Fight AIDS, Tuberculosis and Malaria* Judgment no 3475 (ILOAT, 30 June 2015) and *C C v Global Fund to Fight AIDS, Tuberculosis and Malaria* Judgment no 3247 (ILOAT, 5 February 2014) deal with employment contracts concluded by the United Nations Office for Project Services (UNOPS), a sort of employment agency created by the United Nations Secretariat, but who in reality worked for another IO. On UNOPS, see Ukri Soirila, 'UNOPS and the Rise of Entrepreneurial International Organizations: A Case Study' (2023) 20(3) International Organizations Law Review 269, 288.

## 2. Vital Statistics and Caseload Trends

The number of cases and judgments varies from one IAT to another. The biggest case load has the ILOAT with more than 5,000 judgments adopted since 1947,[20] plus 37 judgments adopted when this tribunal belonged to the League of Nations. Before it was abolished in 2009, the United Nations (UN) Administrative Tribunal issued 1,495 judgments. The newly created UN system of administration of justice has so far rendered 2,682 judgments by the UNDT and 1,523 judgments by the UNAT.[21]

Recently created IATs may have none or only a handful of cases. Among those that have existed for longer and have adopted less than 100 judgments are tribunals of Mercosur (5),[22] the Commonwealth (56),[23] the International Monetary Fund (IMF) (84),[24] and the European Bank for Reconstruction and Development (EBRD) (60).[25] The tribunals of the Organisation for Economic Co-operation and Development (OECD) (101),[26] the Inter-American Development Bank (IADB) (127),[27] the Asian Development Bank (AsDB) (135),[28] and the Organization of American States (OAS) (171)[29] have each rendered between 100 and 200 decisions.

## 3. Legal Basis for Tribunals' Competence[30]

The decision to create an IAT is normally taken by the highest authority of an organization. As those decisions bind the secretariat, parties to the disputes before the IATs (the executive head on behalf of the organization and the staff members covered by the competence of the tribunal) are automatically bound by its jurisdiction. Once the IAT is created, the staff rules of the organization should state that individual disputes between the organization and an official are to be submitted to

20 See website of ILO <https://wwwex.ilo.org/dyn/triblex/triblexmain.bySession?p_lang=en&p_all=Y> accessed 6 February 2025.

21 See website of the UN System of Administration of Justice <www.un.org/internaljustice/oaj/en> accessed 19 July 2025.

22 See website of Mercosur <www.tprmercosur.org/es/tal.htm> accessed 19 July 2025.

23 See website of the Commonwealth <https://thecommonwealth.org/tribunal> accessed 19 July 2025.

24 See website of IMF <www.imf.org/external/imfat/jdgmnts.htm> accessed 12 January 2025.

25 See website of EBRD <www.ebrd.com/home/who-we-are/our-organisation/ebrd-governance-leadership/corporate-governance/administrative-tribunal.html> accessed 12 January 2025.

26 See website of OECD <www.oecd.org/en/about/administrative-tribunal/all-judgements.html> accessed 19 July 2025.

27 See website of IADB <www.iadb.org/en/who-we-are/transparency/administrative-tribunal/administrative-tribunal-decisions> accessed 19 July 2025.

28 See website of AsDB <www.adb.org/who-we-are/organization/administrative-tribunal> accessed 19 July 2025.

29 See website of OAS <www.oas.org/ext/en/main/oas/our-structure/agencies-and-entities/tribad/Decisions/Documents> accessed 19 July 2025.

30 Due to the specific nature of the dispute resolution mechanism described in this chapter, the section heading differs from the comparative grid used in other chapters of Part III of this book, where it is entitled, 'Arbitration agreement and consent'.

such tribunal. By a general reference to the staff rules, such a provision becomes part of each individual employment contract.[31]

For other organizations that wish to recognize the competence of an IAT belonging to another IO, the procedure starts with the decision of a competent organ of that organization to recognize the competence of the chosen IAT. In the case of UNAT, the recognition is open to a specialized UN agency or any other IO belonging to the UN Common System, which concludes a special agreement with the UN Secretary-General.[32] Other UN organs are not involved in the process.

Similarly, in the Council of Europe, following a request from the competent authority of the applying organization, which can be any intergovernmental organization, an agreement covering modalities and administrative matters is concluded between the Council of Europe, represented by the Secretary-General, and the organization concerned.[33] In the case of the ILOAT, a declaration recognizing the jurisdiction of the ILOAT is sent to the ILO Director-General, who brings it to the attention of the ILO Governing Body for final approval.[34] This procedure is open to any intergovernmental IO or any other IO fulfilling conditions set out in the Annex to the ILOAT Statute.

