

NOTES AND COMMENTS

A Few Thoughts about the Concepts of International Administrative Tribunals and International Administrative Law

Shin-ichi AGO

Kinugasa Research Organization, Ritsumeikan University, Kyoto, Japan
Email: ago-law@fc.ritsumeik.ac.jp

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Abstract

This note tries to determine the most appropriate way to position international administrative tribunals (established by a number of inter-governmental organizations) in the public international legal order, and identify the substance of the so-called international administrative law applied therein. There is an emerging group of laws arising from numerous international administrative tribunal decisions that form a substantive body of legal rules applicable therein: a law of international civil service. Judges in those tribunals, who look for an appropriate source whenever they face a *non-liquet* situation, use the concept of international administrative law to overcome such difficulties. Judges should not hide themselves behind an ambiguous notion of international administrative law or general principles, but apply the law of international civil service with confidence.

Keywords: Dispute Settlement; International Organizations

On the occasion of the 30th anniversary of the Asian Development Bank's Administrative Tribunal, it is appropriate to give some thoughts about the position of international administrative tribunals (IATribunals) in the public international legal system – and the notion of international administrative law (IALaw) frequently used in the decisions of such tribunals – from the perspective of public international law.

The key concept here is “administration”. Public administration or executive power is not as clear as the other two state powers: legislative and judicial. Authors vary as to the scope of administration, either maintaining the existence of administrative acts in a positive way, or considering, in a negative way, acts that are left over from legislative and judicial acts.¹ The concept of administrative law in the domestic legal system is, therefore, differently perceived from one country to another, and if one adds the difference between common law systems and continental law systems it becomes almost impossible to obtain a universally agreeable notion of administrative law. There are countries in which special administrative courts have already been established, and there are others in which the ordinary courts deal with cases that adjudicate upon administrative acts or decisions.

¹ Hiroshi SHIONO, *Gyoseiho*, Vol. I, 6th ed. (Tokyo: Yuhikaku Publishing, 2020) at 2–7. Ernst FORSTHOFF, *Lehrbuch des Verwaltungsrecht*, Vol. I, 10th ed., (Munich: C.H. Beck, 1973) at 1, maintains that administration can be described but not defined.

On the top of it, an attribute of “international” is now added before “administrative”, which leaves a great many authors to freely interpret the notion of IALaw in their own way. The following chapters try to determine the most appropriate way to position IATribunals in the public international legal order, and identify the substance of IALaw that applies therein.

I. IATribunals

A number of institutions, called “Administrative Tribunals”, have been established since the creation of the first of its series in 1927 at the League of Nations (and/or the International Labour Organization (ILO)).² At the end of the Second World War, the United Nations (UN) established such an institution in 1949, which was eventually transformed into the UNDT (United Nations Dispute Tribunal) and, thereafter, the UNAT (United Nations Appeals Tribunal) in 2009. A number of UN specialized agencies, spear-headed by the World Health Organization in 1949, as well as other international and regional organizations (totalling about sixty), subsequently joined the ILO Administrative Tribunal. International financial institutions (IFIs) chose to set up their own tribunals.³ All had been set up for the same reason: they provided remedies for alleges injuries inflicted upon staff members arising out of their employment relations with their employing organizations. These were established by treaties. If independent judicial machineries were not offered to ensure remedies for their staff the latter would be deprived of their rights to a fair trial, and these international organizations would be obliged to waive their immunities and appear before local courts of law. A staff member of the African Development Bank (AfDB) was successful before the French courts in the determination of an employment case because the AfDB, in 1995, did not have an internal judicial machinery to settle employment disputes.⁴ The jurisprudence of the European Court of Human Rights and, in particular, the Waite/Kennedy and Beer/Regan cases of 1999, has become pivotal in recognizing the significance of an effective internal judicial system for an international organization to claim immunity from local legal processes.⁵ Many authors have discussed this matter extensively in relation to the immunities enjoyed by international organizations.⁶

It is clear from the history of the creation of such bodies that the word “administration” has been used to mean personnel management. It is not used in the sense of exercising the executive power of the organization. Appointing a staff member or concluding an employment contract with a staff member is certainly one of the principal powers conferred to the organization. But the executive function of an international organization

² C. F. AMERASINGHE, *The Law of the International Civil Service: As Applied by International Administrative Tribunals*, Vol. I, 2nd ed. (Oxford: Oxford University Press, 1994) at 49–52. The development of IATs is fully elaborated in this volume by Chris DE COOKER, “Proliferation of International Administrative Tribunals” in its first part.

