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60th anniversary of the Administrative Tribunal of the Council of Europe

Report on General Principles as applied by International Administrative Tribunals

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Registry's translation, the French text alone being authoritative

Abstract. This report demonstrates that international administrative tribunals possess at least implicit jurisdiction to identify and apply general principles. As a source of international law binding on international organisations, these principles have a higher legal standing than the organisation's secondary law. They are indispensable for adjusting the settlement of disputes where the written normative framework is insufficient and constitute a necessary legal safeguard to guarantee the substantive or material rule of law (*materielle Rechtsstaatlichkeit*) within the organisation's non-autonomous or partial legal system.

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List of abbreviations

ABCE	Appeals Board of the Council of Europe
ADB	Asian Development Bank
ADBAT	Asian Development Bank Administrative Tribunal
AFDI	*Annuaire français de Droit international*
Art.	Article
ATBIS	Administrative Tribunal of the Bank for International Settlements
ATCE	Administrative Tribunal of the Council of Europe
cf.	compare
CJEC	Court of Justice of the European Communities
CJEU	Court of Justice of the European Union
EBRDAT	European Bank for Reconstruction and Development Administrative Tribunal
ECB	European Central Bank
ECHR	European Convention on Human Rights
ECMWF	European Centre for Medium-Range Weather Forecasts
ECMWFAB	European Centre for Medium-Range Weather Forecasts Appeals Board
ECtHR	European Court of Human Rights
ed. / eds.	edited by
Ed.	Edition
EEAS	European External Action Service
EIB	European Investment Bank
EPO	European Patent Organisation

ESA	European Space Agency
ESAAB	European Space Agency Appeals Board
ESAAT	European Space Agency Administrative Tribunal
EU	European Union
EUIPO	European Union Intellectual Property Office
EUMETSAT	European Organisation for the Exploitation of Meteorological Satellites
EUMETSATAB	European Organisation for the Exploitation of Meteorological Satellites Appeals Board
ff.	and the following pages
IAEA	International Atomic Energy Agency
IAT(s)	international administrative tribunal(s)
IBRD	International Bank for Reconstruction and Development
ICJ	International Court of Justice
IDB	Inter-American Development Bank
IDBAT	Inter-American Development Bank Administrative Tribunal
IHEI	Institut des hautes études internationales
ILC	International Law Commission
ILO	International Labour Organization
ILO Office	International Labour Office
ILOAT	International Labour Organization Administrative Tribunal
IMF	International Monetary Fund
IMFAT	International Monetary Fund Administrative Tribunal
IOM	International Organization for Migration
LoNAT	League of Nations Administrative Tribunal
MERCOSUR	Southern Common Market
NATO	North Atlantic Treaty Organization

NATOAT	North Atlantic Treaty Organization Administrative Tribunal
OAS	Organization of American States
OASAT	Organization of American States Administrative Tribunal
OECDAT	Organisation for Economic Co-operation and Development Administrative Tribunal
OIF	International Organisation of La Francophonie
OJ	Official Journal
op. cit.	*opere citato*
p.	page
para.	paragraph
paras.	paragraphs
pp.	pages
Rep.	*Reports*
RGDIP	*Revue générale de droit international public*
SFDI	Société française pour le droit international
SGCE	Secretary General of the Council of Europe
SGUN	Secretary-General of the United Nations
TALMERCOSUR	Administrative and Labour Tribunal of MERCOSUR
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TPIOIF	First Instance Tribunal of the International Organisation of La Francophonie
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNAT	United Nations Appeals Tribunal
UNAdT	United Nations Administrative Tribunal
UNDT	United Nations Dispute Tribunal

UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UPU	Universal Postal Union
v.	versus
Vol.	volume
WBAT	World Bank Administrative Tribunal
WHO	World Health Organization

Introduction

Since the *Monod* case, decided on 29 August 1925,[1] general principles have been explicitly recognised as an applicable source for resolving disputes between an international organisation and its staff members, a finding adopted by permanent administrative courts from the very first three judgments of the League of Nations Administrative Tribunal (LoNAT) in 1929.[2] And, since those judgments, the question has arisen as to whether there are multiple categories of general principles, their relationship with other applicable sources and their scope. This study, which summarises and contextualises the responses received from nine international administrative tribunals (IATs) specialising in this field and the General Court of the European Union (EU) – to whom we extend our sincere thanks –[3] aims to shed light on these issues on the occasion of the 60th anniversary of the Council of Europe's Administrative Tribunal (ATCE).

Article 38(1)(c) of the Statute of the International Court of Justice (ICJ) explicitly recognises "the general principles of law recognized by civilized nations" as a source of international law. It is generally accepted that these apply to disputes concerning the international civil service.[4] Marcelo Vázquez-Bermúdez, Special Rapporteur of the International Law Commission (ILC), recalled in his First Report on General Principles of Law the distinction made in general international law between "General principles of law derived from national legal systems" and "General principles of law formed within the international legal system".[5] The former are often

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[1] League of Nations, *Official Journal*, Oct. 1925, p. 1441, esp. pp. 1443-1444.

[2] LoNAT, Judgment No. 1, 15 January 1929, *Di Palma Castiglione v. International Labour Office (ILO Office)*, p. 2; Judgment No. 2, 15 January 1929, *Phelan v. ILO Office*, p. 2; No. 3, 15 January 1929, *Maurette v. ILO Office*, p. 2.

[3] The Administrative Tribunal of the Council of Europe (ATCE), the European Space Agency Administrative Tribunal (ESAAT), the European Centre for Medium-Range Weather Forecasts Appeals Board (ECMWFAB), the European Organisation for the Exploitation of Meteorological Satellites Appeals Board (EUMETSATAB), the Organization of American States Administrative Tribunal (OASAT), the Administrative-Labour Tribunal of MERCOSUR (TALMERCOSUR), the General Court of the European Union, the Inter-American Development Bank Administrative Tribunal (IDBAT), the First Instance Tribunal of the International Organisation of La Francophonie (TPIOIF) and the International Monetary Fund Administrative Tribunal (IMFAT). These were requested by the ATCE in preparation for this report, which is why, in the interests of transparency, reference is made to these reports in footnotes when they are cited, but without necessarily placing the relevant passages in quotation marks, when they are limited to presenting the relevant case-law.

[4] See, for example, C. F. Amerasinghe, *The Law of the International Civil Service as Applied by International Administrative Tribunals*, Vol. 1, Clarendon Press, Oxford, 2nd ed. 1994, pp. 151 ff.; A. Plantey and F. Loriot, *Fonction publique internationale. Organisations mondiales et européennes*, CNRS Éditions, Paris, 2005, pp. 69 ff.; S. Villalpando, "The Law of the International Civil Service", J. K. Cogan *et al.* (eds.), *The Oxford Handbook of International Organizations*, Oxford University Press, Oxford, 2016, p. 1082; G. Ullrich, *The Law of the International Civil Service. Institutional Law and Practice in International Organisations*, Duncker & Humblot, Berlin, 2018, pp. 81 ff.; J. Morgan-Foster, "Sources of Law", in A. Garrido Muñoz, J. Morgan-Foster, D. Peat and A.-M. Thévenot-Werner, *The Law and Practice of International Administrative Tribunals*, CUP, Cambridge, 2025, pp. 59-65.

[5] United Nations (UN), document A/CN.4/732, 5 April 2019, *First report on general principles of law*, paras. 22 and 188-253 and Draft Conclusion 3, confirmed, for example, in A/CN.4/785, 18 February 2025, *Fourth report on general principles of law*, by Marcelo Vázquez-Bermúdez, Conclusion 3. See also A. von Verdross, "Les principes généraux du droit et le droit des gens", *Revue de droit international*, 1934, Vol. 13, p. 498: "the general principles of law applicable in international relations are not only those which form the basis of national law, but also others derived directly from the nature of public international law itself.". No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry. See also B. Simma and Ph. Alston, "The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles",

referred to in French as “principes généraux de droit” (general principles of law) and the latter “principes généraux du droit international” (general principles of international law).[6] For the sake of clarity, the term “general principles” will be used below to refer to all these principles.

However, this source of law raises numerous questions, not least because of its unwritten nature. Indeed, “*[w]hat the sources of law are, cannot be stated, it can only be discussed*”.[7] As Alain Pellet observed, “[t]his is even more true of general principles of law than of all other sources of international law: they are, in essence, what every jurist carries within themselves”.[8]

In international civil service law, the applicable body of written law varies from one organisation to another. Whilst it may be more or less developed, it is not exhaustive. However, “[l]aw, like nature, abhors a vacuum”.[9] General principles can therefore play a decisive role in filling the gaps in written law and in clarifying the meaning of provisions. Furthermore, certain general principles are reflected in international human rights conventions which are generally not directly enforceable against international organisations as such. This raises the question of the relationship between these general principles – which ultimately protect human dignity, an inalienable right –[10] and secondary law derived from the organisation’s constituent instrument.

A very useful study on “General principles according to the ILO Administrative Tribunal” has already been carried out and published, but it essentially concerns the case-law of a single tribunal;[11] another focuses on procedural rights, including in relation to the applicable general principles.[12] Whilst general principles “pre-exist judicial decision-making”[13] insofar as they must have been “recognized”,[14] it is specifically the responsibility of the courts to identify general principles and to assess their applicability and scope. For these reasons, the Administrative Tribunal of the Council of Europe wishes to take the opportunity of its 60th anniversary to examine, in a more general and cross-cutting manner, the role played by general principles in the case-law of international administrative tribunals.[15]

Australian Yearbook of International Law, 1988, Vol. 12, p. 102, noting that there is no reason to limit the concept of general principles to those derived from national laws.

[6] *Cf.*, for example, A. Pellet, *Recherches sur les principes généraux de droit en droit international*, thesis defended at the University of Paris II, examination board: S. Bastid, Chair, P. Reuter, M. Virally, 1974, 504 pp.; H. Ascensio, “Principes généraux du droit”, *Répertoire de droit international*, February 2004, para. 6, and the references cited; B. Samson, “*PGD: de et pas du*”, in H. Ascensio *et al.* (eds.), *Dictionnaire des idées reçues en droit international*, Pedone, Paris, 2017, pp. 433-437.

[7] C. Parry, *The Sources and Evidences of International Law*, Manchester University Press, Manchester, 1965, p. 27.

[8] A. Pellet, *Recherche sur les principes généraux de droit…*, *op. cit.*, note 6, p. 435. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

[9] *Ibid.*, p. 1. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

[10] G. Le Moli, “The Principle of Human Dignity in International Law”, in M. Andenas *et al.* (eds.), *General Principles and the Coherence of International Law*, Brill, Leiden, 2019, pp. 352-368, esp. pp. 362-368.

[11] L. Germond, *Les Principes généraux selon le Tribunal administratif de l’O.I.T.*, Pedone, Paris, 2009, 376 p. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

[12] A.-M. Thévenot-Werner, *Le droit des agents internationaux à un recours effectif. Vers un droit commun de la procédure administrative internationale*, Brill/Nijhoff, Leiden, 2016, xxi–1405 p.

[13] H. Ascensio, *op. cit.*, note 6, para. 16. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

[14] Statute of the ICJ, Art. 38(1.c).

[15] The term international administrative tribunal or international administrative court is understood here to mean a permanent court with jurisdiction to hear, amongst other matters or exclusively, disputes between an international organisation and its officials or its staff members. For the purposes of this report, this concept also includes the courts of the European Union, namely the General Court of the EU and the Court of Justice, insofar as they have

Marcelo Vázquez-Bermúdez has carried out considerable work in his reports to the United Nations International Law Commission.[16] Whilst it is not possible to conduct such an exhaustive study within the framework of the preparations for the 60th anniversary of the ATCE, his findings merit verification, at least in part, in the field of international civil service law as well.

It follows from this study that whilst the methods of identification are relatively consistent across tribunals (I), the degree to which relationships with other sources are determined is subject to variations which are, however, explainable (II). As regards the scope of the principles, they are applied with a certain degree of restraint, which is malleable depending on the tribunal's sense of justice, such that, essentially, applicants are only granted relief on the basis of a general principle when the infringement is clear to the judges (III).

I. Methods of identification

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

Implied power. An international administrative tribunal is an independent and impartial body, established by an international organisation to settle its disputes with its staff members, officials or, sometimes, more generally, its agents (in the sense of the ICJ 1949 advisory opinion), pursuant to an express provision in its constituent instrument,[17] its headquarters agreement,[18] or, failing that, by virtue of the organisation's implied powers,[19] in accordance with the law. Relations between the organisation and its agents are governed by the organisation's internal law, but also by international law binding on the organisation.[20] The organisation's internal law,

jurisdiction to hear disputes between the European Union (its institutions, bodies and agencies) and its servants (officials and other servants) (N.B. the term "agent" in French is translated in the EU terminology in English to the term "servant". For the purpose of this study, we use here the term "agent" (in French and in English) as defined under the ICJ advisory opinion, 11 April 1949, *Reparation for injuries suffered in the service of the United Nations*, *ICJ Reports* 1949, p. 174, esp. p. 177).

[16] See, in particular, documents A/CN.4/732, 5 April 2019, *First report on general principles of law*; A/CN.4/741, 9 April 2020, *Second report on general principles of law*; A/CN.4/753, 18 April 2022, *Third report on general principles of law*; A/CN.4/785, 18 February 2025, *Fourth report on general principles of law*.

[17] See, for example, Convention on the Statute of the European Schools, OJ No L212 of 17 August 1994, p. 0003-0014, Art. 27(1).

[18] Agreement between the Swiss Federal Council and the Bank for International Settlements regarding the legal status of the Bank in Switzerland, of 10 February 1987, as amended with effect from 1 January 2003, Art. 4(2).

[19] ICJ, Advisory Opinion, 11 April 1949, *Reparation for Injuries Suffered in the Service of the United Nations*, *ICJ Reports 1949*, pp. 174 ff.

[20] See, for example, A. Plantey and F. Loriot, *Fonction publique internationale…*, *op. cit.*, note 4, pp. 52-77; G. Ullrich, *The Law of the International Civil Service…*, *op. cit.*, note 4, pp. 38-257; A.-M. Thévenot-Werner, "The Civil Service in International Organisations. The Example of the Coordinated Organisations", in K.-P. Sommermann, A. Krzywoń, C. Fraenkel-Haeberle (eds.), *The Civil Service in Europe. A Research Companion*, Routledge Taylor & Francis Group, London/New York, 2025, pp. 405-412. See, on the law applicable to agents, A.-M. Thévenot-Werner, "Le droit applicable aux agents non préqualifiés de membres du personnel", *RGDIP*, Vol. 128, 2024, no. 2, pp. 243-257.

derived from its constituent instrument, is directly governed by international law.[21] The applicability of international law to the organisation's internal law therefore does not require an incorporation clause or any other provision governing relations with international law, unlike in national legal systems. It is generally recognised that general principles form part of the sources of international law, and this was the case even before the adoption, for example, of the Statute of the Permanent Court of International Justice.[22] Verdross demonstrates that this is a source applicable by any international court.[23] In particular, general principles are enforceable against international organisations.[24] As genuine international courts, international administrative tribunals therefore all have at least the implicit power to apply general principles. As stated in the *Monod* case, to avoid arbitrariness, "[t]he public administration must always, in all its acts, have regard for the public interest and respect the principles of justice", failing which the act or acts adopted are "unlawful".[25] It follows from Verdross's analysis that these are "principles deriving from the concept of law".[26] As bodies empowered to "adjudicate the law" (*jurisdictio* derived from *ius dicere*) in order to settle disputes, international administrative tribunals have jurisdiction to identify general principles and to apply them in order to settle the disputes submitted to them.[27] Added to this is the fact that "one of the fundamental tenets of all legal systems is that no court may refrain from giving judgment on the grounds that the law is silent or obscure", as emphasised, for example, by the Administrative Tribunal of the International Labour Organization (ILOAT) in the *Desgranges* case.[28] In the same vein, the IDBAT states in its report that the implicit jurisdiction to recognise the applicability of general principles derives implicitly from its Statute and Rules of Procedure; it stems from the need to fill gaps in the law and gaps in the interpretation of the organisation's international legal framework.[29]

Thus, the ILOAT,[30] the United Nations courts,[31] the IDBAT,[32] the ESAAT, the EUMETSATAB and the ECMWFAB, for example, apply the general principles by virtue of

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[21] See, for example, S. Bastid, *Les fonctionnaires internationaux*, Sirey, Paris, 1931, pp. 67-70; J. Gascon y Marin, "Les fonctionnaires internationaux", *Collected Courses of the Hague Academy of International Law*, 1932, Vol. 41, p. 759.

[22] A. von Verdross, "Les principes généraux du droit et le droit des gens", *op. cit.*, note 5, pp. 484-498, esp. pp. 488-492; A. Pellet, *Recherches sur les principes généraux de droit…*, *op. cit.*, note 6, p. 58.

[23] A. von Verdross, "Les principes généraux du droit et le droit des gens", *op. cit.*, note 5, pp. 484-498, esp. pp. 488-492; D. Dreyssé, "La contribution d'Alfred Verdross à la théorie des principes généraux du droit : la consécration d'une troisième source du droit", in IHEI (ed.), *Les sources*, "Grandes pages du droit international" series, Vol. 2, Pedone, Paris, 2016, p. 253.

[24] M. B. Akehurst, *The Law Governing Employment in International Organizations*, "Cambridge Studies in International and Comparative Law" series, Vol. 8, Cambridge University Press, Cambridge, 1967, pp. xxvii-294, esp. pp. 72-83 and 262-263; C. F. Amerasinghe, *The Law of the International Civil Service…*, *op. cit.*, note 4, pp. 151-158.

[25] League of Nations, *Official Journal*, Oct. 1925, p. 1443.

[26] A. von Verdross, "Les principes généraux du droit dans la jurisprudence internationale", *Collected Courses of the Hague Academy of International Law*, 1935, Vol. 52, esp. p. 203. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

[27] See, in this regard, the ECMWFAB/EUMETSATAB/ESAAT report, p. 1.

[28] ILOAT, Judgment No. 11, 12 August 1953, *Micheline Desgranges v. International Labour Organization (ILO)*.

[29] IDBAT report, p. 1.

[30] For example, ILOAT, Judgment No. 122, 15 Oct. 1968, *Chadsey v. Universal Postal Union (UPU)*.

[31] For example, United Nations Appeals Tribunal (UNAT), Judgment No. 2012-UNAT-201, *Obdeijn v. Secretary-General of the United Nations* (SGUN), para. 36; Judgment No. 2020-UNAT-1042, *Bantan Nugroho v. SGUN*, para. 39; Judgment No. 2022-UNAT-1217, *Ajay Sud v. President of the International Fund for Agricultural Development*, para. 72.

[32] See the IDBAT report, p. 1.

their implied jurisdiction.[33] The ILOAT, for example, stated in the *Chadsey* case that certain provisions of the Staff Regulations

> are merely the translation into written form of general principles of international civil service law; these principles correspond at the present time to such evident needs and are recognised so generally that they must be considered applicable to any employees having any link other than a purely casual one with a given organisation, and consequently may not lawfully be ignored in individual contracts.[34]

Express provision. It may be observed, with regard to a number of administrative tribunals, that the reference to general principles, whether in the statute or rules of procedure of the tribunal, or in other provisions applicable to the organisation, constitutes merely a codification. It is therefore by virtue of their implicit jurisdiction that tribunals may identify and apply general principles.

Thus, the Appeals Board of the Council of Europe, and subsequently the ATCE, identify and apply general principles by recognising "the implied power enjoyed by these bodies in such matters and which can be regarded as inherent in the very exercise of the judicial function".[35] The provisions in the Staff Regulations of the Council of Europe and the Development Bank, or in other organisations affiliated to the ATCE, merely codify certain principles.[36]

Similarly, Article 206 of the Staff Regulations of the International Organisation of La Francophonie (OIF) recognises the applicability of general principles of law by the Court of First Instance.[37] Furthermore, the OIF Court of First Instance reiterates in its case-law that it is bound to respect "the general principles of international civil service law".[38]

Likewise, the second sentence of Article III of the IMFAT Statute "includ[es]"[39] the general principles in the organisation's internal law in that it 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.*[40]

It follows from the case-law of the courts of the European Union that they also identify and apply general principles, primarily by virtue of their implied jurisdiction.[41] Whilst primary law expressly refers to general principles – first in Article F(2) of the 1992 Maastricht Treaty, and subsequently in Article 6(3) of the Treaty on European Union (TEU) – it in fact merely validates the "establishment by case-law of fundamental rights as general principles of Union law".[42]

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[33] See the ECMWFAB/EUMETSATAB/ESAAT report, p. 1.
[34] For example, ILOAT, Judgment No. 122 (1968), *Chadsey v. UPU*.
[35] ATCE report, p. 2.
[36] ATCE report, pp. 1-2.
[37] TPIOIF report, p. 1.
[38] TPIOIF, Judgment No. 44, 5 March 2025, para. 5; TPIOIF report, p. 1. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.
[39] Celia Goldman, "Finding the law of the international civil service in the jurisprudence of sister tribunals", in D. Petrović (ed.), *90 years of contribution of the Administrative Tribunal of the International Labour Organization to the creation of international civil service law*, ILO, Geneva, 2017, p. 44; IMFAT report, p. 1.
[40] IMFAT Statute, Art. III, second sentence; IMFAT report, p. 1.
[41] Court of Justice of the European Communities (CJEC), 12 Nov. 1969, *Stauder v. Stadt Ulm*, Case 29/69, EU:C:1969:57; 17 Dec. 1970, *Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel*, Case 11/70, EU:C:1970:114. See the report of the General Court of the EU, pp. 5-6, §§ 1-5 and pp. 13-14, §§ 13-16.
[42] See the report of the General Court of the EU, p. 6, §§ 4-5, referring to the case-law of the CJEC, 12 Nov. 1969, *Stauder v. Stadt Ulm*, cited above; 17 Dec. 1970, *Internationale Handelsgesellschaft*, cited above. No official

Thus, "it is now commonly accepted that the power of the EU judicature to establish general principles is intrinsically linked to the task conferred upon it by Article 19 TEU of *ensuring that in the interpretation and application of the Treaties the law is observed*, combined, where appropriate, with the jurisdiction of that court, under the second paragraph of Article 263 [of the Treaty on the Functioning of the European Union (TFEU)], to rule on 'actions [for annulment of acts of secondary law] on grounds of […] infringement of the Treaties or of *any rule of law relating to their application*'".[43]

In other international administrative courts, the possibility of referring to general principles was also codified well after their establishment. Thus, the Administrative and Labour Tribunal of the Southern Common Market (TALMERCOSUR), which was established in 2003[44] and which applied the general principles from its very first judgment,[45] decided to specify in its rules of procedure only in 2016 that it may apply the general principles of law.[46]

For the Organization of American States Administrative Tribunal (OASAT), this possibility was also added, albeit in different terms, under Article 1(v) of its Statute:

> *For the adjudication of any disputes involving the personnel of the General Secretariat, the internal legislation of the Organization shall take precedence over general principles of labor law and the laws of any member State.*

This provision differs from the others in that it limits the possibility of referring to general principles and determines their standing in relation to other applicable sources. It was added in 1995 by the Organisation's General Assembly, "*to curb what it considered the Tribunal's inappropriate application of general principles of law, equity* […]*, and the jurisprudence of other tribunals in the course of adjudicating several high-profile multi-party staff disputes.*"[47] The OASAT had previously been led to adopt judgments declaring policies and standards adopted by the Organisation's General Assembly to be incompatible with general principles.[48] Thus, it effectively ruled out the applicability of a resolution of the Organisation's General Assembly concerning its budget which (repeatedly) failed to take account of the obligation previously recognised in an agreement with staff members to adjust salaries to the cost of living in accordance with a method determined by mutual agreement with the staff.[49]

Conversely, at the Administrative Tribunal of the Bank for International Settlements (ATBIS), Article IX(1) of its Statute explicitly confers upon it the jurisdiction to ensure, "if necessary, that [the regulatory provisions adopted by the Bank and agreements concluded between the Bank and its staff members] are in conformity with general principles of law". The subsidiary

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English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

[43] Report of the General Court of the EU, p. 14, § 16, italics in the original. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

[44] MERCOSUR/GMC/RES No. 54/03, *Tribunal Administrativo-Laboral Del MERCOSUR*.

[45] TALMERCOSUR, Judgment 1, 23 Sept. 2005, *Mackinnon Gómez v. Secretaría Administrativa del MERCOSUR*, pp. 7-8.

[46] TALMERCOSUR, Rules of Procedure, as amended on 13 April 2016, Art. 4.

[47] W. M. Berenson, "Administrative Tribunal: Organization of American States (OAS)", *Max Planck Encyclopedia of International Procedural Law*, January 2022, para. 42.

[48] *Ibid.*, para. 2. The case-law in question included, inter alia, Judgments No. 37, 3 Nov. 1978, *Buchholz et al. v. Secretary-General of the OAS*; No. 64, 30 April 1982, *Chisman v. Secretary-General of the OAS*; No. 90, 1 Nov. 1985, *Rebolledo et al. v. Secretary General of the OAS* and No. 124, 13 May 1994, *Jairo Torres et al. v. Secretary General of the OAS*.

[49] OASAT, Judgment No. 124 (1994), *Jairo Torres et al.*, cited above.

applicability of the "general principles of the law of the international civil service" and the "general principles of Swiss law" follows from Article IX(2) of the 2014 ATBIS Statute:

> In the absence of applicable rules, the Administrative Tribunal shall base its judgments on general principles of the law of the international civil service law and, in case of doubt, on general principles of Swiss law, whereby it is understood that neither judgments delivered by other administrative tribunals of the international civil service nor those of national courts shall be binding upon the Tribunal.

Conclusion. In summary, in the absence of an express provision, all international administrative tribunals have the implied jurisdiction to apply general principles.

2) **Does your tribunal distinguish between "general principles of law arising from national legal systems" and "general principles of law formed within the international legal system", and perhaps other principles as well (for example, general principles of international civil service law, etc.)? Which ones, for what reason(s) and with what consequence(s)?**

Use of a wide range of terminology. Several international administrative tribunals use a wide range of terminology to refer to general principles. This has already been demonstrated in relation to the ILOAT,[50] and confirmed by the ATCE.[51] Similarly, the IMFAT refers at times to the "well-established principle[s] of international administrative law" in relation to the principle of non-discrimination,[52] to the "generally recognized principles of international civil service law",[53] to the "general principles of international administrative law",[54] and to the "general principle[s] guiding international administrative tribunals",[55] or even to "universally accepted principles of human rights".[56]

Practices regarding the absence of distinction. With the exception of the General Court of the EU,[57] all the courts that responded to the survey stated that they did not make a specific distinction between "general principles of law derived from national legal systems" and "general principles of law formed within the international legal system".[58] They do not appear to attach any particular significance to the origin of general principles. For example, the provisions applicable to the TPIOIF refer to "general principles of law",[59] which does not prevent the TPIOIF from referring sometimes to "general principles of international law",[60] and sometimes to "general principles of international civil service law".[61]

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[50] L. Germond, *Les principes généraux…*, *op. cit.*, note 11, pp. 33-34.
[51] See the ATCE report, pp. 2-3.
[52] IMFAT, Judgment No. 2002-1, 5 March 2002, *Mr "R" v. IMF*, para. 30; IMFAT report, p. 2.
[53] IMFAT, Judgment No. 2024-5, 30 Dec. 2024, *"XX" v. IMF*, para. 65; IMFAT report, p. 2.
[54] *Ibid.*, para. 65; IMFAT report, p. 2.
[55] IMFAT, Judgment No. 2024-1, 12 February 2024, *"WW" v. IMF*, para. 170. See also Judgment No. 2022-1, 30 June 2022, *"TT" v. IMF*, para. 159; Judgment No. 2005-1, 18 March 2025, *Mr "F" v. IMF*, para. 73; IMFAT report, p. 2.
[56] IMFAT, Judgment No. 2005-1, 18 March 2005, *Mr. "F" v. IMF*, para. 81; Judgment No. 2006-6, 29 November 2006, *Ms. 'M' and Dr. 'M' v. IMF*, paras. 123-126, IMFAT report, p. 2.
[57] Report of the General Court of the EU, pp. 15-19, §§ 17-27.
[58] See, for example, ECMWFAB/EUMETSATAB/ESAAT report, p. 1; IDBAT report, p. 2; ATCE report, pp. 2-3; IMFAT report, p. 2; TALMERCOSUR report, p. 1; OASAT report, pp. 1-2; TPIOIF report, pp. 1-2.
[59] OIF, *Staff Regulations*, Art. 206.
[60] TPIOIF, Judgment No. 8, 9 Dec. 2015, p. 14; TPIOIF report, p. 2.
[61] TPIOIF, Judgment No. 44, 5 March 2024, para. 5; TPIOIF report, p. 1.

Practice of a distinction with legal consequences. The General Court of the EU, for its part, draws a distinction between "general principles of EU law deriving from national legal systems", i.e. "general principles of EU law", and "general principles of law formed within the international legal system". This distinction is necessary to determine the principle's standing in relation to other legal norms. In particular, "general principles of [EU] law" fall within the scope of primary EU law.[62] The applicability of the principles of international law is subject to their compatibility with the structure and objectives of the European Union.[63] In the event of a conflict of norms, the general principles of EU law take precedence over the principles of customary international law.[64] More specifically, according to the General Court of the EU:

> It must be borne in mind that the Community must respect international law in the exercise of its powers. […] However, […] the primacy of international law over EU law does not extend to primary law, in particular to the general principles of which fundamental rights form a part.[65]

Consequently, the courts of the European Union recognise that sources of general international law, including general principles, occupy a position equivalent to primary law in the hierarchy of norms (which is logical given the absence of a hierarchy among sources of international law), but that primary law alone prevails in the event of incompatibility, which may be justified by the principle of *lex specialis*.

Practice of a distinction without legal consequences. The case of ATBIS is also worth noting: Article IX(1) of its Statute expressly distinguishes between "general principles of law", with which regulatory standards and "contracts concluded between the Bank and its officials" must comply. By contrast, "general principles of the law of the international civil service" and "general principles of Swiss law" apply "in the absence of applicable rules". However, this distinction has no bearing on the position of the principles within the hierarchy of norms. Thus, the ATBIS nevertheless examined the compatibility of an amendment to the terms and conditions of employment – in this case the "*Pensions Regulations*" – with the principle of acquired rights.[66]

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

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[62] See, for example, EU, Court of Justice (CJEU), Judgments of 15 Oct. 2009, *Audiolux and Others v. Groupe Bruxelles Lambert SA (GBL) and Others and Bertelsmann AG and Others*, Case C-101/08, EU:C:2009:626, para. 63, and of 29 Oct. 2009, *NCC Construction Danmark*, Case C-174/08, EU:C:2009:669, para. 42, in which the Court held that the general principles of EU law have "constitutional status" (*cf.* report of the General Court of the EU, p. 16, note 29).

[63] CJEC, Judgments of 26 February 1976, *Commission of the European Communities v. Italian Republic*, Case 52/75, EU:C:1976:29, and of 9 July 1991, *Commission of the European Communities v. United Kingdom*, Case C-146/89, EU:C:1991:294, concerning the inapplicability in EU law of the principle of reciprocity specific to public international law. See the report of the General Court of the EU, pp. 17-18, § 24.

[64] For example, General Court of the EU, Judgment of 13 July 2011, *Schindler Holding and Others v. European Commission*, Case T-138/07, EU:T:2011:362, paras. 185-196 concerning the protection of foreign investors and the fundamental right to respect for property; Judgment of 30 April 2014, *Tisza Erömü kft v. European Commission*, Case T-468/08, EU:T:2014:235, paras. 321-324 concerning the principle of good faith; report of the General Court of the EU, p. 18, §§ 25-26.

[65] General Court of the EU, Judgment of 13 July 2011, *Schindler Holding and Others v. European Commission*, Case T-138/07, EU:T:2011:362, para. 188, referring in particular to the CJEC (Grand Chamber), Judgment of 3 Sept. 2008, *Kadi and Al Barakaat International Foundation v. Council and Commission*, Case C-402/05 P and C-415/05 P, EU:C:2008:461, paras. 291 and 308.

[66] ATBIS, Judgments No 1/2006, of 13 Dec. 2007, para. 3d; No 1/2018, 11 April 2019, paras. 182-188.

Applicability of methods derived from general international law. Insofar as international civil service law is a branch of international law, it is necessary to apply the methods applicable in international law to identify the existence and content of general principles, as noted by the European Bank for Reconstruction and Development Administrative Tribunal (EBRDAT) in Judgment No. 2019/AT/06, which is particularly comprehensive on this subject and refers to the work of the International Law Commission in this field.[67]

Principle of the absence of hierarchy among methods. The TALMERCOSUR explains the distinctive nature of general principles in its first judgment of 2005:

> The inclusion of general principles of law [among the applicable sources] implies the need to determine which of these principles are applicable to the case, taking into account the fact that these are relations governed by specific rules that are not peculiar to any national legal system.[68]

According to the Administrative and Labour Tribunal (ALT), the following may be applied:

> the general principles of law enshrined in international and regional instruments which establish rights of the highest value and effectiveness, considered essential to the universal legal conscience and resulting from a comparative study of the laws of the four MERCOSUR member states.[69]

In its subsequent case-law, it clarified that, in addition to principles derived from international conventions, it could also refer to "other general principles of labour law accepted by the legal doctrine and case-law throughout the region".[70] Whilst the use of the term "other" (*otros*) might suggest that it favours reference to international instruments (particularly where the same principle arises both from international instruments and from national laws as a whole) and employs the method of comparative law only as a supplementary measure, it considers that there is no hierarchy between the various methods.[71]

A similar approach is found at the ATCE, the IDBAT, the TPIOIF and the United Nations courts, which do not formally rank the methods used to identify general principles,[72] in the

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[67] EBRDAT, Decision No. 2019/AT/06, *Appellant v. BERD*, para. 6.3.4; see the analysis by J. Morgan-Foster, "Sources of Law", *op. cit.*, note 4, pp. 60-61.