Facing the situation in which several organizations left the ILOAT's jurisdiction to recognize the competence of other IATs (World Meteorological Organization, International Fund for Agricultural Development and Universal Postal Union of UNAT, and Intergovernmental Organisation for International Carriage by Rail of CoEAT), and noting the ILOAT's dissatisfaction with such 'forum shopping', the ILO adopted some basic rules a few years ago for withdrawing from the ILOAT's jurisdiction and included them in the Annex to the ILOAT Statute.

According to those rules, the whole process should be guided by the principles of good faith and transparency. The official notification of withdrawal should reaffirm commitments to faithfully execute judgments on any pending cases and indicate, 'as appropriate, the reasons for withdrawing the recognition of the Tribunal's

31 See, eg, Staff Regulations, Rules and Instructions Applicable to Officials of the Organisation for Economic Co-operation and Development (entered into force 30 September 1960) <www.oecd.org/content/dam/oecd/en/about/legal/staff-rules-en.pdf> accessed 25 March 2025 regs 8 and 22. Reg 8 reads as follows:

> The letter of appointment shall determine the specific conditions of employment and mention that the appointment is subject to the provisions of these Regulations, Rules and Instructions and of any other rules which are applicable to officials, including amendments which may be made to these Regulations, Rules and Instructions or to the said rules, and that disputes arising from them may only be submitted to the Administrative Tribunal provided for in Regulation 22.

32 Statute of the United Nations Appeals Tribunal (adopted 24 December 2008) UN Doc A/Res/63/253 Annex II (UNAT Statute) art II(10).

33 Statute of the Administrative Tribunal of the Council of Europe (adopted 16 November 2022, entered into force 1 January 2023) CM/Res(2022)65 Appendix (CoEAT Statute) art II(2.3).

34 Statute of the Administrative Tribunal of the International Labour Organization (adopted 9 October 1946) <www.ilo.org/resource/statute-administrative-tribunal-international-labour-organization> accessed 2 April 2025 (ILOAT Statute) art II(5).

jurisdiction, the alternative means of employment dispute settlement envisaged and any consultations with the staff representative bodies prior to the withdrawal decision'.[35] The ILO Governing Body, after consultation with the Tribunal, shall 'take note of the withdrawal of the organization concerned', and shall determine the date as of which the organization concerned is no longer subject to the competence of the ILOAT.[36]

## 4. Jurisdiction

IATs have limited competence, and their Statutes typically define their jurisdiction. For example, in most of the IATs, the competence *ratione personae* is restricted to staff members or officials. Who is an official is normally defined in an individual employment contract. However, this may not always be obvious, and the IATs have to examine whether or not an individual has this status. For example, and this was contested by the organizations concerned, the ILOAT found that judges of the International Criminal Court are officials of the Court,[37] or that the Director-General of the Organisation for the Prohibition of Chemical Weapons (OPCW) is an official of the OPCW.[38] Contrary to that, the ILOAT often found that an individual did not have that status if this was expressly excluded by the employment contract, regardless of the nature of the work performed. [39]

This implies that entire categories of non-staff, such as temporary staff, consultants, and interns, are left outside the jurisdiction of those tribunals.[40] This is worrisome both for the persons concerned and for the organizations. In fact, there are many categories of collaborators who are not defined as 'staff' or 'officials'. By denying them access to an IAT, they are deprived of an effective mechanism for resolving potential disputes with the organizations. This is because, in the most favourable scenario, i.e., that they resort to arbitration, there will be a case-by-case consideration without any guarantees of equal treatment and due process rights. As for the organizations, they may need to argue before the national court, if the person concerned goes there, that an efficient dispute mechanism is available. This is to be assessed by the national court, bearing the risk that, should the analysis yield a negative result, immunity from national court jurisdiction may be denied.

Even if some standard contracts provide for arbitration for non-staff, this may be just a smoke screen. For example, many UN organizations still use the Special

35 ILOAT Statute Annex art IX(3)3.

36 ILOAT Statute Annex art IX(3)4.

37 *BLM C and DDN N v International Criminal Court* Judgment no 3359 (ILOAT, 9 July 2014).

38 *JM B v Organisation for the Prohibition of Chemical Weapons* Judgment no 2232 (ILOAT, 16 July 2003).