³ The World Bank in 1980; the Inter-American Development Bank in 1981; the Bank for International Settlements in 1987; the Asian Development Bank 1991; the International Monetary Fund in 1992; the OECD in 1992; and the African Development Bank in 1997, among others.

⁴ Chris DE COOKER and Gisela SÜSS “Immunity of International Organisations from National Jurisdiction in Staff Matters” in Chris DE COOKER, ed., *International Administration: Law and Management Practices in International Organisations* (Leiden: Nijhoff, 2009), 541 at 544.

⁵ Bardo FASSBENDER, “Germany” in August REINISCH, ed., *The Privileges and Immunities of International Organizations in Domestic Courts* (Oxford: Oxford University Press, 2013), 123 at 126.

⁶ For example, August REINISCH, *International Organizations Before National Courts* (Cambridge: Cambridge University Press, 2000), C.F. AMERASINGHE, “Privileges and Immunities” in C.F. AMERASINGHE, *Principles of the Institutional Law of International Organizations*, 2nd ed. (Cambridge: Cambridge University Press, 2005), 315, De Cooker and Süß, *supra* note 4. Cf., also International Labour Organisation, *Legal Protection of the International Labour Organization in its Member States: An Introductory Guide*, 2nd ed. (Geneva: ILO Publication, 2014).

does not limit itself to personnel management matters; more generally, it applies to the execution of tasks mandated by its constitutive instrument. In the case of international financial institutions such as the Asian Development Bank (ADB), such function includes concluding loan agreements, publishing macro-economic analyses, and providing advice to member states on their economic policies. The UN as an inter-governmental institution, which has as its fundamental mandate to secure the peace and security of international society, adopts various resolutions with binding effect, such as setting up its subsidiary bodies (e.g. Peace Keeping Operations), making decisions to request the Secretary General or his representatives to conduct mediation/conciliation missions to conflicting areas, and, more generally, requesting the Secretariat to establish analytical reports on various subject matters. These resolutions/decisions are international administrative acts in the truest sense of the term. Staffing the Secretariat is obviously an administrative act of the organization but it is only a part of it, it is largely managerial. It appears to be misleading to generalize the names of those tribunals as IATribunals, which may lend itself to the misconception that the tribunals can deal with all kinds of administrative decisions made by an international organization.

The International Court of Justice (ICJ) is more likely to serve the purpose of an administrative tribunal when it pronounces advisory opinions regarding the function of the UN or its specialized agencies.⁷ While it is not a judicial organ,⁸ the Inspection Panel of the World Bank, or its equivalent in other IFIs,⁹ deserves the title of IATribunal because it checks the constitutionality of administrative acts of the organization concerned.

In a way, the Statute of the International Monetary Fund Administrative Tribunal (IMFAT) has widened the scope of its jurisdiction by allowing staff members to question the legality of a managerial decision, even if it does not directly cause damage to the applicant.¹⁰ However, the relevant section of the Statute adds in Paragraph 2: “[f]or purposes of this Statute: a. the expression ‘administrative act’ shall mean any individual or regulatory decision taken in the administration of the staff of the Fund”, and thereby delimits the tribunal’s jurisdiction to those managerial decisions that impact the employment relationship with the staff. The Asian Development Bank Administrative Tribunal (ADBAT), along with almost all other IATribunals, restricts applications to those administrative decisions that have actually inflicted damage to the applicant(s).¹¹

It can be concluded from these facts that being named an IATribunal is, in some cases, unfortunate. It would have been more accurate to call them “Tribunals to Settle Disputes Related to Employment Relations within International Organizations”. However, this naming appears to be too long and not very practicable. Some sort of shortened version would be preferable, but not IATribunal. Being named an “International Civil Service Tribunal”

⁷ Cf. *Certain Expenses of the United Nations*, Advisory Opinion of 20 July 1962, [1962] ICJ Rep. 151 at 151.

⁸ The World Bank in its website describes the Inspection Panel as “an independent complaints mechanism for people and communities who believe that they have been, or are likely to be, adversely affected by a World Bank-funded project”. It can be seen from this statement that the intention of the World Bank to establish the Inspection Panel was to provide a complaint mechanism by which the affected people or communities were given a chance to make the Bank to review its projects. This functions almost as a tribunal to settle disputes.

⁹ In the case of the ADB, it is called Accountability Mechanism: Asian Development Bank, “Accountability Mechanism”, online: ADB <<https://www.adb.org/who-we-are/accountability-mechanism/main>>.

¹⁰ Article II: “1. The Tribunal shall be competent to pass judgment upon any application: (a) by a member of the staff challenging the legality of an administrative act adversely affecting him”.

