

16 September 2025

Answers for the International Monetary Fund Administrative Tribunal Questionnaire on the subject of general principles

I. Identification methods

- 1) On what legal basis (written rule, implied power, etc.) does your tribunal recognise the applicability of general principles?

The founding document of the IMF Administrative Tribunal (the “Tribunal” or the “IMFAT”) – the Statute of the Administrative Tribunal (the “Statute”) – provides that the Tribunal will apply the “internal law of the Fund”¹ when deciding on an application. In addition, the internal law of the Fund expressly “incorporates ‘generally recognized principles of international administrative law concerning judicial review of administrative acts.’”² The second sentence of Article III of the Statute indeed provides:

“In deciding on an application, the Tribunal shall apply the internal law of the Fund, *including* generally recognized principles of international administrative law concerning judicial review of administrative acts.”³

The Commentary on the Statute elaborates on the “internal law of the Fund”, noting that “the internal law of the Fund includes both formal, or written, sources and unwritten sources,”⁴ which in turn comprise “the administrative practice of the organization” and “general principles of international administrative law, such as the right to be heard (the doctrine of *audi alteram partem*)”⁵ Article III “calls upon the tribunal to adhere to and apply”⁶ these principles, which “are so widely accepted and well-established in different legal systems that they are regarded as generally applicable to all decisions taken by international organizations, including the Fund.”⁷ As further discussed in response to question 5, the Commentary on the Statute also states that this reference to general principles of international administrative law was “intended to limit the powers of the [T]ribunal” in its review of employment-related decisions by the Fund.⁸

¹ [Article III of the Statute.](#)

² [Celia Goldman, “Finding the law of the international civil service in the jurisprudence of sister tribunals”, 90 years of contribution of the Administrative Tribunal of the International Labour Organization to the creation of international civil service law, Geneva, ILO, 2017](#), p. 44. (Emphasis added.)

³ [Article III of the Statute.](#) (Emphasis added.)

⁴ [Commentary on the Statute](#), p. 17.

⁵ *Id.*, p. 18.

⁶ *Id.*, p. 17.

⁷ *Id.*

⁸ *Id.*

2) Does your tribunal make a distinction between “general principles of law derived from national legal systems” and “general principles of law formed within the international legal system”, and perhaps other principles (e.g. the general principles of international civil service law, etc.)? If so, which ones, for what reason(s) and what are the implications?

To date, the IMFAT has not made any pronouncement on this particular distinction. As a general rule, the Tribunal makes reference to “generally recognized principles of international administrative law”, as contemplated in Article III of its Statute. For example, in *Mr. “R”*, a case in which the Tribunal “ruled expressly for the first time that the principle of nondiscrimination serves as a constraint on management’s discretionary authority,”⁹ the Tribunal began its analysis on that principle as follows:

“Article III of its Statute requires the Administrative Tribunal to apply the internal law of the Fund, ‘... including generally recognized principles of international administrative law concerning judicial review of administrative acts.’ It is a well-established principle of international administrative law that the rule of nondiscrimination imposes a substantive limit on the exercise of discretionary authority in both the policy-making and administrative functions of an international organization.”¹⁰

The Tribunal regularly refers to variations of the phrase used in Article III. For example, in the “XX” case, the Tribunal referred both to “generally recognized principles of international civil service law”¹¹ and “general principles of international administrative law.”¹² In “WW”, the Tribunal used the terms “general principle guiding international administrative tribunals” when discussing the requirement that a causal link exist between an allegedly improper motive and a challenged decision.¹³

In a number of cases, the Tribunal has referred to general principles that are also applied beyond the realm of international administrative law in international litigation, such as due notice of rights and obligations.¹⁴ It has also made reference to “universally accepted principles of human rights”, as further discussed in response to questions 3(a) and (d), 7, and 8(a).¹⁵

3) How does your tribunal go about identifying a general principle?

⁹ Celia Goldman, “Developments in the Jurisprudence of the International Monetary Fund Administrative Tribunal: 2000-2002”, *IMF Administrative Tribunal Reports, Vol. II*, p. 6.

¹⁰ *Mr. “R”, Applicant v. International Monetary Fund, Respondent, Judgment No. 2002-1 (March 5, 2002)*, para. 30.

¹¹ *“XX”, Applicant v. International Monetary Fund, Respondent, Judgment No. 2024-5 (December 30, 2024)*, para. 65.

¹² *Id.*, para. 132.

¹³ *“WW”, Applicant v. International Monetary Fund, Respondent, Judgment No. 2024-1 (February 12, 2024)*, para. 170. See also *“TT”, Applicant v. International Monetary Fund, Respondent, Judgment No. 2022-1 (June 30, 2022)*, para. 159; *Mr. “F”, Applicant v. International Monetary Fund, Respondent, Judgment No. 2005-1 (March 18, 2005)*, para. 73. In *Ms. “GG” (No. 2), Applicant v. International Monetary Fund, Respondent, Judgment No. 2015-3 (December 29, 2015)*, the Tribunal did not use the phrase “general principle guiding international administrative tribunals” but invoked to the principle itself and referred to *Mr. “F”*. See *Ms. “GG” (No. 2)*, para. 330. See also the reference to “fundamental principles of workplace fairness, principles that are shared to a significant extent among international intergovernmental organizations” in *Ms. “GG” (No. 2)* at para. 449, and “general principles of fair treatment in the workplace” in *Mr. “KK”, Applicant v. International Monetary Fund, Respondent, Judgment No. 2016-2 (September 21, 2016)*, para. 201.

¹⁴ In *M. D’Aoust*, the Tribunal held that “notice by which rights and obligations are clearly conveyed is a requirement not only of due process . . . as a general proposition, it is held to be required by ample judicial authority.” (*Mr. M. D’Aoust, Applicant v. International Monetary Fund, Respondent, Judgment No. 1996-1 (April 2, 1996)*, para. 37.) In *Ms. “B”*, the Tribunal expressly suggested that the principle formulated in *D’Aoust* could be characterized as a general principle of international administrative law. See *Ms. “B”, Applicant v. International Monetary Fund, Respondent, Judgment No. 1997-2 (December 23, 1997)*, para. 56.) In *Ms. “PP”, Applicant v. International Monetary Fund, Respondent, Judgment No. 2021-1 (May 20, 2021)*, the Tribunal merely used the terms “general principles” (“the general principles of notice and fair hearing that underlie [Fund] regulations [concerning misconduct cases]”) (para. 108).

¹⁵ See, e.g., *Mr. “F”, Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2005-1 (March 18, 2005), para. 81*; *Ms. “M” and Dr. “M”, Applicants v. International Monetary Fund, Respondent, IMFAT Judgment No. 2006-6 (November 29, 2006), paras. 123-126.*

- a. By reference to national law? If so, which national law? Does your tribunal do a comparative law analysis, even if it is only a limited one? How are difficulties in translating legal concepts overcome?

The Commentary on Article III of the Statute provides:

“The second sentence of this Article calls upon the tribunal to adhere to and apply generally recognized principles for judicial review of administrative acts. These principles have been extensively elaborated in the case law of both international administrative tribunals and *domestic judicial systems*, particularly with respect to review of decisions taken under discretionary powers.”¹⁶

The Commentary further states that “certain general principles of international administrative law are so widely accepted and well-established in *different legal systems* that they are regarded as generally applicable to all decisions taken by international organizations, including the Fund.”¹⁷

Despite the reference to “domestic judicial [and] legal systems” in the Commentary,¹⁸ the IMFAT has not expressly referred to specific national laws as a means of identifying general principles. However, the Tribunal has had the opportunity to explore the relationship between the internal law of the Fund, including general principles of international administrative law, and the domestic law of member states.

In *Mr. “P” (No. 2)*, the applicant and his former spouse each argued that the Tribunal ought to give effect to a different divorce judgment – one obtained by the applicant in Egypt and the other by the former spouse in Maryland – for purposes of applying a provision of the Fund’s Staff Retirement Plan (“SRP”), which authorized, under certain conditions, payment deductions from a retiree’s pension entitlements.¹⁹

The Tribunal provided the following analysis on the law applicable to the dispute:

“Under its Statute, the Administrative Tribunal has no competence to pass upon the validity of municipal law as interpreted and applied by the legal authorities of either Maryland or Egypt. Hence, whether the Maryland Court correctly applied Maryland law may be regarded as a question that only the Maryland courts are competent to answer. As no appeal has been taken, the Administrative Tribunal regards the Circuit Court decision as the prevailing statement of Maryland law under the circumstances of the case. Similar considerations apply to the validity of the Egyptian divorce.