39 See, eg, *D D v Green Climate Fund* Judgment no 4652 (ILOAT, 7 July 2023).

40 See table 7 in United Nations Joint Inspection Unit, 'Review of the Use of Non-Staff Personnel and Related Contractual Modalities in the United Nations System Organizations: Report of the Joint Inspection Unit' (2023) UN Doc JIU/REP/2023/8.

Service Agreement (SSA) for collaborators who do not have the status of officials, who are recruited for a specific task and who are nationals or residents of developing countries. It may be instructive to quote the arbitration clause in its entirety:

> Any dispute, controversy or claim between the parties arising out of the Agreement, or the breach, termination, or invalidity thereof, unless settled amicably, as provided above, shall be referred by either of the parties to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. For all evidentiary questions, the arbitral tribunal shall be guided by the Supplementary Rules Governing the Presentation and Reception of Evidence in International Commercial Arbitration of the International Bar Association, 28 May 1983 edition. The arbitral tribunal shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential information provided under the Agreement, order the termination of the Agreement, or order that any other protective measures be taken with respect to the goods, services or any other property, whether tangible or intangible, or of any confidential information provided under the Agreement, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to Article 26 ('Interim Measures of Protection') and Article 32 ('Form and Effect of the Award') of the UNCITRAL Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in the Agreement, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate ('LIBOR') then prevailing, and any such interest shall be simple interest only. The parties shall be bound by any arbitration award rendered.[41]

This begs the question whether, for example, a UN Women Writer-Editor in Bosnia and Herzegovina, a World Food Programme (WFP) Associate in the Philippines, or World Health Organization (WHO) Administrative Assistant/Protocol Assistant in Harare, would be able to have recourse to an arbitration of this type as an effective means of dispute settlement. It is very unlikely that there would be equality of arms between the parties if the dispute is between locally recruited staff and organizations with experienced legal services.

These arbitration clauses are a cut-and-paste of the arbitration clause in commercial contracts, and thus totally unsuited for employment disputes.[42] For example, instead of the general principles of the law of international civil service, the arbitral tribunal is supposed to apply general principles of international commercial law. More generally, international commercial arbitration has nothing to do with

41 See website of UNDP <https://procurement-notices.undp.org/view_file.cfm?doc_id=3279> accessed 26 March 2025.

42 In addition, it may raise the issue of costs. See August Reinisch, 'Arbitrating Disputes with International Organisations and Some Access to Justice Issues' (2023) 34(3) King's Law Journal 546, 558.

labour-type issues, unless labour is considered as a commodity.[43] To make meaningful use of the UNCITRAL Arbitration Rules,[44] one would need to have considerable knowledge of these Rules. A locally recruited person in the developing country would be unlikely to deal with such rules without proper legal assistance.

This clause should be considerably revised to provide for a simple, accessible, and free-of-charge mechanism of settlement in case of contract-related, or in fact, employment-related disputes. At least for WFP and WHO, the solution is relatively simple: They have the possibility to entrust the ILOAT with resolving their disputes with the non-staff.[45] Another solution could be to foresee compulsory arbitration within the framework of the ILOAT.[46]

Jurisdiction *ratione materiae* normally covers work-related disputes between organizations and staff members. They involve individual disputes arising from acts allegedly non-conforming to the internal rules of each organization. Typically, this includes disputes relating to the non-extension of employment, disciplinary sanctions, social protection (for example, pension or medical insurance), salaries, entitlements, and performance assessment. However, there are many ways this jurisdiction can be limited. For example, when Statutes provide that only challenges against administrative acts are admissible, this excludes decisions of political organs. This is the situation with the UN system of justice, where decisions of the UN General Assembly and its subsidiary organ, the International Civil Service Commission (ICSC), which are two key organs of the UN Common System, are excluded from the judicial review of the UNDT and the UNAT. This may have far-reaching consequences for the employment conditions of officials.[47] Another limitation is when a Statute, in relation to possible remedies, puts a cap on material damages or requires the tribunal to provide the executive head with two optional remedies (such as reinstatement or a sum of money), which is hardly compatible with the notion of the finality of judgments.[48]

43 This line of reasoning would be contrary to the Constitution of the International Labour Organization (adopted 9 October 1946, entered into force 20 April 1948) 15 UNTS 40, Annex art 1(a).

44 United Nations Commission on International Trade Law, Arbitration Rules (2021) <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/21-07996_expedited-arbitration-e-ebook.pdf> accessed 2 April 2025.

45 See *D D v Green Climate Fund* (n 39).

46 See, for an alternative proposal for compulsory arbitration, Ornella-Wendy Dzomo, *Compulsory Arbitration: A Tool to Enable Access to Justice in the Context of Employment Disputes Involving International Organisations* (Stämpfli 2023).