[68] TALMERCOSUR, Judgment No. 1/2005, *Maureen Margaret Mackinnon Gómez v. MERCOSUR Administrative Secretariat (MAS)*, p. 7: "*La inclusión de los principios generales del derecho implica la necesidad de determinar cuáles de esos principios son aplicables al caso, teniendo en cuenta que se trata de relaciones regidas por normas específicas que no son proprias de ningún ordenamiento jurídico nacional.*". No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

[69] TALMERCOSUR, Judgment No. 1/2005, *Mackinnon Gómez*, cited above, pp. 7-8: "*A critero del TAL, son aplicables al caso los principios generales de derecho proclamados en instrumentos internacionales y regionales que consagran derechos de más alto valor y eficacia que se consideran esenciales a la conciencia jurídica universal, así como resultantes del estudio del Derecho Comparado de los cuatro Estados Partes del MERCOSUR*". No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

[70] TALMERCOSUR, Judgment No. 4/2017, *Luis Flores v. Parlasur*, p. 6. See also Judgment No. 3/2015, *María del Carmen García v. Instituto Social del MERCOSUR*, p. 5, recognising the applicability of the general principles of procedural law accepted by the legal doctrine and case-law of the region. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

[71] TALMERCOSUR report, p. 3.

[72] TPIOIF report, p. 3; S. Villalpando, "The Law of the International Civil Service", *op. cit.*, note 4, p. 1083; United Nations Dispute Tribunal (UNDT), Judgment No. UNDT/2011/032, 10 February 2011, *Obdeijn v. SGUN*, para. 30, analysing the rationale of national laws regarding the non-renewal of contracts, as well as applicable international law, and para. 31: "In the adjudication of employment disputes that come before them, international administrative tribunals may rely on, among other sources, general principles of law – including international human rights law, international administrative law and labour law – which may be derived from, inter alia, international treaties and international case law.. […] Further, in many cases international administrative tribunals may find guidance by reference to the case law of counterpart tribunals, ILO Conventions and Recommendations,

absence of an express provision or case-law on the matter.[73] It may be noted that, in terms of frequency, reference to the tribunal's own case-law and then reference to the case-law of other international administrative tribunals are the most frequently used methods,[74] followed by the method of reference to international texts codifying or crystallising principles. This is explained by the fact that, insofar as the work of identifying a principle has already been carried out by case-law or in international instruments, it is possible to dispense with a comparative law analysis of national laws.

Exception to a hierarchical method in the EU. The method used to identify a new general principle is particularly detailed for the courts of the European Union:

> for the purposes of identifying a new general principle of EU law, the Court of Justice and the General Court draw inspiration, first, from the national law of the Member States; secondly, from the instruments of international law to which the Member States have acceded or to which they have been party, taken individually or collectively; and, to a lesser extent, thirdly, from the written law of the European Union. Where the principle in question is recognised, in one form or another, in both national and international law – which is often the case in relation to the protection of fundamental rights – the courts of the European Union usually draw upon all relevant sources with a view to establishing that principle as a general principle of EU law.[75]

a) *By reference to national laws? Which ones? Does your tribunal carry out a (possibly limited) comparative law analysis? How are difficulties in translating legal concepts overcome?*

The principle of the inapplicability of national law as such. Unless expressly provided for, as in the legal framework applicable under the ATBIS,[76] and except in specific cases requiring a reference to national law, for example to determine the personal status of agents,[77] national law is not applicable as such by international administrative tribunals.[78] The courts also generally refrain from referring to the national laws of one[79] or several countries to justify the application of a general principle in a given case.[80]

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as well as Digests of Decisions of specialized committees and Reports of the Committee of Experts on the Application of Conventions and Recommendations of the ILO". In the present case, however, the UNDT attaches particular and decisive importance to international texts in identifying a general principle. On appeal, the UNAT does not overturn the UNDT's reasoning on this point, but clarifies: "*the obligation for the Secretary-General to state the reasons for an administrative decision does not stem from any Staff Regulations or Rule, but is inherent to the Tribunal's power to review the validity of such a decision, the functioning of the system of administration of justice established by the General Assembly resolution 63/253 and the principle of accountability of managers that the resolution advocates for.*" (2012-UNAT-201, Judgment of 16 March 2012, *Obdeijn v. SGUN*, para. 36).

[73] ATCE report, p. 11; IDBAT report, p. 5.

[74] For example, IMFAT report, p. 9.

[75] Report of the General Court of the EU, p. 20, § 29, see also the analysis on pp. 20-28, §§ 28-54. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

[76] ATBIS, Statute, Art. IX(1).

[77] For example, IMFAT, Judgment No. 2001-2, 20 Nov. 2001, *Mr. "P" (No. 2) v. IMF*, paras. 146–147; IMFAT report, pp. 3-5. It follows from this judgment that the determination of national law, including a national judgment to be taken into account, may be made by applying principles of private international law interpreted in the light of principles of international administrative law.

[78] See, for example, IDBAT, Statute, Art. VI(2); TALMERCOSUR, Judgment No. 4/2017, *Luis Flores v. Parlasur*, p. 6; ATCE report, p. 4 and the reference cited; TPIOIF, Judgment No. 43, 10 August 2023, para. 32; TPIOIF report, p. 2.

[79] IDBAT report, p. 3.

[80] See the ATCE report, pp. 3-4, and the IMFAT report, p. 3.

Principles derived from a comparison of legal systems. And yet, the influence of national laws on international civil service law in general,[81] and on general principles – of which the general principles of law "include principles […] derived from national legal systems"–[82] in particular, is well established.[83] Thus, the commentary on Article III of the IMFAT Statute[84] expressly states: "*These principles have been extensively elaborated in the case law of both international administrative tribunals and domestic judicial systems*".[85] It also specifies: "*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.*"[86] The TALMERCOSUR applies "the general principles of law […] resulting from the comparative study of the laws of the four MERCOSUR member states".[87] When the ATCE identifies a general principle of law, it considers that it represents "the lowest common denominator among those systems".[88] Nevertheless, most general principles are already established and do not require a detailed analysis of national laws.[89] For example, it was sufficient for the Court of Justice of the European Communities (CJEC) to state in the *Johnston* case that the requirement for "judicial control […] reflects a general principle of law which underlies the constitutional traditions common to the Member States", whilst recalling that it "is also laid down in Articles 6 and 13" of the ECHR.[90] It is only in exceptional cases that a court carries out an explicit comparative analysis.[91]

Nevertheless, the courts of the European Union "generally carry out a comparative analysis of the relevant national laws" when preparing their decisions:

> In this context, they examine the degree of convergence between the various national legal systems on the issue in question. The greater this convergence, the more likely it is that EU courts will recognise the existence of a common general principle […]. However, this is not a strictly quantitative or arithmetic analysis of national legal systems, but a process of identifying the principles that embody the spirit and values already present in the legal system of the European Union. The comparative elements derived from the observation of national legal

[81] M. Bedjaoui, *Fonction publique internationale et Influences nationales*, Stevens, London, 1958, xv-674 p.
[82] ICJ, A/CN.4/785, 18 February 2025, *Fourth Report on General Principles of Law*, by Mr Vázquez-Bermúdez, Annex II, conclusion 3.
[83] ILOAT, Judgment No. 493 (1982), *Volz v. Eurocontrol*, para. 5; C. F. Amerasinghe, *The Law of the International Civil Service…*, *op. cit.*, note 4, p. 177. See also the ATCE report, p. 4.
[84] The commentary on the IMFAT Statute is the report of the IMF Executive Board proposing the adoption of the IMFAT Statute; see IMFAT, Judgment No. 2003-2, 30 Sept. 2003, *Ms. 'K' v. IMF*, para. 42; *cf.* IMFAT report, p. 9, footnote 67.
[85] *Commentary on the IMFAT Statute*, p. 17; IMFAT report, p. 3.
[86] *Ibid.*, p. 18; IMFAT report, p. 3.
[87] TALMERCOSUR, Judgment No. 1/2005, *Mackinnon Gómez*, cited above, pp. 7-8: "*A critero del TAL, son aplicables al caso los principios generales de derecho* […] *así como resultantes del estudio del Derecho Comparado de los cuatro Estados Partes del MERCOSUR*". No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.
[88] ATCE report, p. 4.
[89] See, in this regard, ECMWFAB/EUMETSATAB/ESAAT report, p. 2.
[90] CJEC, Judgment of 15 May 1986, *Johnston v. Chief Constable of the Royal Ulster Constabulary*, Case 222/84, EU:C:1986:206, para. 18; report of the General Court of the EU, p. 20, § 31. For examples of the identification of general principles of EU law derived from the national laws of Member States, see also the examples in the report of the General Court of the EU, pp. 20-23, §§ 30-38.
[91] ATCE, Decision of 28 March 2003, *Levy v. Secretary-General*, appeal No 308/2002, para. 48; ATCE report, p. 4.

> systems thus constitute a source of inspiration from which the EU courts select the instruments best suited to meeting the requirements and needs of the EU legal system.[92]

This process may be described as a "bottom-up process", insofar as principles recognised in national legal systems are incorporated into EU law.[93] The Court of Justice and the General Court of the European Union may request the Research and Documentation Directorate to prepare a comparative law study in the form of a research note to assist them in their deliberations during the proceedings.[94] This study "usually covers a fairly large sample of legal systems, selected on the basis of their representativeness".[95] However, it is not generally presented in detail in the decisions of EU courts: they "are generally limited to presenting the conclusion of the comparative law analysis".[96]

The EU courts may identify general principles of law both by reference to constitutional traditions common to the Member States (for example, the right to property,[97] the principle of retroactive application of the lighter penalty,[98] the principle of non-retroactivity of criminal provisions) [99] and to rules common to the Member States that are not of a constitutional nature (for example, the prohibition of unjust enrichment).[100] Furthermore, the second paragraph of Article 340 TFEU requires the European Union, "*in accordance with the general principles common to the laws of the Member States*, [to] make good any damage caused by its institutions or by its servants in the performance of their duties".[101] On this basis, the following have been identified:

a. the common general principle confirming the joint and several liability of the co-perpetrators of the same damage, whether material or non-material;[102]

b. the general principle whereby, in the event of the death of an official in the performance of their duties, "the existence of a scheme which guarantees automatic payment of benefits to the heirs and successors of a deceased official does not prevent those same people, if they consider that the damage which they have suffered is not covered, or not completely

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[92] Report of the General Court of the EU, p. 23, § 36. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.
[93] *Ibid.*, p. 23, § 37. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.
[94] *Ibid.*, pp. 23-24, § 38.
[95] *Ibid.*, p. 23, § 38. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.
[96] *Ibid.*, pp. 23-24, § 38. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.
[97] CJEC, Judgment of 13 Dec. 1979, *Hauer v. Land Rheinland-Pfalz*, Case 44/79, EU:C:1979:290, paras. 15-22, report of the General Court of the EU, p. 21, § 31.
[98] CJEC (Grand Chamber), Judgment of 3 May 2005, *Berlusconi and Others*, C-387/02, C-391/02 and C-403/02, EU:C:2005:270, paras. 66-69; report of the General Court of the EU, p. 21, § 31.
[99] CJEC, Judgment of 10 July 1984, *Regina v. Kent Kirk*, Case 63/83, EU:C:1984:255, paras. 21-24; report of the General Court of the EU, p. 21, § 31.
[100] Report of the General Court of the EU, p. 21, § 32 and the case-law cited.
[101] See also the second paragraph of Article 215 of the EEC Treaty (Art. 288 of the consolidated version of the EC Treaty, after the entry into force of the Amsterdam Treaty), which provided that "[i]n the case of non-contractual liability, the Community shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties".
[102] General Court of the EU, Judgment of 7 Dec. 2017, *Missir Mamachi di Lusignano and Others v. Commission*, Case T-401/11 P-RENV-RX, EU:T:2017:874, paras. 118 and 195; report of the General Court of the EU, p. 22, § 34.

covered, by that scheme, from obtaining compensation for their non-material damage by means of an action before a national court";[103]

c. the general principle that non-pecuniary damage suffered cannot be the subject of double compensation;[104]

d. the "common general principle […] under which […] it is recognised that the heirs [of a deceased official in the exercise of their duties], in particular his children and parents, have suffered compensable non-material damage consisting in the psychological suffering caused by the death of a person close to them".[105]

The General Court of the EU has, however, set a limit on the possibility of inferring the existence of a general principle from the rules common to the various national legal systems:

> [i]t would still be necessary for that rule to be essential in those legal systems as a genuine general principle of law and not merely to derive from the specific provisions adopted by the legislature in the exercise of its wide discretion.[106]

Transposition. In all cases, once the existence of a principle common to the various legal systems has been identified, the principle is transposed into the international legal system, and more specifically into international civil service law.

Apparent absence of difficulties in translating legal concepts. Regarding the question of how difficulties in translating legal concepts are overcome, most tribunals have not answered this question, except for the TPIOIF, which states that it has not encountered any translation difficulties in this regard to date.[107]

Reference to national law for illustrative purposes. Although international administrative tribunals all agree that, in order to identify a general principle, it is not possible to refer to a single national legal system,[108] it does happen, for example at the IDBAT, that parties to a dispute invoke national case-law to illustrate the existence or scope of a general principle.[109] In such cases, the IDBAT takes care not to cite such case-law in its reasoning, but may in certain instances agree to include it in the annexes to the judgment in order to support arguments based on converging legal concepts within the framework of the organisation's partial legal system.[110] Similarly, where the exact scope of a principle remains to be determined, it may be useful for the tribunal to refer to a given national law or to several national laws in which the scope of the principle is formulated in an exemplary manner. Thus, to determine the conditions of a promise,

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[103] General Court of the EU, Judgment of 7 Dec. 2017, *ibid.*, para. 194; report of the General Court of the EU, p. 22, § 34.
[104] General Court of the EU, Judgment of 7 Dec. 2017, *ibid.*, para. 195; report of the General Court of the EU, p. 22, § 34.
[105] General Court of the EU, Judgment of 7 Dec. 2017, *ibid.*, para. 198; report of the General Court of the EU, p. 22, § 34.
[106] General Court of the EU, Judgment of 6 Oct. 2005, *Sumitomo Chemical Co. Ltd. and Sumika Fine Chemicals Co. Ltd. v. Commission of the European Communities*, Cases T-22/02 and T-23/02, EU:T:2005:349, paras. 97-99, according to which there is no general principle whereby, "where a limitation period is fixed for a particular infringement, it must be applied both to the power to penalise the infringement and to the power to find it" (para. 96); report of the General Court of the EU, p. 22, § 35.
[107] TPIOIF report, p. 3.
[108] See, for example, General Court of the EU, Judgment of 5 April 2006, *Degussa AG v. Commission of the European Communities*, Case T-279/02, EU:T:2006:103, para. 73; report of the General Court of the EU, p. 23, § 36.
[109] IDBAT report, p. 3.
[110] *Ibid.*, referring to IDBAT, Case No. 104, Judgment of 7 November 2022, *Viviana Vélez-Grajales v. IDB*, annexes. However, these annexes have not been published on the Tribunal's website.

the ESA Appeals Board (ESAAB) referred to other international judgments and, by way of example, to section 38 of the German Administrative Procedure Act (*Verwaltungsverfahrensgesetz*).[111] National law is then invoked only in an auxiliary or illustrative capacity.

b) ***By reference to your tribunal's previous case-law?***

Ensuring consistency in case-law. With regard to general principles already recognised, all the international administrative tribunals participating in this study refer to their own previous case-law.[112] This helps to consolidate case-law and ensure consistency.

As Celia Goldman explained:

> *IATs are not ad hoc tribunals, but essentially "permanent" or continuing ones, whose legitimacy is enhanced when they act with a measure of consistency over time. By looking to precedent, tribunals also gain in efficiency by avoiding the need to re-play in full the decision-making process when similar issues and fact patterns recur. Furthermore, reasoning through precedent provides future litigants with a measure of predictability that like cases shall be considered in a similar manner. In international organizations, a tribunal's use of precedent may also have a kind of downstream effect, guiding decision-makers in other tiers of the dispute resolution system.*[113]

Furthermore, more generally, the United Nations Appeals Tribunal (UNAT) explained in the *Igbinedion* case, sitting as a panel of six judges and unanimously:

> *There can be no doubt that the legislative intent in establishing a two-tier system was that the jurisprudence of the Appeals Tribunal would set precedent, to be followed in like cases by the Dispute Tribunal. The principle of stare decisis applies, creating foreseeable and predictable results within the system of internal justice.*[114]

Similarly, the ILOAT has stated that "the Tribunal has adopted the rule of *stare decisis*" under which it follows its own precedents "unless it is persuaded that such precedents were wrong in law or in fact or that for any other compelling reason they should not be applied", and under which "courts lower in the judicial hierarchy are obliged to follow legal principles […] established by appellate courts".[115]

For example, in Case No. 105, *FD v. IDB* (2023), the IDBAT refers to its previous case-law to reaffirm the applicability of principles such as the right to a fair trial, good faith and proportionality, without the need to refer to external sources.[116]

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[111] ESAAB, Decision of 31 January 2018, Case No. 106, paras. 71-75; ECMWFAB/EUMETSATAB/ESAAT report, pp. 2 and 6-7.

[112] See, for example, the IMFAT report and the examples cited, pp. 5-6, including Judgment No. 2015-3 of 29 Dec. 2015, *Ms. 'GG' (No. 2) v. IMF*, para. 445, referring to the IMFAT's previous case-law to establish its inherent jurisdiction, including under general principles, to determine the compensation due for intangible injury; in para. 446 it sets out the criteria for identifying the compensation due.

[113] C. Goldman, "Finding the law…", *op. cit.*, note 39, p. 46.

[114] 2014-UNAT-410, *Igbinedion v. SGUN*, para. 24. See also the analysis in P. Bodeau-Livinec and A.-M. Thévenot-Werner, "Activité et Jurisprudence des Tribunaux administratifs des Nations Unies. Années 2014-2015", *AFDI*, 2015, Vol. 61, pp. 413-416.

[115] ILOAT, Judgment No. 3450 (2015), *Ms L. N. v. ILO*, para. 8. See also the analysis in P. Bodeau-Livinec and A.-M. Thévenot-Werner, "Activité et Jurisprudence…", *ibid.*, pp. 414-415.

[116] IDBAT, Case No. 105 (2023), *FD v. IDB*, paras. 53-56, 105-110. See also the IDBAT report, p. 3.

Maintaining flexibility in the interests of justice. Nevertheless, as the ILOAT implies, the tribunals also retain a degree of flexibility in this area. The ATCE frequently cites its previous case-law applicable to general principles, but does not, however, consider itself bound by its own precedents.[117] Indeed, the source of the applicable law in this area is not precedent, but the general principle itself.[118] It refers to its previous case-law in particular to address a legal issue on which it has already ruled.[119] This was the case in a judgment of 22 March 2024, which referred to a judgment of 4 April 2023 to clarify that the principle of non-discrimination had not been infringed by the non-renewal of a contract on the grounds that the applicant was exclusively Russian since the exclusion of the Russian Federation from the Council of Europe.[120]

c) *By reference to the case-law of other international administrative tribunals? Which ones? Is this reference explicit in the judgments or is it made by the tribunal exclusively in preparation for the judgments?*

Practice of the "dialogue among judges". International administrative courts are in no way bound by the case-law of other international or regional courts.[121] Exceptionally, Article 206 of the OIF Staff Regulations provides that the TPIOIF is to apply, inter alia, "the general principles of law and the case-law of international organisations":[122] this provision, however, leaves the TPIOIF with a wide power of appreciation to determine which case-law to take into consideration. It is, however, common practice for most international administrative tribunals to refer, where appropriate, to the case-law of other international administrative tribunals that have already taken the same general principle into account, where the tribunal considers that such a reference may support its reasoning.[123] As the EBRDAT notes, "*[w]hile case law by other international administrative tribunals is not formally binding on this Administrative Tribunal, the desirability of a consistent development of international administrative law strongly suggests that they should be taken into consideration*".[124]

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[117] ATCE report, p. 4.
[118] C. F. Amerasinghe, *The Law of the International Civil Service*…, *op. cit.*, note 4, p. 193; ATCE report, p. 4.
[119] ATCE report, p. 4.
[120] ATCE, Judgment of 22 March 2024, *I. S. v. Secretary General of the Council of Europe*, appeal No. 742/2023, para. 43, referring to the Decision of 4 April 2023, *Orekhova et al. v. Secretary General*, appeals Nos. 722/2022, 731/2022, 732/2022 and 733/2022, paras. 39, 41 and 64 to 67. See also the ATCE report, p. 4.
[121] ILOAT, Judgment No. 4493 (2022), *P. (No. 9) v. European Patent Organisation (EPO)*, para. 10, and the case-law cited. General Court of the EU, Judgment of 27 Sept. 2011, *Whitehead v. European Central Bank (ECB)*, Case F-98/09, para. 76, confirmed by the General Court of the EU, Judgment of 11 Dec. 2013, *Carlos Andres v. ECB*, Case F-15/10, para. 382: "the case-law of the Administrative Tribunal of the ILO, relied on by the applicants in support of their argument, is not applicable. As is apparent from the judgment of 27 Sept. 2011 in *Whitehead v. ECB* (F-98/09, para. 76), that case-law does not, as such, constitute a source of European Union law and, consequently, cannot be relied on otherwise than in support of a rule or principle recognised by European Union law". No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.
[122] See also the TPIOIF report, pp. 1 and 3. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.
[123] See the study by J. Morgan-Foster, "International Administrative Tribunals and Cross-Fertilization: Evidence of a Nascent Common Jurisprudence?", *Chicago Journal of International Law*, Vol. 24, 2024, no. 2, pp. 339-412. See also General Court of the EU, Judgment of 11 Dec. 2013, *Carlos Andres v. ECB*, Case F-15/10, EU:F:2013:194, para. 382.
[124] EBRDAT, Decision No. 2019/AT/06, *Appellant v. EBRD*, para. 6.3.4.1; see also the analysis by J. Morgan Foster, "Sources of Law", *op. cit.*, note 4, p. 61.

Thus, the OASAT has, for example, referred to the case-law of the ILOAT and the World Bank Administrative Tribunal (WBAT) regarding acquired rights.[125] A similar practice is found at the UNAT, which regularly cites the case-law of another international administrative tribunal when recalling a general principle.[126] Indeed, general principles – as a source of international law – are directly enforceable against international organisations: in law, the same general principle applies to different international organisations. By way of illustration, the ILOAT, which has jurisdiction over some sixty international organisations, applies the same general principles to all international organisations falling within its jurisdiction. It has also been emphasised in general terms: "*when a tribunal identifies a general principle underlying the written law, that identification provides a natural justification for looking to the jurisprudence of other IATs*",[127] which in turn supports the Tribunal's conclusions.[128]

Regular practice. The practice of expressly referring to the case-law of other courts may be more or less frequent depending on the tribunal. As the IMFAT explains, referring to the work of Celia Goldman: "'*[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.' The need to do so may then become less compelling '[a]s a tribunal matures.'*"[129] The commentary on the IMFAT Statute encourages the IMFAT to consider the case-law of other international administrative tribunals in its endeavour "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".[130] This implies for the IMFAT the obligation to recognise the limitations on those principles resulting from the case-law established by other international administrative tribunals.[131] Relying on the case-law of other international administrative tribunals plays an important role in enabling the tribunal to "*find and transmit higher norms (or 'general principles') in a process of cross-fertilization. In this way, IATs weave the fabric of what has been termed 'international administrative law' or the law of the international civil service*".[132]

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[125] OASAT, Judgment No. 30, 1 June 1977, *Hebblethwaite et al. v. Secretary-General of the OAS*, p. 9, citing ILOAT Judgment No. 61, 4 Sept. 1962, *Lindsey v. ITU*. In Judgment No. 95, 31 Oct. 1986, *Brunetti et al. v. Secretary-General of the OAS*, it referred to the aforementioned *Lindsey* case-law and to Decision No. 1 delivered on 5 June 1981 by the WBAT in the case of *de Merode et al. v. World Bank*, holding that the replacement of one tax reimbursement system with another does not infringe staff members' acquired rights, provided that it is reasonable and does not undermine the balance of the employment relationship; see W. M. Berenson, "Administrative Tribunal…", *op. cit.*, note 47, para. 45. See also the OASAT report, p. 2.

[126] See, for example, 2022-UNAT-1231, *Sergio Baltazar Arvizú Trevino v. SGUN*, paras. 64-67, referring to numerous judgments of the ILOAT (No. 2227, para. 7; No. 911; No. 4148, para. 7; No. 3106, paras. 8 and 9; No. 274, para. 22; No. 1061, para. 3; and Judgment No. 87) to clarify that defamation constitutes a limitation on the principle of freedom of expression and debate as components of the principle of freedom of association. 2013-UNAT-302 (Plenary Panel), *Applicant v. SGUN*, para. 35, concerning the principle that internal appeal bodies are the primary bodies for establishing the facts. For an analysis of the case-law in 2014-2015, see P. Bodeau-Livinec and A.-M. Thévenot-Werner, "Activité et Jurisprudence…", *op. cit.*, note 114, p. 415.

[127] C. Goldman, "Finding the law…", *op. cit.*, note 39, p. 47; IMFAT report, pp. 7-8.

[128] IMFAT report, p. 8.

[129] C. Goldman, "Finding the law…", *op. cit.*, note 39, p. 47; footnotes omitted; IMFAT report, p. 5.

[130] Commentary on the IMFAT Statute, p. 17; IMFAT report, p. 6.

[131] Commentary on the IMFAT Statute, p. 17; IMFAT report, pp. 6-7.

[132] C. Goldman, "Finding the law…", *op. cit.*, note 39, p. 47; IMFAT report, p. 7.

Reference to the case-law of other IATs is indeed common at the IMFAT.[133] The case-law of the WBAT is often cited due to the similar functioning of the two organisations and the relatively comprehensive nature of the WBAT's case-law,[134] but there are also references to the case-law of the ILOAT, the United Nations Administrative Tribunal and its successor, as well as to the case-law of the Asian Development Bank Administrative Tribunal (ADBAT).[135] For example, in Judgment No. 2023-4, it refers to the case-law of the WBAT, the United Nations Administrative Tribunal and the ADBAT to reiterate that international organisations have a duty of care to protect the health and safety of their employees, and to the case-law of the ILOAT to specify that one way of fulfilling this duty is to compensate the official in the event of an accident at work or an occupational disease.[136]

The IDBAT also regularly refers to the case-law of other international administrative tribunals, notably that of the WBAT, when identifying and applying general principles of international administrative law. This practice of comparing case-law plays a decisive role in enabling the IDBAT to forge its own standards, particularly in areas such as the right to a fair trial, proportionality and the scope of judicial review in disciplinary matters.[137] It considers that the case-law of other international administrative tribunals is not merely persuasive, but forms an integral part of the coherent development of general principles applicable to the international civil service.[138]

Similarly, the ATCE regularly refers to the case-law of other tribunals, even where there are precedents in its own case-law: this enables it to demonstrate that its findings are broadly supported.[139] There are frequent references to the case-law of the ILOAT,[140] the North Atlantic Treaty Organization Administrative Tribunal (NATOAT),[141] the Organisation for Economic

[133] J. Morgan-Foster, "International Administrative Tribunals and Cross-Fertilization…", *op. cit.*, note 123, pp. 347-354; IMFAT report, pp. 5-9 and the case-law cited.
[134] IMFAT report, p. 7, which also notes in a footnote that, over the years, certain judges have sat on both the WBAT and the IMFAT.
[135] IMFAT, Judgment No. 2002-1, 5 March 2002, *Mr 'R' v. IMF*, paras. 30-34, concerning the principle of non-discrimination; IMFAT report, p. 7.
[136] IMFAT, Judgment No. 2023-4, *"VV" (No. 2) v. IMF*, para. 83, referring to WBAT, Decision No. 569 (2017), *EI v. International Bank for Reconstruction and Development (IBRD)*, para. 90; UNAT, Judgment No. 1125 (2003), *Mwangi v. SGUN*, para. IV, and ADBAT, Decision No. 5 (1995), *Bares v. Asian Development Bank (ADB)*, para. 21, as well as the case-law of the ILOAT, Judgment No. 2533 (2006), *M. D. S. v. Organisation for the Prohibition of Chemical Weapons*, para. 6.
[137] IDBAT report, p. 4. See IDBAT, Judgment of 17 Dec. 2021, *José Jesús Lovo Parrales v. IDB*, Case No. 102, paras. 44 and 113-115, adopting the analytical framework developed by the WBAT in Decision No. 248 (2001), *Koudogbo*, and in Decisions No. 14 (1983), *Gregorio v. IBRD*, No. 142 (1995), *Carew v. IBRD*, and No. 543 (2016), *Houdart v. IBRD*, in disciplinary matters.
[138] IDBAT report, p. 4.
[139] ATCE report, pp. 5-6, including further examples and a detailed presentation of these.
[140] See, e.g., ATCE, Decision of 9 Oct. 2018, *Jannick Devaux (II) and (III) v. Secretary-General*, appeals Nos 587/2018 and 588/2018, para. 98, referring to ILOAT Judgment No 1333 (1994), *Franks and Vollering v. EPO*, para. 5, to recall that it also rules by taking into account the "general principles of law and basic human rights". See the ATCE report, p. 5.
[141] ATCE, Decision of 5 February 2025, *A. S. T. and Others v. Secretary-General*, appeals Nos. 746/2024 and 748/2024, para. 64, concerning the principle that it is the responsibility of each official to inform themselves of the tax legislation applicable in their country of residence, without being able to transfer that responsibility to their employer; ATCE report, p. 5.

Co-operation and Development Administrative Tribunal (OECDAT),[142] the United Nations tribunals[143] and the General Court of the EU.[144]

Sporadic practice. By contrast, the decisions of the Appeals Boards of the ECMWF and EUMETSAT, as well as of the ESAAT, follow such a practice only occasionally[145] and certain international administrative tribunals have, to date, generally refrained from referring to the case-law of other international administrative tribunals. This is the case, for example, with TALMERCOSUR.[146]

Nevertheless, the general trend towards accepting the possibility of referring to the case-law of sister tribunals – and to cite to it explicitly where appropriate – reflects the convergence of international civil service law in terms of general principles.[147]

d) *By explicit or implicit reference (please specify) to an international text, for example regarding general principles relating to human rights? Which one(s)?*

Inapplicability in principle of international human rights conventions. International organisations are generally not parties to international human rights or labour law conventions. For this reason, they are in principle not enforceable as such against international organisations.[148] This is explained by the principle of the relative effect of treaties. The ILOAT has further clarified that, due to the inapplicability of the European Convention on Human Rights to "international organisations within the legal system to which the Tribunal belongs", "the case law of the European Court of Human Rights" is not applicable.[149]

Exceptional applicability of the content of international human rights instruments. Nevertheless, the content of these conventions may be enforceable against international organisations in certain cases. The first (generally recognised but rarely applied, which is why it is not discussed here) is where the organisation itself has expressly declared the standards derived from the convention to be applicable.[150] The second (applied by certain international

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[142] ATCE, Decision of 27 January 2022, *C. v. Governor of the Council of Europe Development Bank*, appeal No. 673/2021, concerning the conditions under which a procedural irregularity may lead to a decision by the Tribunal to set aside a judgment; ATCE report, p. 5.

[143] See, for example, ATCE, Decision of 1 February 2023, *E v. Secretary General*, appeal No. 720/2022, para. 62, referring to the judgment of the UNAT, 2019-UNAT-973, paras. 30 and 32, to reiterate "that the impugned decision must be assessed in the light of all the facts which had occurred and were known to the Administration at the relevant moment"; ATCE report, p. 5.

[144] See, for example, ATCE, Decision of 5 February 2025, *A. S. T. and others v. Secretary-General*, appeals Nos. 746/2024 and 748/2024, para. 20, concerning the conditions that must be met to engage the Organisation's non-contractual liability under European Union civil service law; ATCE report, pp. 5-6.

[145] For example, regarding acquired rights, EUMETSATAB, Decision of 18 Oct. 2021, Case Nos. 9-14; ECMWFAB, Decisions of 15 March 2022, *H. G. et al. v. ECMWF*, Case Nos. 7-11, and of 15 March 2022, *A. and Others v. ECMWF*, Case Nos. 12-16; ECMWFAB/EUMETSATAB/ESAAT report, p. 2.

[146] TALMERCOSUR report, p. 2.

[147] ATCE report, p. 6; on convergence regarding the general principles constituting the right to an effective remedy, see A.-M. Thévenot-Werner, *Le droit des agents…*, *op. cit.*, note 12; on convergence in general in international civil service law, see M. B. Akehurst, *The Law Governing Employment…*, *op. cit.*, note 24, p. 263; J. Morgan-Foster, "International Administrative Tribunals and Cross-Fertilization…", *op. cit.*, note 123, esp. p. 413.

[148] See, for example, IDBAT report, p. 4. See, for example, ILOAT, Judgment No. 4864 (2024), *S. (No. 4) v. World Health Organization (WHO)*, para. 14 and the case-law cited.

[149] ILOAT, Judgment No 4493 (2022), *P. (No 9) v. EPO*, para. 10.