The Tribunal accordingly must take as its starting point, supported by the record in this case, that the Maryland Judgment of Absolute Divorce is valid under Maryland law and that the Egyptian divorce as recorded by a religious notary and registered with Egyptian civil authorities is valid under Egyptian law.”²⁰

In the face of these two conflicting domestic court decisions, the Tribunal held that it had to apply “the public policy of the organization,”²¹ which was “embodied”²² in the provisions of the SRP:

¹⁶ [Commentary on the IMFAT’s Statute, p. 17](#). (Emphasis added.)

¹⁷ *Id.*, p. 18. (Emphasis added.)

¹⁸ The IMFAT has cited these particular parts of the Commentary in some of its Judgments, but not to extract general principles from a set of different legal or judicial systems. See, e.g., [Ms. “J”, Applicant v. International Monetary Fund, Respondent, Judgment No. 2003-1 \(September 30, 2003\)](#), para. 104; [“YY”, Applicant v. International Monetary Fund, Respondent \(Admissibility of the Application\), IMFAT Judgment No. 2024-3 \(June 7, 2024\)](#), para. 63.

¹⁹ The SRP authorized the Fund to give effect to orders for spousal and child support, and for division of marital property by deducting payments from a retiree’s pension entitlements. See Celia Goldman, “Developments in the Jurisprudence of the International Monetary Fund Administrative Tribunal: 2000-2002”, [IMF Administrative Tribunal Reports, Vol. II](#), p. 3.

²⁰ [Mr. “P” \(No. 2\), Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2001-2 \(November 20, 2001\)](#), paras. 146-147.

²¹ *Id.*, para. 150.

²² *Id.*, para. 151.

“The underlying purpose of the policy is to encourage enforcement of orders for family support and division of marital property, and hence the policy favors legal systems in which such measures are recognized.

Moreover, the Fund’s internal law favors legal decisions that are the result of adversary proceedings, in which reasonable notice and the opportunity to be heard are the essential elements. The jurisprudence of the Administrative Tribunal has applied notice and hearing as essential principles of international administrative law.”²³

Having reviewed a number of other factors, including the “cardinal importance” of the Maryland judgment’s compliance with “the criteria of enforceability set out in the internal law of the Fund,”²⁴ the Tribunal concluded in favor of the former spouse, noting that it did not enforce any national laws or judgments, but applied “what may be termed the public policy of its forum, namely, the internal law of the Fund.”²⁵

In *Ms. “M” and Dr. “M”*, the Tribunal had a further opportunity to make pronouncements on the relationship between the internal law of the Fund and domestic law in a dispute relating to the same provision of the SRP. Ms. “M” and her mother Dr. “M” challenged the Fund’s decisions denying their reiterated requests to give effect under the SRP to a series of child support orders issued by German courts by deducting support payments for Ms. “M” from the pension payments of Mr. “N”, a retired participant in the SRP.²⁶ Dr. “M” and Mr. “N” had never been married and the German court orders were silent as to whether the support payments to Ms. “M” could be drawn from Ms. “N”’s SRP pension payments. The applicants challenged the denial of their first request as discriminatory on the ground that the version of the SRP applicable at the time effectively precluded requests for child support by or on behalf of children born out of wedlock.²⁷ The applicants also contended that the SRP did not require the German court orders to expressly direct payment from the retiree’s SRP pension benefits to Ms. “M”.²⁸

In summary, the Tribunal made the following two main holdings with respect to the applicable law:²⁹

1. Building on its earlier jurisprudence,³⁰ the Tribunal held that even though the Fund’s nondiscrimination law did not expressly refer to discrimination on the ground of birth, “the pertinence of principles of human rights to practices of the Fund” was “reflected” by other Fund rules and the jurisprudence of this Tribunal.³¹ Because the Fund’s classification that distinguished between married and unmarried persons failed to take into consideration the effects of this classification on children born out of wedlock, the challenged rule was incompatible with “contemporary standards of human rights” and the “international standards of nondiscrimination that the Fund itself professes.”³²
2. The Tribunal again relied on the notion of “public policy of the forum”, as it had first done in *Mr. “P” (No. 2)*. By deciding that the SRP could be interpreted so as to permit giving effect to court orders that did not expressly provide that child support payments be made from the

²³ *Id.*, paras. 151, 152.

²⁴ *Id.*, para. 155.

²⁵ *Id.*, para. 156.

²⁶ [Ms. “M” and Dr. “M”, Applicants v. International Monetary Fund, Respondent, IMFAT Judgment No. 2006-6 \(November 29, 2006\)](#), para. 1. See also Celia Goldman, “Developments in the Jurisprudence of the International Monetary Fund Administrative Tribunal: 2006”, [IMF Administrative Tribunal Reports, Vol. V](#), pp. 2-3.

²⁷ [Ms. “M” and Dr. “M”, Applicants v. International Monetary Fund, Respondent, IMFAT Judgment No. 2006-6 \(November 29, 2006\)](#), para. 2.

²⁸ *Id.*, para. 5.

²⁹ For a more detailed analysis of both holdings – on principles of human rights and the policy of the forum – see Celia Goldman, “Developments in the Jurisprudence of the International Monetary Fund Administrative Tribunal: 2006”, [IMF Administrative Tribunal Reports, Vol. V](#), pp. 2-10.

³⁰ [Mr. “F”, Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2005-1 \(March 18, 2005\)](#).

³¹ *Id.*, para. 126.

³² *Id.*, para. 132.

Fund's pension benefits, the Tribunal "respond[ed] to the policy of its forum, namely, the internal law of the Fund, which favors enforcement of family support orders wherever they originate and however drafted."³³

b. By reference to your tribunal's previous case law?

While the IMFAT does refer to its previous case law when enunciating general principles of international administrative law, its judgments show that it also often refers to (i) the Commentary on the Statute and (ii) the case law of other international administrative tribunals. The examples provided below illustrate this tendency to refer to these three sources. As has been pointed out, "[f]or relatively newer tribunals, and for those with small caseloads" such as the IMFAT, considering and "wrestl[ing]" with the non-binding precedents of sister tribunals has "particular utility."³⁴ The need to do so may then become less compelling "[a]s a tribunal matures."³⁵

The examples discussed below illustrate this approach.

In *Ms. "B"*, one of the first cases of the Tribunal, when determining whether reasonable notice of a change in policy was required by general principles of law, the Tribunal first referred to, and discussed, its earlier Judgment in the first *D'Aoust* case.³⁶ The Tribunal then referred to cases of the IDBAT and OASAT.³⁷

In *Ms. "J"*, the Tribunal enumerated a number of "principles" that the Commentary on the Statute had "articulated" and that its jurisprudence had "confirmed" with regard to the standard of review of administrative decisions:

"The IMFAT's jurisprudence has confirmed many of the principles articulated in the Statutory Commentary. Hence, in a variety of contexts, the Administrative Tribunal, in discharging its responsibility to review the lawfulness of challenged administrative acts, has acknowledged, and deferred to, the exercise of the managerial discretion of the Fund. (See, e.g., *Mr. "R", Applicant, International Monetary Fund, Respondent*, IMFAT Judgment No. 2002-1 (March 5, 2002), para 65: "The management of the Fund necessarily enjoys a managerial and administrative discretion which is subject only to limited review by this Tribunal.") This deference is at its height when the Tribunal reviews regulatory decisions (as contrasted with individual decisions), especially policy decisions taken by the Fund's Executive Board. See, e.g., *Ms. "G", Applicant and Mr. "H", Intervenor v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2002-3 (December 18, 2002), para. 80 (reviewing Executive Board's decision on expatriate benefits). See also *Ms. "Y" (No. 2)*, paras. 42-52 (implementation of ad hoc discrimination review procedure was a proper exercise of Fund's discretionary authority).