47 For a criticism, see Anne-Marie Thévenot-Werner, 'Activité et jurisprudence des tribunaux administratifs des Nations Unies et de l'OIT (2021–2022)' (2022) LXVIII Annuaire français de droit international 537, 548–549.

48 See following provisions of the relevant Statutes adopted by the host organizations: Statute of the Asian Development Bank Institute (entered into force October 1996) <www.adb.org/sites/default/files/institutional-document/435686/adbi-statute-2018.pdf> accessed 26 March 2025 art X(1); UNAT Statute art 9(1)(a) and (b); Statute of the OPEC Fund Administrative Tribunal (adopted 16 March 2022) <https://opecfund.org/var/site/storage/original/application/3c5c20a1584e7b4fe67ace82991f4d53.pdf> accessed 26 March 2025 (OPECFAT Statute) art 11.3; Statute of the Administrative Tribunal of the Organization of American States (adopted 22 April 1971) <www.oas.org

## 5. Key Procedural Elements

The procedural rules of each IAT are normally self-contained. Each IAT has developed its own rules of procedure, in addition to elements of procedure set forth in the Statute. Furthermore, there are judicial and practical instructions as well as guidelines provided on the websites of tribunals.[49]

Receivability *ratione temporis* is subject to the respect of deadlines set forth in the Statutes for filing a complaint. The COVID-19 crisis has accelerated recourse to electronic filing, and even tribunals like the ILOAT, which still formally require six hard copies, have at times accepted filing by email[50] and provided for the possibility to ask for hard copies at a later stage and only for voluminous submissions. Even before this crisis, few other tribunals, such as the UNAT, developed a comprehensive court management system for electronic filing.[51]

Most of the IATs operate in a limited number of languages. When nothing is mentioned, English is the only language.[52] When there is more than one language, frequent combinations are English and French[53] or English and Spanish.[54] Before the OAS, submissions can be filed and judgments rendered in one of the four official languages (English, French, Portuguese, and Spanish), and in UNAT, although the working languages are English and French, judgments may be rendered in any of the official languages of the United Nations.

The written proceedings consist of an exchange of written submissions, normally two rounds of them. Recently, some tribunals limited the volume of written submissions. For example, the ILOAT modified its Rules on 9 May 2023. Under the said Rules, unless there is a prior authorization of the President of the Tribunal, the complaint brief and the organization's reply must not exceed 25 pages, while this limit is 10 pages for the complainant's rejoinder and the organization's surrejoinder. These submissions have to be made on A4-sized paper, using normal margins, Times New Roman font style, font size 12, and line spacing of 1.5 lines. The

/ext/en/main/oas/our-structure/agencies-and-entities/tribad/Rules/Statute> accessed 7 April 2025 (OASAT Statute) art IX(2); Statute of the Administrative Tribunal of the African Development Bank (adopted 16 July 1997) <www.afdb.org/fileadmin/uploads/afdb/Documents/Administrative-Tribunal/StatuteoftheAdministrativeTribunal_1312.pdf> accessed 26 March 2025 (AfDBAT Statute) art XIII(2): CoEAT Statute art XVI(16.2) and Statute of the Administrative Tribunal of the International Monetary Fund (adopted and entered into force 15 November) <www.imf.org/external/imfat/pdf/2020_Amended-Statute.pdf#page=3> accessed 26 March 2025 (IMFAT Statute) art XIV.

49 See website of NATO <www.nato.int/nato_static_fl2014/assets/pdf/2021/5/pdf/210527-Complaints-Process_EN.pdf> accessed 7 April 2025.

50 See ILOAT, 'Order of the Tribunal Concerning Filing of Written Submissions' (24 May 2022) <www.ilo.org/resource/order-tribunal-concerning-filing-written-submissions> accessed 7 April 2025.

51 See website of UNAT <www.un.org/en/internaljustice/unat/e-filing.shtml> accessed 26 March 2025.

52 WBAT, OPECFAT, AsDBAT, in IMFAT this is specifically stated.

53 NATOAT, ILOAT, AfDBAT and CoEAT.

54 IADBAT.

Organization of American States Administrative Tribunal (OASAT)[55] and UNAT have similar provisions on the limit of pages.