[150] For example, the incorporation of the Charter of Fundamental Rights of the European Union into primary EU law pursuant to Article 6 of the Treaty on European Union; see also the Central Commission for Navigation on

administrative tribunals) is the case where the *instrumentum* (the convention or normative framework in question) has been adopted within the organisation.[151] The third (generally recognised) is the case where the content of the convention reflects a general principle.[152]

i) The *instrumentum* was adopted within the organisation

Regarding the second basis, for example, the United Nations Appeals Tribunal regularly refers not only to international conventions (for example the International Convention on the Elimination of All Forms of Racial Discrimination),[153] but also to the Universal Declaration of Human Rights (UDHR) to reiterate the human rights applicable to relations between the organisation and its staff,[154] although this resolution is not legally binding on its Member States as such, since it is a resolution of the General Assembly and not a treaty.[155] The approach of the UNAT is explained by Article 1(3) of the Charter of the United Nations, which provides that one of the purposes of the Organisation is "to achieve international co-operation […] in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion", and by a consistent application of the principle *tu patere legem quam ipse fecisti* (you must comply with the law you have established), insofar as the declaration in question was adopted by the plenary body of the Organisation. Beyond the fact that the UNAT also regularly states that the UDHR reflects "principle[s]",[156] it considers that this declaration is of a fundamental nature for the United Nations, allowing the UNAT to refer to it directly.[157]

As regards the European Union, it follows from the case-law of its courts that, whilst a directive does not generally apply, as such, to the institutions of the European Union,[158] this does not preclude it from being relevant to their relations with their officials and other servants in certain

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the Rhine, Appendix 1 to the Staff Regulations, Art. 10, second sentence: "Fundamental rights and freedoms as enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, as well as general principles of law, in particular those established by international administrative courts, shall form an integral part of the [applicable law]."

[151] A.-M. Thévenot-Werner, *Le droit des agents…*, *op. cit.*, note 12, pp. 486-490, paras. 526-527; "Introduction au droit des organisations internationales", *JurisClasseur Droit international*, fascicle 110, para. 38.

[152] On these two cases, see also the commentary by the then President of the European Committee of Social Rights, Giuseppe Palmisano, on the occasion of the 50th anniversary of the ATCE, "The European Social Charter as an instrument for the protection of fundamental rights within an international organisation", in S. Sansotta (ed.), *Common Focus and Autonomy of International Administrative Tribunals. International colloquy*, Council of Europe, Strasbourg, 2017, pp. 39-43; see ATCE report, p. 6, footnote 22.

[153] 2014-UNAT-483, *Mashhour v. SGUN*, para. 36. This Convention was adopted by the United Nations General Assembly in its Resolution 2106 A (XX) of 21 Dec. 1965. In the same case, the Secretary-General of the United Nations also referred to Article 26 of the International Covenant on Civil and Political Rights to provide a definition of discrimination (see para. 35).

[154] For example, 2010-UNAT-030, *Tabari v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)*, para. 17, concerning Article 23(2) of the UDHR; 2011-UNAT-121, *Bertucci v. SGUN*, para. 51, and 2011-UNAT-126, *Lesar v. SGUN*, para. 12, concerning Article 8 of the UDHR; 2012-UNAT-210, *Finniss v. SGUN*, para. 26, concerning Article 12 of the UDHR.

[155] UN, General Assembly, A/RES/217 A (III), 10 Dec. 1948, *Universal Declaration of Human Rights*.

[156] See, for example, 2024-UNAT-1465, *Sabrije Hoxha v. SGUN*, para. 48 (concerning the duty to classify or reclassify posts without infringing the principle of the right to equal pay for equal work enshrined in Article 23(2) of the UDHR).

[157] 2021-UNAT-1139, *Jihad AbdulGhani Oneis, Diab El-Tabari and Walid Abdullah v. Commissioner-General of UNRWA*, para. 25: "*That employment right is embedded as deeply as in Article 23(2) of the General Assembly's 1948 Universal Declaration of Human Rights upon which the United Nations itself was founded.*"

[158] General Court of the EU, Judgment of 11 Sept. 2024, *TU v. European Parliament*, Case T-793/22, EU:T:2024:614, para. 109; report of the General Court of the EU, p. 28, § 54.

specific circumstances.[159] This is the case with regard to Directive 2019/1937 on the protection of persons who report breaches of Union law, insofar as provisions of the Staff Regulations "are specifically intended to guarantee protection for whistle-blowers against any retaliatory measures".[160] Consequently, the institution concerned "cannot provide for less protective measures than those which have been specifically adopted, in that regard, by the EU legislature in relation to the protection of whistle-blowers by the Member States".[161]

The question of the direct applicability of an international convention adopted within the organisation in the field of human rights also arises before the Administrative Tribunal of the Organization of American States. In its Judgment No. 125 of 13 November 1995, it refers directly to Article 13 of the American Convention on Human Rights concerning freedom of opinion and expression in holding that the dismissal of a staff representative for a statement made to the press following a meeting of the Staff Association infringed that provision.[162]

The Council of Europe is in a similar position to the UN and the OAS: one of the organisation's aims is "the maintenance and further realisation of human rights and fundamental freedoms" pursuant to Article 1(b), *in fine*, of the Statute of the Council of Europe. Whilst the ATCE refers primarily to the principles reflected in the instruments adopted within the Council of Europe, such as the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), it specifically cites the provisions setting out the principle in question and supports this principle by referring to the interpretation given to it by the European Court of Human Rights.[163] This interpretation may be implicit, for example regarding the principle of non-discrimination as recognised in Article 14 of the ECHR, in a judgment of 22 March 2024,[164] or explicit, as in the 2005 case of *Nyctelius v. Secretary General* concerning the same principle.[165] Thus, relying on Articles 31 to 33 of the Vienna Convention on the Law of Treaties of 23 May 1969 and on the judgment in *Golder v. United Kingdom* that the ATCE "invoked the principle of the rule of law when declaring itself competent ratione personae to consider an appeal lodged by a candidate in a competition based on qualifications, when the Staff Regulations restricted the right to appeal to external candidates who had been 'allowed to sit a competitive recruitment examination'".[166] It has also applied the principle of legal certainty as interpreted by the ECtHR to declare an appeal inadmissible for failure to comply with the applicable time limits,[167] or to declare that "objections to inadmissibility should as a general rule be raised in *limine litis*".[168] The ATCE may also be required to refer to the case-law of the ECtHR to interpret a general

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[159] General Court of the EU, *TU v. Parliament*, *ibid.*, para. 110 and the case-law cited; report of the General Court of the EU, p. 28, § 54.
[160] General Court of the EU, *TU v. Parliament*, *ibid.*, para. 111; report of the General Court of the EU, p. 28, § 54.
[161] General Court of the EU, *TU v. Parliament*, *ibid.*, para. 111; report of the General Court of the EU, p. 28, § 54.
[162] OASAT, Judgment No. 125, 13 Nov. 1995, *Hugo Valverde v. Secretary General of the OAS*, p. 6. In this case, the applicant had been active in the campaign organised by the Staff Association to secure the enforcement of Judgment No. 124 of 13 May 1994, which recognised certain salary-related rights for civil servants.
[163] ATCE report, p. 6.
[164] ATCE, Decision of 22 March 2024, *E. T. and Others v. Secretary General*, appeals Nos. 739 to 741/2023, para. 71; see the ATCE report, pp. 6-7.
[165] ATCE, Decision of 4 February 2005, *Nyctelius v. Secretary General*, appeals No. 321/2003, paras. 49 and 50. See also the case-law of the Appeals Board of the Council of Europe (ABCE), Decision of 21 April 1982, *Pagani v. Secretary General*, appeal No. 76/1981, paras. 31-33, and the Decision of 20 Dec. 1984, *Van Lamoen v. Secretary General*, appeal No. 100/1984, paras. 59-60; see also the ATCE report, pp. 7-8.
[166] ATCE, Decision of 24 April 1997, *Zimmermann v. Secretary General*, appeal No. 226/1996; ATCE report, p. 8.
[167] ATCE, Decision of 27 January 2022, *Mendez Carvalho v. Secretary-General*, appeal No. 674/2021, para. 50; Decision of 21 Oct. 2021, *Kowalczyk Kędziora v. Secretary-General*, appeal No. 672/2020, paras. 29-30; ATCE report, p. 8.
[168] ATCE, Decision of 4 July 2003, *Belyaev v. Secretary-General*, appeal No. 309/2002, para. 28.

principle or a provision reflecting that principle.[169] This is the case with the principle of impartiality, which is incumbent "not only on the authority competent for issuing the final decision, but also on bodies responsible for making a recommendation to this authority", and therefore also to "a person who was part of a collegial body such as the Appointments Board".[170] Conversely, the interpretation of the European Social Charter and the European Code of Social Security led the ATCE to conclude that, at present, there are no "general principles of European social law [that] place an obligation on the Organisation to protect its temporary staff against unemployment."[171]

The ILOAT takes a more detached approach to the conventions adopted within the ILO. It refuses to recognise the enforceability of ILO conventions against the ILO as such. According to this tribunal, "these instruments create obligations for Member States and do not apply to the relationships between the ILO and its officials".[172] However, it recognises that the content of the provisions of these conventions is binding on international organisations where it reflects general principles.[173]

Conclusion. It follows from this analysis that, as regards international organisations which have themselves adopted instruments relating to human rights or labour law, the content of these conventions may be invoked against them at least as a general principle, if not directly. Even where the tribunal gives precedence to the general principle derived from the instrument, the wording of the text and the relevant case-law may provide clarity on the contours and scope of the principle in question.

ii) The application of general principles reflected in an international text

Principles relating to human rights and working conditions. Generally speaking, international administrative tribunals recognise that the general principles codified in these international instruments may be invoked against international organisations, as explained by TALMERCOSUR in its first judgment (see above).[174] In the present case, it considered it "obvious" ("*evidente*") that the principles set out in the ILO Declaration on Fundamental Principles and Rights at Work of 18 June 1998 and the *Social and Labor Declaration of the MERCOSUR* were applicable.[175] Indeed, it is widely recognised that general principles constitute in themselves a source of international human rights law.[176]

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[169] ATCE report, p. 8.
[170] ATCE, Decision of 12 February 2021, *Yuksek (II) v. Secretary-General*, appeal No. 665/2020, paras. 70, 71 and 82; ATCE report, pp. 8-9.
[171] ATCE, Decision of 23 March 2003, *Levy v. Secretary-General*, appeal No. 308/2002, paras. 46-50; ATCE report, pp. 9-10.
[172] ILOAT, Judgment No. 3448 (2015), *M. R. G. L. v. ILO*, para. 10; cited, for example, by ILOAT, Judgment No. 3726 (2017), *R. v. International Organization for Migration (IOM)*, para. 4.
[173] ILOAT, Judgment No. 3726 (2017), *R. v. IOM*, para. 4, and the case-law cited.
[174] TALMERCOSUR, Judgment No. 1/2005, *Mackinnon Gómez*, cited above, pp. 7-8. See also the IDBAT report, p. 4.
[175] TALMERCOSUR, Judgment No. 1/2005, *Mackinnon Gómez*, cited above, p. 8. *Cf.* Report of the TALMERCOSUR, p. 2. See also Judgment No. 4/2017, cited above, pp. 5 and 6, according to which general principles may also be derived from international labour conventions.
[176] B. Simma and Ph. Alston, "The Sources of Human Rights Law…", *op. cit.*, note 5, pp. 105-108; Ph. Pazartzis and M. Papadaki, "Conclusions: General Principles and International Human Rights Law", in M. Andenas, M. Fitzmaurice, A. Tanzi and J. Wouters (eds.), *General Principles and the Coherence of International Law*, Brill/Nijhoff, Leiden/Boston, 2019, p. 370.

With regard to disputes involving a specialised agency of the United Nations system, the UNAT referred to the ILO and United Nations "*employment principles*" in its founding documents, including the UDHR, to clarify that the duty of staff members to be at the organisation's disposal does not imply that the staff members' interests are subordinate to those of the organisation.[177]

For their part, the EU courts accord particular importance to the ECHR and the case-law of the European Court of Human Rights (ECtHR) for the identification of general principles (and their scope), on the basis of Article 6(3) TEU.[178] They have thus identified the principle of effective judicial protection arising from Articles 6 and 13 of the ECHR and the constitutional traditions common to the Member States,[179] the *non bis in idem* principle, enshrined in Article 4 of Protocol No. 7 to the ECHR;[180] and the principle of legality of criminal offences and penalties, with reference to Article 7(1) of the ECHR.[181] Furthermore, pursuant to Article 52(3) of the Charter of Fundamental Rights of the European Union:

> In so far as [the] Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

The "Explanations relating to the Charter", which were drawn up in order to provide guidance for its interpretation, state that Article 52(3) "is intended to ensure the necessary consistency between the Charter and the ECHR", that "[t]he reference to the ECHR covers both the Convention and the Protocols to it", and that "[t]he meaning and the scope of the guaranteed rights are determined not only by the text of those instruments, but also by the case-law of the European Court of Human Rights", "without thereby adversely affecting the autonomy of Union law" and of the EU courts.[182] It is therefore common practice for "the Court of Justice and the General Court also to refer to the case-law of the ECtHR when applying the general principles identified by reference to the relevant provisions of the ECHR".[183]

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[177] 2023-UNAT-1399, *Michel Raymond Marie Rixen v. Secretary-General of the World Meteorological Organization*, para. 56: "*In an employment relationship for which the United Nations has adopted a combined or fused statutory and contractual model and in which both parties also have express and implied rights and obligations, this notion of subservience is no longer appropriate. Such an unbalanced relationship would be contrary to the employment principles of the International Labour Organization and of the United Nations itself under its founding documents, including the Universal Declaration of Human Rights.*"

[178] Art. 6(3) TEU: "Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law."; General Court of the EU, Judgment of 27 June 2012, *Coats Holdings v. European Commission*, Case T-439/07, EU:T:2012:320, para. 172; report of the General Court of the EU, p. 24, §§ 39-40.

[179] General Court of the EU, Judgment of 5 April 2006, *Degussa AG v. Commission of the European Communities*, Case T-279/02, EU:T:2006:103, para. 421; report of the General Court of the EU, p. 24, § 41.

[180] General Court of the EU, Judgment of 9 July 2003, *Archer Daniels Midland and Archer Daniels Midland Ingredients v. Commission of the European Communities*, Case T-224/00, EU:T:2003:195, para. 85; report of the General Court of the EU, p. 24, § 31.

[181] General Court of the EU, Judgment of 27 Sept. 2012, *Total SA v. European Commission*, Case T-344/06, EU:T:2012:479, para. 86; report of the General Court of the EU, p. 25, § 41

[182] Explanations relating to the Charter of Fundamental Rights, OJEU, C 303/17 – 14 December 2007: report of the General Court of the EU, p. 25, § 43.

[183] Report of the General Court of the EU, p. 25, § 44; for example, Judgment of 8 July 2008, *Franchet and Byk v. European Commission*, Case T-48/05, EU:T:2008:257, paras. 209 to 211, delivered before the entry into force of the Charter, interpreting the principle of the presumption of innocence enshrined in Article 6(2) of the ECHR. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

On very rare occasions, EU courts also refer to other instruments of international law to identify general principles of EU law,[184] for example the International Covenant on Civil and Political Rights of 19 December 1966.[185]

The IDBAT refers, either implicitly or explicitly, to general principles reflecting international human rights standards when interpreting the organisation's internal law.[186] This is evident from Case No. 102 (2021), in which the IDBAT concludes that there has been an infringement of the right to a fair hearing due to the failure to guarantee an impartial investigation and the inadequacy of the "*more likely than not*" standard of proof provided for in disciplinary matters under the organisation's internal law.[187] Where applicants refer to international conventions, such as the American Convention on Human Rights or the International Covenant on Civil and Political Rights, the IDBAT refuses to apply these instruments directly, but may be led to accept references to these texts in the pleadings.[188] Furthermore, the dissenting opinion in Case No. 51 highlights the relevance of international human rights standards concerning the right to a fair trial, which shows that such texts may nevertheless guide the IDBAT in its understanding of general principles such as the right to a fair trial.[189]

The IMFAT explicitly referred to the UDHR in the case of *Ms. "M" and Dr. "M"*. [190] In that case, the applicants sought enforcement of decisions by German courts through the deduction of child maintenance payments from the pension of Mr. "N", a retired civil servant of the respondent organisation. The organisation had refused to enforce these decisions on the grounds that the applicable provisions excluded this possibility for children born out of wedlock, which was the case for the child in question. The IMFAT considered that this 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 non-discrimination that the Fund itself professes.[191] In the following paragraph, the IMFAT adds a reference to Article 25 of the UDHR, under which "Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection."[192] It concludes that the provision in question cannot therefore be sustained.[193] Furthermore, the

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[184] See, for example, General Court of the EU, Judgment of 27 June 2012, *Bolloré v. Commission*, Case T-372/10, EU:T:2012:325, para. 33: "The principle that criminal offences and penalties must have a proper basis in law, which is one of the general legal principles underlying the constitutional traditions common to the Member States, has also been enshrined in various international treaties, and in particular in Article 7 of the ECHR".

[185] General Court of the EU (Grand Chamber), Judgment of 27 July 2022, *RT France v. Council of the European Union*, Case T-125/22, EU-T-2022:483, paras. 207-209; report of the General Court of the EU, p. 26, § 46.

[186] IDBAT report, p. 4.

[187] IDBAT, Case No. 102 (2021), *Lovo Parrales*, cited above, paras. 125-127; see also the IDBAT report, p. 4.

[188] IDBAT, Judgment of 4 Nov. 2005, *Juan Carlos Lockhart v. IDB*, Case No. 55, para. 41(i); see also the IDBAT report, p. 4.

[189] IDBAT, Judgment of 14 May 2004, *Jorge Rojas Gaete v. IDB*, Case No. 51, dissenting opinion of Judge Jorge Darío Cristaldo Montaner; see also the IDBAT report, p. 4.

[190] IMFAT, Judgment No. 2006-6, 29 Nov. 2006, *Ms. "M" and Dr. "M" v. IMF*, para. 133; IMFAT report, p. 9.

[191] IMFAT, Judgment No. 2006-6, *Ms. "M" and Dr. "M"*, cited above, para. 132: "*the 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 non-discrimination that the Fund itself professes*"; IMFAT report, p. 9.

[192] IMFAT, Judgment No. 2006-6, *Ms. "M" and Dr. "M"*, cited above, para. 133; IMFAT report, p. 9.

[193] IMFAT, Judgment No. 2006-6, *Ms. "M" and Dr. "M"*, cited above, para. 133: "*Thus, while the terms of the provision in question may have been understandable, they nevertheless cannot be sustained.*"; IMFAT report, p. 9.

IMFAT referred to the case-law of other international administrative tribunals which have invoked international instruments.[194]

This was notably the case in Judgment No. 2006-6, in which it referred to a judgment of the ILOAT recalling Article 26 of the UDHR recognising the right to non-discrimination. This was also the case in Judgment No. 2008-1: the IMFAT referred to the case-law of the United Nations Administrative Tribunal, which recalled that freedom of association was recognised in Articles 20 and 23(4) of the UDHR.[195]

The courts of the ECMWF, the ESA and EUMETSAT, for their part, ensure that, unless expressly provided otherwise, the provisions of the organisation's internal law are not interpreted in a manner contrary to fundamental principles in international conventions adopted by most or all Member States, such as the European Convention on Human Rights or the Charter of Fundamental Rights of the European Union. Although the EUMETSAT Appeals Board refuses to apply a European Union directive directly, it considers that, insofar as most of the organisation's Member States are members of the European Union, it cannot be assumed that they have created internal law within EUMETSAT that would manifestly contradict European Union law and European values.[196]

The TPIOIF, for its part, frequently applies the "general principles of human rights", but "without referring either explicitly or implicitly to the relevant international texts"; it bases its decisions "exclusively on the internal texts of the OIF".[197]

Principles borrowed from general international law. It should also be noted that, beyond the issue of human rights protection, the ATCE has also been required to apply general principles enshrined in international instruments drawn up outside the Council of Europe. This is the case with the principle of *pacta sunt servanda* and the principle of *rebus sic stantibus*, with reference to the 1969 Vienna Convention on the Law of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations.[198] This is also the case with the general rules of interpretation set out in Articles 31 to 33 of the 1969 Vienna Convention on the Law of Treaties.[199]

Conclusion. With regard to provisions in international conventions that merely codify general principles, and in light of the enforceability of general principles enshrining human rights

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[194] See IMFAT, Judgment No. 2006-6, *Ms. "M" and Dr. "M"*, cited above, para. 125, referring to Judgment No. 2120 (2002), *M. I. M. B. v. International Atomic Energy Agency (IAEA)*, para. 10, according to which "discrimination [based on the marital status and family relationships of candidates] is contrary to the Charter of the United Nations, general principles of law and those which govern the international civil service, as well as international instruments on human rights. The principles of Article 26 of the International Covenant on Civil and Political Rights (1966), although not strictly binding on the Agency[,] are relevant. That article provides that: 'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'"; IMFAT report, p. 9.

[195] IMFAT, Judgment No. 2008-1, 7 January 2008, *Mr. M. D'Aoust (No. 3) v. IMF*, para. 68, referring to UNAT Judgment No. 15, *Robinson v. SGUN*, para. 11.

[196] CREUMETSAT, Decision of 14 January 2020, Case No. 7, paras. 76-77. See also the ECMWFAB/EUMETSATAB/ESAAT report, p. 2.

[197] TPIOIF, Judgment No. 45, 5 June 2024, para. 196; TPIOIF report, p. 3. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

[198] ATCE, Decision of 20 June 2019, *Alberelli (III) and others v. Secretary-General*, appeals Nos. 595-601/2018, paras. 93 and 104, on the consequences of a Member State's "failure to pay" contributions; ATCE report, p. 10.

[199] ATCE, Decision of 29 January 1998, *Fuchs and others v. Secretary-General*, appeals Nos. 231-238/1997, para. 49; ATCE report, p. 10.

against international organisations, the cautious stance adopted by certain international administrative courts towards the case-law of courts specialising in human rights must be viewed in context. Admittedly, this case-law is not, as such, binding on international organisations. Nevertheless, it sheds light on the contours of recognised human rights and is intended to be adapted to the context of international civil service law. Insofar as international organisations are composed of States (either primarily or exclusively), what would justify a lower standard of human rights protection (or even the lowest common denominator) being enforceable against them in relation to States, when one of the fundamental principles of international civil service law is to establish the most attractive working conditions?[200]

e) ***By another method?***

General principles codified in legally binding instruments for the organisation. Many provisions of organisations merely codify general principles, in which case the courts refer primarily to that provision and mention the general principle nature of the rule in question, either to emphasise its specific nature or to apply it to cases comparable to those governed by the instrument codifying the principle, but to which the instrument is not in itself applicable. This was the case, for example, in the aforementioned *Chadsey* case, decided by the ILOAT. In that case, the applicant had been a temporary employee who, in view of the facts at issue, could not "be regarded as merely a casual employee of the Organization".[201] The ILOAT held that:

> While the Staff Regulations of any organisation are, as a whole, applicable only to those categories of persons expressly specified therein, some of their provisions are merely the translation into written form of general principles of international civil service law; these principles correspond at the present time to such evident needs and are recognised so generally that they must be considered applicable to any employees having any link other than a purely casual one with a given organisation, and consequently may not lawfully be ignored in individual contracts. This applies in particular to the principle that any employee is entitled in the event of a dispute with his employer to the safeguard of some appeals procedure.[202]

The OIF Staff Regulations explicitly refer to the "principle of adversarial proceedings and the rights of the defence" in Article 205.[203] This does not prevent the OIF courts from also referring to other general principles, in particular pursuant to Article 206 of the Staff Regulations, which requires the TPIOIF to comply with the "general principles of law".[204]

The IMFAT also emphasises the mutual reinforcement between general principles of international administrative law and internal statutory law, which gives expression to the former.[205] In this context, it may also refer to the internal law of other international organisations to illustrate the fundamental nature of the rule in question. Thus, it stated in Judgment No. 2015-3, *Ms. "GG" (No. 2)*:

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[200] See, for example, D. Petrović, "The Freedom of Association as Seen by the International Administrative Tribunals", *International Organizations Law Review*, Vol. 21, 2024, p. 305.
[201] ILOAT, Judgment No. 122 (1968), *Chadsey v. UPU*.
[202] *Ibid.*
[203] TPIOIF report, p. 2. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.
[204] *Ibid.* No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.
[205] IMFAT report, pp. 16-17.

> *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.*[206]

As regards the European Union, where the general principle has been codified in a provision of primary law, that provision is, as a general rule, also cited.[207]

Conversely, "[t]he EU Courts have accepted the possibility of identifying general principles of EU law from sources within that same legal order", following a specific method: "In order to identify a general principle reflected in EU law, it is not sufficient that a rule appears in several provisions of EU law; that rule must constitute a principle properly so called."[208]

These principles may result from a combined reading of the provisions of primary law.[209] This is the case with the precautionary principle, which is "applicable in all areas of EU action in order to ensure a high level of protection of human health, consumer safety and the environment".[210] Furthermore, the obligation on the European institutions to respect the general principle of equal treatment when implementing the financial provisions of the Treaty stems from the "general arrangements [of those provisions], which, like the corresponding arrangements in the Member States, are governed by the general principle of equality which requires that comparable situations may not be treated differently unless difference of treatment is objectively justified."[211]

Principles codified in the preparatory work for the Tribunal's Statute. When identifying and interpreting the applicable legal rules, the IMFAT attaches particular importance to the commentary on its Statute, which has been published on the Tribunal's website and is the report of the IMF Executive Board proposing the adoption of its Statute.[212] The case-law of the IMFAT has confirmed many of the principles identified in this document.[213]

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[206] IMFAT, Judgment No. 2015-3, 29 Dec. 2015, *Ms. "GG" (No. 2) v. IMF*, para. 449; IMFAT report, p. 17.
[207] Report of the General Court of the EU, p. 20, § 28.
[208] Report of the General Court of the EU, p. 26, § 49, citing the Judgment of the General Court of the EU of 28 February 2002, *Atlantic Container Line and Others v. Commission of the European Communities*, Case T-18/97, EU:T:2002:51, paras. 50-53: "the Court rejected the existence of a general principle according to which notification of an agreement confers on the notifying undertaking immunity from fines, on the ground that such immunity, although provided for in several EU regulations, constitutes 'a form of derogation or exception' and not the expression of a general principle applicable even in the absence of an express provision." No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.
[209] Report of the General Court of the EU, p. 27, § 50.
[210] *Ibid.* p. 27, § 51, referring to the judgment of the General Court of the EU of 26 Nov. 2002, *Artegodan GmbH and Others v. Commission of the European Communities*, T-74/00, T-76/00, T-83/00 to T-85/00, T-132/00, T-137/00 and T-141/00, EU:T:2002:283, paras. 182-184. This principle has derived, since the entry into force of the Treaty on the Functioning of the EU, from Articles 11, 168(1), 169(1) and (2) and 191(1) and (2) TFEU, according to the judgment of the General Court of the EU of 21 February 2024, *Pesticide Action Network Europe (PAN Europe) v. European Commission*, Case T-536/22, EU:T:2024:98, para. 70, under appeal, registered under reference C-316/24 P. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.
[211] CJEC, Judgment of 5 March 1980, *H. Ferwerda BV v. Produktschap voor Vee en Vlees*, Case 265/78, EU:C:1980:66, para. 7; report of the General Court of the EU, p. 27, § 52.
[212] IMFAT, Judgments No. 2003-1, 30 Sept. 2003, *Ms. "J." v. IMF*, para. 102; Judgment No. 2003-2, 30 Sept. 2003, *Ms. "K" v. IMF*, para. 42; *cf.* IMFAT report, p. 9, footnote 67.
[213] IMFAT, Judgment No. 2003-1, 30 Sept. 2003, *Ms. "J." v. IMF*, para. 105; IMFAT report, p. 9.

General principles codified in instruments which are in themselves unenforceable against the organisation under international civil service law. In EU law, it is accepted that general principles may be codified or crystallised in directives addressed to Member States. Thus,

> rules or principles laid down in or derived from those directives can be relied on against that administration when they themselves simply appear to be the specific expression of fundamental rules of the Treaty and of general principles of law which are directly applicable to the EU administration..[214]

A similar approach is applied in European civil service law,[215] even if it is not always clear from the case-law whether the indirect application of the wording of the directive in question entails the application of a general principle.[216]

General principles codified in instruments that are not in themselves binding. It may also happen that a tribunal identifies a general principle when interpreting internal texts, which do not necessarily have legally binding force in themselves. Such is the case, for example, with the IDBAT. In Case No. 102 (2021), *José Jesús Lovo Parrales v. IDB*, it interprets certain provisions of the Code of Ethics – the wording of which suggests that it sets out managerial expectations rather than legal obligations – as reflecting general principles, without actually using that term.[217] These include the duty of integrity, respect and the obligation to create a healthy working environment.[218]

f) *Conclusion on point 3 in light of the ILC's draft conclusions*

Recognition of general principles by the international community. Conclusion 2 of the International Law Commission states in its French version that "*[p]our qu'un principe général du droit existe, il doit être reconnu par l'ensemble des nations*" and in its English version "*[f]or a general principle of law to exist, it must be recognized by the community of nations*".[219] According to the Spanish version: "*[p]ara que un principio del derecho exista, debe ser reconocido por la comunidad internacional*". With regard to international civil service law, international organisations – subjects of international law – have participated in the formulation of general principles. However, only the Spanish version truly covers this aspect.

General principles of law. Overall, the approach of international administrative tribunals regarding general principles of law derived from national legal systems confirms conclusions 4 to 6 of the ILC. However, the administrative tribunals of regional organisations also identify general principles based on the national laws of their Member States, to the exclusion of others. In such cases, doubt may remain as to whether the general principle identified is a regional or international principle. This is not the case with the administrative tribunals of organisations with a universal remit (notably the ILOAT, the WBAT, the IMFAT and the UNAT), which, when dealing with general principles derived from national laws, necessarily refer to general

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[214] Report of the General Court of the EU, p. 28, § 53, referring to the judgment of the General Court of the EU of 5 Oct. 2022, *European Dynamics Luxembourg SA v. ECB*, Case T-761/20, EU:T:2022:606, para. 61.
[215] Report of the General Court of the EU, p. 28, § 54. See, for example, the Judgment of 11 Sept. 2024, *TU v. European Parliament*, Case T-793/22, EU:T:2024:614, paras. 109-111, cited above.
[216] General Court of the EU, *TU v. Parliament*, *ibid.*, paras. 109-111.
[217] IDBAT, Case No. 102 (2021), *Lovo Parrales*, cited above, para. 107; IDBAT report, pp. 4-5.
[218] IDBAT, Case No. 102 (2021), *Lovo Parrales*, *ibid.*, para. 107; IDBAT report, p. 5.
[219] UN, ILC, A/CN.4/L.1018, 20 May 2025, *General principles of law. Text and title of the draft conclusions adopted by the Drafting Committee on second reading.*

principles common to the various legal systems of the world. Even when the dispute before the tribunal concerns a regional organisation, the tribunal makes no distinction and applies the general principle as recognised in international civil service law in general.[220] This is why the case-law of these tribunals is of particular significance for all international administrative tribunals – beyond the fact that the case-law of these tribunals is particularly rich, extensive and has a certain historical depth. And this is why it is particularly relevant for the international administrative tribunals of regional organisations, but not only them, to refer to the case-law of these tribunals if the latter have already identified the general principle in question. Generally speaking, the case-law of international administrative tribunals is perhaps an auxiliary means (conclusion 8 of the ILC), but clearly very useful for determining the existence and content of general principles of law.

Reference to international conventions may facilitate the identification of general principles of law. These conventions are intended to be incorporated into the domestic laws of the States Parties, but already specify what is commonly recognised.

General principles of international law. Case-law recognises that, in international civil service law, there are specific principles formed within the framework of the international legal system. These include, for example, the principle of independence and the principles recognising the preservation of acquired rights or essential rights. As with conclusion 2, there is a difference in the vocabulary used in conclusion 7 depending on the language version consulted: the French version states that "*il est nécessaire d'établir que l'ensemble des nations a reconnu ce principe comme intrinsèque au système juridique international*", the English version states, "*it is necessary to ascertain that the community of nations has recognised the principle as intrinsic to the international legal system*", and the Spanish version states, "*es necesario cerciorarse de que la comunidad internacional ha reconocido aquel principio como intrínseco al sistema jurídico internacional.*" Here again, only the Spanish version, with its reference to the international community, takes account of the fact that international organisations must be given a role in the recognition of these principles – a recognition that is essential and clearly enshrined in international civil service law.

Distinction between general principles of law and general principles of international law. The distinction between principles derived from national laws and principles inherent in international law is rarely, if ever, applied by international administrative tribunals. It may be of academic interest and is useful for clarifying that both sources are recognised. Furthermore, international administrative tribunals recognise and apply general principles derived from national laws as well as general principles formed within the framework of the international legal system. However, in practice, the distinction cannot always be clearly established, particularly as certain principles may be of a dual nature. Furthermore, certain principles derived from national laws and transposed into international law have been shaped by the specific

[220] See the practice of the ILOAT. See also M. B. Akehurst, *The Law Governing Employment…*, *op. cit.*, note 24, pp. 262-263: "*The tribunals seem to regard unwritten sources as constituting a sort of international administrative law, of universal application, which supplements the internal law peculiar to each organization. When a tribunal has jurisdiction over several organizations – and this is true above all for the ILO Tribunal – it applies the same general principles of law and cites its previous judgments, without distinguishing between the different organizations involved in the various cases. The tribunals also quote each other's judgments – and also, very significantly, the case-law of the ICJ – in order to substantiate their propositions concerning general principles of law. The consequences would be very awkward if it were otherwise, if each organization had an internal law independently of other organizations, if a general principle of law had to be proved afresh every time a new organization was a party to a case.*"

features of international civil service law to such an extent that one might question whether they are not ultimately principles inherent in international civil service law, and thus in international law. The question of classification arises, for example, in relation to principles enshrined in both international conventions and national laws, such as those concerning respect for human rights.

4) Can your tribunal rely on a general principle of its own motion?

The generally recognised possibility of relying on a general principle of its own motion. All the international administrative tribunals that took part in the survey answered this question in the affirmative,[221] with the exception of the General Court of the EU, which takes a nuanced approach to this matter, as will be discussed below.