In cases involving the review of individual decisions taken in the exercise of managerial discretion, the Administrative Tribunal consistently has invoked the standard set forth in the Commentary as follows:

'... with respect to review of individual decisions involving the exercise of managerial discretion, the case law has emphasized that discretionary decisions cannot be overturned unless they are shown to be arbitrary, capricious, discriminatory, improperly motivated, based on an error of law or

³³ *Id.*, para. 155.

³⁴ [Celia Goldman, "Finding the law of the international civil service in the jurisprudence of sister tribunals", 90 years of contribution of the Administrative Tribunal of the International Labour Organization to the creation of international civil service law, Geneva, ILO, 2017](#), p. 47.

³⁵ *Id.*, p. 47.

³⁶ [Ms. "B", Applicant v. International Monetary Fund, Respondent, Judgment No. 1997-2 \(December 23, 1997\)](#), paras. 56-61.

³⁷ See *id.*, paras. 61-63.

fact, or carried out in violation of fair and reasonable procedures.’

(Report of the Executive Board, p. 19.) See, e.g., *Mr. “R”*, para. 32; *Ms. “Y” (No. 2)*, para. 53.”³⁸

Further in the *Ms. “J”* Judgment, the Tribunal also extensively discussed the general principles invoked in decisions of other international administrative tribunals, including the International Labour Organization Administrative Tribunal (ILOAT), the UN Administrative Tribunal (UNAdT), and the World Bank Administrative Tribunal (WBAT), on the appropriate standard of review relevant to the dispute at hand.³⁹

Other examples include *Ms. “GG” (No. 2)*, a more recent case in which the Tribunal was able to rely on its own multiple precedents establishing general principles on compensation for intangible injury.⁴⁰ The first of these precedents, *Ms. “C”*, had identified the relevant general principle in part by referring to earlier cases of the UNAdT and the WBAT, with which the IMFAT’s analysis was seen as “consonant.”⁴¹

In “*TT*”, the Tribunal relied on its holding in *Mr. “RR”* regarding the existence of a general principle of international administrative law imposing on the decision maker “the obligation to give a reasoned written explanation for [her/his] decision, particularly where the decision has a profound and fundamental impact on the employment status of a person.”⁴² In *Mr. “RR”*, after formulating the general principle, the Tribunal had referred to judgments of the United Nations Appeals Tribunal and the WBAT in support of the identification of this general principle.⁴³

c. By reference to the case law of other international administrative tribunals? If so, which ones? Is this reference explicit in the judgments handed down or does your tribunal refer to such case law only when preparing judgments?

As noted in response to question 3.b, the IMFAT does refer to the case law of other international administrative tribunals when identifying general principles of international administrative law. The Commentary on the Statute itself contemplates that the IMFAT will consider the jurisprudence of other international administrative tribunals in its endeavor “to adhere to and apply generally recognized principles for judicial review of administrative acts” because “[t]hese principles have been extensively elaborated in the case law of both international administrative tribunals and domestic judicial systems, particularly with respect to review of decisions taken under discretionary powers.”⁴⁴ In addition, the IMFAT “is expected to recognize the limitations observed by other administrative tribunals of international organizations in reviewing the exercise of

³⁸ *Ms. “J”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2003-1 (September 30, 2003), paras. 105-106.

³⁹ *Id.*, paras. 118-127.

⁴⁰ The Tribunal referred to a general principle of international administrative law, previously spelled out in the *Negrete* Judgment, to award compensation for intangible injury: “Intangible injury ordinarily arises when the Fund fails through inaction to discharge a duty imposed by its written law or by general principles of international administrative law, such as the obligation to take decisions in accordance with fair and reasonable procedures. Compensation for intangible injury responds to staff members’ legitimate expectations that the Fund will act in accordance with the rule of law.” (*Ms. “GG” (No. 2)*, para. 445, referring to *Mr. S. Negrete, Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2012-2 (September 11, 2012)*, para. 151.) This principle had already been invoked by the Tribunal in a series of earlier Judgments, which the Tribunal had discussed in some detail in the *Negrete* case (see *Negrete*, paras. 140-145), including *Ms. “C”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 1997-1 (August 22, 1997), *Mr. “F”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2005-1 (March 18, 2005), *Ms. “EE”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2010-4 (December 3, 2010), and *Ms. N. Sachdev, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2012-1 (March 6, 2012).

⁴¹ *Ms. “C”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 1997-1 (August 22, 1997), para. 44.

⁴² “*TT*”, *Applicant v. International Monetary Fund, Respondent*, Judgment No. 2022-1 (June 30, 2022), para. 100, quoting *Mr. “RR”, Applicant v. International Monetary Fund, Respondent*, Judgment No. 2021-2 (December 24, 2021), para. 125.

⁴³ *Mr. “RR”, Applicant v. International Monetary Fund, Respondent*, Judgment No. 2021-2 (December 24, 2021), paras. 126-127.

⁴⁴ *Commentary on the Statute*, p. 17.

discretionary authority by the decision-making organs of the Fund.”⁴⁵

Using the “decisional law of sister tribunals”, which the IMFAT has extensively done in its Judgments,⁴⁶ plays an important role in allowing the Tribunal “to find and transmit higher norms (or ‘general principles’) in a process of cross-fertilization.”⁴⁷ It is in this way, a commentator argues, that international administrative tribunals “weave the fabric of what has been termed ‘international administrative law’ or the law of the international civil service.”⁴⁸

The IMFAT often refers to the jurisprudence of the World Bank Administrative Tribunal (WBAT), in part because the World Bank is a sister organization and the WBAT’s jurisprudence is quite extensive.⁴⁹

In *Mr. “R”*, the IMFAT relied first on the WBAT *de Merode* case⁵⁰ in support of the proposition that a general principle of nondiscrimination limits the exercise of discretionary authority:⁵¹

“In the *de Merode* case, the World Bank Administrative Tribunal, reviewing the exercise of legislative powers of the Bank in making changes to the terms or conditions of employment, enunciated the following standard:

“The Bank would abuse its discretion if it were to adopt such changes for reasons alien to the proper functioning of the organization and to its duty to ensure that it has a staff possessing ‘the highest standards of efficiency and of technical competence.’ Changes must be based on a proper consideration of relevant facts. They must be reasonably related to the objective which they are intended to achieve. They must be made in good faith and must not be prompted by improper motives. *They must not discriminate in an unjustifiable manner between individuals or groups within the staff.* Amendments must be made in a reasonable manner seeking to avoid excessive and unnecessary harm to the staff. In this respect, the care with which a reform has been studied and the conditions attached to a change are to be taken into account by the Tribunal.”

(*de Merode*, WBAT Decision No. 1 (1981), para. 47.) (Emphasis supplied.)⁵²

The IMFAT has also referred to the jurisprudence of other international administrative tribunals, such as the ILOAT, the then UNAdT and its successors, and the Asian Development Bank Administrative Tribunal (AsDBAT). To take again the example of *Mr. “R”*, in addition to citing *de Merode*, the Tribunal referred to judgments of other tribunals (AsDBAT, ILOAT), other judgments of the WBAT, and its own jurisprudence, as well as the Commentary on its Statute,⁵³ in order to “extract” a number of “principles” for application in the case.⁵⁴

It has been suggested that when a tribunal identifies a general principle underlying the written law of the organization, “that identification provides a natural justification for looking to the

⁴⁵ *Id.*

⁴⁶ See Jason Morgan-Foster, “International Administrative Tribunals and Cross-Fertilization: Evidence of Nascent Common Jurisprudence?” (2024) 24:2 *Chi J Int’l L* 339, 347.

⁴⁷ [Celia Goldman, “Finding the law of the international civil service in the jurisprudence of sister tribunals”, 90 years of contribution of the Administrative Tribunal of the International Labour Organization to the creation of international civil service law, Geneva, ILO, 2017](#), p. 47.

⁴⁸ *Id.*, p. 47.

⁴⁹ It may also be noted that over the years the IMFAT and the WBAT have had some of the same judges.