Notably, IATs' approach regarding oral proceedings differs. While IATs' Statutes and Rules mention oral hearings, most of them leave them to the wisdom of the tribunal.[56] Only a few IATs make holding a hearing the general rule, subject to exceptions.[57]

Expenses of the tribunals and the proceedings are normally covered by the organization against which the complaint is made. This is the price to pay to preserve the immunity from national jurisdiction. A staff member who prevails with her or his arguments may be awarded reasonable costs for her or his participation in the proceedings.[58] In the case of OASAT or the UNAT, the costs may also be ordered against the staff member if she or he loses the case.[59]

IATs normally have their seat in the headquarters of the host organizations, and that is where the registries are based and in-person deliberations are held. Most of the internal rules say that proceedings leading to judgments are confidential. Since the parties' submissions are not publicly accessible, IATs often provide details of the parties' arguments in their judgments. As for the IAT's deliberations, only the final judgment is made public.

## 6. Judges[60]

Although some Statutes refer to 'members'[61] and not judges, they are all elected to the bench for a certain duration and not for a specific case.

The number of judges varies. Most of the IATs have an uneven number of judges—three,[62] five,[63] or seven.[64] However, there are tribunals with an even number of members—six[65]or eight.[66] Tribunal members are typically nominated by the

55 Rules of Procedure of the Administrative Tribunal of the Organization of American States (adopted 24 October 1975) <www.oas.org/ext/Portals/31/documents/RULES OF PROCEDURE OF THE ADMINISTRATIVE TRIBUNAL 772016 350.pdf> accessed 26 March 2025 (OASAT Rules) art 26.

56 ILOAT, WBAT, IADBAT, AsDBAT, OASAT, AfDBAT, and IMFAT.

57 NATOAT and CoEAT.

58 See below n 88.

59 OASAT Rules art 50(7); UNAT Statute art 9(2).

60 Due to the specific nature of the dispute resolution mechanism described in this chapter, the section heading differs from the comparative grid used in other chapters of Part III of this book, where it is entitled 'Arbitrators'.

61 For example, Statute of the Administrative Tribunal of the International Bank for Reconstruction and Development, International Development Association and International Finance Corporation (adopted 30 April 1980) <https://tribunal.worldbank.org/sites/default/files/documents/WBAT-Statute-Rules.pdf> accessed 26 March 2025 (WBAT Statute).

62 CoEAT and OECDAT have three judges and also three deputies.

63 AsDBAT, BISAT, EBRDAT, ESMAT, NATOAT, OPECFAT.

64 ILOAT, UNAT, IMFAT, WBAT, IADBAT.

65 OASAT, AfDBAT.

66 CSAT.

highest authorities within the organization concerned,[67] usually composed of member states' representatives. Consultation with the staff representative bodies about whom to nominate as a judge is rather exceptional.[68] Judges must be nationals of one of the member states, but not two of them can be of the same nationality.

There is no uniformity in the duration of the judges' mandate. The initial appointment may be for two,[69] three,[70] four,[71] five,[72] or six[73] years, and most of the IATs foresee the possibility of a limited number of renewals.

The profile of judges varies.[74] Some IAT judges are professional judges at various levels of the national judicial system of a member state, but there are also former international civil servants, professors of law, attorneys, and arbitrators. Some of them may be totally unfamiliar with the law of international civil service, the way IOs function, the systems of protection that civil servants enjoy nationally, or the privileges and immunities that IOs enjoy.

The nominations are sometimes the result of political bargaining, insisting on geographical representation and nationality, rather than on expertise or national experience mirroring best practices of protection of national or international civil servants. Given the differences among States in the level of protection of workers, especially those in the public sector, newly appointed judges coming from States with less protection may be tempted to reduce the level of protection within the international civil service. They may be unfamiliar with developments in the law of international civil service that have taken place over almost 100 years of its existence. They may further compromise some basic elements by simply transposing national concepts.

One of the most obvious examples was the approach of the UNAT judges towards the concept of acquired rights. Since the very first judgment[75] of the first international administrative tribunal (created by the League of Nations), the notion of acquired rights has been a pillar of protection for international officials.[76] All

67 For example, by the International Labour Conference, the UN General Assembly, the OECD Council, the ECtHR, by the Committee of Ministers of the Council of Europe, etc. Rare are examples where the chief executive officer, such as the Managing Director of the IMF, appoints the judges.

68 This is the case in the IMF and only for the President of the Tribunal. The AsDB and IADB provide involvement of staff representatives, but only as members of an advisory committee with a wider composition.