International administrative tribunals have the implied power to apply the principle of "*iura novit curia*"[222] in order to exercise their judicial function.[223]

In application of the principle of *iura novit curia*, the ATCE applied, on its own initiative, the principles of *pacta sunt servanda* and *rebus sic stantibus* in the case of *Alberelli (III) and others v. Secretary General of the Council of Europe*.[224]

The question of whether a general principle may be applied of the court's own motion arose before the IMFAT in Judgment No. 2004-1, concerning the case of *Mr "R" (No. 2)*. In this case, the applicant, who had been posted to Abidjan, challenged the decision not to reimburse him for "*security expenses*" because he had chosen to stay in a hotel rather than in private accommodation. When the IMFAT assesses the legality of the individual decision implementing the regulatory decision on the reimbursement of security expenses, it reclassifies the applicant's plea and verifies whether the implementing decision – and, incidentally, the general decision – does not infringe the principle of "equal pay for equal work". It upheld the applicant's claim, holding that "*equal treatment of staff in their fundamental right to enjoy physical security should govern*".[225]

The TALMERCOSUR has also previously upheld a claimant's application by applying the principle of *iura novit curia* of its own motion,[226] it being noted that, where there are multiple applicable standards and in cases of doubt regarding the interpretation of those standards, it

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[221] ECMWFAB/EUMETSATAB/ESAAT report, pp. 3-4; ESAAB, Decision of 21 Dec. 2021, *Frota v. ESA*, Case No. 129, para. 43; IDBAT report, p. 5; ATCE report, p. 11; IMFAT report, pp. 9-10; TALMERCOSUR report, p. 3; OASAT report, p. 2; TPIOIF report, p. 3.
[222] ECMWFAB/EUMETSATAB/ESAAT report, p. 3.
[223] IDBAT report, p. 5.
[224] ATCE, Decision of 20 June 2019, *Alberelli (III) and others v. SGUN*, appeals Nos 595-601/2018, paras. 93 and 104; ATCE report, p. 11.
[225] IMFAT, Judgment No. 2004-1, 10 Dec. 2004, *Mr "R." (No. 2) v. IMF*, paras. 51-52; IMFAT report, pp. 9-10.
[226] TALMERCOSUR, Judgment No. 3/2015, *María del Carmen García v. Instituto Social del MERCOSUR*, p. 9: "*En aplicación de las normas de derecho señaladas y de los principios que se desarrollarán más adelante, el TAL hará lugar en lo sustancial a lo peticionado por la reclamante en aplicación del principio iura novit curia, principio jurídico del derecho procesal que indica que el juez es conocedor del derecho y lo obliga a decidir de acuerdo a las normas legales, aún cuando las partes no hayan encuadrado correctamente su petición, no hayan expresado las leyes en que fundan sus derechos o hayan invocado normas jurídicas distintas a las que el juez considera aplicables al caso concreto. El juez debe aplicar el derecho, haciendo la calificación jurídica adecuada de los hechos. Según la doctrina, el juez es servidor de la ley y su fiel intérprete y debe aplicarla adecuándola a la situación fáctica a resolver y, si hay varias, eligiendo entre ellas la más adecuada para resolver la cuestión.*"

applies the standard that offers the greatest protection of workers' rights by virtue of another general principle.[227]

The IDBAT applied *ex officio* the standard of "clear and convincing evidence" in Case No. 102 (2021), *José Jesús Lovo Parrales v. IDB*, in disciplinary proceedings concerning serious misconduct, even though the applicant had not invoked it.[228] According to the IDBAT, the use of a less stringent standard of proof in disciplinary matters, as provided for in the organisation's Code of Conduct, infringes international standards relating to the right to a fair hearing: it recommends a review of the Code of Conduct.[229] The IDBAT may therefore apply general principles of its own motion where necessary to ensure a fair outcome consistent with the law.[230]

The OASAT has also applied principles *proprio motu*.[231]

A nuanced possibility for EU courts. However, the General Court of the EU has provided a more nuanced perspective as regards the *ex officio* application of a general principle, given that, in accordance with the rules governing proceedings before the EU courts, these courts cannot rule *ultra petita*.[232] It may – or indeed must – on the other hand raise public policy grounds of its own motion, after having duly informed the parties, regarding its jurisdiction, any plea of inadmissibility, and the grounds based on the lack of jurisdiction of the author of an act causing prejudice, the infringement of essential procedural requirements, and the absence or insufficiency of reasoning in the contested decision.[233] Grounds relating to internal legality (*légalité interne*)[234] are therefore, in principle, excluded, for example with regard to the obligation to respect the rights of the defence.[235] Nevertheless, this has not prevented the General Court from "drawing the appropriate conclusions from complaints formally submitted in support of a plea alleging infringement of the rights of the defence when examining a plea alleging breach of the duty to state reasons, raised of its own motion".[236] Similarly, it may be required to interpret rules of its own motion in the light of general principles, in application of

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[227] TALMERCOSUR, Judgments No. 1/2005, *Mackinnon Gómez*, cited above, and No. 5/2025, 21 March 2025, *Brenda Luciana Maffei v. Secretariat of the Permanent Court of Review of MERCOSUR*; see the TALMERCOSUR report, pp. 2 and 3.

[228] IDBAT, Case No. 102 (2021), *Lovo Parrales*, cited above, paras. 125-127; IDBAT report, p. 5.

[229] IDBAT, Case No. 102 (2021), *Lovo Parrales*, *ibid.*, para. 127; IDBAT report, p. 5. Regarding this example, it should be noted that there is a divergence in case-law among international administrative tribunals concerning the exact terminology to be used regarding the standard of proof in disciplinary matters, although a convergence in the application of the various standards can be identified (see in this regard, for example, R. Cèbe, note on Judgment No. 4207 of the ILOAT, *RGDIP*, 2020, Vol. 124, No. 2, pp. 429-434; A.-M. Thévenot-Werner, "Activité et jurisprudence des Tribunaux administratifs des Nations Unies et de l'OIT (2019-2020)", *AFDI*, 2020, pp. 527-532. The general principle to which the IDBAT refers here is therefore that of the minimum standard below which an organisation may not fall.

[230] IDBAT report, p. 5.

[231] OASAT report, p. 2.

[232] Article 21 of the Statute of the CJEU, as well as Articles 76 and 84(1) of the Rules of Procedure of the General Court; Report of the General Court of the EU, p. 29, § 55. See, on the whole issue, the detailed analysis by the General Court of the EU, pp. 29-32, §§ 55-63.

[233] See, for example, General Court of the EU, Judgment of 8 Sept. 2021, *AH v. Eurofound*, Case T-630/19, EU:T:2021:538, para. 45 and the case-law cited; report of the General Court of the EU, pp. 29-30, § 58.

[234] General Court of the EU, Judgment of 25 Oct. 2017, *European Commission v. Italian Republic*, Case C-467/15 P, EU:C:2017:779, para. 15 and the case-law cited; report of the General Court of the EU, p. 30, § 58.

[235] Report of the General Court of the EU, p. 30, § 60.

[236] *Ibid.*, pp. 30-31, § 61, referring, for example, to the Judgment of 16 Dec. 2015, *Martinair Holland NV v. European Commission*, Case T-67/11, EU:T:2015:984, para. 75. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

the principle *iura novit curia*,[237] particularly in the field of European civil service law. Thus, in that field, the General Court of the EU considers that a "plea concerned with the scope of the [law]" constitutes a matter of public policy which must, where appropriate, be examined by the EU judicature of its own motion.[238]

Conclusion. All international administrative courts may, at least to some extent, refer to a general principle of their own motion.

II. Relationship with other sources

5) What legal value does your tribunal attach to general principles in relation to the various types of secondary acts of the organisation (including acts adopted by bodies composed of State representatives), in relation to the organisation's constituent instrument, and in relation to other sources of international law? Why?

Terminological choice: "body composed of State representatives". Various bodies (including agencies and institutions) of an organisation may be called upon to adopt acts applicable under international civil service law. These may include, in particular, the organisation's secretariat, but may also include other collegial bodies composed of representatives of the organisation's members. In some cases, this is the organisation's plenary body; in others, a select body. One might be tempted to describe these entities as "legislative" bodies. However, given that international organisations are not States, that these bodies have only delegated powers (and are not sovereign), and that the representatives of States sitting on these bodies are generally representatives of the executive branch of their respective States, such an assimilation appears inappropriate.[239] At a push, one might speak of the "regulatory competence" of the organisation's plenary body, as Paul Reuter observes regarding the UN General Assembly.[240] One might also be tempted by the distinction between political bodies and administrative bodies. However, the head of an organisation's secretariat may be called upon to take political decisions.[241]

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[237] Report of the General Court of the EU, pp. 31-32, § 63; see also General Court of the EU, Judgment of 5 Oct. 2009, *Commission of the European Communities v. Roodhuijzen*, Case T-58/08 P, EU:T:2009:385, para. 36, concerning the applicability of provisions relating to marriage to "partnerships which are 'capable of being treated as' marriage"; Judgment of 12 Dec. 2018, *Servier and Others v. European Commission*, Case T-691/14, EU:T:2018:922, para. 102 and the case-law cited, not set aside on this point by the Judgment of 27 June 2024, *European Commission v. Servier and Others*, Case C-176/19 P, EU:C:2024:549.

[238] CJEC, Judgment of 15 July 1994, *Browet and Others v. Commission of the European Communities*, Case T-576/93, EU:T:1994:93, para. 35; General Court of the EU, Judgment of 12 June 2019, *RV v. Commission*, Case T-167/17, EU:T:2019:404, paras. 60 and 61 and the case-law cited; report of the General Court of the EU, p. 32, § 63.

[239] See, for example, M. Virally, "De la Classification des Organisations internationals", in *Miscellanea W. J. Ganshof van der Meersch: studia ab discipulis amicisque in honorem egregii professoris edita*, Vol. 1, Bruylant/LGDJ, Brussels/Paris, 1972, p. 382.

[240] P. Reuter (representative of the French Government), oral statement at the public hearing of 11 June 1954, ICJ, Advisory Opinion of 13 July 1954, *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal, part II, oral statements, ICJ Reports 1954*, p. 340. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

[241] D. Hammarskjöld, "The international civil servant in law and in fact", in W. Foote (ed.), *Servant of Peace. A Selection of the Speeches and Statements of Dag Hammarskjöld. Secretary-General of the United Nations 1953-1961*, Harper & Row, New York, 1962, pp. 329-353.

This is why the concept of a body composed of representatives of States – already used in legal doctrine –[242] is employed for the purposes of this study. This concept is understood here in the broadest sense. The representatives of the members need not be representatives of the State's government. Thus, at the ILO, "[t]he General Conference of representatives of the Members […] [is] composed of four representatives of each of the Members, of whom two shall be Government delegates and the two others shall be delegates representing respectively the employers and the workpeople of each of the Members."[243] At the Bank for International Settlements, the Board of Directors is composed of the governors of the central banks of the Member States. For the purposes of this study, bodies such as the IMF Executive Board should be treated as equivalent to bodies composed of state representatives. As Professor Anne-Thida Norodom observes, "as they are remunerated by the Fund, the members of the IMF Executive Board are […] closer to state representatives than to mere 'directors', according to the wording used in the Organisation's Articles of Agreement."[244]

If we apply this terminology to the European Union, it refers in particular to the acts of the Council (composed of government representatives), the Governing Council and the Board of Directors of the European Investment Bank (EIB),[245] or the Governing Council of the European Central Bank (comprising the six members of the Executive Board and the governors of the national central banks of the euro area Member States) and the General Council (comprising the President and Vice-President of the ECB as well as the twenty-seven governors of the national central banks of the EU Member States). Due to the specific procedure for adopting texts within the European Union, reference should also be made here to the acts of the European Parliament, although it is more precisely composed of representatives of the citizens of the Union elected by direct universal suffrage in the Member States.[246] When the legality of an act of such a body is examined, it is indeed the act of that body (organisation or institution) that is being examined, and not a review of the acts of individual Member States.

a) Framing the issue

The question of the role of general principles in relation to the various types of secondary law is not a new one.[247] At first glance, the answers to this question vary considerably between courts, and even within the case-law of a single court, the weight accorded to general principles may appear to vary depending on the principles in question.[248] Added to this is the fact that reference to general principles is, in absolute terms, not very frequent in the case-law of

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[242] See, for example, E. Lagrange, *La représentation institutionnelle dans l'ordre international. Une contribution à la théorie de la personnalité morale des organisations internationales*, Kluwer Law International, The Hague/London/New York, 2002, p. 50; A.-Th. Norodom, "Les droits et obligations statutaires du membre, leur protection et leur sanction", in E. Lagrange and J.-M. Sorel (eds.), *Droit des organisations internationales*, LGDJ, Issy-les-Moulineaux, 2013, p. 329, para. 666.

[243] Constitution of the International Labour Organization, Art. 3(1).

[244] A.-Th. Norodom, *op. cit.*, p. 329, para. 666. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

[245] Statutes of the EIB, Art. 7(1): "The Board of Governors shall consist of the ministers designated by the Member States."; Art. 9(2), para. 2, 2nd sentence: "one [director to the Board of Directors] nominated by each Member State, and one nominated by the Commission".

[246] Art. 14(2) TEU: "The European Parliament shall be composed of representatives of the Union's citizens. […] Representation of citizens shall be degressively proportional, with a minimum threshold of six members per Member State. No Member State shall be allocated more than ninety-six seats."

[247] L. Germond, *Les Principes généraux…*, *op. cit.*, note 11, pp. 35-42.

[248] For the case-law of the ILOAT, see L. Germond, *Les Principes généraux…*, *op. cit.*, note 11, pp. 35-42.

international administrative courts. As indicated in the report of the ECMWF Appeals Board, the Appeals Board of the EUMETSAT and the ESAAT, decisions are first based on the organisation's internal law; secondly, for the organisations covered by the aforementioned report, on the law established in coordination with the six "Co-ordinated Organisations" and adopted by the organisation; and finally, only certain general principles play a major role in the case-law of those courts, such as the right to be heard, the right of access to justice, the right to equal treatment, the principle of proportionality or the principle of non-retroactivity.[249] This does not, however, prevent the said courts from recognising general principles as fundamental, leading them to interpret the applicable provisions in the light of these principles to ensure that the provisions are applied in a manner compatible with the principles in question.[250]

Is it possible to identify explanations for these variations and to find an overall consistency in the case-law on this issue? We shall attempt to suggest some possible answers.

b) Interpretation of internal rules in the light of general principles

Interpretative function. From the perspective of general international law, on the one hand, general principles of law serve to fill gaps in the otherwise applicable legal framework.[251] On the other hand, general principles are a source of general international law and are therefore on an equal footing with custom and treaties, given that there is no hierarchy among sources in general international law. They are therefore, in principle, on an equal footing with the organisation's constituent instrument. This may explain why most international administrative tribunals accept that the organisation's internal law should be interpreted in the light of general principles and in a manner consistent with them.[252] This is also the case for the OASAT, to which the Statute confers the power to recognise a complementary and interpretative function for general principles,[253] a function specified by the OASAT in Article 1(3) of its Rules of

[249] ECMWFAB/EUMETSATAB/ESAAT report, p. 3.
[250] *Ibid.*, pp. 2-3; see, for example, CREUMETSAT, Decision of 14 January 2020, Case No. 7, paras. 76-77: "*It is true that such European law [e.g. directives] would not be directly applicable since EUMETSAT is not a member of the EU and therefore not subject to its legislation (nor to its jurisdiction). However, the Appeals Board acknowledges that most member states of EUMETSAT are member states of the EU as well and cannot be supposed to have created internal EUMETSAT law which would sharply contradict European law and European values (such as the European [Convention] on Human Rights which is also incorporated into EU law)*".
[251] LoNAT, Judgments No. 1, 15 January 1929, *di Palma Castiglione v. ILO*; No. 2, 15 January 1929, *Phelan v. ILO*; and No. 3, 15 January 1929, *Maurette v. ILO*.
[252] For example, ATCE report, p. 11; ECMWFAB/EUMETSATAB/ESAAT report, p. 2.
[253] OASAT report, pp. 1 and 3. See, for example, OASAT, Judgment No. 124 (1994), *Jairo Torres et al., op. cit.*, p. 33: "*when resolution AG/RES. 498 (X-O/80) makes the payment of comparator-based adjustments contingent on the financial capacity of the Organization, this must be interpreted to mean that the system applies at all times, barring exceptional financial circumstances or force majeure. As was said above, the application of the system cannot be made to depend on a unilateral statement of intent by the party obligated; otherwise, there would be no obligation and there would have been no good faith in entering into the contract.*"

Procedure.[254] The UNAT also interprets the organisation's internal law in the light of the general principles,[255] as does the ILOAT.[256]

Corrective function. The IDBAT further refers, beyond the interpretative function, to a corrective function, to ensure that the secondary act is compatible with such fundamental standards as the principles of proportionality, good faith and the right to a fair hearing.[257] This concept of a corrective function is found in certain courts of the coordinated organisations.[258]

c) Possibility of giving precedence to a general principle over an act incompatible with it

The codified primacy of general principles. For EU courts, the general principles of EU law clearly take precedence, as they form part of primary law:[259] "Compliance with those general principles is therefore a condition of the legality of acts of secondary legislation adopted by the institutions, bodies, offices and agencies of the Union".[260] These courts have jurisdiction to annul such an act, including acts adopted by the Council, pursuant to the first paragraph of Article 263 TFEU.[261]

Uncodified pre-eminence. Even in the absence of such an express provision, where an act of secondary law of the organisation is incompatible with the general principle, the court may decide not to give legal effect to that act of secondary law in the case before it. This approach was followed, for example, by the IDBAT in the *Edgar Andrade* case, where it held that the decision to dismiss a civil servant, based on the organisation's Code of Conduct, was not compatible with the principle of proportionality.[262] Similarly, in the case of *José Jesús Lovo Parrales*, it concluded that the standard of proof applied by the bank infringed the right to a fair hearing: it applied instead the standard of clear and convincing evidence and recommended amending the organisation's Code of Ethics.[263]

The case-law of the ATCE also supports this view, whether the secondary act is adopted by a body composed of State representatives (such as the Committee of Ministers of the Council of Europe) or by the Secretary General. Thus, in the case of *Artzet (I) v. Secretary General*, the Appeals Board of the Council of Europe (ABCE) gave precedence to the principle of non-

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[254] OASAT, Rules of Procedure, Art. 1(3): "*By way of supplement, and consistent with the Charter of the Organization, the Statute of the Tribunal, and the preceding sections 1 and 2 of this Chapter, the Tribunal may apply and interpret the provisions and general principles of labor and civil law, take into consideration the clauses of contracts signed by the parties, cite the case law of this and other Tribunals of International Organizations, the general principles of equity, and other provisions and materials that apply or are relevant to the establishment and functioning of labor relations.*"

[255] S. Villalpando, "United Nations Internal Justice System", *Max Planck Encyclopedia of International Procedural Law*, May 2019, para. 46; see, for example, 2021-UNAT-116, *Beatriz Fernández Carrillo v. SGUN*, para. 39.

[256] See, for example, ILOAT, Judgment No. 122 (1968), *Chadsey v. UPU*.

[257] IDBAT report, p. 5.

[258] ECMWFAB/EUMETSATAB/ESAAT report, p. 3: "*Having recourse to general principles of international law is only needed if and insofar the relevant particular law of the organization does not give a clue how to solve a case in a decent matter.*"

[259] For example, CJEC (Grand Chamber), Judgment of 3 Sept. 2008, *Kadi et al.*, *op. cit.*, para. 308; report of the General Court of the EU, pp. 15-16, § 19.

[260] Report of the General Court of the EU, p. 16, § 19; see also the introduction to that report. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

[261] *Ibid.*, p. 34, § 65.

[262] IDBAT, Judgment of 1 April 2016, *Edgar Andrade v. IDB*, Case No. 91, paras. 16-21; IDBAT report, pp. 5-6.

[263] IDBAT, Case No. 102 (2021), *Lovo Parrales*, cited above, paras. 125-127; IDBAT report, p. 6.

discrimination over Resolution (69)38 of the Committee of Ministers, which specified that only men could be considered to have family responsibilities.[264] The refusal to grant the applicant family allowances on the basis of this resolution was "compatible neither with the Statute of the Council of Europe nor with the general principles of law, whose legal weight is greater than that of the resolution in question".[265] The ABCE stated in its reasoning that it "cannot agree that an intergovernmental organisation should ignore in its internal administration the principles which are proclaimed in its own Statute as being the aims of the Organisation, and confirmed in other Conventions adopted within the Organisation for application, by its Members".[266] The ABCE further implicitly affirmed the primacy of the general principle of good faith over the regulatory provisions concerning salaries and allowances which the Committee of Ministers adopts in order to implement the recommendations of the joint body of the so-called "co-ordinated" organisations.[267] The resolution of the Committee of Ministers in question was not annulled at that time; rather, what was annulled were "the individual decisions whereby the Secretary General applied to retired staff the decision of the Committee of Ministers taking into account [a special deduction] in the fixing of salaries of Council of Europe staff".[268]

Nevertheless, the ATCE applies the general principles with restraint and does not lightly set aside the application of an express provision, for example, in the *Devaux II and III* (2018) case.[269] In this case, to enable the applicant, who was on a fixed-term contract, to complete the tasks she was working on beyond the term of that contract, she was offered a four-month temporary staff contract, which she accepted. However, because the applicable regulations provided for equivalent remuneration only for grades lower than hers, she suffered a reduction in pay for work of equal value compared to her previous role. The ATCE states that "the strict application of the rules of the Organisation in the present case cannot in itself be deemed to amount to a breach of the general principles of law, in particular the duty of due diligence or the duty of care", but concludes that there was no breach of those principles in this instance insofar as "the difference in question is not in itself contrary to the said general principles of law".[270] The ATCE nevertheless takes the opportunity to reiterate "that international organisations are bound to abide by the principle of equal treatment and in particular to comply with the requirement that there be equal pay for work of equal value; if their rules do not ensure adherence to that principle and the requirement of equal remuneration, it is their duty to initiate procedures that do", referring to the case-law of the ILOAT and highlighting the nuances relating to this principle.[271] It concludes on this subject with a recommendation to the organisation to "consider defining appropriate rules in order to prevent further cases of *de facto* unequal treatment from occurring. As a source of law, moreover, Rule No. 1232 is subordinate to the general principles of law and to the Staff Regulations".[272] This case confirms the legal status of the general principles as being, at the very least, supra-regulatory.

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[264] ABCE, Decision of 10 April 1973, *Artzet (I) v. Secretary General of the Council of Europe*, appeal No. 8/1972; ATCE report, p. 11.
[265] ABCE, *Artzet (I)*, *ibid.*, para. 25; ATCE report, p. 11.
[266] ABCE, *Artzet (I)*, *ibid.*, para. 25; ATCE report, p. 11.
[267] ABCE, Decision of 3 August 1987, *Ausems et al. v. Secretary General of the Council of Europe*, appeals Nos. 133-145/1986; ATCE report, pp. 11-12.
[268] ABCE, *Ausems and Others*, *ibid.*, operative part. See also paras. 78-79, 86 and 88; ATCE report, pp. 11-12.
[269] ATCE, Decision of 9 Oct. 2018, *Jannick Devaux (II) and (III) v. Secretary General of the Council of Europe*, appeals Nos. 587/2018 and 588/2018; ATCE report, pp. 12-13.
[270] ATCE, *Jannick Devaux (II) and (III)*, *ibid.*, para. 66; ATCE report, p. 13.
[271] ATCE, *Jannick Devaux (II) and (III)*, *ibid.*, para. 68, referring to the judgments of the ILOAT, No. 2313 (2004), *Z. P. v. WHO*, paras. 5-6 and No. 3034 (2011), *M. G. A. et al. v. Eurocontrol*, para. 24.
[272] ATCE, *Jannick Devaux (II) and (III*), *ibid.*, para. 69.

In light of the body of case-law at the ATCE,[273] it must be concluded that general principles are generally considered to take precedence over the organisation's secondary law.

The commentary on Article III of the IMFAT Statute, for its part, highlights another function of the applicability of general principles: the reference to recognised general principles of international administrative law serves to *limit* the court's powers in that the standard applied by the court should not go beyond that applied by other courts.[274] This applies in particular to the review of the exercise of the organisation's discretionary power.[275] Furthermore, according to the same commentary, certain general principles of international administrative law, such as the right to be heard, are so widely accepted and established in various legal systems that they are considered applicable to *all decisions* adopted by international organisations, including the Fund.[276] This observation implies a general primacy of general principles over the organisation's secondary law.

The TPIOIF's approach is consistent with that of the courts mentioned above, as is evident from its report:

> The question of whether internal law must take precedence over [general principles] has not yet arisen before the [First Instance Tribunal]. But a priori, the [general principle] should take precedence over acts of secondary law. This capacity refers to the concept of subsidiary but mandatory law in the absence of a clear text. It is also consistent with the logic of the ICJ: every international organisation "is bound […] by all the obligations imposed on it by the general rules of international law" [277]

This is confirmed in the case-law of the ILOAT on this subject.[278]

d) Distinction between general principles?

Framing the issue. However, the question arises as to the relationship between the supplementary nature of certain general principles and the primacy of others. For example, analysing the case-law of the ILOAT, Laurent Germond notes in his thesis that there are, first and foremost, "general principles [which apply] in the absence of an express provision".[279] He states, "[t]he repeated assertion that a particular principle is valid '*even in the absence of an express provision*' certainly does not allow us to rule on the primacy of one over the other. It is, however, a good indicator of the Tribunal's inclination to resort to general principles where the

[273] See the ATCE report.
[274] Commentary on Article III of the IMFAT Statute; IMFAT report, p. 10.
[275] Commentary on Article III of the IMFAT Statute; IMFAT report, pp. 10-11.
[276] Commentary on Article III of the IMFAT Statute: "*Second, certain general principles of international 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.*" IMFAT report, pp. 10-11.
[277] TPIOIF report, p. 3, citing ICJ, Advisory Opinion of 20 Dec. 1980, *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, *ICJ Reports 1980*, pp. 89-90, para. 37. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.
[278] See, for example, ILOAT, Judgment No. 4550 (2022), *L. (No. 9) v. EPO*, para. 7, Plenary Panel.
[279] L. Germond, *Les Principes généraux…*, *op. cit.*, note 11, pp. 36-37, and the case-law cited. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

texts are silent".[280] For example, in determining the law applicable to officials in liaison offices, the ILOAT stated in the *Sharma* case:

> although the Staff Regulations exclude officials of branch offices from the scope of their provisions, it does not follow that such officials should be exposed to arbitrary action by the Director-General or the directors of branch offices; that consequently, the conditions of employment of such officials are governed primarily by general decisions of the Director-General and rules resulting from the partial assimilation of the conditions of service of such officials to those of public servants in the country where the branch office is located and, in a subsidiary way, by general principles of law and, in particular, administrative law.[281]

Principles set out in an express provision. Laurent Germond then identifies "[t]he general principles as set out in an express provision".[282] This is, for example, the case in the aforementioned *Chadsey* case, concerning "the principle that any employee [who has a connection with the organisation other than a purely casual one] is entitled[,] in the event of a dispute with [his] employer[,] to the safeguard of some appeals procedure."[283]

Principles superior to secondary law. Finally, there are "[t]he general principles superior to an express provision".[284] This is the case, for example, with the principle of freedom of association, which implies the right of the body elected by staff members to represent them before the organisation's authorities to freely choose "the persons whom it appoints as members of the Appeals Committee, which is an essential joint body".[285]

The ILOAT clarified its approach to the relationship between written law and general principles in Judgment No. 2097 (2002), *Deville and Others, and Gasser*:

> Where there is great disparity in bargaining power, […] the law will impose constraints upon the more powerful. In the international civil service that is one of the functions of the staff rules, and where these are inadequate, the Tribunal will intervene to redress the balance through the application of general principles of international civil service law..[286]

Ultimately, the ILOAT reserves the *right* to set aside the applicability of an act contrary to general principles in such circumstances.

An analysis of the above examples and the case-law of the ILOAT shows that these international administrative tribunals give precedence to human rights principles (i) and to the general principles of international civil service law (ii). The (apparent) "preponderance" of secondary law in certain cases is explained by the manner in which the principle is applied (iii).

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[280] *Ibid.*, p. 37, and the case-law cited. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.
[281] ILOAT, Judgment No. 30 (1957), *Sharma v. ILO*.
[282] L. Germond, *Les Principes généraux…*, *op. cit.*, note 11, pp. 37-38, and the case-law cited. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.
[283] ILOAT, Judgment No. 122 (1968), *Chadsey v. UPU*.
[284] L. Germond, *Les Principes généraux…*, *op. cit.*, note 11, pp. 38-40, and the case-law cited. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.
[285] ILOAT, Judgment No. 4550 (2022), *L. (No. 9) v. EPO*, para. 7, Plenary Panel.
[286] ILOAT, Judgment No. 2097 (2002), *Deville and Others, and Gasser v. WHO*, para. 19; L. Germond, *Les Principes généraux…*, cited above, note 11, p. 40.

i) The primacy of human rights principles

Protecting human dignity. It is evident from the case-law that, in all cases, principles relating to the protection of human rights are considered to take precedence over a provision of the organisation's internal law. Indeed, the right to the protection of human dignity – which requires special protection due to its fundamental importance – lies at the heart of these various rights.

It is clear from the responses received that general principles are not applied solely to fill gaps, that is to say, they do not apply only in the absence of *any* specific provision. With regard to human rights, they are also applied to address the absence of any other equivalent guarantee that is at a position in the hierarchy of the organisation's internal norms which is superior to secondary law.

Thus, Celia Goldman highlighted, with regard to the case-law of the IMFAT

> 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.[287]

In *Ms. "M." and Dr "M."*, the IMFAT clarified that where an infringement of human rights is alleged, "*[t]he very nature of this grave complaint requires a greater degree of scrutiny over the Fund's exercise of its discretion*".[288]

Primacy of procedural human rights. For example, regarding the right of access to justice, the applicable provisions have been interpreted by the CJEC,[289] the ATCE[290] and the Appeals Board of the ESA[291] in such a way that external candidates for a post also have access to the administrative jurisdiction established by the organisation. The terms "agents", "servants", "staff members" or "officials" in the relevant provisions are therefore understood to include not only the former or current ones, but also "*potential* agents[, servants, staff members] or officials, in order to avoid [a] denial of justice".[292] The ATCE also ruled out the applicability of a provision of the Staff Regulations, adopted by the Committee of Ministers, restricting access to the ATCE in breach of the Tribunal's established case-law.[293] The Appeals Board of the EUMETSAT, for its part, agreed to hear the appeal of a caretaker, employed by various German companies but carrying out tasks for EUMETSAT, because in the proceedings before the

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[287] C. Goldman, "Developments in the Jurisprudence of the International Monetary Fund Administrative Tribunal: 2006", *IMF Administrative Tribunal Reports*, Vol. V, p. 6, regarding Judgment No. 2006-6, 29 Nov. 2006, *Ms. "M" and Dr. "M." v. IMF*, para. 117; IMFAT report, p. 14.

[288] IMFAT, Judgment No. 2006-6, 29 Nov. 2006, *Ms. "M" and Dr. "M."*, para. 117; IMFAT report, p. 14.

[289] CJEC, judgment of 31 March 1963, *Ms. Vandevyvere v. European Parliament*, Case 23/64, *ECR 165, p. 00205*, Grounds II; see A.-M. Thévenot-Werner, *Le droit des agents…*, *op. cit.*, note 12, pp. 398-399, para. 437.

[290] ATCE, Decision of 9 June 1999, *Schmitt v. Secretary General of the Council of Europe*, appeal No. 250/1999, paras. 12-17; ATCE report, pp. 13-14.

[291] ESAAB, Decision of 21 Dec. 2021, Case No. 129, paras. 44-45; ECMWFAB/EUMETSATAB/ESAAT report, p. 4.

[292] See A.-M. Thévenot-Werner, *Le droit des agents…*, *op. cit.*, note 12, p. 399, para. 437. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

[293] ATCE, Decision of 28 April 2015, *Cucchetti Rondanini et al. v. Secretary General of the Council of Europe*, appeal No. 548-553/2014, para. 63: "The Tribunal points out that all persons believing themselves to be the victim of an act adversely affecting them are entitled to challenge that act through the courts. That is a general principle which holds good in the member states of the Council of Europe and, in the matter of access to employment in the international civil service, in other international organisations too."; ATCE report, pp. 13-14.

national courts, the defendant had invoked EUMETSAT's immunity from jurisdiction and enforcement.[294]

The UNAT, for its part, refuses to hear appeals from external candidates for a post. However, it agreed to interpret its Staff Regulations in the light of the right to an effective remedy in order to hear the application of a person who had *de facto* entered into a contract with the organisation but had not yet been formally appointed as a staff member of the organisation.[295]

Although the ILOAT refuses to hear appeals from external candidates for a post due to the absence of a provision to that effect in its Staff Regulations, it has recognised that this situation could constitute a denial of justice, for which the respondent organisation should remedy, "either by waiving its immunity or by submitting the dispute to arbitration".[296] Conversely, it has been required to set aside the decision to withdraw its jurisdiction in certain circumstances. This was the case in *Hamouda and Others*.[297] In that case, the Management Board of the organisation's pension fund had decided to withdraw jurisdiction from the ILOAT to hear disputes concerning the pension scheme, in favour of national courts, and to reduce the time limit for internal appeals to 30 days. After conducting a brief comparative law analysis to identify the scope of the "principle of proximity" applicable in private international law for determining the competent court, and considering that this principle allowed for the resolution of any conflict of jurisdiction and, in particular, to "avoid a denial of justice in the event of a negative conflict of jurisdiction", the ILOAT ruled "that the challenged amendment […] to the Regulations must be set aside".[298] The Tribunal also states that "[i]f [however] the Union wanted to resolve the conflict of jurisdiction in some other way in agreement with the Swiss authorities it would have to do so by concluding a proper international agreement binding on both jurisdictions.".[299] This judgment shows that the principle of proximity, with its component of the obligation to avoid a denial of justice, is considered to take precedence over the organisation's secondary law and is equivalent in the hierarchy of norms to an international agreement, which could replace it. As for the replacement of the 60-day internal appeal period with a 30-day period, the ILOAT held:

> that the authors of the challenged amendment were wrong to think that reducing still further a time limit that was already fairly short could somehow serve to hasten the proceedings. This amendment too, like the main one, must be set aside because there are no credible grounds for it.[300]

The ILOAT refers here to the duty to state reasons, which is a component of the right to a fair hearing and a general principle.[301]

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[294] EUMETSATAB, Decision of 14 January 2020, Case No. 7, paras. 34 ff.; ECMWFAB/EUMETSATAB/ESAAT report, p. 4.