¹¹ Article II “1. The Tribunal shall hear and pass judgment upon any application by which an individual member of the staff of the Bank alleges non-observance of the contract of employment or terms of appointment of such staff member”. Cf. ILOAT Statute, Article II: “1. The Tribunal shall be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials of the International Labour Office, and of such provisions of the Staff Regulations as are applicable to the case.”

may have been a better option. Whatever the name, one thing is certain: it is a judicial body not an administrative body. IATribunals are usually established by decisions of the general assembly of the organization.¹² However, they are independent bodies and not subsidiary organs of the superior bodies of the international organizations concerned.

IATribunals must be distinguished from organs that conduct administrative reviews before applications are forwarded to the tribunals. In the case of the ADB, the exhaustion of internal remedies (such as Compulsory Conciliation, Administrative Review, and an appeal before the Appeals Committee) is a prerequisite before an applicant can lodge his/her application before the Tribunal.¹³ The Appeals Committee, with its quasi-judicial style of having hearings before three Committee members, examines the exchange of written statements, between the applicant and the respondent (the Bank): it has an appearance almost like a judicial organ of first instance, but it is definitely an administrative body composed of staff members of the Bank. Public Service Commissions, which can be found in many countries, perform similar functions. These functions are very close to being judicial, but they are foundationally administrative in the sense that they are established within the governmental system and are subject to eventual appeal before the judiciary. As a matter of fact, these pre-litigation processes¹⁴ would better deserve the name of “International Administrative Commission”, which are a little short of an IATribunal (as such a commission would only have recommendatory powers).

II. Laws Applied By IATribunals

A. Semantics

Having established that an IATribunal is a judicial body which settles disputes relating to employment relationships within international organizations, which should have been called an International Civil Service Tribunal, the next point to clarify is the question of the applicable law in those IATribunals. What kind of laws must judges apply? A question, a little differently put, would be what are the sources of law relevant to IATribunals?¹⁵

A simplistic answer would be to say that an IATribunal applies IALaw, purely by a linguistic similarity of the word “administrative”. As a matter of fact, the notion of IALaw is commonly, but improperly used, to indicate a set of norms that are supposed to be applied by IATribunals. The word “IALaw” is frequently referred to by judges of IATribunals,¹⁶ as well as applicants and respondents in the proceedings before those

¹² In the case of the ILO Administrative Tribunal (or that of the League of Nations), it was established by a decision of the Assembly of the League of Nations (*League of Nations Official Journal*, May 1928 at 751). So was the case of the World Bank, in which it was the Board of Governors (= general assembly) which set up the World Bank Administrative Tribunal, but in the case of other regional development banks, the Board of Executive Directors (and not the Board of Governors) established the tribunals. For instance, both the Inter-American Bank and the ADB in 1991.

¹³ *Statute of the Administrative Tribunal of the Asian Development Bank*, 1 April 1991 at Art. II, para. 3.

¹⁴ Chris DE COOKER, “Pre-litigation Procedures in International Organisations” in Chris DE COOKER ed., *International Administration Law and Management Practices in International Organisations* (Leiden: Nijhoff, 2009), 781.

¹⁵ The present author discussed this matter at a seminar organized by the AIIB (Asian Infrastructure Investment Bank) in 2019 in Beijing, which was eventually published in its journal: AGO Shin-ichi, “What is ‘International Administrative Law’? The Adequacy of this Term in Various Judgments of International Administrative Tribunals” (2020) 3 AIIB Yearbook of International Law 88.

¹⁶ *Samardzic, Tadic-Mihaljcic, Mitrovic, Martic, Kovacevic v Secretary-General of the United Nations*, [2010] UNDT Judgment No. UNDT/2010/019 at para. 20; *Elmi v. Secretary-General of the United Nations*, [2016] UNDT Judgment No. UNDT/2016/032 at para. 38; *Kasperski v. European Patent Office*, [1988] ILOAT Judgment No. 944 at para. 5; *Rosario Cardenas v. International Bank for Reconstruction and Development*, [1988] WBAT Decision No. 71 at para 21; *Appellant v. European Bank of Reconstruction and Development*, [2019] EBRDAT Decision No. 2018/AT/06 at para. 62.