⁵⁰ The Tribunal then cited a case from the Asian Development Bank Administrative Tribunal (AsDBAT), the Commentary on the IMFAT Statute, and its own jurisprudence. See [Mr. “R”, Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2002-1 \(March 5, 2002\)](#), paras. 32-34.

⁵¹ See response to question 2 above.

⁵² [Mr. “R”, Applicant v. International Monetary Fund, Respondent, Judgment No. 2002-1 \(March 5, 2002\)](#), paras. 30-31. (Emphasis in the original.)

⁵³ *Id.*, paras. 33-47.

⁵⁴ *Id.*, para. 47.

jurisprudence of other [international administrative tribunals].”⁵⁵ This jurisprudence will in turn buttress the tribunal’s conclusion. In *Ms. “GG” (No. 2)*, the Tribunal found a general principle in the Fund’s written law on nondiscrimination⁵⁶ and, having reviewed its own case law⁵⁷ and that of other international administrative tribunals,⁵⁸ concluded as follows:

“The IMFAT finds this jurisprudence of its sister tribunals pertinent because the Fund’s written rules prohibiting discrimination, harassment, retaliation and a hostile work environment give expression to fundamental principles of workplace fairness, and these principles are to a significant extent shared among international intergovernmental organizations.”⁵⁹

While the IMFAT has regularly referred to the jurisprudence of other international administrative tribunals, the Commentary on the Tribunal’s Statute also makes clear that if such jurisprudence is dependent on the particular law of the organization in question, it will be considered specific to the organization and not part of the general principles of international administrative law. In this regard, the Commentary provides:

“[T]he reference to general principles is not intended to introduce concepts that are inapplicable to, or inappropriate for, the Fund. With respect to the concern that the application of the principles enunciated by other administrative tribunals may have the unintended result of interfering with the responsibilities entrusted to the Executive Board, it should be noted that, to the extent that a tribunal’s decision is dependent on the particular law of the organization in question (such as the precise language of a staff regulation), the decision would be regarded as specific to the organization in question and not part of the general principles of international administrative law.”⁶⁰

For instance, in the “YY” Judgment on the Admissibility of the Application, the Tribunal stated as follows:

“The WBAT’s jurisprudence [regarding World Bank access restrictions in the event of misconduct] is not binding on this Tribunal. Article III of the IMFAT’s Statute sets out the sources of law to which the Tribunal must adhere. Article III provides that ‘[i]n deciding on an application, the Tribunal shall apply the internal law of the Fund, including generally recognized principles of international administrative law’ The Commentary to the Statute cautions that ‘to the extent a tribunal’s decision is dependent on the particular law of the organization in question, the decision would be regarded as specific to the organization in question’ Commentary, p. 19.

Further, the WBAT’s jurisprudence in question is not persuasive because it assesses the World Bank’s unique policy framework governing access to the World Bank. The Fund itself acknowledges in its Motion that ‘this alone distinguishes the instant case from those at the World Bank and the related case law.’ The WBAT’s jurisprudence is also distinguishable because the WBAT’s competence differs from the IMFAT’s competence.”⁶¹

d. By explicit or implicit reference (please specify) to an international text, e.g. with regard to general principles relating to human rights? If so, which text(s)?

⁵⁵ [Celia Goldman, “Finding the law of the international civil service in the jurisprudence of sister tribunals”, 90 years of contribution of the Administrative Tribunal of the International Labour Organization to the creation of international civil service law, Geneva, ILO, 2017](#), p. 47.

⁵⁶ [Ms. “GG” \(No. 2\), Applicant v. International Monetary Fund, Respondent, Judgment No. 2015-3 \(December 29, 2015\)](#), para. 183.

⁵⁷ *Id.*, paras. 184-186.

⁵⁸ *Id.*, para. 187.

⁵⁹ *Id.*

⁶⁰ [Commentary on the IMFAT’s Statute](#), p. 19.

⁶¹ [“YY”, Applicant v. International Monetary Fund, Respondent \(Admissibility of the Application\), Judgment No. 2024-3 \(June 7, 2024\)](#), paras. 69-70.

The IMFAT made explicit reference to the Universal Declaration of Human Rights in *Ms. "M" and Dr. "M"*. As noted above under question 3(a), the Tribunal observed in that case that the written law of the Fund reflected a principle of nondiscrimination on the basis of universally recognized human rights. The Tribunal concluded that the challenged SRP provision was "fundamentally defective as it failed to make adequate provisions for children born out of wedlock, a failure that was incompatible with the international standards of nondiscrimination that the Fund itself professes."⁶² Further, "the Fund's apparent failure to provide consideration to the effect of [the "marital relationship" requirement of the SRP] on children born out of wedlock was not compatible with contemporary standards of human rights, standards which obtained in 1999, as they [did] in 2006."⁶³ The Tribunal then cited Article 25 of the Universal Declaration of Human Rights (1948), which provides that "[a]ll children, whether born in or out of wedlock, shall enjoy the same social protection" and further concluded that the terms of the SRP provision in dispute could not be sustained.⁶⁴

The IMFAT has also on occasion made reference to cases of other administrative tribunals that invoked international texts.⁶⁵

e. By some other method?

As discussed above, the IMFAT has referred to the Commentary on the Tribunal's Statute and stated that its jurisprudence has "confirmed many of the principles articulated in the Statutory Commentary."⁶⁶

If more than one method is used, please number them in order of preference, if any.

Reference to its own case law and that of other international administrative tribunals is the most followed method. The Commentary on the Statute is also often relied upon, as noted above.⁶⁷

4) Can your tribunal rely on a general principle proprio motu?

The IMFAT has invoked general principles of international administrative law on its own accord.

For example, in *Mr. "R" (No. 2)*, Applicant contested a decision of the Human Resources Department to deny his request for reimbursement of security expenses said to have been incurred by him indirectly when he elected to live in a hotel rather than a private residence at his

⁶² [Ms. "M" and Dr. "M", Applicants v. International Monetary Fund, Respondent, IMFAT Judgment No. 2006-6 \(November 29, 2006\)](#), para. 132.

⁶³ *Id.*

⁶⁴ [Ms. "M" and Dr. "M", Applicants v. International Monetary Fund, Respondent, IMFAT Judgment No. 2006-6 \(November 29, 2006\)](#), para. 133.

⁶⁵ See [Ms. "M" and Dr. "M", Applicants v. International Monetary Fund, Respondent, IMFAT Judgment No. 2006-6 \(November 29, 2006\)](#), para. 125, citing the ILOAT which in turn had invoked "[t]he principles of Article 26 of the International Covenant on Civil and Political Rights (1966); [Mr. M. D'Aoust \(No. 3\), Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2008-1 \(January 7, 2008\)](#), para. 68, citing a UNAdT case that invoked the Universal Declaration of Human Rights in defining a right of association.

⁶⁶ See [Ms. "J", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2003-1 \(September 30, 2003\)](#), para. 105.

⁶⁷ In *Ms. "J"* and *Ms. "K"*, the Tribunal held that "[i]n resolving the question of the appropriate standard of review in a given case, the Administrative Tribunal looks to the following sources: a) the text of Article III, requiring that it apply '... generally recognized principles of international administrative law concerning judicial review of administrative acts,' b) the published Commentary on the Statute, i.e. the Report of the Executive Board proposing the Statute's adoption, c) the jurisprudence of the IMFAT, and d) the jurisprudence of other international administrative tribunals." ([Ms. "J", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2003-1 \(September 30, 2003\)](#), para. 102; [Ms. "K", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2003-2 \(September 30, 2003\)](#), para. 42). As seen above, these generally recognized principles of international administrative law will be found in the Commentary, and the jurisprudence of the IMFAT and other international administrative tribunals.

overseas post.

The Tribunal recognized that “[i]mplicit in Applicant’s challenge to the ‘regulatory decision’ [reimbursing residential security costs directly but not indirectly incurred by staff member posted abroad] is that the policy is inherently inequitable, and, *although [Applicant] does not articulate it as such*, that it violates the principle of equal pay for equal work.”⁶⁸ The Tribunal then concluded that there was “no cogent consideration, in light of the Fund’s policy of meeting security costs, why Respondent should be absolved of those costs in the case of Mr. ‘R’ simply because they were indirectly rather than directly incurred. On the contrary, equal treatment of staff in their fundamental right to enjoy physical security should govern.”⁶⁹

II. Relationship with other sources

5) What legal value does your tribunal attach to general principles in relation to the various types of secondary legislation produced by the organisation (decisions adopted by organs of the organisation, including organs composed of states - e.g. General Assembly of the United Nations - or representatives of states - e.g. the Committee of Ministers of the Council of Europe -), in relation to the instrument establishing the organisation and in relation to other sources of international law? Why?