69 Administrative Tribunal of Mercosur.

70 AfDBAT, AsDBAT.

71 TCSAT, BISAT, CoEAT, IMFAT.

72 ILOAT, ESMAT, OPECFAT, the WBAT.

73 IADBAT, OASAT, UNAT.

74 See, for more details, Dražen Petrović, 'Judges of the International Administrative Tribunals' in Linos-Alexandre Sicilianos, Iulia Motoc, Robert Spano and Roberto Chenal (eds), *Intersecting Views on National and International Human Rights Protection: Liber Amicorum Guido Raimondi* (Wolf Legal 2019) 721–732.

75 *Di Palma Castiglione v International Labour Office* Judgment no 1 (Administrative Tribunal of the League of Nations, 15 January 1929).

76 In *Biggio (No 3), Van Moer (No 2) and Fournier v International Patent Institute* Judgment no 366 (ILOAT, 13 November 1978), the ILOAT explained that

other IATs since then have respected this notion. However, the UNAT judges adopted the definition from national laws, without making any reference to the meaning of acquired rights adopted by other IATs.[77] By this different approach, the UNAT judges put in jeopardy one of the basic notions on which the UN Common System is based.

Selection of judges must be done carefully, according to some predetermined criteria. That is why the ILO, for the ILOAT, insists informally on the following: Candidates must be national judges of high or supreme judicial organs, need to have experience in labour and administrative law disputes, and must be able to deal with written submissions in English and French. Those are the two official languages of the ILOAT, and the case files can legitimately contain documents written in both languages without the need to provide their translation.

Although most of the Statutes impose high moral and professional standards for the judges, few IATs considered it necessary to adopt a code of conduct for their judges.[78] Like many codes of conduct, they do not have mechanisms of compliance and enforcement.

## 7. Applicable Law

IATs apply principally the internal rules of the organization.[79] This is a combination of general rules adopted by the governing bodies (such as staff regulations and staff rules) and the executive heads (such as administrative circulars and general instructions). The written rules may be supplemented by the administrative practice. What is normally challenged before IATs is the application of those rules to an official in the form of administrative acts, including payslips.

Another source of law is of a contractual nature, and the IATs may examine the terms of the employment contract between the organization and the official. Finally, IATs may apply some general principles of law.[80]

Hierarchy between various legal instruments is normally determined by the IAT. However, in the OAS, the Statute of the OASAT states specifically that the internal rules of the organization take precedence over general principles of labour law and

---

A right is acquired when he who has it may require that it be respected notwithstanding any amendment to the rules. In particular, it may be either a right which arises under an official's contract of appointment and which both parties intend should be inviolate, or a right which is laid down in a provision of the Staff Regulations or Staff Rules and which is of decisive importance to a candidate for appointment.

77 'An "acquired" right should be purposively interpreted to mean a vested right; and employees only acquire a vested right to their salary for services already rendered.' See *LIoret Alacañiz et al v Secretary General of the United Nations* Judgment no 2018-UNAT-840 (UNAT, 29 June 2018) para 90.

78 In NATOAT, AsDBAT, WBAT, IMFAT, CoEAT, UNDT and UNAT.

79 See Yaraslau Kryvoi, 'The Law Applied by International Administrative Tribunals: From Autonomy to Hierarchy' (2015) 47(2) George Washington International Law Review 267; Dražen Petrović, 'Le droit applicable devant le Tribunal administratif de l'Organisation internationale du travail' [2017] I Revue de droit administratif et de droit fiscal 537.

80 See Laurent Germond, *Les principes généraux selon le tribunal administratif de l'O.I.T.* (Editions A. Pedone 2009). For an analysis of the presence of the concept of fairness in the case law, see Kryvoi, Procedural Fairness (n 8).

the laws of any member state. Within those internal rules, the UN Charter is the instrument of the highest legal order, followed by the resolutions of the General Assembly, and then by the resolutions of the Permanent Council, and finally by the norms adopted by the other organs under the UN Charter, each acting within its respective sphere of competence.[81]

While IATs rely systematically on their own case law, they sometimes quote the jurisprudence of other IATs. Most IATs quote judgments of the ILOAT, as this tribunal has the most extensive case law, easily accessible through its database called TRIBLEX. What is not applicable are the rules of other IOs and the domestic law, unless there is a direct reference to it in the internal legislation.[82]

## 8. Judgments and Enforcement[83]

Normally, the judgments are final and subject only to a limited review by the tribunals themselves. There is no involvement of national courts. Even the possibility that an advisory opinion be requested from the International Court of Justice (ICJ) regarding judgments of ILOAT and UNAT was deleted from their Statutes. In fact, IATs have the *Kompetenz-Kompetenz*, sometimes recognized explicitly.[84]