[295] 2011-UNAT-120, *Gabaldon v. SGUN*, para. 29: "*Finding otherwise would mean denying the right to an effective remedy before a tribunal in respect of acts of the Organization that may ignore rights arising from a contract, as stated above, which was concluded for the appointment of a staff member*."

[296] ILOAT, Judgment No. 2657 (2007), *Klausecker v. EPO*, para. 5.

[297] ILOAT, Judgment No. 1451 (1995), *Hamouda and Others v. UPU*.

[298] *Ibid.*, paras. 27-29.

[299] *Ibid.*, para. 30.

[300] *Ibid.*, para. 31.

[301] A.-M. Thévenot-Werner, *Le droit des agents…*, cited above, pp. 609-619. On the duty to state reasons, see also, for example, IMFAT, Judgments No. 2021-2, 24 Dec. 2021, *Mr. "RR" v. IMF*, paras. 125-127, referring to the case-law of the UNAT and the WBAT, confirmed by IMFAT, Judgment No. 2022-1, 30 June 2022, *"TT" v. IMF*, para. 100: the appointing authority has an "*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*"; IMFAT report, p. 6.

The primacy of substantive human rights. The primacy accorded to human rights enshrined in general principles can also be observed in the field of substantive human rights, for example with regard to freedom of association.[302]

Although the UNAT refuses to review the legality of acts adopted by bodies composed of State representatives, the UNAT has clarified, with regard to the enforceability of the provisions of various ILO conventions and the prohibition of discrimination:

> *international conventions are an important source of internationally accepted standards of employment. This was the foundation of the reasoning in Mashhour […] where the Appeals Tribunal relied on the ILO Discrimination (Employment and Occupation) Convention, which entered into force in 1960, to aid in the interpretation of "discrimination" in the legal framework of UNICEF where "discrimination" was not defined. That illustrates the application of the international conventions in practice: they do not provide substantive rights for, or impose obligations on, employers and employees. Rather, they guide lawmakers as to the content of legislation and assist courts and tribunals in the interpretation of it. Therefore, although these conventions and other human rights and labour law instruments do not directly apply as a source of law or remedial power to tribunals, they provide minimum standards of employment and general principles of law that are or should be embodied in the Organisation's rules, regulations and policies.*[303]

This serves as a reminder of the obligation incumbent upon drafters and decision-makers of standards within the UN to ensure that these standards are compatible with the general principles of human rights and international labour law, an obligation that can only be explained if these general principles are recognised as having a higher value than secondary law.

ii) The primacy of general principles of international civil service law

The obligation on all drafters and decision-makers of standards to ensure their compatibility with general principles also applies to the general principles of international civil service law, as the ILOAT noted in the cases of *Niesing (No. 2)*, *Peeters (No. 2)* and *Roussot (No. 2)*:

> [a]n organisation may of course freely decide what its staff regulations are to say and what the structure of its secretariat is to be. But once it has laid those administrative foundations the political and administrative bodies that frame personnel policy must at all times, and more particularly when amending conditions of service, abide by those general principles [namely, "a set of general principles that form part of the law of the international civil service"].[304]

It is also noted that principles *inherent* in international civil service law take precedence over the internal law of organisations.[305] This is the case with regard to guarantees of the independence of international organisation[306] and acquired rights or essential rights as generally understood in international civil service law.[307]

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[302] ILOAT, Judgment No. 4550 (2022), *L. (No. 9) v. EPO*, Plenary Panel.
[303] 2021-UNAT-116, *Beatriz Fernández Carrillo v. SGUN*, para. 39, referring to 2014-UNAT-483, *Mashhour v. SGUN*.
[304] ILOAT, Judgment No. 1118 (1991), *Niesing (No. 2), Peeters (No. 2) and Roussot (No. 2) v. Eurocontrol*, para. 10.
[305] See, for example, ILOAT, Judgment No. 2232 (2003), *Bustani v. Organisation for the Prohibition of Chemical Weapons*.
[306] See, in particular, ILOAT, Judgment No. 2232 (2003), *Bustani*, *ibid.*
[307] LoNAT, Judgments No. 1, 25 January 1929, *di Palma Castiglione v. ILO Office*; No. 2, 25 January 1929, *Phelan v. ILO Office*; No. 3, 25 January 1929, *Maurette v. ILO Office*; WBAT, Decision No. 1 (1981), *de Merode*

iii) Primacy of secondary law in certain cases

Nevertheless, courts do not systematically give precedence to general principles. The primacy given to the internal law of the organisation in certain cases can be explained as follows:

- by the text's compatibility with the general principle;
- by the fact that the principle itself, by its very nature, implies the possibility of derogating from it to a certain extent (for example, certain nuances applied to the principle of equal treatment);[308]
- by the fact that, in the case before the court, the specific application of the rules did not result in a breach of the general principle.[309]

Exceptionally, the ILOAT gave precedence to the rules relating to the status of the ILOAT when determining its own jurisdiction, but nevertheless urged the organisation not to place the applicant in a situation of denial of justice.[310] It therefore sought to ensure that, in the present case, there would be no specific infringement of the general principle.

e) Relationship with other sources of international law

Equivalent value to other sources of international law. Leaving aside cases in which general principles derived from international conventions are applied (cases which are not all that frequent), references in case-law to the relationship between general principles and other sources of international law are rare. Certain courts, such as the IDBAT, state that they do not apply other sources of international law, namely international human rights treaties or customary law, directly –[311] perhaps because the issue has not yet arisen in practice in a case concerning a convention to which the organisation is a party. The TALMERCOSUR, for its part, states that the application of MERCOSUR standards, rules and principles takes precedence over other standards because they govern labour relations within the MERCOSUR organisation –[312] as *lex specialis*, therefore. Conversely, the ILOAT has held that a general principle – in this case the principle of proximity derived from private international law – may

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et al., cited above; IMFAT, Judgments No. 2007-1, 24 January 2007, *Daseking-Frank et al. v. IMF*; No. 2021-4, 28 Dec. 2021, *Elkjaer et al. v. IMF*; No. 2023-1, 30 January 2023, *Elkjaer et al. (No. 2) v. IMF*; ILOAT, Judgment No. 986 (1989), *Ayoub (No. 2) et al. v. ILO*; ATBIS, Judgment No. 1/2006, 13 Dec. 2007, para. 3d; 1/2018, 11 April 2019, paras. 182-188; ATCE, Decision of 20 April 2021, *John Parsons (V) et al. v. Secretary General of the Council of Europe*, appeals Nos. 640/2020-644/2020, 646/2020-648/2020, and *Nathalie Verneau (II) and Others v. Secretary General of the Council of Europe*, appeals Nos. 649/2020, 652/2020-660/2020 and 644/2020; NATOAT, Judgment of 1 June 2021, *G et al. v. NATO International Secretariat*, Case No. 2020/1303, paras. 74-80; OECDAT, Judgment of 30 June 2021, *Mr. AA and Others v. Secretary General*, Case No. 94, paras. 55-73; ESAAT, Decision of 15 Oct. 2021, *G. and Others v. ESA*, Case No. 122-128, paras. 107-122; EUMETSATAB, Decision of 18 Oct. 2021, Case Nos. 9-14, paras. 104-118; ECMWFAB, Decision of 15 March 2022, *H. G. and Others v. ECMWF*, Case Nos. 7-11, paras. 73-80; and Decision of 15 March 2022, *A. and Others v. ECMWF*, Case Nos. 12-16, paras. 126-134.

[308] Regarding freedom of expression: ATCE, Decision of 22 Dec. 2005, *Kling (III) v. Secretary General of the Council of Europe*, appeal No. 345/2005, paras. 38-41; ATCE report, p. 15; UNAT, Judgment No. 2011-UNAT-177, *Tabari v. Commissioner-General of UNRWA*, para. 25; A.-M. Thévenot-Werner, *Le droit des agents…*, *op. cit.*, note 12, p. 501, para. 538.

[309] ATCE, *Jannick Devaux (II) and (III)*, *op. cit.*, para. 66.

[310] ILOAT, Judgment No. 2657 (2007), *Klausecker v. EPO*, para. 5.

[311] IDBAT report, p. 6.

[312] TALMERCOSUR report, p. 3.

be set aside by the conclusion of "a proper international agreement",[313] an agreement which would then take precedence both as *lex posterior* and *lex specialis*.

f) Conclusions on point 5

Interim conclusion. These various elements of the response indicate that the general principles relating to human rights and international civil service law necessarily form part of the hierarchy of the organisation's internal standards at the same level as the organisation's constituent instrument and other sources of general international law. Where precedence is given to the text, it is because the principle itself implies the possibility of derogations. General principles therefore generally have a higher status than the organisation's secondary law. The hierarchy between the constituent instrument, general principles and other sources of international law is determined by general rules of interpretation of international law. This may explain the primacy of the general principles of EU law, which form an integral part of primary law, and the superior status of other general principles over secondary law, whilst remaining supplementary to primary EU law.[314]

Conclusion on point 5 regarding the ILC's draft conclusions.[315] This finding confirms and refines ILC conclusion 11. In particular, it specifies that general principles have a status equivalent to that of the constituent instrument and superior to the organisation's secondary law in the hierarchy of norms within the organisation's partial legal system. Furthermore, an organisation's secondary law must be compatible with the general principles.

6) Has your tribunal ever agreed to examine, at least on an exceptional basis, the legality of an act adopted by a body composed of State representatives in relation to a general principle? With what consequences, from both a legal (for the act in question) and a political (within the organisation) perspective?

a) General possibility of reviewing acts of a body composed of State representatives

Review on an exceptional basis. International administrative courts are, in principle, only competent to hear individual administrative decisions. However, when examining the legality of the disputed decision, the question of its conformity with another act may arise, and on that occasion the question of the compatibility of that act with a general principle. Many international administrative courts agree to exercise this review of the so-called exceptional review of legality, including with regard to general principles.[316] In a decision of 15 October 2021, the ESAAT further clarified:

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[313] ILOAT, Judgment No. 1451 (1995), *Hamouda et al. v. UPU*, para. 30.
[314] See, on this point above, the answers to question 2.
[315] UN, ILC, A/CN.4/L.1018, 20 May 2025, *General principles of law: Text and titles of the draft conclusions adopted by the Drafting Committee on second reading.*
[316] For example, TALMERCOSUR, Judgment No. 3/2015, *María del Carmen García v. Instituto Social del MERCOSUR*, p. 11; TALMERCOSUR report, p. 3; IMFAT, Judgment No. 2004-1, 10 Dec. 2004, *Mr "R." (No. 2) v. IMF*, para. 51; see also the case-law cited in note 307.

> It is well established in international administrative law that an agent may invoke the illegality of a general rule which is individually applied in his case, if and insofar as the illegality of the rule renders illegal the decision which he appeals against (see, for example, ILOAT decision 3291 of 5 February 2014). Although it is beyond the competence of the Appeals Board to declare invalid such a rule – the Appeals Board not being a constitutional court vested with such powers (see Appeals Board Decision No. 85) –, the Appeals Board may rescind the decision of Administration on the ground that the underlying rule is illegal and thus cannot be the basis of legal decisions ('exception d'illégalité').[317]

Review by way of direct legal action. Certain courts agree to review the legality of normative acts, in very exceptional cases, by way of direct legal action. This is the case, firstly, if a provision expressly grants this power to the court. This applies in particular to the European Union courts[318] and the IMFAT.[319] The IMFAT Statute provides a restrictive definition of the concept of a "regulatory decision" that may be the subject of an action:

> For purposes of this Statute: […] b. the expression "regulatory decision" shall mean 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.[320]

Secondly, certain courts agree to review the legality of normative acts through legal proceedings if "the general decision does not require an implementing decision and immediately and adversely affects individual rights" of the applicant.[321] This is the case, for example, where an infringement is alleged of the right to strike or, more generally, of the freedom of association.[322] Furthermore, the review of acts that implement to the letter decisions of bodies composed of State representatives forms part of a now well-established case-law practice which goes beyond the scope of international civil service law.[323] International administrative tribunals may also hear cases concerning individual decisions adopted by a body composed of State representatives, for example in the event of a dispute over a decision to terminate the appointment of a civil servant appointed by that body.[324] However, such cases are relatively

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[317] ESAAT, Decision of 15 Oct. 2021, *Central Committee of the Staff Association, L and D v. ASE*, Case No. 119, paras. 47-48; ECMWFAB/EUMETSATAB/ESAAT report, p. 9.

[318] EU courts, Art. 263 TFEU. Applicants also have the option, where appropriate, to raise a "plea of illegality" in proceedings before the EU courts, pursuant to Article 277 TFEU; see report of the General Court of the EU, p. 34, § 67.

[319] IMFAT Statute, Art. II(1).

[320] IMFAT Statute, Art. II(2); IMFAT report, p. 11.

[321] See, for example, ILOAT, Judgment No. 3761 (2017), *D. and R. v. United Nations Educational, Scientific and Cultural Organisation (UNESCO)*, para. 14, five-judge panel, cited in Judgment No. 4482 (2022), *H. (No. 8) v. EPO*, delivered by the full bench, para. 4. The latter judgment concerns a decision of the Administrative Council of the EPO, a body comprising its Presidency, representatives of the EPO Member States, the President of the Office supported by EPO staff, the Board of Auditors and the Staff Committee.

[322] ILOAT, Judgment No 4482 (2022), *H. (No 8) v. EPO*, para. 5 and the case-law cited.

[323] See, for example, CJEC (Grand Chamber), Judgment of 3 Sept. 2008, *Kadi and Others*, cited above, para. 299; ECtHR (Grand Chamber), Judgment of 21 June 2016, *Al-Dulimi and Montana Management Inc. v. Switzerland*, application No. 5809/08, paras. 137-149. See A.-M. Thévenot-Werner, "Activité et jurisprudence des Tribunaux administratifs des Nations Unies et de l'OIT (2023-2024). Evaluation des systèmes, accès à la justice, procédure disciplinaire et anonymat", *AFDI*, 2024, Vol. 70, pp. 403-425.

[324] ILOAT, Judgment No. 4737 (2024), *R. v. Energy Charter Conference*, Plenary Chamber. On the standing to bring proceedings before an administrative court of a head or former head of a secretariat, see also: United Nations Administrative Tribunal, Judgment No. 1495 (2009), *Annan v. Joint Committee of the United Nations Joint Staff Pension Fund*, para. VI. See D. Petrović, "Access to Justice – An Unfinished Task", in A. Dileita (ed.), *Justice Administrative Internationale et Organisations internationales: aperçu et perspectives*, Administrative Tribunal of the African Development Bank, Abidjan, 2021, p. 63; OECDAT, Judgment of 2 Dec. 2004, *M. P. v. Secretary-General*, Case No. 57, paras. 3-7. See R. Cèbe, *RGDIP*, Vol. 128, 2024, No. 1, pp. 197-198.

rare in the broader body of case-law on international civil service law, to the extent that certain international administrative courts have not yet had the opportunity to rule on an appeal directly or indirectly challenging the legality of an act adopted by a body composed of representatives of States.[325]

Refusal to exercise any review. Although no provision of its Statute prohibits it from doing so, the United Nations Appeals Tribunal nevertheless refuses to rule on the legality of resolutions adopted by a body composed of representatives of States, even in an incidental capacity,[326] which is not without its difficulties in terms of guarantees of the rule of law and access to justice.[327]

b) Exercise of review of the legality of acts of a body composed of State representatives in the light of general principles

A review of compatibility. Insofar as international administrative courts review the *compatibility* (rather than the conformity) of acts of a body composed of State representatives with general principles in accordance with the general principles of interpretation of applicable standards, they seek to give full effect to the body of standards. Only if the act is incompatible with general principles may it be set aside (and the implementing decisions annulled)[328] or, in the event of a direct legal challenge to the act, annulled.[329]

Where the review of legality is carried out by way of an interlocutory application and the inapplicability of that act is established, by virtue of the principle of the relative effect of judicial decisions, this finding of inapplicability is limited solely to the parties to the dispute, resulting in the illegality of the individual implementing decisions challenged before the court.[330]

An illegality rarely found. The IMFAT has explained that the scope of the review may vary depending on the legal nature of the contested act: deference to managerial discretion is greatest when the Tribunal examines regulatory decisions (as opposed to individual decisions),

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[325] See IDBAT report, p. 6.

[326] 2021-UNAT-1107, *Abd Al-Shakour et al. v. Aksioutine et al. v. SGUN*, full bench of six judges, paras. 49, 51 and 68; 2021-UNAT-1108, *Andres et al., Correira Reis et al. v. SGUN*; 2021-UNAT-1109, *Bozic et al., Alsaqqaf et al. v. SGUN*; 2021-UNAT-1110, *Andreeva et al., Bettighofer et al. v. SGUN*; 2021-UNAT-1111, *Angelova et al., Avognon et al. v. SGUN*; 2021-UNAT-1112, *Doedens et al. v. SGUN* and 2021-UNAT-1113, *Aligula et al. v. SGUN*.

[327] For a critical analysis of this approach, see A.-M. Thévenot-Werner, "Activité et jurisprudence des tribunaux administratifs des Nations Unies et de l'OIT (2018)", *AFDI*, 2018, Vol. 64, pp. 442-457; A.-M. Thévenot-Werner, "Activité et jurisprudence… (2019-2020)", *op. cit.*, note 229, pp. 543-545; A.M. Thévenot-Werner, "Activité et jurisprudence des tribunaux administratifs des Nations Unies et de l'OIT (2021-2022). Focus: 'juge résident' au TAOIT et projet d'une 'chambre conjointe'", *AFDI*, 2022, Vol. 68, pp. 548-549.

[328] ABCE, Decision of 10 April 1973, *Artzet (I) v. Secretary General of the Council of Europe*, appeal No. 8/1972; ATCE report, p. 11; ILOAT, Judgment No. 986 (1989), *Ayoub (No. 2) et al. v. ILO*.

[329] On annulment in the event of an appeal by way of direct legal action: for example, CJEC (Grand Chamber), Judgment of 3 Sept. 2008, *Kadi et al.*, cited above (outside the scope of European civil service law); IMFAT Statute, Art. XIV(3); ILOAT, Judgment No. 4482 (2022), *H. (No. 8) v. EPO*.

[330] General Court of the EU, Judgment of 27 Oct. 2016, *ECB v. Cerafogli*, Case T-787/14 P, EU:T:2016:633, para. 45; Judgment of 25 Oct. 2018, *KF v. European Union Satellite Centre*, Case T-286/15, EU:T:2018:718, para. 157; report of the General Court of the EU, p. 40, § 82. Nevertheless, the finding that the general framework is inapplicable may, to a certain extent, have an indirect effect on other individual implementing decisions; see A.-M. Thévenot-Werner, "Remedies", in A. Garrido Muñoz *et al.*, *op. cit.*, note 4, pp. 263-264.

particularly in the case of general decisions adopted by the Fund's Executive Board.[331] Drawing on the *de Merode* case-law, the IMFAT also distinguishes between fundamental and essential terms of employment, which cannot be unilaterally amended, and non-fundamental and non-essential terms of employment, which may be amended in accordance with the Fund's lawful exercise of discretionary power.[332] To determine whether there has been an abuse of discretion in the amendment of non-fundamental terms of employment, it applies the criteria identified by the WBAT in *de Merode*:

> *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.*[333]

Whilst the IMFAT dismissed the claims in the *Daseking-Frank et al.* case and the first *Elkjaer et al.* judgment[334] on the basis of this reasoning, it held in judgment No. 2023-1, *Elkjaer et al. (No. 2)* that the defendant organisation had not fully complied with its own rules regarding salary adjustments.[335]

Even in the courts of the European Union, "the unlawfulness of a general act of secondary law for breach of a general principle of EU law" has been found only "in a few cases".[336]

For example, the CJEU, when called upon to review the legality of general provisions by way of an exception, set aside the disputed provision in the *Dumitrescu and Schwarz* case and annulled the implementing decisions based on the unlawful provision.[337] At issue in this case was the second subparagraph of Article 8(2) of Annex VII to the Staff Regulations, concerning the lump-sum payment of annual travel expenses to the official's place of origin. That provision provides for a different calculation for places of origin within the European Union (calculation

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[331] IMFAT, Judgment No. 2003-1, 30 Sept. 2003, *Ms. "J." v. IMF*, paras. 105-106 and the case-law cited: "*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*"; IMFAT report, pp. 5-6. See also p. 12: "*the scope of review of the Executive Board's regulatory decisions is 'quite narrow' [Commentary on the Statute, p. 19] and the Tribunal's 'deference is at its height' when reviewing the Executive Board's policy decisions*", referring to IMFAT, Judgment No. 2007-1, *Daseking-Frank et al.*, *op. cit.*, para. 46. See also IMFAT, Judgment No. 2023-1, *Elkjaer et al. (No. 2)*, *op. cit.*, para. 80; IMFAT report, pp. 12-13.

[332] WBAT, Decision No. 1 (1981), *de Merode et al.*, cited above, paras. 42-43, cited in IMFAT, Judgment No. 2007-1, *Daseking-Frank et al.*, cited above, paras. 59-60, 76, concerning the decision to revise the methodology for determining staff salaries and its implementation; IMFAT, Judgment No. 2021-4, *Elkjaer et al.*, cited above, para. 94, concerning the increase to 3.6% in the contribution to the health insurance scheme (exceeding the structural salary increase of 2.7%) for the 2021 financial year; Judgment No. 2023-1, *Elkjaer et al. (No. 2)*, cited above, paras. 81-82, concerning the adjustment of salaries; IMFAT report, p. 12.

[333] WBAT, Decision No. 1 (1981), *de Merode et al.*, cited above, para. 47, cited in IMFAT, Judgment No. 2007-1, *Daseking-Frank et al.*, cited above, para. 90; IMFAT, Judgment No. 2021-4, *Elkjaer et al.*, cited above, para. 109; Judgment No. 2023-1, *Elkjaer et al. (No. 2)*, cited above, paras. 81-82; IMFAT report, p. 12.

[334] IMFAT, Judgment No. 2007-1, *Daseking-Frank et al.*, cited above; IMFAT, Judgment No. 2021-4, *Elkjaer et al.*, cited above.

[335] IMFAT, Judgment No. 2023-1, *Elkjaer et al. (No. 2) v. IMF*, cited above, in particular paras. 81-113; IMFAT report, pp. 12-13.

[336] Report of the General Court of the EU, p. 40, § 83. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

[337] CJEU, Judgment of 18 April 2024, *Vasile Dumitrescu and Guido Schwarz et al. v European Commission and Court of Justice of the European Union*, Cases C-567/22 P to C-570/22 P EU:C:2024:336, paras. 83, 112 and the operative part. See also the report of the General Court, pp. 40-41, § 84.

per kilometre of the geographical distance between the place of origin and the place of employment) and places of origin outside the European Union (calculation per kilometre of the geographical distance between the place of employment and the capital of the Member State of which the official is a national). The legality of this provision is assessed in the light of "the general principle of law governing the EU civil service that it must be possible for an official to retain personal links with the place where his or her principal interests are situated, notwithstanding his or her entry into the service and the distance between that place and the place of employment"[338] and the "principle of equal treatment" – a general principle of EU law enshrined in Article 20 of the Charter.[339] The Court states that

> considerations of a purely budgetary, administrative or staff policy nature cannot in themselves constitute an objective justification for the difference in treatment established between officials in comparable situations resulting from the use of a criterion that is completely unrelated to the objective pursued by Article 8 of Annex VII to the Staff Regulations.[340]

Within the European Union, the review of the legality of acts of political bodies by its courts is part of standard case-law practice and does not, in itself, generally raise any difficulties calling into question the very principle of exercising such review, including as regards the implementation of decisions.

c) *Specific prohibition on reviewing the legality of acts of a body composed of State representatives*

A voluntary limitation of the court's jurisdiction. The OASAT had on several occasions agreed, on an exceptional basis, to examine the legality of an act adopted by a body composed of representatives of States (the Organisation's General Assembly) in relation to a general principle. This was the case, for example, in Judgment No. 124 of 13 May 1994, *Jairo Torres and 556 other applicants v. Secretary-General of the OAS*. In that case, it ruled out the applicability of a resolution of the Organisation's General Assembly concerning its budget which (repeatedly) failed to take into account the obligation previously recognised in an agreement with staff members to adjust salaries to the cost of living in accordance with a method determined by mutual agreement with the staff. Initially, there were difficulties in enforcing this judgment.[341] Following these judgments, the OAS General Assembly amended the OASAT Statute, specifying in Article I(v) that the Organisation's internal law takes precedence over general principles of labour law, it being specified that the Organisation's Charter has the highest rank in the hierarchy of the Organisation's internal norms.[342] It also stated in paragraph (vi) of the same article: "*Any decision of an organ subordinate to the General Assembly which violates the basic principles set out in the foregoing provisions is ultra vires and not binding on the Organization, the General Secretariat, its personnel, or the member States*".

A limitation contrary to international civil service law. However, the practice at the OASAT of reviewing resolutions of the Organisation's General Assembly (and ruling against the Organisation) had already been established in several other cases, dating back more than ten

[338] CJEU, Judgment of 18 April 2024, *Dumitrescu et al.*, *ibid.*, para. 71.
[339] *Ibid.*, paras. 65 and 66.
[340] *Ibid.*, para. 81.
[341] W. M. Berenson, "Administrative Tribunal…", *op. cit.*, note 47, para. 82; OASAT, Judgment No 125 (1995), *Hugo Valverde*, cited above.
[342] OASAT Statute, Art. I(v).

years prior to the *Jairo Torres et al.* judgment.[343] Added to this is the fact that the position taken by the OASAT prior to the amendment of its Statute is consistent with the approach adopted by several other international administrative tribunals with a well-established case-law tradition. Interestingly, Article 90 of the OAS Charter itself provides that the Permanent Council and ad hoc committees "*shall observe the provisions of the Charter and the principles and standards of international law*", which indicates that the founding states of the OAS had already considered that the organisation's secondary law must be compatible not only with the Charter, but also with general principles.

A limitation preventing the rule of law in substance. Finally, failing to recognise the competence of the organisation's administrative tribunal to hear, at least by way of exception, decisions of a body composed of representatives of States effectively results in the absence of guarantees of a substantive rule of law (*materielle Rechtsstaatlichkeit, état de droit matériel*[344]) within the organisation. Furthermore, this renders the organisation vulnerable with regard to the issue of maintaining its immunities. Indeed, if an organisation refuses to recognise this competence to its tribunal – or if a tribunal refuses to interpret its statute in such a way as to have jurisdiction – this entails the risk of a denial of justice and, ultimately, the risk that a national court will set aside the organisation's immunity from jurisdiction.

7) Would it be possible to give at least one example of a general principle relating to procedure, one example of a general principle relating to substance (for example, the principle of independence, the principle recognising acquired/essential rights, etc.) and one example of a general principle relating to the protection of human rights, concerning the principle's position in the hierarchy of norms?

a) General principle relating to procedure

Right of access to justice. The provisions conferring jurisdiction on the court seised have been interpreted in the light of the right of access to justice and its corollary, the principle prohibiting the denial of justice by the courts of several coordinated organisations. Thus, the Appeals Board of the ESA interpreted the applicable rules to mean that it may hear appeals from the staff association concerning disputes relating to the rights recognised to the staff association committee.[345] The Appeals Board of the EUMETSAT recognised its jurisdiction to hear an appeal from a caretaker made available to the organisation by subcontractors.[346] The ATCE, for its part, recognised its jurisdiction to hear an appeal from a person seconded to the organisation.[347] The possibility of hearing appeals from external candidates for a post has already been mentioned (see above, 5.d.i).

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[343] See, for example, the cases cited by W. M. Berenson, "Administrative Tribunal…", cited above, note 47, para. 42; OASAT, Judgments Nos. 90, 1 Nov. 1985, *Rebolledo et al. v. Secretary-General of the OAS*; No. 74, 30 April 1982, *Chisman et al. v. Secretary-General of the OAS*; Judgment No. 37, 3 Nov. 1978, *Buchholz et al. v. Secretary-General of the OAS*.

[344] With a lower-case letter, as the organisation is not a State.

[345] ESAAB, Decision of 22 January 2013, Case 88/89, pp. 6-7; ECMWFAB/EUMETSATAB/ESAAT report, p. 4.

[346] EUMETSATAB, Decision of 14 January 2020, Case No. 7, paras. 34-40; ECMWFAB/EUMETSATAB/ESAAT report, p. 4.

[347] ATCE, Decision of 1 February 2023, *E. v. Secretary General of the Council of Europe*, appeal No. 720/2022; ATCE report, p. 14.

Rights of defence. In the European Union, respect for the rights of defence, as a general principle of EU law enshrined in Article 41(2) of the EU Charter, applies whenever the administration proposes to take action against a person that adversely affects them.[348]

Due process. The IDBAT, for its part, considered that the general principle of due process was central to procedural matters.[349] Thus, issuing an annual work plan before allowing the civil servant to respond to a negative appraisal constitutes a serious procedural irregularity.[350] Performance appraisals must be conducted in a fair and impartial manner.[351] Similarly, a decision to dismiss must be taken in accordance with pre-established procedures and in good faith.[352]

b) General principle on the merits

Acquired rights. Referring to the established case-law of the ILOAT and its own case-law, the ESAAT recognises the principle of acquired rights and agrees to examine an act of the ESA Administrative and Financial Committee, acting on delegation from the ESA Council, amending the *Co-ordinated Pension Scheme*, but finds that there has been no breach of the principle in this case.[353]

Principle of good faith. The Appeals Board of the Council of Europe, for its part, "implicitly affirmed the primacy of the general principle of good faith over the regulatory provisions adopted by the Committee of Ministers regarding the salaries and allowances of Council of Europe staff" in the case of *Ausems et al. v. Secretary General*.[354]

In dubio pro operario. The OASAT was called upon to interpret Article 57(c)(iii) of the document *General Standards to Govern the Operations of the General Secretariat of the Organization of American States* concerning dismissal in the light of general principles in Judgment No. 169.[355] The manner in which the provision was applied by the organisation raised various questions for the tribunal, which were put to the respondent, but the latter was unable to clarify the matter satisfactorily. In accordance with the general principle of *in dubio pro operario*, the Tribunal (with the dissenting opinion of two judges) therefore ruled in favour of the claimant.[356]

Right to fair remuneration. The right to fair remuneration is enshrined in the OAS Charter in Articles 33(g) and 3(i) and (k). In Judgment No. 127, the OASAT recognised the supreme legal

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[348] General Court of the EU, Judgment of 18 Sept. 2004, *Qualcomm Inc. v European Commission*, Case T-671/19, EU:T:2024:626, under appeal, paras. 156 to 158; report of the General Court of the EU, p. 35, § 70.
[349] IDBAT report, p. 6.
[350] IDBAT, Judgment of 5 April 2022, *TD v. IDB*, Case No 103, para. 76; IDBAT report, p. 6.
[351] IDBAT, Case No. 103 (2022), *TD v. IDB*, *ibid.*, para. 80, also referring to the case-law of the ILOAT, for example, Judgment No. 4257 (2020), *H. (No. 2) v. EPO*, and of the WBAT, Decision No. 437 (2010), *A. I. (No. 2) v. IBRD*; IDBAT report, p. 6.
[352] IDBAT, *ibid.*, para. 93.
[353] ESAAT, Decision of 15 Oct. 2021, *G. et al. v. ESA*, Case Nos. 122-128, paras. 108 ff.; ECMWFAB/EUMETSATAB/ESAAT report, pp. 8-9.
[354] ATCE report, p. 14, referring to ABCE, Decision of 3 August 1987, *Ausems et al.*, cited above.
[355] OASAT, Judgment No. 169, 31 August 2022, *Steven Griner v. Secretary-General of the OAS*, para. 236.
[356] *Ibid.*; OASAT report, p. 3.

value of this principle, not only for the purposes of interpretation, but also when applying the principle to the case before it.[357]

c) General principle relating to the protection of human rights

Principle of equal treatment. The obligation on international organisations "to respect the principle of equal treatment and, in particular, the obligation to ensure equal pay for work of equal value" was reiterated by the ATCE in the case of *Jannick Devaux (II) and (III) v. Secretary-General*. The ATCE states in this regard that "if their rules do not ensure adherence to that principle and the requirement of equal remuneration, it is their duty to initiate procedures that do".[358]

This is in line with the approach adopted by the EU courts on this matter. As the report of the General Court of the EU states:

> the principle of equal treatment, as enshrined in Article 20 of the Charter of Fundamental Rights of the European Union, constitutes a general principle of EU law, which requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified […]
>
> It is also apparent from the case-law that a breach of the principle of equal treatment arising from different treatment presupposes that the situations concerned are comparable in the light of all the elements characterising them. The elements which characterise different situations and thus their comparability must, in particular, be determined and assessed in the light of the subject-matter and purpose of the provisions at issue, account being taken, for that purpose, of the principles and objectives of the field to which the measure concerned relates […][359]

Thus, in the field of reclassification, the General Court of the EU held that the European Economic and Social Committee had acted unlawfully in that it failed to establish "clear, objective and transparent evaluation material for the procedure for regrading of members of the temporary staff, capable of ensuring compliance with the principles of legal certainty and equal treatment".[360]

Similarly, the EU courts have been able to declare an act of secondary law of general application unlawful on the grounds that it infringed the general principle of equal treatment.[361]

Principle of non-discrimination. Respect for human rights is reflected in IDBAT's case-law through the importance attached to the principle of non-discrimination and standards such as respect for dignity at work, equality and fairness in internal procedures, as enshrined in the

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[357] OASAT, Judgment No. 127, 13 Nov. 1995, *Manuel Díaz-Franjul v. Secretary General of the OAS (concerning the right to a special duty allowance)*, para. III.D.3: "*This broad reading is grounded in the principle of labor law of a fair salary, incorporated in the OAS Charter at Article 33(g) and Article 3(i) and (k), which the Tribunal understands to constitute labor principles that are not only binding on the Tribunal, but also of the highest order when applying these principles to specific cases*"; OASAT report, p. 3.