The Statute of the IMFAT and its Commentary address in some detail the issue of the relationship between general principles of international administrative law and other sources of law and how the Tribunal may apply them. Article III of the IMFAT’s Statute provides:

“The Tribunal shall not have any powers beyond those conferred under this Statute.

In deciding on an application, the Tribunal shall apply the internal law of the Fund, including generally recognized principles of international administrative law concerning judicial review of administrative acts.

Nothing in this Statute shall limit or modify the powers of the organs of the Fund under the Articles of Agreement, including the lawful exercise of their discretionary authority in the taking of individual or regulatory decisions, such as those establishing or amending the terms and conditions of employment with the Fund. The Tribunal shall be bound by any interpretation of the Fund’s Articles of Agreement decided by the Executive Board, subject to review by the Board of Governors in accordance with Article XXIX of that Agreement.”⁷⁰

The Commentary on Article III of the Statute addresses the relationship between the reference to general principles of international administrative law and the limits of the Tribunal’s powers of review of “regulatory” and “individual” decisions. In relevant part, the Commentary provides:

“The reference to recognized principles of international administrative law is intended to limit the powers of the tribunal by making clear that the standards of review applied by the tribunal should not go beyond those applied by other tribunals, and that the tribunal is expected to recognize the limitations observed by other administrative tribunals of international organizations in reviewing the exercise of discretionary authority by the decision-making organs of the Fund.

There are two unwritten sources of law within the internal law of the Fund. First, the administrative practice of the organization may, in certain circumstances, give rise to legal rights and obligations. [footnote omitted] Second, *certain general principles of international*

⁶⁸ [Mr. “R” \(No. 2\), Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2004-1 \(December 10, 2004\)](#), para. 51. (Emphasis added.)

⁶⁹ *Id.*, para. 52.

⁷⁰ [Article III of the Tribunal’s Statute](#). See [Daseking-Frank et al., Applicants v. International Monetary Fund, Respondent, IMFAT Judgment No. 2007-1 \(January 24, 2007\)](#), para. 69.

administrative law, such as the right to be heard (the doctrine of *audi alteram partem*) are so widely accepted and well-established in different legal systems that *they are regarded as generally applicable to all decisions taken by international organizations, including the Fund.*

As applied to the review of *regulatory decisions*, the case law of administrative tribunals in general demonstrates that although there exists a competence to review regulatory decisions, *the scope of that review is quite narrow. There are broad and well-recognized principles protecting the exercise of authority by the decision-making organs of an institution from interference by a judicial body. The Fund tribunal would have to respect those principles in reviewing the legality of regulatory decisions.*

Likewise, with respect to review of *individual decisions* involving the exercise of managerial discretion, the case law has emphasized that discretionary decisions cannot be overturned unless they are shown to be arbitrary, capricious, discriminatory, improperly motivated, based on an error of law or fact, or carried out in violation of fair and reasonable procedures. This principle is particularly significant with respect to decisions which involve an assessment of an employee's qualifications and abilities, such as promotion decisions and dismissals for unsatisfactory performance. In this regard, administrative tribunals have emphasized that the determination of the adequacy of professional qualifications is a *managerial, and not a judicial, responsibility.*

[T]he reference to general principles [of international administrative law] is not intended to introduce concepts that are inapplicable to, or inappropriate for, the Fund. With respect to the concern that the application of the principles enunciated by other administrative tribunals may have the unintended result of interfering with the responsibilities entrusted to the Executive Board, it should be noted that, to the extent that a tribunal's decision is dependent on the particular law of the organization in question (such as the precise language of a staff regulation), the decision would be regarded as specific to the organization in question and not part of the general principles of international administrative law. Moreover, in applying general principles of international administrative law, an administrative tribunal cannot derogate from the powers conferred on the organs of the Fund, including the Executive Board, under the Articles of Agreement."⁷¹

6) Has your tribunal ever agreed to examine, if only by way of an objection, the legality of an act adopted by a body composed of states in relation to a general principle? If so, what were the implications, both legally (for the instrument in question) and politically (within the organisation)?

In the governance structure of the IMF, the Board of Governors is the highest decision-making body and consists of one governor and one alternate governor for each member country. The Board of Governors delegates most of its powers to the Executive Board, which is composed of twenty-five Executive Directors, elected by the Board of Governors.⁷²

The IMFAT Statute allows challenges to "individual" and "regulatory" decisions.⁷³ "Regulatory" decisions are defined as "any rule concerning the terms and conditions of staff employment, including the General Administrative Orders and the Staff Retirement Plan, but excluding any resolutions adopted by the Board of Governors of the Fund."⁷⁴

The Commentary on the Statute states that the "sources of internal law" of the Fund, which, as seen above, expressly include the general principles of international administrative law, "apply to, and circumscribe, the exercise of discretionary authority by the Executive Board in prescribing

⁷¹ [Commentary on the IMFAT's Statute, pp. 17-19.](#) (Emphasis added.)

⁷² See [How Does the IMF Make Decisions?](#)

⁷³ See Article II of the Statute.

⁷⁴ Article II, Section 2(b) of the Statute.

the terms and conditions of Fund employment.”⁷⁵ However, the scope of review of the Executive Board’s regulatory decisions is “quite narrow,”⁷⁶ and the Tribunal’s “deference is at its height” when reviewing the Executive Board’s policy decisions,⁷⁷ as recalled in the example below.

In *Elkjaer et al. (No. 2)*, the applicants challenged FY2022 staff compensation decision, approved by the Fund’s Executive Board, pursuant to Article VI (2) of the Tribunal’s Statute, which provides for direct challenges to “regulatory decisions”. The challenge focused on the Fund’s implementation, in relation to the FY2022 staff compensation decision, of the “safeguard mechanism” adopted by the Executive Board in 2019 and designed to ensure competitiveness of Fund salaries.

The Tribunal first recalled the “[f]ramework for the Tribunal’s analysis”⁷⁸ or, as the Tribunal put it in the *Daseking-Frank et al.* case, the “[g]eneral principles governing review of regulatory decisions of the Fund.”⁷⁹ The Tribunal stated that:

“It is well established that the Tribunal’s “degree of deference - or depth of scrutiny - may vary according to the nature of the decision under review, the grounds upon which it is contested, and the authority or expertise that has been vested in the original decision maker.” *Ms. “J”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2003-1 (September 30, 2003), para. 99. The Tribunal has consistently held that “[t]his deference is at its height when the Tribunal reviews regulatory decisions (as contrasted with individual decisions), especially policy decisions taken by the Fund’s Executive Board.” *Ms. “J”, para. 105; Daseking-Frank et al.*, para. 46.

In reviewing regulatory decisions, the Tribunal distinguishes “fundamental and essential” conditions of Fund employment, which are not open to unilateral amendment, from non-fundamental and non-essential conditions of employment, which may be amended but are subject to the constraints that govern the lawful exercise of discretionary authority. *Daseking-Frank et al.*, para. 59. In reviewing those latter decisions, including staff compensation decisions, this Tribunal has looked to the standard developed by the World Bank Administrative Tribunal (“WBAT”) in *de Merode*, WBAT Decision No. 1 (1981), para. 47:

Changes must be based on a proper consideration of relevant facts. They must be reasonably related to the objective which they are intended to achieve. They must be made in good faith and must not be prompted by improper motives. They must not discriminate in an unjustifiable manner between individuals or groups within the staff. Amendments must be made in a reasonable manner seeking to avoid excessive and unnecessary harm to the staff. In this respect, the care with which a reform has been studied and the conditions attached to a change are to be taken into account by the Tribunal.

Quoted in *Daseking-Frank et al.*, para. 90; *Elkjaer et al.*, para. 109.