Nevertheless, most of the IATs provide for the possibility of a limited internal review of judgments. They can rectify clerical or arithmetical errors.[85] Most of them have the power to revise, interpret, or clarify their own judgments. Few have the express power to deal with claims that judgments were not properly executed and to order measures of execution.[86]

As a general rule, judgments are available publicly, either as a printed copy deposited in the archive of the host organization, or electronically at the website of

81 OASAT Statute art I(v).

82 See Dražen Petrović, 'Domestic Law and International Administrative Tribunals' in Jorge Viñuales, Andrew Clapham, Laurence Boisson de Chazournes and Mamadou Hébié (eds), *The International Legal Order in the XXIst Century: Essays in Honour of Professor Marcelo Gustavo Kohen* (Brill Nijhoff 2023) 611–627.

83 Due to the specificities of the dispute settlement mechanism described in this chapter, the section heading differs from the comparative grid followed in other chapters of Part III of this book where it is entitled 'Awards and enforcement'.

84 In the following provisions of their respective Statutes: WBAT Statute art III; OPECFAT Statute art III; Statute of the Administrative Tribunal of the Asian Development Bank (adopted 1991) <www.adb.org/sites/default/files/institutional-document/33394/statute-adb-tribunal.pdf> accessed 26 August 2025 art III; OASAT Statute art II(5); AfDBAT Statute art V(2); CoEAT Statute art II(2.6); IMFAT Statute art IV.

85 Rules of Procedure of the Administrative Tribunal of the North Atlantic Treaty Organization (adopted 1 July 2013); Appendix 1 to Annex IX of the Civilian Personnel Regulations of the North Atlantic Treaty Organization <www.nato.int/nato_static_fl2014/assets/pdf/pdf_2015_09/20150902_150902-cpr-en.pdf> accessed 1 April 2025 rule 28; Rules of Procedure of the Administrative Tribunal of the Asian Development Bank (adopted 1992) <www.adb.org/sites/default/files/institutional-document/33395/administrative-tribunal-rules.pdf> accessed 2 April 2025 rule 22(1); OASAT Statute art XI(2); AfDBAT Statute art XII(3); IMFAT Statute art XVII; UNAT Statute art 11(2).

86 ILOAT and CoEAT.

the tribunal. While the names of third parties[87] are always anonymized, the ILOAT, since the year 2000, anonymizes the names of complainants and interveners in the version available on the Internet, in its TRIBLEX database, while the original version printed in the collection of judgments contains their full names. In June 2019, the ILOAT introduced in its Rules a new provision enabling it to grant requests for anonymity even in the original judgments. The Tribunal may grant a request for anonymity 'where disclosure of the identity of the complainant or intervener in a judgment is likely to be seriously prejudicial to that person's interests'.[88]

Remedies ordered by judgments for successful complainants, in addition to rescinding impugned administrative decisions, typically include monetary compensation for material and, if applicable, moral damages. They also include provision for costs, although rarely based on actual costs incurred by the complainants and evidenced by invoices.[89] The most controversial remedy is the reinstatement of the complainant whose employment had been unlawfully terminated. Only ILOAT and OASAT have unlimited statutory power to order reinstatement.[90]

Most of the other IATs must make a monetary equivalent to a non-monetary order so that the executive head can decide, 'in the interest of the organization', whether to implement a non-monetary order, such as reinstatement or pay a sum of money, normally limited to two or three years of salary. Thus, the final decision on award is taken by the executive head. When one knows that agreed termination negotiations often involve the payment of 12–18 months' salary of an official, giving the executive head the possibility to get away with a two-year salary payment in the case of unlawful termination of employment, if not properly monitored by the governing bodies of an organization, may be an encouragement for abusive and arbitrary dismissals. There seems to be no publicly available mechanism obliging executive heads to report and justify to the governing bodies their preference for payment over reinstatement of a staff member.

One IAT, created by the African Development Bank, can also give advisory opinions 'on any question of law concerning the general administration of the Bank'.[91]

87 This expression covers persons not party to the dispute before the ILOAT, such as supervisors, colleagues, and witnesses, who are mentioned in the judgment.

88 Rules of the Administrative Tribunal of the International Labour Organization (adopted 24 November 1993) <www.ilo.org/resource/rules-administrative-tribunal-international-labour-organization> accessed 1 April 2025 art 7B(3).