[358] ATCE, Decision of 9 Oct. 2018, *Jannick Devaux (II) and (III)*, cited above, para. 68; ATCE report, p. 14.

[359] General Court of the EU, Judgment of 12 February 2025, *UL and Others v. European External Action Service (EEAS)*, Case T-17/24, EU:T:2025:149, paras. 75 and 76; appeal: Case C-299/25 P before the Court of Justice, and the case-law cited; report of the General Court of the EU, p. 38, § 77. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

[360] General Court of the EU, Judgment of 28 April 2021, *Correia v. European Economic and Social Committee*, Case T-843/19, EU:T:2021:221; para. 73; report of the General Court of the EU, p. 39, § 79.

[361] Report of the General Court of the EU, pp. 39-41, §§ 80-85 and the case-law cited.

organisation's legal framework.[362] Thus, the IDBAT has highlighted the principles of integrity and proportionality as key standards for assessing the legality of administrative sanctions, in line with the principles of fairness and equal treatment, which are widely recognised in international practice.[363]

The case-law of the IMFAT offers valuable insights into the principle of non-discrimination. In the case of *Mr. "F."*, it distinguishes between discrimination relating to the observance of a fundamental right and other forms 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*.[364]

Whilst the IMFAT examines in the latter categories of cases whether there is a "*rational nexus*" between the classifications of persons subject to different treatment and the objective of the classification,[365] it applies "*particular scrutiny*" in the former scenario, given the seriousness of the allegations.[366] In this case, the IMFAT concluded that the abolition of the applicant's post was not motivated by religious discrimination.[367]

Freedom of expression. The application of a principle protecting human rights may be tempered by the application of another general principle. In the *Kling (III)* case heard by the ATCE, in which the applicant invoked her freedom of expression, the ATCE noted:

> that Article 10 of the European Convention on Human Rights […] does not guarantee freedom of expression absolutely. It also provides that because exercise of freedom of expression, "carries with it duties and responsibilities", it may be subject to certain formalities, conditions, restrictions or penalties (see Article 10, paragraph 2). True, that paragraph does not specifically provide […] that lawful restrictions may be imposed on certain categories of public servants, but it is clear that on account of her position as a Council of Europe staff member the appellant cannot lay claim to unlimited freedom of expression.[368]

Apart from the fact that the applicant also had a duty of loyalty to the organisation, her actions were not to infringe upon the rights and freedoms of others.[369] In the present case, the applicant had on several occasions distributed leaflets containing statements (discrimination on grounds of national or religious origin, a call for rejection on ethical grounds) contrary to the principles of the Council of Europe. A reprimand as a disciplinary sanction in such circumstances is therefore not manifestly disproportionate.[370]

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[362] IDBAT report, p. 7.
[363] IDBAT, Case No 91 (2016), *Andrade*, cited above, paras. 16-21; IDBAT report, p. 7.
[364] IMFAT, Judgment No. 2005-1, 18 March 2005, *Mr "F" v. IMF*, para. 81; IMFAT report, p. 14.
[365] For example, regarding the granting of supplementary benefits, IMFAT, Judgment No. 2002-1, 5 March 2002, *Mr. "R" v. IMF*, paras. 2 and 47 (differential treatment between overseas Office Directors and Resident Representatives); Judgment No. 2002-3, 18 Dec. 2002, *Ms. "G" v. IMF* (differential treatment between lawful permanent residents and holders of a G-4 visa), paras. 2 and 79; IMFAT report, p. 14.
[366] IMFAT, Judgment No. 2005-1, *Mr. "F."*, cited above, paras. 49-50; IMFAT report, p. 14.
[367] IMFAT, Judgment No. 2005-1, *Mr. "F."*, cited above, para. 90; IMFAT report, p. 14.
[368] ATCE, Decision of 22 Dec. 2005, *Kling (III) v. Secretary General of the Council of Europe*, appeal No. 345/2005, para. 38; ATCE report, p. 15.
[369] ATCE, Decision of 22 Dec. 2005, *Kling (III)*, *ibid.*, para. 40.
[370] *Ibid.*, para. 41.

d) Other

Principle of transparency. In Judgment No. 6 (2015) of the TPIOIF, the tribunal emphasised that "the [Staff] Regulations reflect concern for staff training and career development" and that, consequently, the annual appraisal "must be sufficiently transparent to highlight shortcomings and areas for improvement and, at the very least, to alert holders of fixed-term contracts nearing expiry to the need to make possible efforts to adapt professionally in another context". The organisation had failed to comply with this obligation in the present case.[371]

Principle of non-retroactivity. The principle of non-retroactivity (which in principle prohibits an organisation from applying a less favourable standard to a person retroactively) as a component of respect for the rule of law is applied by the ESA's administrative court, and its scope is clarified by reference to the case-law of the ILOAT.[372]

Tu patere legem quam ipse fecisti. By virtue of the principle *tu patere legem quam ipse fecisti*, the organisation's acts are binding on it, including a document such as an "*Internal Staff Contract Policy*",[373] or the recruitment criteria in a job advertisement.[374]

Legal certainty. Furthermore, by virtue of the principle of legal certainty, the ESA courts strictly apply the time limits for the admissibility of appeals.[375]

8) What function(s) does your tribunal attribute to general principles? For example, do they serve to:

a) fill gaps in statutory law?

Yes. All the international administrative courts participating in the survey agree that the function of general principles is to fill gaps in statutory law.[376]

With regard to the OAS, it follows from Article 1 of its statute that general principles, although playing a secondary role, may be taken into account where necessary.[377] More specifically, it

[371] TPIOIF, Judgment No. 6, 24 June 2015, Case 2014/007, pp. 9-10; TPIOIF report, p. 4. On the principle of transparency in evaluation in general, see also A.-M. Thévenot-Werner, "Procedural Grounds of Review", in A. Garrido Muñoz *et al.*, *op. cit.*, note 4, pp. 139-141.
[372] ESAAB, Decision of 7 May 2019, Case Nos. 112-114, paras. 55-65; ECMWFAB/EUMETSATAB/ESAAT report, pp. 5-6.
[373] ESAAB, Decision of 14 June 2017, Case No. 102, para. 45; ECMWFAB/EUMETSATAB/ESAAT report, p. 7.
[374] ESAAB, Decision of 21 Dec. 2020, Case No. 129, paras. 56-57; ECMWFAB/EUMETSATAB/ESAAT report, p. 7.
[375] ESAAB, Decision of 18 January 2016, Case No. 96; ESAAT, Decision of 22 January 2021, Case No. 118, para. 76; ECMWFAB/EUMETSATAB/ESAAT report, pp. 7-8.
[376] See, for example, ATCE report, p. 15; ATCE, Decision of 1 February 2023, appeal No. 720/2022, *E. v. Secretary General of the Council of Europe*, in particular para. 58; ECMWFAB/EUMETSATAB/ESAAT report, p. 9; IDBAT report, p. 7; IMFAT report, p. 15; IMFAT, Judgment No. 2010-4, 3 Dec. 2010, *Ms. "EE" v. IMF*, para. 186; TALMERCOSUR report, pp. 2 and 4; OASAT report, p. 4; Report of the General Court of the EU, pp. 42-43, §§ 86-88; TPIOIF report, p. 5, which states that "nothing obliges the tribunal to use the [general principles] only in the absence of a text". No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.
[377] OASAT report, p. 1.

follows from Judgment No. 111 of the OASAT that general principles apply only in the event of the absence, insufficiency or ambiguity of the organisation's internal rules.[378]

This function also concerns the identification of the scope of the judge's powers and of any jurisdiction ancillary to the main proceedings. This includes, for example, the court's jurisdiction to hear an appeal for review, rectification, interpretation or enforcement, even in the absence of a statutory provision, as was the case for a long time at the ILOAT.[379] Similarly, general principles may clarify the scope of the remedy due in the absence of a statutory provision.[380]

b) facilitate the interpretation of statutory provisions, for example by interpreting statutory provisions in the light of general principles?

Interpretation in the light of general principles. All the courts that took part in the survey also agree on this function of general principles (see above, 5.b).[381] The report by the ECMWFAB, the EUMETSATAB and the ESAAT states: "*If more than one interpretation is possible, then the interpretation should prevail which may be supported by general law principles such as transparency, the principle 'tu patere legem quam ipse fecisti', equal treatment, etc.*"

Resolving conflicts of norms. General principles also enable the resolution of conflicts of norms. Thus, in Judgment No. 170, the OASAT invoked the principle of the pre-eminence of substance over form to resolve a conflict of norms and clarified that Article 103.7(f) of the Staff Regulations was a *lex specialis* in matters of audit which took precedence over other provisions.[382]

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[378] OASAT, Judgment No. 111, 9 Nov. 1990, *Norma Repetto de Dulce v. Secretary-General of the OAS*; OASAT report, p. 4.

[379] See C. F. Amerasinghe, *The Law of the International Civil Service…*, *op. cit.*, note 4, pp. 245-247 (applications for review of a judgment); L. Germond, *Les Principes généraux…*, *op. cit.*, note 11, pp. 301-303 (applications for review of a judgment), pp. 303-304 (applications for interpretation of a judgment), pp. 307-309 (applications for execution of a judgment); A.-M. Thévenot-Werner, *Le droit des agents…*, *op. cit.*, note 12, pp. 1083-1117 (applications for rectification and for review of a judgment); pp. 1169-1204 (applications for execution of a judgment); pp. 1206-1214 (applications for interpretation of a judgment). See also A.-M. Thévenot-Werner, "Review of Judgments: Administrative Tribunal of the International Labour Organization (ILOAT)", *Max Planck Encyclopedia of International Procedural Law*, April 2018.

[380] C. F. Amerasinghe, *The Law of the International Civil Service…*, *op. cit.*, note 4, pp. 443-586; A. Plantey and F. Loriot, *Fonction publique internationale…*, *op. cit.*, note 4, pp. 427-442; L. Germond, *Les Principes généraux…*, *op. cit.*, note 11, pp. 336-344; A.-M. Thévenot-Werner, *Le droit des agents…*, *op. cit.*, note 12, pp. 983-1074; S. Villalpando, "The Law of the International Civil Service", *op. cit.*, note 4, p. 1082; A.-M. Thévenot-Werner, "Remedies", in A. Garrido Muñoz *et al.*, *op. cit.*, note 4, pp. 224-267, esp. pp. 245-147.

[381] See, for example, ATCE report, pp. 15-16; ATCE, Judgment of 25 January 2024, *G. T. v. Secretary General of the Council of Europe*, appeal No. 737/2023: the ATCE verifies whether the organisation has complied with the applicable regulatory framework, interpreted in the light of the "general legal principles, including the rights of the defence" (para. 32), in relation to the simultaneous communication to the complainant of the letter notifying the appellant of the termination of his contract and a written warning, taking into account ILOAT case-law on termination of employment of temporary staff: the organisation must communicate a written warning before it may issue a notice terminating the contract (para. 36); IDBAT report, p. 7; IMFAT report, pp. 15-16; IMFAT, Judgment No. 2012-1, 6 March 2012, *Ms N. Sachdev v. IMF*, paras 108-111; TALMERCOSUR report, p. 4; report of the General Court of the EU, pp. 43-46, §§ 89-98; TPIOIF report, p. 5; ECMWFAB/EUMETSATAB/ESAAT report, p. 9.

[382] OASAT, Judgment No. 170, 3 Nov. 2023, *Ricardo Cabral v. Secretary General of the OAS*, para. 201; dissenting opinion of Judge Sandonato de León, para. 36; OASAT report, p. 4.

The TALMERCOSUR ruled in Judgment No. 1/2005 that, in matters of labour relations, the principle of *in dubio pro operario* should be applied where appropriate, whereby, in the event of reasonable doubt arising from the interpretation of the norm, the interpretation most favourable to the worker should be chosen.[383] It also applies the principle of "the most favorable norm", which requires judges to apply the norm most favourable to the worker where a number of incompatible norms may be applied to the same situation.[384]

c) ensure the substantive rule of law (état de droit, Rechtsstaatlichkeit), in particular pursuant to general principles relating to human rights, including within international organisations?

Ensuring the substantive rule of law. The courts that participated in the survey generally responded favourably to this question.[385] Thus, the report by the ECMWFAB, the EUMETSATAB and the ESAAT states:

> *The Appeals Boards will always assume that the member states of the organisation should not be supposed to have created law which is contrary to international law binding the member state. All member states of the organisations here in question are supposed to ensure the rule of law*.[386]

As regards the European Union, the rule of law is not only mentioned twice in the preamble to the Treaty on European Union, but it is also a founding value of the EU under Article 2 TEU and a guiding principle for the EU's external action under Article 21 TEU.[387] Certain general principles have reinforced the rule of law in EU law.[388] This is the case with the general principle of effective protection: "[t]he very existence of effective judicial review designed to ensure compliance with EU law is of the essence of the rule of law".[389] This is also the case with the principle of proportionality.[390]

The ATCE thus ensures compliance with the "principle of legal certainty, one aspect of which is the non-retroactivity of rules of law" and rules out the retroactive application of a decree significantly increasing the rate of the applicant's contribution to the medical insurance scheme from which she benefited as a pensioner.[391]

When ensuring that a decision is not lacking a legal basis, it takes into account the conditions of accessibility of written rules to litigants and of foreseeability, as understood by the case-law of the ECtHR in relation to laws. In this regard, the ATCE states that "[t]he same principle

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[383] TALMERCOSUR, Judgment No. 1/2005, *Mackinnon Gómez*, *op. cit.*, p. 21; TALMERCOSUR report, p. 2.
[384] TALMERCOSUR, Judgment No. 1/2005, *ibid.*, p. 21; TALMERCOSUR report, pp. 2 and 4.
[385] ECMWFAB/EUMETSATAB/ESAAT report, p. 10; IDBAT report, p. 8; ATCE report, pp. 16-17; IMFAT report, p. 16; TALMERCOSUR report, p. 4; report of the General Court of the EU, pp. 46-49, §§ 99-105.
[386] ECMWFAB/EUMETSATAB/ESAAT report, p. 10.
[387] See report of the General Court of the EU, p. 46, § 99.
[388] *Ibid.*, p. 46, § 100.
[389] CJEU (Grand Chamber), Judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses v. Tribunal de Contas*, Case C-64/16, EU:C:2018:117, para. 35; report of the General Court of the EU, pp. 46-47, § 101.
[390] Report of the General Court of the EU, pp. 47-49, §§ 102-105, and the case-law cited.
[391] ATCE, Decision of 10 Dec. 2015, *Hedman v. Secretary General of the Council of Europe*, appeal No. 557/2014, para. 72; ATCE report, p. 16.

incontestably applies to the internal rules of the Council of Europe and it is for the Tribunal to ensure that it is observed.””.[392]

The IMFAT, for its part, emphasises respect for human rights as a limit on the exercise of the organisation's discretionary power in judgment No. 2006-6.[393] The general wording of the decision implies recognition of the superior legal status of this principle over all the organisation's internal acts.

With regard to the IDBAT, the commitment to upholding the rule of law is evident in the strengthening of due process rights[394] and the emphasis placed on respecting the principle of proportionality in the imposition of sanctions relating to dismissal.[395]

d) other(s)?

Another function has been highlighted by the IMFAT. It refers to general principles in order to underpin the requirements arising from written law. There is a link or mutual reinforcement between the general principles of international administrative law and the organisation's written law, which gives expression to the former.[396] This function is not specific to the IMFAT and is recognised, for example, in the case-law of the ILOAT.[397]

e) Conclusion on point 8 in relation to the ILC's draft conclusions

The answer to question 8 essentially confirms conclusion 10 of the ILC[398] on the functions of general principles of law.

III. Defining the scope of the principles

9) When a general principle applies, how is the scope of that principle determined? Have there been cases where an infringement of the general principle has been established?

General observation. As the General Court of the EU states:

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[392] ATCE, Decision of 13 Dec. 2011, *Yeo v. Secretary General of the Council of Europe*, appeal No. 476/2011, para. 49; ATCE report, p. 16.
[393] IMFAT report, p. 16, referring to Judgment No. 2006-6, 29 Nov. 2006, *Ms. "M" and Dr. "M" v. IMF*.
[394] IDBAT, Case No. 102 (2021), *Lovo Parrales*, cited above, paras. 125-127; IDBAT report, p. 8.
[395] IDBAT, Case No. 91 (2016), *Andrade*, cited above, paras. 16-21; IDBAT report, p. 8.
[396] IMFAT report, p. 16: "*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*." See also p. 17 and, for example, IMFAT, Judgment No. 2012-1, 6 March 2012, *Ms. N. Sachdev v. IMF*, paras. 109, 210; Judgment No. 2011-1, 16 March 2011, *Ms. C. O'Connor (No. 2) v. IMF*, para. 89: "*Systems of classification and grading are designed to give expression to the fundamental principle that comparable work be compensated comparably. The Tribunal has recognized this essential principle of equality of treatment in the compensation of staff members.*"
[397] See, for example, ILOAT, Judgment No. 122 (1968), *Chadsey v. UPU*, cited above, under I.1. See also *above*, I.3.e.
[398] UN, ILC, A/CN.4/L.1018, 20 May 2025, *General principles of law: Text and titles of the draft conclusions adopted by the Drafting Committee on second reading.*

> The application of the general principles of EU law by the Court of Justice and the General Court is case-specific, in that it is, by definition, always linked to the particular cases brought before those courts. It follows that the scope of those general principles is defined progressively through their application to individual cases.[399]

This observation holds true for all the courts examined.

Given the complexity and abundance of case-law, the issue would merit in-depth research for each general principle, which goes beyond the scope of this study. Nevertheless, the analysis below confirms the finding that the courts apply general principles with a degree of restraint. However, the courts ensure that the protected value at the heart of the principle is not undermined. The principle thus serves as an adjustment variable to arrive at a legally balanced resolution of the dispute.

a) Principles relating to human rights

Traditional approach. In matters of substantive human rights, the courts apply a traditional approach similar to that of the competent national and international courts in this field: does the disputed situation fall within the scope of protection (*Schutzbereich*) afforded by human rights law? If so, must this right be limited in light of the human rights of third parties or other standards of equivalent value? Where applicable, a proportionality test may be applied. This reasoning has been applied, for example, in relation to freedom of expression,[400] including where it is combined with freedom of association.[401]

However, it is often sufficient for the situation to fall within the scope of the protected right. For example, the TALMERCOSUR has clarified that the right to remuneration for work performed is a fundamental right, which cannot be waived, and which is enshrined and protected by international and regional standards; for this reason, the ALT considers that the payment of wages and social benefits not received by the complainant is due for the period during which she worked without receiving a salary.[402] This is also the case, for example, where freedom of association as such is at issue.[403]

Principle of non-discrimination. A principle particularly highlighted by various courts in their reports prepared for this study is the principle of non-discrimination. The principle of non-discrimination is recognised as a source of law hierarchically superior to the organisation's

[399] Report of the General Court of the EU, p. 50, § 106. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.
[400] ATCE, Decision of 22 Dec. 2005, *Kling (III)*, cited above, paras. 38-41; ATCE report, p. 15; *cf. above*.
[401] See, for example, 2022-UNAT-1231, *Trevino*, cited above, paras. 57-68, in particular paras. 63 and 68.
[402] TALMERCOSUR, Judgment No. 3/2015, *María del Carmen García v. El Instituto Social del MERCOSUR*, p. 11.
[403] See, in this regard, the study by D. Petrović, "The Freedom of Association…", *op. cit.*, note 200, pp. 304-334. See also L. Germond, *Les Principes généraux…*, *op. cit.*, note 11, pp. 159-172.

internal law.[404] It is a "general principle distinct from the principle of equality".[405] At the same time, the two principles are not independent of one another, insofar as both aim to ensure "the protection and respect of human dignity"[406] and "the equality of all before the law, which must grant everyone equal protection without discrimination".[407]

Laurent Germond explains:

> However, they differ in that the principle of equality involves an objective analysis, whereas the principle of non-discrimination requires a subjective analysis. Indeed, the application of the first principle stems from a comparison between two factual and legal situations. The aim is to determine whether the agents are, in fact and in law, in a similar or different situation. In the event of a breach of the principle of equality, the judge overturns the decision without having to consider the reasons for the difference in treatment. Conversely, the application of the second principle requires the judge to examine the personal characteristics of the agent that were taken into account, and to verify whether or not they are legitimate.[408]

The principle has already been examined by Laurent Germond with regard to the case-law of the ILOAT,[409] and by Anne Trebilcock with regard to the case-law of the IDBAT and the ADBAT.[410] An in-depth study of international civil service law in general has been carried out by Asier Garrido Muñoz on the principle of equality and the principle of non-discrimination.[411]

The scope of the principle was reiterated by the ILOAT in its Judgment No. 5078 (2025), *K (No. 52) v. EPO*. In this case, the applicant alleged discrimination on the grounds of a permanent disability or impairment in that he was excluded from standing for election to the Staff Committee in 2013 and 2014 pursuant to general decisions CA/D 22/09 and CA/D 2/14 on account of his status as a non-active staff member due to his disability. In paragraph 8, the ILOAT states:

> *According to the Tribunal's well-settled case law, the principle of equal treatment requires, on the one hand, that officials in identical or similar situations be subject to the same rules and, on the other, that officials in dissimilar situations be governed by different rules defined so as to take account of this dissimilarity (see, for example, Judgment 4277, consideration 21, and the case law cited therein). Also, in most cases involving allegations of unequal treatment, the critical question is whether there is a relevant difference warranting the different treatment involved, and even where there is a relevant difference, different treatment may breach the principle of equality if the different treatment is not appropriate and adapted to that difference (see, for example, Judgments*

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[404] G. Barbagallo, "Closing Remarks by Judge Giuseppe Barbagallo", in D. Petrović (ed.), *90 Years of Contribution of the Administrative Tribunal of the International Labour Organization to the Creation of International Civil Service Law*, ILO, Geneva, 2017, p. 194; A. Trebilcock, "Approaches to Discrimination Claims: A Comparison of the Administrative Tribunals of the Asian Development Bank and the Inter-American Development Bank Group", *Asian Journal of International Law*, 2022, Vol. 12, p. 217. See also above, under II.7.c, regarding the case-law of the IMFAT.

[405] L. Germond, *Les Principes généraux…*, *op. cit.*, note 11, p. 103. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

[406] ILOAT, Judgment No. 2193 (2003), *Alvarez-Orgaz v. UNESCO*, dissenting opinion of Judge Hugessen, para. 22, regarding the question of whether the Civil Solidarity Contract (*PACS*) entitles partners to the same treatment as marriage. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

[407] L. Germond, *Les Principes généraux…*, *op. cit.*, note 11, pp. 102-103. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

[408] *Ibid.*, p. 103. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

[409] *Ibid.*, pp. 99-104.

[410] A. Trebilcock, "Approaches to Discrimination Claims…", *op. cit.*, note 404, pp. 216-231.

[411] A. Garrido Muñoz, "Equality and non-discrimination", in A. Garrido Muñoz *et al.*, The Law and Practice…, supra, note 4, pp. 208-243.

> *4391, consideration 11, and 4022, consideration 6). Notably, in Judgment 4487, consideration 9, the Tribunal concluded that the status of employees in active employment is materially different from that of employees assigned to non-active status and therefore warrants distinct legal treatment without this infringing the principles of equality of treatment and non-discrimination. As the Tribunal stated, "[t]he two situations differ in fact and cannot be compared". This conclusion also applies to the present case justifying the recognition of different electoral rights for employees in active employment as opposed to those assigned to non-active status.*

It should be noted that, as the difference in treatment between active and non-active staff is objectively justified in this case, the ILOAT also concludes that there has been no infringement of the freedom of association in this case.[412]

Often,[413] the burden of proof regarding discrimination lies with the claimant:

> allegations of discrimination and unequal treatment can lead to redress on condition that they are based on precise and proven facts, that establish that discrimination has occurred in the subject case. Discrimination cannot be established unless it is proven that staff members in identical situations were treated differently.[414]

This burden of proof may occasionally be reversed where the claimant has a reasonable perception that they have been the victim of discrimination.[415]

Generally speaking, the principle of non-discrimination aims to prevent the arbitrary differential treatment of persons who are in an equal situation in fact and in law.[416] It is usually sufficient for a factual element to justify the difference in treatment.[417] Furthermore, in matters of promotion and reclassification of posts, claims based on this principle are generally unlikely to succeed.[418] Similarly, differences in categories of appointment may justify different treatment, as the legal situation differs. Thus, the argument alleging discrimination between general service staff and administrators was generally rejected.[419] However, the IDBAT held that the rights of Long-Term Consultants had been infringed; these consultants, having become members of the Bank's staff, were unable to have their years of service with the Bank as consultants taken into account for the purposes of calculating their pension.[420]

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[412] ILOAT, Judgment No. 5078 (2025), *K. (No. 52) v. EPO*, para. 10.
[413] Exceptions prove the rule; see A. Garrido Muñoz, "Equality and non-discrimination", *op. cit.*, note 406, pp. 208-243.
[414] ILOAT, Judgment No. 4867 (2024), *T. v. WHO*, para. 5 and the case-law cited.
[415] ADBAT, Decision No. 87, Judgment of 23 January 2009, *Ms. A. v. ADB*; A. Trebilcock, "Approaches to Discrimination Claims…", *op. cit.*, note 404, pp. 226-228.
[416] A. Trebilcock, *ibid.*, pp. 224-226.
[417] IDBAT, Judgment of 14 May 1984, *Schwarzenberg Fonck v. IDB*, Case No. 2; A. Trebilcock, *ibid.*, p. 224.
[418] L. Germond, *Les Principes généraux…*, *op. cit.*, note 11, p. 104 and the case-law cited, for example, ILOAT, Judgment No. 1388 (1995), *Héritier v. Intergovernmental Organization for International Carriage by Rail*, para. 13 regarding promotion. See also A. Trebilcock, *ibid.*, p. 225, referring, for example, to IDBAT, Judgment of 9 May 1990, *Thompson v. IDB*, Case No. 24, concerning promotion, and to the Judgment of 1 September 2006, *Rios v. IDB*, Case No. 58, concerning reclassification, decided by the full bench, with a dissenting opinion from three judges.
[419] For example, ILOAT, Judgment No. 498 (1982), *Tarrab (No. 7) v. ILO*, para. 1; L. Germond, *Les Principes généraux…*, *op. cit.*, note 11, p. 104.
[420] IDBAT, Judgment of 31 August 2015, *Agusti, Vena and Verdejo-Sancho et al. v. IDB*, Case No. 80. In this case, however, the IDBAT does not explicitly refer to the principle of non-discrimination in this regard; A. Trebilcock, "Approaches to Discrimination Claims…", *op. cit.*, note 404, p. 224.

The principle of non-discrimination prohibits, amongst other things, discrimination on the grounds of sex or gender.[421] Positive discrimination, however, may only be applied between candidates who are otherwise equal.[422] The ATCE held that, in cases of equal merit, positive discrimination in favour of female candidates infringes the principle of non-discrimination in the absence of a provision on this matter in the Regulations on Appointments and a specific indication in the vacancy notice.[423] This clarification was subsequently incorporated into the applicable regulations.[424]

It follows from the case-law of the IMFAT that discrimination against children born out of wedlock is also unlawful.[425]

b) Procedural rights

During administrative proceedings. Procedural rights are ubiquitous in case-law. The question of their observance arises not only in relation to the right of access to a court.[426] Whilst recognising that international organisations have broad discretion in the management of their staff, the courts point out that agents have procedural rights from the administrative proceedings onwards, the infringement of which may undermine the legality of the decision taken where there is a serious breach of procedural rules.[427] For example, the IDBAT found a breach of the general principles of fundamental fairness, which are the essence of due process, where the applicant, during a probationary period, was not given the opportunity to address criticisms regarding their performance or to demonstrate their suitability for the post.[428] This is consistent with the case-law as applied by other international administrative tribunals.[429] Similarly, according to the IMFAT, referring to the case-law of the ADBAT, every official must have the opportunity to respond to any allegation in order to ensure a fair hearing.[430] Even if a breach of

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[421] A. Trebilcock, *ibid.*, pp. 226-228.

[422] ILOAT, Judgment No. 2392 (2005), *Trupke v. International Fund for Agricultural Development*, para. 9. For a general discussion of affirmative action, see L. Germond, *Les Principes généraux…*, *op. cit.*, note 11, p. 103.

[423] ABCE, Decision of 28 February 1992, *Parsons (I) v. Secretary General of the Council of Europe*, appeal No. 167/1991, paras. 22-25; ATCE report, p. 17.

[424] ATCE report, p. 17, footnote 23, stating: "It should be noted that the regulatory situation has since evolved in this respect, as Article 430.1 of the Staff Rule on entry into service now states that '[a]t the time of appointment, preference between suitable candidates shall be given to the candidate of the gender which is under-represented in the relevant grades within the category to which the vacancy belongs'."

[425] IMFAT, Judgment No. 2006-6, 29 Nov. 2006, *Ms. "M" and Dr. "M" v. IMF*; IMFAT report, p. 17.

[426] See the analysis *above*. See also D. Peat, "Receivability of a Complaint", in A. Garrido Muñoz *et al.*, *op. cit.*, note 4, pp. 85-117.

[427] See, on procedural rights in general, for example, A.-M. Thévenot-Werner, *Le droit des agents internationaux…*, *op. cit.*, note 12, pp. xxi-1405. Regarding procedural rights prior to the adoption of the final administrative decision, see A.-M. Thévenot-Werner, "Procedural Grounds of Review", in A. Garrido Muñoz *et al.*, *op. cit.*, note 4, pp. 118-161, esp. pp. 122-125 on the requirement of the seriousness of the procedural irregularity.

[428] IDBAT, Judgment of 21 March 2022, *BD v. IDB*, Case No. 100, paras. 58-67.

[429] See A.-M. Thévenot-Werner, "Procedural Grounds of Review", *op. cit.*, note 427, pp. 137-141.

[430] IMFAT, Judgment No. 1997-1, 22 August 1997, *Ms. "C" v. IMF*, paras. 41-42, referring to the judgment of the ADBAT, Decision No. 1 (1992), *Lindsey v. ADB*, para. 9: "*Individual 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*" and to the case-law of the United Nations Administrative Tribunal, Judgment No. 700 (1995), *Benthin v. SGUN*, paras. V-VI, and of the WBAT, Decision No. 27 (1985), *Broemser v. IBRD*, paras. 39-40; IMFAT report, p. 17.

this principle may not lead to the annulment of the contested decision, the applicant may be entitled to compensation for procedural irregularities.[431]

Procedural rights have been strengthened in disciplinary matters.[432] The ATCE thus reiterated:

> that respect for the right of defence, of which the right to be heard is an integral part, is a fundamental principle that applies to all persons and must be guaranteed in all proceedings that may give rise to a complaint. Compliance with the right of defence requires that the staff member against whom the Administration has initiated administrative proceedings should be given the opportunity, in the course of those proceedings, to put forward his or her point of view on the existence and relevance of the facts, the alleged circumstances and the documents which the Administration intends to use against him or her.
>
> 88. The Tribunal considers also that the exercise of the right of defence, and in particular the right to be heard, also implies that the Administration must give due consideration to the observations thus submitted by the person concerned by examining, with care and impartiality, all the relevant aspects of the case. The right to be heard must thus enable the Administration to investigate the case in such a way as to take a decision in full knowledge of the facts so that, if necessary, the staff member concerned can validly exercise his or her right to bring an action before the Tribunal.[433]

This right must be respected even if no disciplinary proceedings have been formally initiated. In particular, an official has the "right to be heard in the event of termination of his employment".[434] That right "must necessarily be construed as a right intended to enable the staff member concerned to defend himself or herself. Since it is a guarantee given to the staff member, this [right] cannot be interpreted as being confined to mere questioning and to listening to the staff member's on-the-spot replies".[435]

These rights of defence apply to all staff members, regardless of whether they are temporary staff, officials on fixed-term contracts or officials on permanent contracts.[436]

The case-law of the courts of the European Union follows the same approach, as is evident from the report submitted by the General Court of the EU:

> According to settled case-law, respect for the rights of the defence by the institutions, bodies and agencies of the Union constitutes a general principle of EU law which applies whenever the administration proposes to take action against a person that adversely affects them. That general principle is now also enshrined in Article 41(2) of the Charter, subparagraph (a) of which reaffirms the right to be heard and subparagraph (b) the right of access to the file.[437]
>
> [[…] In] the civil service, the right to be heard, which forms an integral part of the rights of the defence, is intended, inter alia, to guarantee that any decision adversely affecting a person is

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[431] IMFAT, Judgment No. 1997-1, 22 August 1997, *Ms. "C" v. IMF*, para. 42.

[432] For example, L. Germond, *Les Principes généraux…*, *op. cit.*, note 11, esp. pp. 216-221; A. Plantey and F. Loriot, *Fonction publique internationale…*, *op. cit.*, note 4, pp. 236-250; A.-M. Thévenot-Werner, *Le droit des agents…*, above, note 12, paras. 638-645; A.-M. Thévenot-Werner, "Procedural Grounds of Review", *op. cit.*, note 427, pp. 146-150.