The Tribunal has also recognized that the Fund, in a variety of contexts, constrains its discretionary authority by adopting rules governing the particular exercise of discretion. In the context of a challenge to a regulatory decision affecting staff compensation, the Tribunal considers that the Fund’s obligation to adhere to its written rules will be heightened. This is so because a “fundamental and essential” condition of staff employment is that the

⁷⁵ Commentary on the Statute, pp. 17-18.

⁷⁶ Commentary on the Statute, p. 19.

⁷⁷ [Daseking-Frank et al., Applicants v. International Monetary Fund, Respondent, IMFAT Judgment No. 2007-1, \(January 24, 2007\)](#), para. 46.

⁷⁸ [Elkjaer et al. \(No. 2\), Applicants v. International Monetary Fund, Respondent, IMFAT Judgment No. 2023-1 \(January 30, 2023\)](#), p. 25.

⁷⁹ [Daseking-Frank et al., Applicants v. International Monetary Fund, Respondent, IMFAT Judgment No. 2007-1, \(January 24, 2007\)](#), p. 22. See also *id.*, paras. 46 *et seq.*

compensation system will be “rules-based” and “comparator-based.” *Daseking-Frank et al.*, paras. 62-75. These are principles that the Fund itself has repeatedly confirmed. See, e.g., ECBR decision (2006), quoted in *Daseking-Frank et al.*, para. 71; CCBR Overview Paper (2019), p. 5; Board Paper (2021), p. 3. The [Executive] Board’s annual decisions setting staff salaries are therefore closely cabined by the rules-based and comparator-based character of the compensation system.”⁸⁰

The Tribunal came to the following conclusion regarding the Fund management’s interpretation of the safeguard mechanism:

“In recommending to the [Executive] Board the FY2022 staff compensation decision, Fund Management exceeded the ambit of its discretionary authority when it interpreted the safeguard mechanism rules to permit it to utilize salary data that terminated prior to the end of the Fund’s financial year, that is, April 30, 2021. As elaborated above, there are three reasons for this conclusion: First, Rule J-9 of the Fund’s Rules and Regulations specifies that the Fund’s financial year runs from May 1 through April 30. Second, the purpose of the safeguard mechanism is to take account of a full year of wage erosion and to compare it to the previous year in setting the annual staff compensation. Third, applying the safeguard mechanism rules in an imprecise and variable manner is inconsistent with the principles of “predictability, consistency, and transparency” (CCBR Overview Paper, p. 8) that the Fund itself acknowledges inhere in a rules-based staff compensation system.”⁸¹

The Fund management’s flawed implementation of the safeguard mechanism in turn had an impact on the legality of the Executive Board’s decision on staff compensation. The Tribunal recalled the principle that “[t]he proper exercise of discretionary authority requires that a decision is taken on the basis of relevant facts, *de Merode*, para. 47, and in accordance with the rules adopted to govern that process.”⁸² The Tribunal concluded that “in the light of [its] conclusion that Fund Management failed to comply fully with the rules governing the safeguard mechanism, the [Executive] Board consequently was not in a position to exercise properly its discretionary authority in taking the FY2022 staff compensation decision.”⁸³

7) Could you give at least one example of a general principle in procedural matters, one example of a general principle in substantive matters (e.g. the principle of independence, the principle recognising acquired/essential rights, etc.) and one example of a general principle in matters relating to human rights protection, regarding the status of the principle in the hierarchy of norms?

The Tribunal has not often expressly addressed the notion of hierarchy of norms and, when it did so, it was in relation to a conflict between two written Fund rules.⁸⁴ In addition to the Commentary on the Statute,⁸⁵ some of the Tribunal’s cases, however, do provide clues as to the Tribunal’s approach to the status of general principles of international administrative law in the hierarchy of norms.

As pointed out in response to question 1, general principles of international administrative law are incorporated in the Fund’s internal law. On multiple occasions, the Tribunal has noted that the

⁸⁰ [Elkjaer et al. \(No. 2\), Applicants v. International Monetary Fund, Respondent, IMFAT Judgment No. 2023-1 \(January 30, 2023\)](#), paras. 81-82.

⁸¹ *Id.*, para. 93.

⁸² *Id.*, para. 107.

⁸³ *Id.*, para. 113.

⁸⁴ See [Mr. J. Prader, Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2016-1 \(March 15, 2016\)](#), para. 65; [Mr. E. Verreydt, Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2016-5 \(November 4, 2016\)](#), n. 5; [Mr. “MM”, Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2017-1 \(November 15, 2017\)](#), para. 58, and [Ms. “NN”, Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2017-2 \(December 11, 2017\)](#), n. 7.

⁸⁵ See [Commentary on the Statute](#), pp. 17-20.

Fund's written rules "give expression" to these general principles,⁸⁶ thereby highlighting their antecedence and importance. While as a general rule the legality of the Fund's administrative decisions may be tested against general principles of international administrative law, tensions may arise because certain administrative decisions call for greater deference, such as the Executive Board's policy decisions,⁸⁷ and certain general principles, in particular those implicating universally accepted human rights, call for greater scrutiny of administrative decisions. Cases on nondiscrimination provide an illustration.

In *Mr. "F"*, a case in which the applicant had made allegations of discrimination on religious grounds, the Tribunal drew a distinction between allegations implicating principles of human rights and those involving other types of discrimination:

"Applicant's case is the first in which the IMFAT has been called upon to address an allegation that a staff member's career has been adversely affected by religious prejudice, a source of discrimination prohibited by the Fund's internal law as well as by universally accepted principles of human rights. Other applicants have alleged discrimination of a distinctly different and less serious type, i.e. that a classification scheme relating to Fund salary or benefits unfairly favored one category of staff members over another."⁸⁸

While the Tribunal had applied a "rational nexus" test to the latter category of allegations,⁸⁹ the former category amounted to a "serious charge" and called for "particular scrutiny by the Tribunal."⁹⁰ In that particular case, the Tribunal held that there was no evidence supporting the allegation that the decision to abolish the applicant's post was motivated by religious discrimination.⁹¹

The distinction drawn in *Mr. "F"* was confirmed in *Mr. "M" and Dr. "M"*.⁹² In that case, the Tribunal acknowledged in the following terms "the tension between the deference that is required in reviewing regulatory decisions of the Fund and the scrutiny necessitated by a challenge to a decision of the Fund as allegedly violating internationally accepted principles of human rights":⁹³

"SRP Section 11.3 [the provision in dispute] was recommended by the Pension Committee and approved by the Executive Board of the Fund. Thus, the Tribunal is mindful of the deference required in deciding whether the 'marital relationship' requirement, formerly incorporated into Section 11.3, was valid under the internal law of the Fund. At the same time, however, the Tribunal also notes that it has been called upon to review the Executive Board's discretionary authority in the light of a claim that the contested Plan provision, a "regulatory" decision of the Fund, as well as its application in the individual case of Applicants

⁸⁶ See response to question 8(d).

⁸⁷ See [Commentary on the Statute](#), p. 19; [Ms. "J", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2003-1 \(September 30, 2003\)](#), para. 105.

⁸⁸ [Mr. "F", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2005-1 \(March 18, 2005\)](#), para. 81. For allegations of discrimination of "a distinctly different and less serious type," see [Mr. M. D'Acoust, Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 1996-1 \(April 2, 1996\)](#) (economist v. non-economist staff); [Mr. "R", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2002-1 \(March 5, 2002\)](#) (overseas Office Directors v. Resident Representatives); [Ms. "G", Applicant and Mr. "H", Intervenor v. International Monetary Fund, Respondent, IMFAT Judgment No. 2002-3 \(December 18, 2002\)](#) (Legal Permanent Residents v. G-4 visa holders).

⁸⁹ In *Mr. "R"* and *Mr. "G"*, the applicants had alleged discrimination in the application by the Fund of differing benefits to two categories of staff. See [Mr. "R", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2002-1 \(March 5, 2002\)](#), paras. 2, 47; [Ms. "G", Applicant and Mr. "H", Intervenor v. International Monetary Fund, Respondent, IMFAT Judgment No. 2002-3 \(December 18, 2002\)](#), para. 2, 79.