89 In *Lamadie v International Patent Institute* Judgment no 262 (ILOAT, 27 October 1975) consideration 6, the ILOAT explained that 'costs are payable only to the extent warranted by the circumstances of the case, that is to say its nature, importance and complexity and the actual contribution made by the complainant or his counsel to the proceedings'. The ILOAT specifically stated that ordinarily it does not award 'actual' costs. See *H (No 12), F (No 7), L M (No 2), M (No 3) and S v World Intellectual Property Organization* Judgment no 4155 (ILOAT, 3 July 2019) consideration 12.

90 See, eg, OASAT Statute art IX.

91 AfDBAT Statute art IV.

## 9. Relationship Between IATs and Domestic/International Courts[92]

There is no direct relationship between IATs and domestic courts. Only indirectly can an individual allege before a national court the violation of access to justice, in case an IAT declares itself incompetent to hear a case.[93] In Judgment 2657, the ILOAT, having declared itself incompetent to hear the case, noted that its judgment created a legal vacuum and considered it 'highly desirable that the Organisation should seek a solution affording the complainant access to a court, either by waiving its immunity or by submitting the dispute to arbitration'.[94] The possibility for the ICJ to issue an advisory opinion on the judgments rendered by the ILOAT and UNAT was discontinued, respectively, in 2016 and 1995.

## 10. Outlook and Trends

IATs are an essential element of the rule of law in IOs. Recognition of an IAT is crucial for asserting immunity from jurisdiction of an IO in relation to labour disputes, while still guaranteeing access to justice. When there is no mechanism for resolving such disputes, the situation is rather clear, and the national authorities, at least in Europe, are bound to intervene.[95] However, the mere existence of an IAT is not sufficient to fully protect an organization from the jurisdiction of national courts. The statutory jurisdiction of those tribunals may leave some gaps, either regarding the categories of persons who may have access to the IAT concerned or regarding subject matter on which the IAT may not have jurisdiction, such as extra-contractual liability or limits as to what could be awarded. In those situations, the immunity from jurisdiction may be successfully challenged before the national court, provided that no other mechanism, such as arbitration, is foreseen for disputes not covered by the IAT's jurisdiction.[96]

A reason for concern regarding IATs is their recent proliferation. Creating an IAT for each organization risks compromising the way international civil service functions today. When an IAT is created by the organization, the administration, which is a defendant in the proceedings, has a privileged position compared to the staff. The organization is often an intermediary between the judges and the governing organs, which normally make the decision to create a tribunal, elect its judges, and adopt its Statute. The very authority which is subject to judicial control proposes—mostly autonomously—how that control should be exercised.

92 Due to the specific nature of the dispute resolution mechanism described in this chapter, the section heading differs from the comparative grid used in other chapters of Part III of this book, where it is entitled 'Relationship between arbitration tribunals and domestic/international courts'.

93 *Klausecker v Germany* App no 415/07 (ECtHR, 6 January 2015).

94 *R K v European Patent Organisation* Judgment no 2657 (ILOAT, 11 July 2007) consideration 6.

95 For the situation of OPEC in Austria, see Judgment SV 1/2021-23 (Austrian Constitutional Court, 29 September 2022).

96 See *FL and TL v ZR (President of the European Space Agency) and XU (President of CNES)* no RG 20/17725 (Paris Court of Appeal, 16 January 2024).

The whole system of IATs created by the States is based on the idea that staff members should feel comfortable at work and have at their disposal a credible mechanism for raising their legal concerns. Hence, creating and adjusting such a mechanism without any involvement of the staff risks undermining its credibility and the very purpose of existence of such tribunals.

Proliferation of IATs creates another risk: The applicable rules may be drafted in different ways, depending on who is consulted for their preparation and how vigilant and competent the State representatives involved in the decision-making process are. This may create a different level of protection for the staff based in the same country but working for different organizations. Not only is this incomprehensible, but it also risks creating an atmosphere in which the immunity from jurisdiction of all those organizations may be challenged by national courts.

Moreover, the creation of more IATs triggers the nomination of more judges. The criteria for their selection are often not clear, especially when there is competition between States to have their nationals nominated as judges. For some of these individuals, it is the first time they would deal with issues involved in the case law of IATs. This may result in significant differences in the case law. It should be recalled that the aim is not simply to have a tribunal, but to offer an equivalent level of protection as is normally available under national law dealing with the same issues. To achieve this is not easy: On the one hand, although grouping organizations to create a single IAT may be tempting, it risks creating a backlog and delayed justice; on the other hand, creating many IATs risks weakening international civil service law. More reflection on IATs may thus be beneficial to the entire multilateral structure.