[433] ATCE, Decision of 29 June 2021, *B. v. Secretary General of the Council of Europe*, appeal No. 651/2020, paras. 87-88.

[434] See, for example, ATCE, Judgment of 25 January 2024, *G. T. v. Secretary General of the Council of Europe*, appeal No. 737/2023, para. 37, and Decision of 5 Sept. 2006, *C. G. v. Secretary General of the Council of Europe*, appeal No. 353/2005, paras. 38 and 39.

[435] ATCE, *C. G.*, *ibid.*, cited by ATCE, Judgment of 25 January 2024, *G. T.*, *ibid.*, para. 37.

[436] See, for example, ATCE, *G. T.*, *ibid.*, paras. 32 and 37 and the case-law cited.

[437] General Court of the EU, Judgment of 18 Sept. 2024, *Qualcomm*, cited above, paras. 156-158. See, in this regard, also the answer to question 7(a) above. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

adopted in full knowledge of the facts, and its purpose is to enable the competent authority to correct an error or to enable the person concerned to submit such information relating to his personal circumstances as will argue in favour of the adoption or non-adoption of the decision, or in favour of its having a specific content.[438] [Consequently, that right] requires that the official against whom an EU institution has opened an administrative procedure has been placed in a position during that procedure effectively to make known his or her views on the truth and relevance of the facts, the alleged circumstances and the documents which that institution intends to use against him or her in support of its allegation that there has been an infringement of the provisions of the Staff Regulations.[439] The right to be heard also implies that the administration must give due consideration to the observations thus submitted by the person concerned by examining, with care and impartiality, all the relevant elements of the case in question.[440]

That being said, like any procedural irregularity,[441] an infringement of the rights of the defence, in particular the right to be heard, results in the annulment of the decision taken at the end of the administrative procedure at issue only if, had it not been for such an irregularity, the outcome of the procedure might have been different. An applicant who relies on infringement of his or her rights of defence cannot be required to show that the decision of the EU institution concerned would have been different in content, but simply that such a possibility cannot be totally ruled out. Such an assessment must be made in the light of the factual and legal circumstances of each case.[442]

The General Court clarified the scope of the right to be heard, in particular in proceedings relating to acts of harassment, in which compliance with that principle had to be reconciled with the need to ensure the confidentiality of witness statements.

In this context, the Tribunal held that, in order to be able effectively to submit his or her observations, the person accused of harassment is entitled to disclosure of a summary, at the very least, of the statements made by the various persons consulted during the investigation procedure, as those statements were used by the Committee in its report in order to make recommendations to the President of the Parliament, and such a summary should have been disclosed while respecting, if necessary, the principle of confidentiality.[443] In order to verify compliance with the rights of the defence, the General Court examines, in this context, whether the non-confidential version of the Committee's report contains a summary of the witness statements taken by that Committee in the course of the investigation, before determining, if applicable, whether that summary reflects the substance of those statements.[444] In accordance with this framework for examination, in its judgment of 12 March 2025, *Semedo v. Parliament* (T-349/23, EU:T:2025:252, paragraphs 48 and 49), the General Court found that there had been a breach of the rights of defence of the applicant, who had been sanctioned for acts of psychological harassment, since the summary of the testimonies communicated to that person did not reflect the substance of the testimonies gathered by the Advisory Committee in the context of the procedure

[438] General Court of the EU, Judgment of 4 June 2020, *EEAS v. De Loecker*, Case C-187/19 P, EU:C:2020:444, para. 69.
[439] General Court of the EU, Judgment of 7 Sept. 2022, *WT v. European Commission*, Case T-91/20, EU:T:2022:510, para. 67.
[440] General Court of the EU, Judgment of 29 May 2024, *Angelidis v. European Parliament*, Case T-49/23, EU:T:2024:335, para. 49; it should be noted that this wording is consistent with the definition of one of the dimensions of the principle of sound administration (see, for example, Judgment of 30 March 2022, *KF v. EIB*, Case T-299/20, EU:T:2022:171, para. 45 and the case-law cited). No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.
[441] General Court of the EU, Judgment of 6 Oct. 2021, *AV and AW v. European Parliament*, Case T-43/20, EU:T:2021:666, para. 94.
[442] General Court of the EU, Judgment of 18 Sept. 2024, *Qualcomm*, cited above, paras. 160 and 161.
[443] General Court of the EU, Judgment of 12 March 2025, *Semedo v. European Parliament*, Case T-349/23, EU:T:2025:252, para. 31.
[444] *Ibid.*, para. 35.

leading to the adoption of the decision finding psychological harassment and imposing a sanction in that regard.[445]

The IMFAT also emphasises the fundamental nature of the *audi alteram partem* principle, even in the absence of an express provision.[446] In a case in which the organisation decided to place the applicant on administrative leave with pay pending the disciplinary investigation procedure, the IMFAT clarified that even in the absence of an express provision, the organisation is obliged to hear the applicant before adopting this decision, save in exceptional circumstances.[447] This follows from the *audi alteram partem* principle, the importance and status of which as a general principle of international administrative law were evident to the drafters of the IMFAT Statute.[448] The latter specifies that the right to a fair hearing applies all the more in disciplinary matters: "To '*hear both sides*' is a core element of due process".[449] At the same time, the IMFAT accepts that exceptional circumstances in which there would be an immediate risk of harm to the institution may justify a derogation from this principle,[450] which was not the case here. Even if the infringement of this principle is not of a nature to call into question the legality of the contested decision itself, the applicant is entitled to financial compensation.[451]

During court proceedings. The right to be heard also applies to judicial proceedings.[452] Thus, when the OASAT determines whether an application is admissible and when the defendant invokes the principle of *res judicata*, on the grounds of a case that may appear to be related to a case already decided, it must verify whether there is identity of subject matter, grounds and parties. Insofar as certain applicants were not parties to the first, previously adjudicated case, the OASAT considers that this plea of inadmissibility must be dismissed "*on the basis of the general principle of procedural law that a party may not be adversely affected without having been heard and convinced in a proceeding*".[453]

c) Duty of care

The duty of care, under which certain positive obligations are incumbent upon the competent authority, is a general principle of international civil service law, the scope of which is gradually being defined by case-law (i). Despite the heterogeneity of the situations in which the principle is intended to apply, the courts apply it with caution (ii).

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[445] Report of the General Court of the EU, pp. 56-58, §§ 120-125, paragraph numbers and formatting omitted. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.
[446] IMFAT, Judgment No. 2010-4, 3 Dec. 2010, *Ms. "EE" v. IMF*, para. 197.
[447] *Ibid.*
[448] *Ibid.*, para. 187; IMFAT report, pp. 17-18.
[449] IMFAT, Judgment No. 2010-4, *Ms. "EE"*, *ibid.*, para. 190; IMFAT report, p. 18.
[450] IMFAT, Judgment No. 2010-4, *Ms. "EE"*, *ibid.*, para. 197.
[451] *Ibid.*, para. 266.
[452] A.-M. Thévenot-Werner, *Le droit des agents…*, *op. cit.*, note 12, pp. 733-977.
[453] OASAT, Judgment No. 124 (1994), *Jairo Torres et al.*, *op. cit.*, p. 24.

i) The scope of the duty of care

A general principle of international civil service law. The duty of protection and assistance of international organisations is regarded as a general principle of international civil service law by the ILOAT in the *Jurado* case, referring to the ICJ's Advisory Opinion of 11 April 1949 on *Reparations suffered in the service of the United Nations*.[454] The duty of care is a corollary of this principle,[455] expressly recognised in settled case-law by the ILOAT as a general principle of international civil service law[456] and by other international administrative tribunals.[457] The two principles (duty of protection and duty of care, which complement and converge) stem from the principle of the independence of international organisations and are necessary for the "effective functioning of the Organization":

> In order that the agent may perform his duties satisfactorily, he must feel that this protection is assured to him by the Organization, and that he may count on it. To ensure the independence of the agent, and, consequently, the independent action of the Organization itself, it is essential that in performing his duties he need not have to rely on any other protection than that of the Organization. […] And lastly, it is essential that […] the agent […] should know that in the performance of his duties he is under the protection of the Organization.[458]

This explains the general principle nature of the duty of protection and the duty of care under international civil service law, as norms inherent in the law of international organisations and, consequently, their superior status to the organisation's secondary law. Insofar as the organisation is duty-bound to protect its independence, the protection and care of its agents is

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[454] ILOAT, Judgment No. 70 (1964), *Jurado v. ILO*, para. II.3; L. Germond, *Les Principes généraux…*, *op. cit.*, note 11, p. 73.

[455] L. Germond, *Les Principes généraux…*, *op. cit.*, note 11, p. 73. For a study of the genesis of this principle, see L. Germond, "L'omniprésence du devoir de sollicitude dans la jurisprudence récente du Tribunal administratif de l'Organisation internationale du Travail", in D. Petrović (ed.), *Une contribution de 90 ans du Tribunal administratif de l'Organisation internationale du Travail à la création d'un droit de la fonction publique internationale*, ILO, Geneva, 2017, pp. 82-85.

[456] ILOAT, Judgment No. 2204 (2003), *André et al. (No. 4) v. Eurocontrol*, para. 7 *in fine*.

[457] For example, 2013-UNAT-287/Corr. 1, *McKay v. SGUN*, para. 33; 2023-UNAT-1329, *Claude Cahn v. SGUN*, para. 38; 2025-UNAT-1530, *Leonid Dolgopolov v. SGUN*, paras. 57-58; ATCE, Decision of 9 Oct. 2018, *Jannick Devaux (II) and (III)*, cited above, para. 109; ILOAT, Judgment No. 5000 (2025), *Z. v. WHO*, para. 26. ILOAT, Judgment No. 2023-4, 22 Dec. 2023, *"VV" (No. 2) v. IMF*, para. 83: "*The Fund, like other international intergovernmental organizations, has a duty of care to protect the health and safety of its employees*", referring to the case-law of the WBAT, Decision No. 569 (2017), *EI v. IBRD*, para. 90, of the United Nations Administrative Tribunal, Judgment No. 1125 (2003), *Mwangi v. SGUN*, para. IV, and of the ADBAT, Decision No. 5 (1995), *Bares v. ADB*, para. 21. Certain courts have provided case-law examples which reflect a recognition of the duty of care in principle, without the term being used in the judgment. This is the case with the TALMERCOSUR in its report, p. 5, referring to TALMERCOSUR Judgment No. 3/2015, *María del Carmen García v. El Instituto Social del MERCOSUR*: "*In Judgment No. 3/2015, the general principle applied referred to the duty of care, i.e., the positive obligations for the competent authority, as recognized by Mercosur norms. The decision of the Mercosur Administrative Labour Tribunal (TAL) consisted of not recognizing the legal effects of the act challenged by the claimant.*" This is also the case with the IDBAT in its report, pp. 8-9, referring to Case No. 101 (2021), *T.S. v. IDB*, paras. 61-70: "*In Case No. 101, TS v. IDB, the Tribunal noted procedural deficiencies and a lack of impartiality in an internal investigation, concluding that placing the complainant on administrative leave (AL) without granting her the opportunity to respond constituted an unlawful exercise of administrative discretion. The Tribunal found that 'the decision to place the Complainant on AL, without granting her a fair opportunity to address the complaints made against her, under the circumstances, amounts to an unlawful exercise of administrative discretion'. This highlights the Bank's positive obligation to treat staff with fairness and respect in sensitive procedures involving professional conduct.*"

[458] ICJ, Advisory Opinion, 11 April 1949, *Reparation for Injuries Suffered in the Service of the United Nations*, *I.C.J. Reports 1949*, pp. 183-184.

also a duty.[459] This is all the more a duty by virtue of the contractual or statutory relationship between the agent and the organisation, under which the agent performs duties for the organisation; this is why reference to this duty is frequently linked to other principles, such as the duty of assistance or the principle of good faith.[460]

Development of the principle. The duty of care was first introduced under this name in ILOAT case-law in a judgment dismissing the case in the *Renault* case in 1987 by a French-speaking panel.[461] At the time, the ILOAT had stated: "Though international organisations owe their staff some consideration, they have no formal duty in the matter and the Tribunal will review their behaviour only in the most exceptional cases."[462] Today, the legally binding nature of this duty is firmly established in case-law, to the extent that some have spoken of the "omnipresence" of this principle in case-law,[463] which does not prevent courts from applying the principle with a certain degree of restraint.

In the case-law of the General Court of the EU, the duty of care occupies a special place. On the one hand, it "is not included among the general principles of EU law recognised by the EU courts".[464] On the other hand, it is well established in case-law relating to the civil service.[465] Can we therefore infer that it has a place in EU law as a general principle of international civil service law?

Lack of definition. There is no precise, single judicial definition of the duty of care:[466] "As is so often the case, case-law is silent on this matter, which allows judges to adapt, over time and as required, the general principles to the demands of sound justice – that is to say, justice suited to its time, understood and accepted by all".[467] In the words of Laurent Germond, "it should be noted [from the analysis of case-law on this subject] that, given the disparity in power between the parties involved, an international organisation is obliged to show itself to be supportive towards its officials."[468]

According to the IMFAT – referring to the case-law of the WBAT, the United Nations Administrative Tribunal and the ADBAT – "*[t]he Fund, like other international intergovernmental organizations, has a duty of care to protect the health and safety of its*

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[459] This is also evident from the discussions held during the study day for the Master 2 in International Administration on 3 October 2025, *La protection des agents internationaux*, organised under the direction of Niki Aloupi and Rémi Cèbe at the University of Paris-Panthéon-Assas.

[460] For example, ILOAT, Judgment No. 5019 (2025), *T. (No. 4) v. Interpol*, para. 6: "it follows from the general principle of good faith and the duty of care associated with it that international organisations must show their officials the necessary consideration so as to spare them unnecessary harm, and that it is therefore incumbent upon them to inform their officials in good time of any measure likely to infringe upon their rights or prejudice their legitimate interests", and the case-law cited.

[461] ILOAT, Judgment No. 856 (1987), *Renault v. UNESCO*, para. 8.

[462] *Ibid.*

[463] For example, L. Germond, *Les Principes généraux…*, *op. cit.*, note 11, p. 74; L. Germond, "L'omniprésence du devoir de sollicitude…", *op. cit.*, note 455, pp. 77-97.

[464] Report of the General Court of the EU, p. 58, § 126. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

[465] Report of the General Court of the EU, pp. 58-59, § 126.

[466] L. Germond, "L'omniprésence du devoir de sollicitude…", *op. cit.*, note 455, pp. 82 and 85.

[467] L. Germond, "L'omniprésence du devoir de sollicitude…", *ibid.*, p. 85. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

[468] L. Germond, *Les Principes généraux…*, *op. cit.*, note 11, p. 74. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

employees", even in the absence of an express provision, as general principles impose such an obligation, "*as would normally be expected of every employer*".[469]

At the United Nations, whilst the duty of care is recognised as generally incumbent upon the organisation, irrespective of any express provision,[470] the scope of the duty of care has been determined by interpreting the applicable provisions on harassment in the light of this duty, notably in the *Claude Cahn* case:

> *the Administration of the Organization has a duty of care to ensure a harmonious working environment and protect staff members from harm by way of, inter alia, taking appropriate preventive and remedial measures in each specific case. This duty is an inherent part of the employment relationship and a fundamental condition of service and must be fulfilled by the Administration with due diligence and without delay.*[471]

This definition has been adopted and extended beyond cases of harassment in the *Leonid Dolgopolov* judgment.[472]

In the European Union, in the *Fleig v. European External Action Service (EEAS)* judgment, the Court of Justice (CJEU) provided the following definition:

> the duty to have regard for the welfare of officials […] reflect[s] the balance of reciprocal rights and obligations established by the Staff Regulations of Officials of the European Union in the relationship between the administration and civil servants, bearing in mind that that balance implies, in particular, that when the administration takes a decision concerning the situation of an official, it should take into consideration all the factors which may affect its decision and that when doing so it should take into account not only the interests of the service but also those of the official concerned.[473]

The relationship between the duty of care and other principles, such as due diligence – which is an obligation incumbent upon international organisations, including beyond the scope of international civil service law –[474] is a delicate one. This is why courts regularly refer jointly to the duty of care and another principle such as due diligence, the duty to assist, the obligation to avoid unnecessary and excessive harm, the principle of good faith, the duty of care, the principle of legal certainty and the principle of proportionality,[475] to which one might add the obligation to respect human dignity.

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[469] IMFAT, Judgment No. 2023-4, 22 Dec. 2023, *"VV" (No. 2) v. IMF*, para. 83 and footnote 4; IMFAT report, p. 18.
[470] For example, 2013-UNAT-287/Corr. 1, *McKay v. SGUN*, para. 33.
[471] 2023-UNAT-1329, *Claude Cahn v. SGUN*, para. 38 (on harassment; footnotes omitted).
[472] 2025-UNAT-1530, *Leonid Dolgopolov v. SGUN*, para. 57.
[473] CJEU, Judgment of 12 Nov. 2020, *Fleig v. EEAS*, Case C-446/19 P, EU:C:2020:918, para. 67 and the case-law cited (no official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry); cited by CJEU, Judgment of 25 April 2024, *NS v. European Parliament*, Case C-218/23 P, EU:C:2024:358, para. 112. See also the report of the General Court of the EU, pp. 58-59, § 126, and the judgments cited, namely the General Court of the EU, Judgments of 7 May 2019, *WP v. European Union Intellectual Property Office (EUIPO)*, Case T-407/18; EU:T:2019:290, para. 58; and of 26 October 2022, *KD v. EUIPO*, Case T-298/20, EU:T:2022:671, para. 115.
[474] E. Lagrange, "La responsabilité des organisations internationales pour violation d'une obligation de diligence", in SFDI (ed.), *Journée d'études franco-italienne. Le standard de due diligence et la responsabilité internationale*, Pedone, Paris, 2018, pp. 189-229. She provides the following definition of this obligation (p. 190): "due diligence consists in the institution and exercise of a power to prevent the occurrence of harm or an undue delay in the effective enjoyment or exercise of a right". The quotation reproduced here is an unofficial translation prepared by the Registry.
[475] See L. Germond, "L'omniprésence du devoir de sollicitude…", *op. cit.*, note 455, pp. 85-97.

ii) The application of the duty of care

Application of the principle. Although breaches of this principle have been noted on occasion,[476] "the duty of care is not the new magic key" for applicants to assert their rights.[477]

Procedural dimension. The duty of care applies in various areas. First and foremost, it has a procedural dimension.[478] By virtue of the "duty of care for its staff", the organisation is "expected to help any staff member who is mistaken in the exercise of a right, if such help will enable the staff member to take useful action. If it is not too late, the organisation should also provide the staff member with procedural guidance".[479] In the same vein, "[i]n view of its duty of care towards its staff, an organisation must spare them the material and psychological drawbacks of endless procedures."[480] However, the General Court of the EU has clarified that the duty of care also has its limits:

> The duty of care does not, in principle, impose a broad positive obligation on the administration to assist officials or other servants of the European Union. In particular, it cannot reasonably be expected of a diligent administration handling a large number of applications for dependent child allowances that it should take the initiative to assist and guide all applicants concerned in any steps they may need to take in order to obtain such allowances. At most, the administration may be required to comply with an enhanced duty of care where special circumstances are present, in particular where the individual concerned is in a situation of extreme vulnerability, where there are doubts as to their state of health and, consequently, as to their ability to defend properly their own interests.[481]

The duty of care may be more extensive depending on the subject matter of the proceedings in question. Thus, the obligations arising therefrom may be broader in cases involving allegations

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[476] For example, in Judgment No. 2023-UNAT-1329, *Claude Cahn v. SGUN*, upholding the Judgment of the UNDT, UNDT/2022/008; Judge Knierim had, however, issued a dissenting opinion to the UNAT judgment, stating in para. 28 that "*[t]he Majority does not explain how a duty of care can derive from ST/SGB/2008/5 in cases where there is neither harassment nor abuse of authority or discrimination of the staff member but only his or her 'subjective perception of being harassed'*". It is clear, however, from Judgment No. 2025-UNAT-1530 that the duty of care rests with organisations regardless of any express provision on the matter, "*in accordance with established international standards*" (para. 58). The judges ruling by a majority in Judgment 2023-UNAT-1329 and unanimously in Judgment No. 2025-UNAT-1530 are not the same.

[477] L. Germond, *Les Principes généraux…*, *op. cit.*, note 11, p. 74. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

[478] See L. Germond, *Les Principes généraux…*, *op. cit.*, note 11, p. 74 and the case-law cited. See also, for example, ILOAT, Judgment No. 5035 (2025), *R. (Nos. 2 and 3) v. Eurocontrol*, para. 21: "[T]he complainant is justified in also submitting that the internal appeal proceedings relating to the decision contested in his second complaint were not conducted with due diligence. A period of almost eight months elapsed between the submission of his internal complaint […] and the notification of the decision thereon […], half of which the Tribunal notes is attributable to the fact that the Head of Human Resources and Services unduly delayed deciding on the internal complaint after receipt of the [Health Insurance Scheme Management Committee's] opinion. While such a delay is not unreasonable in absolute terms, it nonetheless appears excessive in the particular circumstances of the case, where the complainant's advanced age – 77 at the material time – and the very considerable financial burden placed on him by the costs in dispute required the Organisation to handle his appeal with greater speed. In addition, the complainant is also justified in submitting that Eurocontrol's failure to reply to the request for special reimbursement that he submitted […] reveals, in view of those particular circumstances, a breach by the Organisation of its duty of care towards him. [T]he Tribunal finds that fair compensation will be made for the moral injury caused by the impugned decisions by ordering Eurocontrol to pay, under this head, compensation of 3,000 euros."

[479] ILOAT, Judgment No. 2345 (2004), *Hketib v. UNESCO*, para. 1(c); L. Germond, *Les Principes généraux…*, *op. cit.*, note 11, p. 74.

[480] ILOAT, Judgment No. 2345 (2004), *Hketib*, *ibid.*, para. 3; L. Germond, *Les Principes généraux…*, *ibid.*, p. 74.

[481] General Court of the EU, Judgment of 17 March 2021, *EJ v. EIB*, Case T-585/19, EU:T:2021:142, para. 77 and the case-law cited; see also the report of the General Court of the EU, p. 60, § 131. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

of harassment.[482] In a case in which a staff member seeking protection had been placed on special leave, the ILOAT clarified that

> [i]n such a case, the Organization's duty of care required it rather to take the necessary measures to protect the staff member who had complained of harassment from potential retaliation by her or his alleged harassers, not by keeping her or him away from the workplace but by ensuring, for example, that these persons were made aware that such retaliation was prohibited. [483]

Material dimension. The duty of care also has a material dimension and is intended to apply in the event of a post being abolished,[484] in the event of outsourcing and in the event of the staff member's illness.[485] Thus, the ILOAT recalled in 2023 that:

> [t]he Tribunal has consistently stated that international organizations have a duty to adopt appropriate measures to protect the health and ensure the safety of their staff members and that an organization which disregards this duty is liable to pay damages to the staff member concerned (see, for example, Judgment 3689, under 5). In the circumstances of this case, the organization

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[482] L. Germond, "L'omniprésence du devoir de sollicitude…", *op. cit.*, note 455, pp. 79-81 and the case-law cited. See also ILOAT, Judgment No. 5023 (2025), *T. (No. 9) v. Interpol*, para. 6: "[I]t is clear from consideration 15 of Judgment 4207, adopted by a plenary panel of judges, that in the absence of a lawful comprehensive procedure within the Staff Regulations and Staff Rules to deal with a claim of harassment, an international organisation has to respond to such a claim in accordance with the Tribunal's relevant case law. In that judgment, the Tribunal further pointed out the following in this matter: 'it is well settled in the case law that an international organization has a duty to provide a safe and adequate working environment for its staff members (see Judgment 2706, consideration 5, citing Judgment 2524). As well, 'given the serious nature of a claim of harassment, an international organization has an obligation to initiate [an] investigation [...]' (see Judgment 3347, consideration 14)..
Moreover, the investigation must be initiated promptly, conducted thoroughly and the facts must be determined objectively and in their overall context. Upon the conclusion of the investigation, the complainant is entitled to a response from the Administration regarding the claim of harassment. Additionally, as the Tribunal held in Judgment 2706, consideration 5, 'an international organisation is liable for all the injuries caused to a staff member by their supervisor acting in the course of his or her duties, when the victim is subjected to treatment that is an affront to his or her personal and professional dignity' (see also Judgments 1609, consideration 16, 1875, consideration 32, and 3170, consideration 33). Thus, an international organization must take proper actions to protect a victim of harassment.'"

[483] ILOAT, Judgment No. 5018 (2025), *T. (No. 3) v. Interpol*, paras. 10-11.

[484] ILOAT, Judgment No. 5019 (2025), *T. (No. 4) v. Interpol*, para. 6: "With regard […] to the complainant's right to be informed that Interpol was considering simply abolishing her post, the Tribunal recalls that the general principle of good faith and the related duty of care demand that international organisations treat their staff with due consideration in order to avoid causing them undue injury and that they must consequently inform their officials in advance of any action that might imperil their rights or harm their rightful interests (see Judgments 4777, consideration 6, 4072, consideration 8, 3861, consideration 9, and 3071, consideration 30). The Tribunal notes that, while the complainant was aware of the need to take restructuring measures for the creation of the new Human Resources Directorate, she had not been informed at any time of the action planned in her respect until she received notification of the decision to abolish her post on 31 July 2018. Quite on the contrary, the Organization had until then been at pains to reassure her in this respect, emphasizing that her post had not been abolished and that the process of assessing and reviewing the situation of that post, in particular with a view to redefining her functions within Interpol, would be carried out in close collaboration with her. The Tribunal considers that this was clearly not the case. As the complainant rightly submits, she was never informed of the potential consequences of the restructuring of the Human Resources Directorate on her situation, nor of the risk that her post could be abolished as a result. Similarly, she was not warned of the risk that the creation of the post of director of the new directorate posed to the existence of her own post and was never informed of the Organization's plan to abolish her post until it was implemented and notified to her on 31 July 2018. …"

[485] L. Germond, "The omnipresence of the duty of care…", *op. cit.*, note 455, pp. 78-79 (outsourcing) and 81-82 (illness). On the subject of outsourcing, see also ILOAT, Judgment No. 4885 (2024), *P. v. UNESCO*, para. 4: "Admittedly, the abolition of the duties in question would have nevertheless needed to be accompanied by financial compensation if it had also led to a substantial reduction in the complainant's remuneration. Under the Tribunal's case law, an organisation is required by its duty of care towards its staff members to provide such compensation where outsourcing seriously affects a staff member's financial situation (see Judgment 3373, considerations 7 and 9). In view of the evidence on file, that is not the case here."

> breached its duty of care to the complainant when it rejected her claim for compensation for her service-incurred illness in the face of the overwhelming evidence, including four favourable medical reports, and its failure to ensure a healthy work environment to protect her health.[486]

Furthermore, according to the General Court of the EU, "the obligations arising for the administration from the duty of care are substantially reinforced where the situation of a member of staff whose health, whether physical or mental, is shown to be affected is involved. In such circumstances, the administration must examine that official's requests with particular openness".[487] Consequently, the administration infringes the duty of care if the applicant's appraisal report contained no reference whatsoever to her health problems and the administration had also failed to demonstrate that it had taken those problems into account during the appraisal procedure, even though it was aware of them.[488]

The ATCE has been required to apply the duty of care in a highly nuanced manner in cases of non-renewal of contracts to avoid situations caused by overly rigid regulations leading to outcomes that were neither in the organisation's interest nor in the staff member's interest, having regard to the particular circumstances of the case.[489] On the other hand, it is clear from the case-law of the same court "that the duty of care did not include an obligation for the Organisation to offer a new contract to a Russian staff member, in a situation where the non-renewal of his fixed-term contract was a consequence of the fact that he no longer fulfilled the requirement to possess the nationality of a member state of the Organisation".[490]

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[486] ILOAT, Judgment No 4600 (2023), *N. (No. 4) v WHO*, para. 6.

[487] General Court of the EU, Judgment of 30 June 2021, *GW v. Court of Auditors*, Case T-709/19, EU:T:2021:389, para. 92 and the case-law cited; in the present case, the General Court finds a breach of the duty of care (para. 98); report of the General Court of the EU, p. 59, § 127. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

[488] General Court of the EU, Judgment of 26 Oct. 2022, *KD v. EUIPO*, Case T-298/20, EU:T:2022:671, paras. 120-129; report of the General Court of the EU, pp. 59, § 128.

[489] See the ATCE report, p. 18: "The ATCE found a violation of the duty of care in its decision of 9 October 2018, Appeals Nos. 587/2018 and 588/2018, Jannick Devaux (II) and (III) v. SG. In this case, the appellant had been employed on a fixed-term contract that had reached its maximum duration. When the contract expired, even though the guidelines called for a one-year waiting period between ending a fixed-term contract and starting a temporary one, the appellant had been awarded a four-month temporary contract in the interests of the department, to enable her to finish the project she had been managing under her fixed-term contract. The appellant challenged the decision not to renew her temporary contract on its expiry – a decision that [had] been based on the one-year waiting period rule that applied to staff coming to the end of a fixed-term contract.
In its judgment, the Tribunal acknowledged that the applicant had no acquired right to be offered a new post. It also accepted that 'restrictive measures would have to be adopted by the Secretary-General, in view of the particularly serious budgetary difficulties facing the Organisation, which, in general terms, could have constituted valid grounds for the decision not to renew a contract'.
Nevertheless, the Tribunal considered that '[g]iven the many years for which she had been working for the Organisation, however, the appellant deserved to be treated with greater respect, as befitted her status'. It concluded that 'in the particular circumstances of the present case, where all the conditions for renewing the temporary contract for a period of at least two months or even three months had been met […] and where the Organisation had already waived the waiting-period rule, having offered the appellant a temporary contract immediately after her fixed term contract ended, the refusal to offer her a new contract, which would have been in the interests of the department, was contrary to the interests of the Organisation and appellant alike' and therefore 'contrary to the general principles of law, namely the principle that there is a duty of care' (§§ 109 and 111 of the decision)."

[490] See the ATCE report, p. 18, setting out the ATCE Judgment of 22 March 2024, *I. S. v. Secretary General of the Council of Europe*, appeal No. 742/2023, para. 46: "As to the alleged risk of retaliation from the Russian authorities, the Tribunal notes that the appellant did not specify what other measures of protection he/she possibly expected to receive from the Secretary General apart from the annulment of the decision not to offer him/her a new contract. Irrespective of the fact that it was legally impossible for the Organisation to offer the appellant a new employment contract […], the Tribunal does not consider that the Organisation's duty of care towards its staff

With regard to the termination of a temporary staff member's contract, the General Court of the EU considers that the duty of care does not require the administration to exercise the power provided for in the Staff Regulations to refer the matter to the Invalidity Committee in the event of sick leave of a certain duration:

> If the administration's duty of care had the effect of transforming an option into an obligation for the administration, it would alter the balance of rights and obligations established by the Staff Regulations in the relationship between the public authority and civil servants, whereas its purpose is to reflect that balance.[491]

Similarly, it refuses to carry out "the balancing of the interests of the service and the interests of the staff member concerned entailed by the administration's duty of care" where the administration "has circumscribed powers and correctly applies a provision fixing pecuniary rights […]. Thus, the applicant cannot invoke the duty of care in order to obtain advantages which the [applicable] Staff Regulations [do] not allow [him or] her to obtain".[492]

The ILOAT did, however, apply the duty of care to mitigate the effects of the change to the education allowance scheme. In this case, the IAEA had implemented a decision of the United Nations General Assembly adopting a recommendation of the International Civil Service Commission. On the one hand, the ILOAT had rejected the plea alleging an infringement of the staff member's acquired rights.[493] On the other hand:

> neither the UN General Assembly decision nor the provisions of Staff Regulation 5.04 and Staff Rule 5.04.1 precluded the adoption of a mechanism to ameliorate the effect of the changes on members of staff who would suffer immediate and significant financial hardship in circumstances where there was no realistic option for the staff member but to have the child complete the course of education much earlier determined.[494]

In this case, the claimant's son had commenced his higher education at a university in the claimant's country of origin, which was far from the place of assignment, and had already completed three of the four years of his course at that university. The ILOAT found that the respondent organisation had "breached its duty of care to the complainant, as that expression is currently used in the Tribunal's case law".[495]

Conduct towards third parties. The duty of care may also influence the way in which the organisation should conduct itself towards third parties. Recent case-law provides insight into two different scenarios relating to this issue. The first raises the following question: to what extent are international organisations obliged to exercise their duty of care towards their agents in relations with the host State, and more generally with the organisation's Member States? This first scenario arose in the *Dolgopolov* case, decided in 2025 by the UNAT.[496] In this case,

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entails the duty to offer a contract. Therefore, the appellant's claim that the refusal to offer him/her such a contract entailed the failure to protect him/her is without merits."

[491] General Court of the EU, Judgment of 14 July 2021, *AQ v. European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA)*, Case T-164/19, EU:T:2021:456, para. 115 and the case-law cited; report of the General Court of the EU, p. 59, § 129.

[492] General Court of the EU, Judgment of 14 July 2021, *KO v. European Commission*, Case T-389/20, EU:T:2021:436, para. 50 and the case-law cited; Report of the General Court of the EU, p. 60, § 130. In the present case, the applicant, a temporary staff member of Bulgarian nationality, was refused the expatriation allowance on the grounds that her declared place of residence upon taking up her duties was Brussels.

[493] ILOAT, Judgment No 4465 (2022), *B. v. IAEA*, paras. 4-10.

[494] *Ibid.*, para. 15.

[495] *Ibid.*, para. 18.

[496] 2025-UNAT-1530, *Leonid Dolgopolov v. SGUN*.