⁹⁰ [Mr. "F", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2005-1 \(March 18, 2005\)](#), para. 50.

⁹¹ [Mr. "F", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2005-1 \(March 18, 2005\)](#), para. 90.

⁹² In *Mr. "M" and Dr. "M"*, the applicants challenged a "regulatory" decision of the Fund, albeit one that later had been revised to remove the offending provision, on the ground that it violated the internationally recognized human right to nondiscrimination on grounds of birth. See response to question 3(a) above.

⁹³ Celia Goldman, "Developments in the Jurisprudence of the International Monetary Fund Administrative Tribunal: 2006", [IMF Administrative Tribunal Reports, Vol. V](#), p. 6.

Ms. “M” and Dr. “M”, violated a universally recognized human right. The very nature of this grave complaint requires a greater degree of scrutiny over the Fund’s exercise of its discretion.”⁹⁴

In that case, the tension was resolved by holding that the Fund’s rationale in support of preferential treatment of married persons, which was reflected in many other pension plans at the time, did not support the resulting disparity in the treatment of children.⁹⁵ In the view of the Tribunal, “[t]he governing consideration is that the child is innocent of the marital -or non-marital - relationship of his or her parents and, as an innocent human being, is entitled to the human right of being free from impermissible discrimination.”⁹⁶ Therefore, the earlier wording of the SRP provision in dispute did not debar the applicants’ request to give effect to the child support court orders relating to the period prior to the revision of this provision.

8) What function(s) does your tribunal assign to general principles? For example, are they intended to:

a. fill gaps in written law?

In *Ms. “EE”*, the IMFAT noted that:

“This Tribunal has invoked general principles of international administrative law both to fill in lacunae in the written law of the Fund and to buttress its requirements. In *Mr. “F”, Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2005-1 (March 18, 2005), the applicant contended that he had been the object of religious hostility in contravention of the Fund’s Discrimination Policy. In raising a claim of religious discrimination in the workplace, Mr. “F” challenged a form of discrimination expressly addressed by the Fund’s written law. The Tribunal commented that such discrimination was prohibited both by the Fund’s written law, “as well as by universally accepted principles of human rights.” *Id.*, para. 81. In a subsequent Judgment, *Ms. “M” and Dr. “M”*, para. 126, the Tribunal observed that the express provisions of the Fund’s nondiscrimination law did not refer to the particular type of discrimination alleged by the Applicants in that case, namely, discrimination on the ground of birth out of wedlock. The case arose under the provision of the Staff Retirement Plan relating to giving effect to child support orders. The Tribunal noted that the omission in the written law was “readily explained by the fact that such discrimination, which is typically directed at children, does not ordinarily arise in the context of employment law.” *Id.* Recognizing the pertinence of universally recognized principles of human rights to the practices of the Fund, however, the Tribunal held that the challenged provision was “fundamentally defective” because it was incompatible with “international standards of nondiscrimination.” *Id.*, para. 132.”⁹⁷

b. facilitate the interpretation of written provisions, e.g. by interpreting written provisions in the light of general principles?

In *Sachdev*, the IMFAT had recourse to a general principle of international administrative law to interpret provisions of the Fund’s written law that lacked clarity:

“In the absence of clarity in the written law of the Fund, the Tribunal has turned to generally recognized principles of international administrative law in reviewing the legality of contested administrative acts. In the view of the Tribunal, generally recognized principles of

⁹⁴ [Ms. “M” and Dr. “M”, Applicants v. International Monetary Fund, Respondent, IMFAT Judgment No. 2006-6 \(November 29, 2006\)](#), para. 117.

⁹⁵ [Ms. “M” and Dr. “M”, Applicants v. International Monetary Fund, Respondent, IMFAT Judgment No. 2006-6 \(November 29, 2006\)](#), para. 130.

⁹⁶ *Id.*

⁹⁷ [Ms. “EE”, Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2010-4 \(December 3, 2010\)](#), para. 186.

international administrative law required that Applicant be informed of the rules that would govern the selection process to the extent that they varied from the written rules of the Fund. To the extent that the Fund failed to do so, it failed to follow fair procedures. This is, in the view of the Tribunal, the second failure of fair process by the Fund to be established by the Applicant in the circumstances of this case.”⁹⁸

c. ensure substantive rule of law (Rechtsstaatlichkeit), for example pursuant to general principles relating to human rights, including within international organisations?

As already noted above, the Tribunal in *Ms. “M” and Dr. “M”* upheld a child’s “human right of being free from impermissible discrimination” as a limit on the exercise of the Fund’s discretionary authority.⁹⁹

d. other?

As quoted above,¹⁰⁰ general principles of international administrative law may be invoked “to buttress” the requirements of the Fund’s written law. In a number of cases, the IMFAT emphasized a “link” or mutual reinforcement between general principles of international administrative law and the written law of the Fund, the latter “giving expression” to the former.

In *Sachdev*, the Tribunal stated that:

“The Tribunal often has drawn a link between generally recognized principles of international administrative law and the written law itself. See, e.g., *Ms. “EE”*, para. 196 (“The Fund’s obligation to interview the staff member about the accusations giving rise to the misconduct investigation before taking the administrative leave decision derives from the underlying principle of *audi alteram partem*, an obligation that is given expression to a great extent by the written law of the Fund”) (emphasis added); *Mr. “P” (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2001-2 (November 20, 2001), para. 152 (“Fund’s internal law favors legal decisions that are the result of adversary proceedings, in which reasonable notice and the opportunity to be heard are the essential elements”; interpreting provision of Staff Retirement Plan); *Ms. “M” and Dr. “M”, Applicants v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2006-6 (November 29, 2006), para. 132 (challenged rule was “fundamentally defective as it failed to make adequate provisions for children born out of wedlock, a failure that was incompatible with the international standards of nondiscrimination that the Fund itself professes”) (emphasis added).¹⁰¹

This Tribunal recently has observed that the obligation of the organization to assist a redundant staff member in identifying opportunities for reassignment, which is given expression in the Fund’s internal law by GAO No. 16, Section 12.02, is supported by generally recognized principles of international administrative law: “The jurisprudence of administrative tribunals indicates that international organizations must make genuine, serious, and pro-active efforts in reassignment of their employees whose positions have been abolished.” *Pyne*, para. 64, quoting *Mr. “F”*, para. 117.”¹⁰²

In *Ms. O’Connor (No. 2)*, the Tribunal held that:

⁹⁸ [Ms. N. Sachdev, Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2012-1 \(March 6, 2012\)](#), paras. 108, 111.

⁹⁹ See response to question 7 above.

¹⁰⁰ [Ms. “EE”, Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2010-4 \(December 3, 2010\)](#), para. 186.

¹⁰¹ [Ms. N. Sachdev, Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2012-1 \(March 6, 2012\)](#), para. 109.

¹⁰² *Id.*, para. 210.

“Systems of classification and grading are designed to give expression to the fundamental principle that comparable work be compensated comparably. The Tribunal recognized this essential principle of equality of treatment in the compensation of staff members [in Mr. “R” (No. 2), para. 51].”¹⁰³

In *Ms. “GG” (No 2)*, as noted earlier, the Tribunal took a similar approach, holding that “.the Fund’s written rules prohibiting discrimination, harassment, retaliation and a hostile work environment give expression to fundamental principles of workplace fairness, principles that are shared to a significant extent among international intergovernmental organizations. Breach of these fundamental principles of workplace fairness will necessarily constitute a serious injury.”¹⁰⁴

III. Establishing the boundaries of principles

9) Where a general principle is applicable, how is it delimited?

See answer to question no. 5.