Russian officials faced discriminatory restrictions imposed by the host State[497] and the applicant sought assistance from the Secretary-General of the United Nations to secure the withdrawal of these discriminatory measures. The UNAT stated:

> *we concede that the Secretary-General as the Chief Administrative Officer of the Organization has a duty of care towards its staff members regardless of their nationality in accordance with established international standards, in a manner that protects not only their safety and security, but also their impartiality and independence that are firmly associated with their immunities as international civil servants. However, the exercise of such duty of care vis-à-vis the host country or any other Member State involves necessarily executive or political considerations that make the Secretary-General's preferred course of action a policy decision which is not subject to judicial review by the [United Nations Dispute Tribunal (UNDT)] or the UNAT. This includes the circumstances of the present case.*[498]

The UNAT therefore recognises the duty of care incumbent upon the organisation in this case, but considers that the UNDT and the UNAT do not have jurisdiction to hear the application.

A second scenario in which the duty of care may shape the conduct the organisation should adopt in its relations with third parties concerns relations with the media. The issue arose in the case that gave rise to ILOAT Judgment No. 5000, delivered in 2025 by a panel of five judges.[499] In this case, the applicant had authored a report on Italy's management of the COVID-19 pandemic, which was published by the WHO but withdrawn shortly afterwards at the request of a Member State. A Deputy Director-General of the organisation ("Mr. G.") had made statements to the media that mentioned the applicant and which the applicant described as defamatory. The ILOAT found that the Assistant Director-General had acted in his personal capacity and not as a representative of the WHO, such that his actions were not attributable to the organisation.[500] However, the ILOAT also stated:

> *As to the Organization's alleged failure to "publicly disassociate itself from [Mr. G.]'s defamatory statements", it is not necessarily the duty of an international organization, although it has in principle a duty to protect its staff members when they are exposed to public criticism in relation to their functions, to engage in public press releases in defense of or against them. However, in the circumstances of the case, taking into account the position of Mr G., who was Assistant Director-General, it was the Organization's duty to publicly distance itself from his declarations, which otherwise could be perceived as attributable to the Organization. In this respect, there was a breach of the Organization's duty of care. This does not justify the impugned decision to be set aside. However, this violation of the duty of care entitles the complainant to an award of moral damages.*[501]

Conclusion. It follows from the analysis of case-law that the duty of care is now firmly established in case-law as a general principle of international civil service law, but that a breach of this principle is not easily established. The courts rely on this principle in the absence of any other rule better suited to governing the situation and where an injustice resulting from a lack

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[497] *Ibid.*, para. 4: "*(a) Twenty-five miles radius travel restrictions from the Columbus Circle. (b) G-4 Visa renewal time of four months or longer compared to United Nations staff members nationals of other countries. (c) G-4 visa duration of one year or less compared to United Nations staff members nationals of other countries. (d) Humiliating procedures upon arrival to an airport: many Russian colleagues were escorted to the special US CBP (assumedly referring to 'Customs and Border Patrol') room, which is usually used to deal with people trying to enter the US illegally or suspected to have committed a crime.*"
[498] *Ibid.*, para. 58.
[499] ILOAT, Judgment No. 5000 (2025), *Z. v. WHO*.
[500] *Ibid.*, para. 18.
[501] *Ibid.*, para. 26.

of care is clear (without the courts applying the criterion of the "manifest" nature of such a breach).

d) Acquired rights/essential rights

The issue of the consistency of case-law regarding acquired rights or essential rights is not a recent one[502] and remains a topical issue.[503] Despite a well-established body of case-law on the matter, it has occasionally been called into question (i). However, the way in which the principle is applied by the courts highlights that it is merely a legal safeguard that rarely grants relief to applicants (ii).

i) The scope of acquired rights or essential rights

Definitions taking into account the specific features of international civil service law. The concept of "acquired rights" has a particular meaning in international civil service law, distinct from its meaning in national laws and different from its meaning in general international law.[504] It has been used since the earliest judgments of the Administrative Tribunal of the League of Nations.[505] In the present case, the amendment to the Staff Regulations had the effect of excluding the applicants, who were division heads at the ILO Office, from the application of a system of allowances applicable to every staff member until the establishment of a pension scheme. This first international administrative tribunal stated that the organisation "is at liberty to establish for its staff such regulations as it may see fit, provided that it does not in any way infringe the acquired rights of any staff member".[506] It continues further in the judgment:

> The Administration's reliance on the general provision allowing it to modify the staff regulations during an official's appointment (Article 117 of the Staff Regulations) is misplaced.
>
> Such an article could not have been intended to expose officials to arbitrary decisions of the Administration since, on the contrary, the existence of staff regulations stems from the need to afford staff members legitimate guarantees as to the stability and terms of their employment both now and in the future.
>
> The report of Mr. Noblemaire, which pre-dates the adoption of the Staff Regulations, clearly demonstrates the intention in which they were drawn up, namely to remedy the insecure position in which the staff members found themselves before these guarantees of stability were established.

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[502] J.-D. Sicault, "L'évolution récente de la jurisprudence des tribunaux administratifs des Nations Unies et de l'OIT en matière de droits acquis", *RGDIP*, 1990, Vol. 94, No. 1, pp. 7-47.

[503] See, for example, G. Ullrich, *The Law of the International Civil Service*, *op. cit.*, note 4, pp. 203-210; A.-M. Thévenot-Werner, "Activité et jurisprudence… (2018)", cited above, note 327, pp. 442-457; A.-M. Thévenot-Werner, "Activité et jurisprudence… (2021-2022)", *op. cit.*, note 327, pp. 548-549; R. Gulati, "Acquired Rights in International Administrative Law", *The Max Planck Yearbook of United Nations Law*, Vol. 24, 2021, pp. 194-214; A. Garrido Muñoz, "Selected Issues: Unilateral Amendment of Terms and Conditions of Service – The Protection of Acquired Rights", in A. Garrido Muñoz *et al.*, *The Law and Practice…*, *op. cit.*, note 4, pp. 337-363.

[504] For an overview, see A.-M. Thévenot-Werner, "Activité et jurisprudence… (2018)", *op. cit.*, note 327, pp. 451-452.

[505] LoNAT, Judgments No. 1 (1929), *Di Palma Castiglione*, *op. cit.*, p. 2; No. 2 (1929), *Phelan*, *op. cit.*, p. 2; No. 3 (1929), *Maurette*, *op. cit.*, p. 2.

[506] LoNAT, Judgments No. 1 (1929), *Di Palma Castiglione*, *op. cit.*, p. 2; No. 2 (1929), *Phelan*, *op. cit.*, p. 2; No. 3 (1929), *Maurette*, *op. cit.*, p. 2.

> Article 117 must therefore be construed as referring only to conditions of application or ancillary matters and not to the substantive rights enjoyed by the staff.[507]

The Administrative Tribunal of the League of Nations concluded that "the complainant remains fully entitled to the benefit of Articles 54 to 61 of the Staff Regulations which entered into force on 1 January 1923", namely in the version applicable prior to the amendment of the Staff Regulations.[508]

The general principle of "acquired rights" or "essential rights" in international civil service law is recognised. It therefore has a legal basis distinct from the principle of non-retroactivity. Since then, it has been adopted in the case-law of most international administrative tribunals.[509] Admittedly, there have been debates regarding the exact terms to be used, insofar as, for example, the WBAT had preferred in its first *de Merode* decision not to use the concept of "acquired rights", but rather different terminology:

> *The Tribunal considers that in examining the numerous and varied elements of the conditions of employment, a major distinction must be drawn. Certain elements are fundamental and essential in the balance of rights and duties of the staff member; they are not open to any change without the consent of the staff member affected. Others are less fundamental and less essential in this balance; they may be unilaterally changed by the Bank in the exercise of its power, subject to the limits and conditions which will be examined later. In various forms and with differing terminology this distinction is found in the Jurisprudence of other international administrative tribunals.*[510]

However, it emphasises itself that the difference in terminology does not alter the fact that the tribunal is adopting an approach that is consistent with the established case-law of other international administrative tribunals. The case-law of the IMFAT follows the reasoning and terminology of the WBAT.[511]

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[507] LoNAT, Judgments No. 1 (1929), *Di Palma Castiglione*, *op. cit.*, p. 2; No. 2 (1929), *Phelan*, *op. cit.*, p. 2; No. 3 (1929), *Maurette*, *op. cit.*, p. 2.

[508] LoNAT, Judgments No. 1 (1929), *Di Palma Castiglione*, *op. cit.*, p. 3; No. 2 (1929), *Phelan*, *op. cit.*, p. 3; No. 3 (1929), *Maurette*, *op. cit.*, p. 3.

[509] For example, ILOAT, Judgment No. 61 (1962), *Lindsey v. ITU*, para. 12; WBAT, Decision No. 1 (1981), *de Merode et al.*, cited above; ATBIS, Judgment No. 1/2006, 13 Dec. 2007, para. 3d; 1/2018, 11 April 2019, paras. 182-188; ATCE, Judgment of 20 April 2021, *John Parsons (V)*, cited above, paras. 184-208; NATOAT, Judgment of 1 June 2021, *G et al. v. NATO International Secretariat*, Case No. 2020/1303, paras. 74-80; OECDAT, Judgment of 30 June 2021, *Mr. AA et al. v. Secretary General*, Case No. 94, paras. 55-73; ESAAT, Decision of 15 Oct. 2021, *G et al. v. ESA*, Case Nos. 122-128, paras. 107-122; EUMETSATAB, Decision of 18 Oct. 2021, Cases Nos. 9-14, paras. 104-118; ECMWFAB, Decision of 15 March 2022, *H. G. et al. v. ECMWF*, cases Nos. 7-11, paras. 73-80, and Decision of 15 March 2022, *A. et al. v. ECMWF*, Cases Nos. 12-16, paras. 126-134; IMFAT, Judgments No. 2007-1, *Daseking-Frank et al.*, cited above; No. 2021-4, *Elkjaer et al.*, cited above; No. 2023-1, *Elkjaer et al. (No. 2)*, cited above; IMFAT report, pp. 18-19.

[510] WBAT, Decision No. 1 (1981), *de Merode et al.*, cited above, para. 42.

[511] IMFAT, Judgments No. 2007-1, *Daseking-Frank et al.*, cited above, in particular paras. 48-60; No. 2021-4, *Elkjaer et al.*, cited above, paras. 73 and 109; No. 2023-1, *Elkjaer et al. (No. 2)*, cited above, in particular para. 81; IMFAT report, pp. 18–19.

The key contours of the principle were identified by the ILOAT in Judgment No. 61 in the case of *Lindsey v. ITU*,[512] and further developed in Judgment No. 832, *Ayoub et al. v. ILO*.[513] They were summarised by the ILOAT as follows:

> According to the case law, "[i]n Judgment 61 […] the Tribunal held that the amendment of a rule to an official's detriment and without his consent amounts to breach of an acquired right when the structure of the contract of appointment is disturbed or there is impairment of any fundamental
>
> term of appointment in consideration of which the official accepted appointment" (see Judgment 832, under 13). Judgment 832, under 14 (cited in part, below), poses a three-part test for determining whether the altered term is fundamental and essential. The test is as follows:
>
> 1) What is the nature of the altered term? "It may be in the contract or in the Staff Regulations or Staff Rules or in a decision, and whereas the contract or a decision may give rise to acquired rights the regulations and rules do not necessarily do so."
>
> 2) What is the reason for the change? "It is material that the terms of appointment may often have to be adapted to circumstances, and there will ordinarily be no acquired right when a rule or a clause depends on variables such as the cost-of-living index or the value of the currency. Nor can the finances of the body that applies the terms of appointment be discounted."
>
> 3) What is the consequence of allowing or disallowing an acquired right and the effect it will have on staff pay and benefits, and how do those who plead an acquired right fare as against others?[514]

A similar approach is applied by other administrative tribunals.[515] For example, according to the ATCE:

> a right is acquired if its holder can enforce it, regardless of any amendments to a text. A right conferred by rule or regulation and significant enough to have induced someone to join an

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[512] ILOAT, Judgment No. 61 (1962), *Lindsey v. ITU*, para. 12: "The terms of appointment of international civil servants and, in particular, those of the officials of the Union, derive both from the stipulations of a strictly individual character in their contract of appointment and from the Staff Regulations and Rules, which the contract of employment by reference incorporates. Owing, inter alia, to their increasing complexity, the conditions of service mainly appear not amongst the stipulations specifically set out in the contract of appointment but in the provisions of the above-mentioned Staff Regulations and Rules. The Staff Regulations and Rules contain in effect two types of provisions, the nature of which differs according to the object, to which they are directed. It is necessary to distinguish, on the one hand provisions which appertain to the structure and functioning of the international civil service and the benefits of an impersonal nature and subject to variation, and, on the other hand, provisions which appertain to the individual terms and conditions of an official, in consideration of which he accepted appointment. Provisions of the first type are statutory in character and may be modified at any time in the interest of the service, subject, nevertheless, to the principle of non-retroactivity and to such limitations as the competent authority itself may place upon its powers to modify them. Conversely, provisions of the second type should to a large extent be assimilated to contract stipulations. Hence, if the efficient functioning of the organisation in the general interest of the international community requires that the latter type of provisions should not be frozen at the date of appointment and continue so for its entire duration, such provisions may be modified in respect of a serving official and without his consent but only in so far as modification does not adversely affect the balance of contractual obligations or infringe the essential terms in consideration of which the official accepted appointment."

[513] ILOAT, Judgment No. 832 (1987), *Ayoub et al. v. ILO*, paras. 12-14.

[514] ILOAT, Judgment No. 4195 (2019), *H. (No. 4) et al. v. EPO*, para. 7; see also ILOAT, Judgment No. 5082 (2025), *L. (No. 22) v. EPO*, para. 6 (dismissal).

[515] See, for example, ATBIS, Judgments No. 1/2006, 13 Dec. 2007, para. 3d, pp. 11-12; No. 1/2018, 11 April 2019, paras. 182-188; NATOAT, Judgment of 1 June 2021, *G et al. v. NATO International Secretariat*, Case No. 2020/1303, paras. 74-80; OECDAT, Judgment of 30 June 2021, *Mr. AA et al. v. Secretary-General*, Case No. 94, paras. 55-73; EUMETSATAB, Decision of 18 Oct. 2021, Case Nos. 9-14, paras. 103-118; ECMWFAB, Decision of 15 March 2022, *H. G. et al. v. ECMWF*, Case Nos. 7-11, paras. 73-80, and Decision of 15 March 2022, *A. et al. v. ECMWF*, Case Nos. 12-16, paras. 126-134.

> Organisation's staff must be deemed an acquired right. Curtailment of that right without the holder's consent is a breach of the terms of employment which civil servants are entitled to assume will be honoured (ATCE, *Baron and others v. Secretary General*, Appeals Nos. 492-497/2011, 504-510/2011, 512/2011, 515-520/2011 and 527/2012, decision of 26 September 2012).[516]

The case-law of the ESAAT also supports this view:

> *The term "vested rights" used in the Staff Regulations has the same meaning as the term "acquired rights", which, according to constant international jurisprudence, are the rights conferred upon the staff member which are of a fundamental and essential nature and so serious and important that they were decisive when it came to the staff member accepting the appointment and, later, being encouraged to stay. An acquired right is "one the staff member may expect to survive any amendments of the rules" (see, for example, ILOAT decision No. 832 of 5 June 1987, consideration 13; No. 4028 of 26 June 2018, considerations 12 and 13, and No. 4380 of 18 February 2021, considerations 9-11).*
>
> *The Administrative Tribunal (former Appeals Board) has long since accepted this concept. In its decision Nos 24-27 of 8 July 1986, the Appeals Board said:*
>
> "that fundamental or essential conditions must be understood to mean conditions whose seriousness or importance is such as to determine the official's acceptance of his appointment or continued service with the Agency" [translated by the ATCE registry].
>
> *Likewise, it said in its decision No. 78 of 18 July 2003:*
>
> "However, as the Commission has observed in previous decisions and in accordance with the established case-law of other international tribunals, this can only be the case where the change is of such magnitude that, had it occurred prior to the official's appointment, it would have been such as to call into question his acceptance of the conditions offered to him" [translated by the ATCE registry].
>
> *The parties concur that the right to have salaries and pensions regularly adjusted is of a statutory nature and not contained as an individual stipulation in the Claimants' letters of appointment. Instead, it derives from statutory law contained in the Staff Regulations, Rules and Instructions to which Staff Regulation 8.2 refers. In such case, the test of whether or not a right contained in an employment contract is of a fundamental and essential nature and so serious and important that it was decisive when it came to the staff member accepting the appointment with ESA and, later, being encouraged to stay, requires an assessment which must be done in a generalised manner, i.e. from the perspective of all the people concerned, to whom the relevant statutory provision applies. It is not possible to assume that a certain right created by a general legal provision constitutes an acquired right for some of the people concerned, and not for others. A right is an acquired right for all concerned, or for none of them.* […] *The view of an individual may be decisive only if it is an individual right which is solely conferred on that person (see ILOAT Judgment No. 832 of 5 June 1987, consideration 13, and ESA Administrative Tribunal decision No. 132 of 26 July 2021, paragraph 85).*[517]

Definitions derived from national legal systems. Two judicial systems have, however, adopted a different approach to acquired rights, namely the courts of the European Union and the United Nations Appeals Tribunal. The courts of the European Union have defined acquired rights as follows:

> It follows from settled case-law that a new rule applies immediately, save where otherwise provided, to the future effects of a situation which arose under the old rule. The position is

[516] ATCE, Decision of 28 April 2015, *Cucchetti Rondanini et al. v. Secretary General of the Council of Europe*, appeals Nos. 548-553/2014, para. 66; ATCE report, p. 19.
[517] ESAAT, Decision of 15 Oct. 2021, Case Nos. 122-128, paras. 108 ff.; ECMWFAB/EUMETSATAB/ESAAT report, pp. 8-9.

> otherwise in relation to situations which arose and became definitively established under the previous rule, which give rise to acquired rights. A right is regarded as acquired where the event giving rise to it occurred before the legislative amendment. That is not the case where the constituent elements of the right were not fulfilled under the legislation which has been amended. It follows that a servant may rely on an acquired right only if the event giving rise to that right occurred under a specific set of rules prior to the amendment adopted by the authority.[518]

In particular, a "practice [regarding salary adjustments] cannot […] create, for the persons concerned, an acquired right to the maintenance of the benefits that a specific salary policy, followed over a long period, might have afforded them".[519]

The wording of the definition used by the courts of the European Union differs from that traditionally adopted in international civil service law. According to G. Ullrich, "*[t]he court has not even developed a real doctrine in relation to this general principle. It simply refers to it or gives a purely formal description without any guidance on how to evaluate in detail the criteria for its application*".[520] This raises the question of whether the definition established by the courts of the European Union, as applied, is truly different from that recognised in international civil service law. It does, however, seem to imply a more restrictive approach. This can be explained by the different way the European Union operates when adopting rules, particularly in the field of the civil service, and by the special place occupied by the guarantees of the rule of law within the Union. It should be recalled that one of the purposes of the principle of acquired rights is to "remedy the insecure position in which the staff members found themselves before these guarantees of stability were established".[521] It is a safeguard against arbitrariness, which is all the more necessary given that the defendant organisation generally adopts the applicable rules unilaterally without parliamentary scrutiny. However, the institutions of the European Union operate differently from other international organisations when it comes to the adoption of statutory rules: the EU has a European Parliament, composed of members directly elected by the population who exercise this oversight, and the applicable legal framework includes substantial guarantees of the rule of law within the organisation. Since the European Union is a supranational entity with its own institutions exercising legislative, executive and judicial powers in accordance with the applicable substantive and procedural rules (including those arising from the Charter of Fundamental Rights), any amendment to the Staff Regulations and the Conditions of Employment of Other Servants is adopted by the Union legislator in accordance with the legislative procedure laid down for that purpose and is subject to the temporal applicability inherent in any legislative or regulatory act. The differing definition may also be explained by the fact that the European Union applies to European civil service law principles established by its case-law, particularly in relation to the harmonisation of labour law rules and common social policy.

However, not all defendants before the General Court of the EU in matters of European civil service law are institutions of the Union and the adoption of their rules does not always benefit from the guarantees of the separation of powers, as is the case with the European Investment Bank. Added to this is the fact that the principle of acquired rights must be distinguished from

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[518] General Court of the EU, Judgment of 2 Dec. 2020, *Vincent Thunus v. EIB*, Case T-247/19, EU:T:2020:577, para. 68, translated by the ATCE registry, and the case-law cited; report of the General Court of the EU, pp. 60-61, § 132. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

[519] General Court of the EU, Judgment of 2 Dec. 2020, *Vincent Thunus*, *ibid.*, para. 71. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

[520] G. Ullrich, *The Law of the International Civil Service…*, *op. cit.*, note 4, p. 209.

[521] LoNAT, Judgment No. 1 (1929), *Di Palma Castiglione*, *op. cit.*, p. 2; Judgment No. 2 (1929), *Phelan*, *op. cit.*, p. 2; No. 3 (1929), *Maurette*, *op. cit.*, p. 2.

the principle of non-retroactivity and has a distinct legal basis in international civil service law. In view of the specific features of international civil service law and to reinforce its unity, it is worth considering whether an alignment of case-law with that generally applicable regarding the criteria for acquired rights might not be desirable.

Recently, the United Nations Appeals Tribunal set out its interpretation of the principle of acquired rights in the judgment in *Lloret Alcañiz et al.*,[522] delivered unanimously by a panel of six judges:

> *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. Promises to pay prospective benefits, including future salaries, may constitute contractual promises, but they are not acquired rights until such time as the quid pro quo for the promise has been performed or earned. Moreover, the fact that increases have been granted in the past does not create an acquired right to future increases [[523]] or pose a legal bar to a reduction in salary.*[524]

It quashed the judgment of the United Nations Dispute Tribunal, which, sitting as a panel of three judges and unanimously, had adopted the reasoning of the ILOAT applicable to acquired rights.[525] The UNAT subsequently confirmed its approach to acquired rights, notably in Judgment No. 2021-UNAT-1107, in the case of *Abd Al-Shakour et al. Aksioutine et al. v. Secretary-General of the United Nations*, sitting in a plenary session of six judges,[526] although one might wonder whether the UNAT, by this decision, does not temper the approach it adopted in the case of *Lloret Alcañiz et al.* The UNAT held that:

> *the term "acquired" implies and suggests the idea of protection and the notion that such vested rights may expect to survive future variation. The aim of the intended protection would be to ensure that staff members' terms and conditions may not be amended in a way that would deprive them of a benefit once the legal requirements for claiming the benefit have been fulfilled.*[527]

The new approach introduced in the *Alcañiz et al.* case has been described as an "*unfortunate outcome and an unwelcome development for the content of substantive protections*".[528] Indeed, it is inconsistent with the established case-law in international civil service law.[529] Furthermore, it introduces a questionable alignment with national law.[530] Above all, it fails to recognise that Article 12(1) of the United Nations Staff Regulations, which recognises acquired rights, was introduced to codify the general principle of international civil service law that enshrines them: it is a legacy of the League of Nations, where this provision was introduced precisely following the *di Palma Castiglione*, *Phelan* and *Maurette* cases. This is a provision that not only recognises acquired rights in substantive terms, but is also a so-called formal provision.[531] This means, with regard to Article 12(1), that it is a "provision whose observance is a condition for the validity of any subsequent provision adopted by the General Assembly amending the Staff

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[522] 2018-UNAT-840, *Lloret Alcañiz et al. v. SGUN*.
[523] The UNAT refers here to the ILOAT, Judgment No. 2632 (2007), *M. P. B. v. Eurocontrol*, para. 13.
[524] 2018-UNAT-840, *Lloret Alcañiz et al. v. SGUN*, para. 90.
[525] UNDT, UNDT/2017/097, *Lloret Alcañiz et al. v. SGUN*.
[526] See, for example, 2021-UNAT-1107, *Abd Al-Shakour et al. Aksioutine et al. v. SGUN*, full bench of six judges.
[527] 2021-UNAT-1107, *Abd Al-Shakour et al. Aksioutine et al.*, *ibid.*, para. 64, referring to paras. 86 and 87 of Judgment 2018-UNAT-840, *Lloret Alcañiz et al. v. SGUN*.
[528] R. Gulati, "Acquired Rights…", *op. cit.*, note 503, p. 214.
[529] R. Gulati, "Acquired Rights…", *ibid.*, p. 214; A.-M. Thévenot-Werner, "Activité et jurisprudence… (2018)", *op. cit.*, note 327, pp. 442-457; see also A.-M. Thévenot-Werner, "Activité et jurisprudence… (2021-2022)", *op. cit.*, note 327, pp. 548-549; A. Garrido Muñoz, "…The Protection of Acquired Rights", *op. cit.*, note 503, pp. 350-351.
[530] A.-M. Thévenot-Werner, "Activité et jurisprudence… (2018)', *op. cit.*, note 327, pp. 450-452.
[531] *Ibid.*, pp. 449-450.

Regulations".[532] This explains why this provision is included in the "General Provisions" section of the Staff Regulations.[533] It is therefore not possible to interpret a provision amending the Staff Regulations in a manner consistent with the principle of acquired rights, by giving precedence to the former over the latter, insofar as the latter determines the validity of the former.[534]

ii) The application of the principle of acquired rights or essential rights

Restrained application of the principle. Furthermore, when the concept of acquired rights is applied in its generally recognised sense in international civil service law, in most cases, claims based on the infringement of an acquired right are dismissed.[535] For example, the ATCE rejected a claim of infringement of an acquired right concerning pension adjustments in a decision of 20 April 2021 in the case of *Parsons (V) et al. v. Secretary General of the Council of Europe and Verneau (II) et al. v. Secretary General of the Council of Europe*.[536]

Exceptional infringement of the principle in financial matters. It is only in very exceptional circumstances that an international administrative tribunal finds that an acquired right has been infringed. Without applying the criterion of manifest infringement, the courts have recognised an infringement of an acquired right only in cases of a substantial breach of staff members' rights. This was, for example, the case in *Ayoub (No. 2) et al. v. ILO*.[537] In that case, the accumulation of measures between 1984 and 1987 had led to a reduction of 15% to 25% in the applicants' pension rights.[538] This was also the case in Judgment 2023-1 of the IMFAT in the *Elkjaer et al. (No. 2)* case, because the organisation had failed to comply with its own rules regarding salary adjustments, and ordered the organisation to recalculate the salary for the financial year in question in accordance with its rules.[539] By contrast, the IMFAT concluded that the decision to revise the methodology for determining staff salaries, as well as its implementation, did not infringe the essential rights of civil servants in the *Daseking-Frank* case.[540] It also concluded that the decision to increase the contribution to the health insurance scheme to 3.6%, exceeding the structural salary increase of 2.7% planned for the 2021 financial year, did not infringe essential rights in the *Elkjaer et al.* case.[541] In the latter case, the applicants had argued that there had been a practice of capping increases in contributions to the health insurance scheme at the annual adjustment percentage of the Fund's pay scale, which had

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[532] *Ibid.*, p. 449. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.
[533] *Ibid.*, p. 449.
[534] In this sense, however, 2018-UNAT-840, *Lloret Alcañiz et al. v. SGUN*, paras. 83-90, in particular para. 90.
[535] See, for example, ILOAT, Judgment No. 4195 (2019), *H. (No. 4) et al. v. EPO*, para. 7; ILOAT, Judgment No. 5082 (2025), *L. (No. 22) v. EPO*, para. 6.
[536] ATCE, Decision of 20 April 2021, *Parsons (V) and others*, cited above, paras. 184 and 188-190; ATCE report, p. 19: "the ATCE found that 'the right to receive a pension and the principle of adjusting the amount of that pension are acquired rights, the abolition or substantial modification of which is liable to fundamentally change the general structure of the employment contract and, consequently, to affect those rights' (§ 184 of the decision). However, it considered that the new adjustment method, whereby pensions would be revalued in line with the consumer price index and no longer in accordance with the salary adjustment index, neither violated the acquired rights of retired staff nor entailed a breach of the solidarity between serving and retired staff, nor infringed the parallelism between salary increases for civil servants in the so-called 'reference' civil services and those of staff in the Co-ordinated Organisations (§§ 188 - 190 of the decision)."
[537] ILOAT, Judgment No. 986 (1989), *Ayoub (No. 2) et al. v. ILO*, para. 23.
[538] *Ibid.*, para. B.
[539] IMFAT, Judgment No. 2023-1, *Elkjaer et al. (No. 2)*, cited above; IMFAT report, p. 19.
[540] IMFAT, Judgment No. 2007-1, *Daseking-Frank et al.*, cited above.
[541] IMFAT, Judgment No. 2021-4, *Elkjaer et al.*, cited above.

allegedly been infringed. However, the IMFAT points out that for a practice to form part of the terms and conditions of employment, it must be proven that it is followed by the organisation and that the organisation is convinced that the practice reflects a legal obligation, which was not the case here.[542]

Exceptional infringement of the principle in non-financial matters. International administrative courts sometimes apply the principle of acquired rights in areas other than financial matters. The ATCE, for example, held that civil servants on fixed-term contracts who had been excluded from an external recruitment procedure could not be subject to a new provision limiting the total duration of employment on a fixed-term contract to five years:[543]

> [B]earing in mind the aforementioned principle of acquired rights the Tribunal believes that this rule could not validly be applied to the appellants' case, since they had been recruited two years previously when the content of the old Article 20 of the Regulations on Appointments gave them a legitimate expectation of being able to continue their respective professional careers with the Council of Europe, one option being that they would be able to take part in a new recruitment competition.[544]

The General Court of the EU, for its part, upheld the applicant's claim seeking the annulment of the withdrawal of the decision validating her request for early retirement in the judgment in *Siragusa v. Council*:[545] "In that regard, the General Court found, in particular, that the Council was required to respect the finality of the earlier decision approving the request for early retirement and that, by unlawfully withdrawing that decision, it had called into question an acquired right of the official concerned."[546]

Conclusion. It follows from the foregoing that the principle of acquired or essential rights is a fundamental principle in international civil service law in that it is not only a substantive but also a procedural rule, which determines the validity of acts modifying the rights of officials. This principle, which implies that rules are considered contrary to the principle only in the event of a substantial infringement of rights – and therefore, in practice, rarely – is firmly established in a body of case-law. It is therefore surprising that certain courts occasionally hesitate to adopt a similar approach.

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[542] *Ibid.*, paras. 91-97; IMFAT report, p. 19. On the place of institutional practice within the hierarchy of internal norms of an international organisation and its distinction from international custom, see also A.-M. Thévenot-Werner, "Introduction au droit des organisations internationales", *JurisClasseur Droit international*, fascicle 110, 8 May 2021, para. 36.

[543] ATCE, Decision of 28 April 2015, *Cucchetti Rondanini et al. v. Secretary General of the Council of Europe*, appeals Nos. 548-553/2014, paras. 66 and 69; ATCE report, p. 19.

[544] ATCE, Judgment of 28 April 2015, *Cucchetti Rondanini et al.*, *ibid.*, para. 69; ATCE report, p. 19.

[545] General Court of the EU, Judgment of 5 June 2019, *Siragusa v. Council*, Case T-616/17 RENV, EU:T:2019:372.

[546] Report of the General Court of the EU, p. 61, § 133. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

General conclusion

This study shows that general principles are a qualitatively significant source of international civil service law. However, international administrative courts are cautious when identifying new principles and rely primarily on established case-law – whether their own or that of other international administrative courts.

An analysis of the case-law shows that general principles, taken as a whole, have a higher legal standing than the organisation's secondary law, including in EU law, it being specified for that organisation that in the event of a conflict between a general principle of EU law and a general principle of international law, the former prevails.

The application of general principles has been criticised for being a source of legal uncertainty and for the fact that they risk calling into question the decisions of political bodies too often. This study shows that general principles are an indispensable source of international civil service law for adjusting the settlement of disputes where the written regulatory framework is precisely insufficient, and that they constitute a necessary legal safeguard to guarantee the rule of substantive law within the organisation's partial legal system.

General principles serve as an adjustment variable to achieve a balanced legal solution. As Alain Pellet stated in his thesis: "Principles do not exist in the realm of ideas, but they impose themselves spontaneously on the interpreter because they enable a response to the need for completeness that characterises any legal system".[547]

Should general principles be further codified, should their application be regulated, and should their place in the hierarchy of norms be defined? The study shows that this is not essential when it comes to determining the jurisdiction of courts, provided that established case-law is not called into question and is respected by all parties. On the contrary, the absence of codification allows their application to be adapted to changes in the law. Furthermore, current practice shows that codifications on this subject have tended to restrict the jurisdiction of courts, which prevents a full guarantee of the rule of law in the substantive sense within the organisation's internal legal system and could, in the long term, jeopardise the immunities of the organisations in question.

On the other hand, it may be useful for an organisation to codify, where appropriate, the rules arising from the application of general principles in its secondary law for greater legal certainty (for example, to determine the procedure to be followed in cases of harassment).

The cautious approach with which courts apply general principles, particularly with regard to decisions of bodies composed of representatives of States, and the relative rarity of cases in which general principles have been decisive, shows that the application of general principles serves as a legal safeguard. It serves as a reminder that bodies composed of representatives of States are also subject to compliance with international law (including international civil service law) and that they must take general principles into account when making their decisions. However, in general, the legality of the act will only be challenged by the court if the infringement of these general principles is relatively clear to it.

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[547] A. Pellet, *Recherches sur les principes généraux de droit…*, *op. cit.*, note 6, p. 435. No official English version of this text could be identified. The quotation reproduced here is an unofficial translation prepared by the Registry.

Given the qualitative importance of general principles for the law of international organisations, the case-law of international administrative tribunals on this subject – which this report has sought to summarise and make more accessible – is intended to inform thinking and practice on this matter beyond the scope of international civil service law.[548] In particular, valuable lessons regarding the enforceability of international human rights law against international organisations can be drawn from this.

[548] M. B. Akehurst, *The Law Governing Employment…*, *op. cit.*, note 24, p. 263: "*general principles of law constitute a source of law common to those internal laws [of international organisations] and to general international law, so that general international law may rely on some of the precedents established by international administrative tribunals, and vice versa.*"

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