Have there been any cases where the general principle has been found to have been violated? Could you illustrate your answer, if applicable, with regard to the following areas:

a. human rights principles;

One example is *Ms. “M” and Dr. “M”, Applicants v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2006-6 (November 29, 2006), as described in response to questions 3(a) and 7.

b. procedural rights;

In *Ms. “C”*, an applicant’s co-workers complained to the applicant’s supervisor about the applicant’s interpersonal skills. The supervisor met with the applicant to discuss with her the accusations raised, without identifying the source of the accusations. The supervisor declined to provide to the applicant the names of the accusers on the grounds that they had spoken in confidence and that what was important was what was said, not who said it. The decision was subsequently made not to convert Ms. “C”’s term appointment to a permanent appointment. The Tribunal concluded that the applicant’s supervisor had failed to afford applicant a meaningful opportunity to rebut accusations, stating that this was a “lapse in due process.”¹⁰⁵ In reaching its conclusion, the Tribunal referred to the Asian Development Bank Administrative Tribunal’s (“ADBAT’s”) Decision in *Carl Gene Lindsey v. Asian Development Bank*, ADBAT Decision No. 1, para. 9 (1992), which held that “[i]ndividual complaints or adverse comments by one staff member on the conduct of another should not be taken into account unless first brought to the attention of the latter, to whom an opportunity of replying should have been given, including, where appropriate, the opportunity of meeting and questioning the complainant or witness”.

In *Ms. “EE”*, the applicant contested the Fund’s decision to place her on paid administrative leave pending investigation of misconduct. The applicant alleged, among other things, that the Fund had violated due process, and its own regulations, by taking the administrative leave decision without first seeking her account of the events at issue. This case was the first in which the Tribunal was called upon to consider what substantive and procedural requirements the Fund must meet before placing a staff member on paid administrative leave pending investigation of

¹⁰³ [Ms. C. O’Connor \(No. 2\), Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2011-1 \(March 16, 2011\)](#), para. 89.

¹⁰⁴ [Ms. “GG” \(No. 2\), Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2015-3 \(December 29, 2019\)](#), para. 449.

¹⁰⁵ [Ms. “C”, Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 1997-1 \(August 22, 1997\)](#), para. 41.

misconduct.

Having found no clear answer in the Fund's written law as to whether the Human Resources Director was required, prior to deciding to place the applicant on paid administrative leave, to have afforded her the opportunity to present her own version of the events at issue, the Tribunal turned to general principles of international administrative law. The Tribunal referred to its prior case law, including *Ms. "C"*, and recalled the "evident" significance of the principle of *audi alteram partem* as a general principle of international administrative law.¹⁰⁶ In the view of the Tribunal, upholding this principle was particularly relevant in misconduct proceedings: "To 'hear both sides' is a core element of due process."¹⁰⁷

The Tribunal concluded that the general principle of *audi alteram partem* should be followed before a decision to place a staff member on administrative leave is taken unless exceptional circumstances require otherwise.¹⁰⁸ The Tribunal accordingly held that the Human Resources Director erred when she failed to afford Ms. "EE" an opportunity to be heard prior to placing her on administrative leave. While the Tribunal considered that this procedural error was not sufficient to overturn the contested administrative leave decision, it did merit relief in the form of monetary compensation.

c. duty of care, i.e. positive obligations for the competent authority;

In "*VV*" (No. 2), the IMFAT stated that "[t]he Fund, like other international intergovernmental organizations has a duty of care to protect the health and safety of its employees."¹⁰⁹ Citing cases of the WBAT and UNAdT, the Tribunal further noted that "[E]ven were such obligation not expressly spelled out in the Regulations and Rules, general principles of law would impose such an obligation, as would normally be expected of every employer."¹¹⁰

d. acquired/essential rights;

The Commentary on the Statute states with respect to Article III that "[t]he Fund, like all international organizations, has reserved to itself broad powers to alter the terms and conditions of employment on a prospective basis."¹¹¹ It adds in a footnote that:

"One basic limitation on an organization's power of amendment is the protection of acquired or vested rights, whether or not expressly provided for in the staff regulations. However, even this limitation has been very narrowly construed and interpreted as essentially synonymous with the principle of non-retroactivity. In other words, an amendment cannot deprive a staff member of any benefit or emolument that has been earned or accrued before the effective date of the change. Accordingly, respect for acquired rights would not preclude the organization from prospective alterations in the conditions of employment."¹¹²

The Commentary continues as follows:

"However, an important limitation on the exercise of this authority would be where the Fund has obligated itself, either through a formal commitment or through a consistent and

¹⁰⁶ [Ms. "EE", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2010-4 \(December 3, 2010\)](#), para. 187.

¹⁰⁷ *Id.*, para. 190.

¹⁰⁸ The Tribunal recognized that "Tribunal recognizes there may be exceptional circumstances, where there is an immediate risk of harm to the institution, in which it will not be necessary to afford a hearing prior to an administrative leave decision." ([Ms. "EE", Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2010-4 \(December 3, 2010\)](#), para. 197.)

¹⁰⁹ "[VV](#)" (No. 2), [Applicant v. International Monetary Fund, Respondent, IMFAT Judgment No. 2023-4 \(December 22, 2023\)](#), para. 83.

¹¹⁰ *Id.*, n. 4.

¹¹¹ [Commentary on the Statute](#), p. 18.

¹¹² *Id.*, n. 7.

established practice, not to amend that element of employment. In the absence of such a commitment by the Fund, there would be no basis for a finding by the tribunal that a decision changing an element of employment violated the rights of the staff. Moreover, even where the organization has voluntarily undertaken such a commitment, subsequent developments, such as urgent and unavoidable financial imbalances, may authorize certain adjustments if they are reasonably justified.”¹¹³

Contrary to other international administrative tribunals,¹¹⁴ the IMFAT has hardly ever used the terms “acquired rights” in its jurisprudence. In the *Daseking-Frank* case, the Tribunal used the phrase when it quoted the above passage from the Commentary in support for the general proposition that “the Fund’s authority to amend terms and conditions of employment is circumscribed.”¹¹⁵ The applications were denied in that case.

Quoting *de Merode*, the IMFAT observed in *Daseking-Frank* that “[i]t is a well-established legal principle that the power to make rules implies in principle the right to amend them.”¹¹⁶ It went on to adopt *de Merode*’s distinction between “fundamental and essential” elements of the conditions of employment, which cannot lawfully be amended on a unilateral basis by the organization, and those elements that are less fundamental or essential and, accordingly, are open to amendment, subject to review under an abuse of discretion standard.¹¹⁷ This approach has continued to guide the IMFAT’s jurisprudence.¹¹⁸

As seen above, in *Elkjaer et al. (No. 2)*, the Tribunal found that the Fund’s management had exceeded their discretion in their recommendation on staff compensation for FY2022 by failing to comply with a fundamental and essential condition of employment, namely that the Fund’s compensation system is “rules-based.”¹¹⁹

In *Elkjaer et al.*, the IMFAT rejected the applicants’ arguments that the contested regulatory decision violated a formal commitment and/or long-standing practice of the organization.¹²⁰ The applicants had invoked the above cited provision of the Commentary.¹²¹ Citing *Daseking-Frank* and other cases, the IMFAT considered that “[t]he integration of practice into the conditions of employment must be limited to that of which there is evidence that it is followed by the organization in the conviction that it reflects a legal obligation.”¹²²

e. any other principle you wish to mention?

:/.

¹¹³ *Id.*, p. 18.

¹¹⁴ See, e.g., the analysis of the jurisprudence of the ILOAT by Dr Eva-Maria Gröniger-Voss, A. Kristen Baxter, and Arthur Nguyen dao in “The principle of acquired rights with particular focus on the jurisprudence of the Administrative Tribunal of the International Labour Organization”, [90 years of contribution of the Administrative Tribunal of the International Labour Organization to the creation of international civil service law, Geneva, ILO, 2017](#), p. 109.

¹¹⁵ [Daseking-Frank et al., Applicants v. International Monetary Fund, Respondent, IMFAT Judgment No. 2007-1 \(January 24, 2007\)](#), para. 48. The applicants contested the decision taken by the IMF Executive Board to revise the methodology by which staff salaries are determined, as well as the implementation of that amended system in the 2006 compensation round.

¹¹⁶ *Id.*, para. 58.

¹¹⁷ *Id.*, para. 59.

¹¹⁸ See, e.g., *Elkjaer et al. (No. 2)*, para. 81.

¹¹⁹ See response to question 6 above.

¹²⁰ [Elkjaer et al., Applicants v. International Monetary Fund, Respondent, IMFAT Judgment No. 2021-4 \(December 28, 2021\)](#), para. 97.

¹²¹ *Id.*, para. 78.

¹²² *Id.*, paras. 92-93.