tribunals.¹⁷ Many seminars organized by IATribunals to commemorate their anniversaries have the word IALaw in their seminar titles.¹⁸ It is, however, far from evident that the notion is used in an appropriate manner. It is not only non-evident, it is inaccurate for two reasons: one is that an IATribunal, as identified in the preceding section, is a notion to designate a judicial institution that passes judgments on the employment relationships of international civil servants with their employers, the international organizations. Therefore, the name for the norms those institutions apply should be more employment law specific rather than using general terminology such as IALaw; perhaps “International Civil Service (or Servants) Law” would be more accurate.¹⁹ The other reason is that an IATribunal is an independent organ established within an inter-governmental institution and, as such, it enjoys legal immunities from the jurisdiction of the host state of the organization.²⁰ Independence implies non-adherence to the local laws of the host state, or to the domestic laws of the organization’s other member. If domestic laws are barred from the adjudication in an IATribunal, it is generally hoped that there would be an explicit or implicit indication in the constitutional instrument of each IATribunal, or elsewhere, describing which laws the tribunals are expected to apply; unlike in domestic courts in which it is obvious that they apply constitutional law and laws enacted by the legislature. There is no need to specify laws applied in each of the national courts of law. On the other hand, Article 38 of the ICJ Statute specifically mentions applicable law. The United Nations Convention on the Law of the Sea (UNCLOS) in its Article 293 provides for the applicable law. Article 21 of the Rome Statute of the ICC also provides for the applicable law. However, almost all of IATribunal Statutes remain silent.

Exceptionally, the IMFAT Statute provides in Article III: “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.” The commentary to the Statute further elaborates the words of internal law and general principles of international administrative law:²¹

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.

The IMFAT Statute is very instructive. Although the notion of international administrative law is not fully defined there, the elaboration in the commentary provides some clues so as to understand what the IMFAT tries to apply. The way it describes the general principles of IALaw is similar to the notion of “general principles of law” provided for under

¹⁷ *In re Rose*, [2003] ILOAT Judgment No. 2256 at para. 19; *Ruyooka v. Secretary-General of the United Nations*, [2013] UNDT Judgment No. UNDT/2013/154 at para. 86; *Alquzaa v. Secretary-General of the United Nations*, [2018] UNDT Order No. 012 (NBI/2018) at para 4; *Mr. H v. Asian Development Bank*, [2017] ADBAT Decision No. 108.

¹⁸ For example, a symposium organized by the IMF Administrative Tribunal in April 2014 on the occasion of its 20th anniversary was entitled: “The Future of International Administrative Law: Harmonization? Fragmentation? Dialogue?” (4 April 2014), online: IMF <<https://www.imf.org/external/imfat/pdf/Symposium3.pdf>>.

¹⁹ C.F. Amerasinghe in his book, “The Law of the International Civil Service”, discussed quite rightly, “the sources of IAL or the law governing employment relations in international organizations” (emphasis added): Amerasinghe, *supra* note 2.

²⁰ *Statute of the Administrative Tribunal of the International Monetary Fund* (entered into force 15 October 1992) [IMFAT Statute] at Art. VIII, similar provisions are found in other IATribunals.

²¹ Sixth Paragraph of the explanation on the second sentence of Art. III: International Monetary Fund (IMF), “Commentary on the Statute”, online: IMF <https://www.imf.org/external/imfat/report.htm#commentary_XVIII> at ARTICLE XVIII.

Article 38, Paragraph 1(c) of the ICJ Statute; however, the ICJ has used this paragraph sparingly in its judgments.²² As Cassese's International Law rightly observes, the notion of general principles of law, as provided for in Article 38 of the ICJ Statute, is different from the general principles of international law, which is closer to the notion of general international law. The former describes a set of legal principles applied in domestic courts, mostly procedural principles, while the latter enters into the realm of substantive international legal rules, and in some cases customary international law. Article III of the IMFAT Statute refers to the first group of principles, but that provision should not have included the word IALaw, for there is no general IALaw.

On the other hand, the provision is instructive as it makes clear how to avoid a *non liquet* situation: general principles of law as applied in domestic courts can be applied in IATribunals as well. We find this usage in a great number of IATribunal judgments.²³ However, not all of them refer to the general principles in the strict sense of the term (i.e. that of the meaning of Article 38 of the ICJ Statute), but refer to something more than procedural principles.

B. Reference to the Principles of IALaw in IATribunal Judgments

The UNDT, in a recent decision, stated:

The Respondent's refusal to exercise his discretion in favour of the Applicant was based on the reasoning that the costing for retroactive promotion was too high and that payment of [his Special Post Adjustment] meant that his obligations under international administrative law had been met. Such reasoning and considerations were a complete abdication of the Respondent's responsibilities *vis-à-vis* the staff member and the correct position of international administrative law (emphasis added).²⁴

Here, IALaw is used to mean a substantive rule, it is not referred to as general principles of law (mainly procedural law) for the purpose of avoiding *non liquet*.

Similarly, in an ILOAT case, the respondent (the Organization for the Prohibition of Chemical Weapons, or OPCW), argued: "If the State Party does not reimburse the OPCW for any national taxation which it has levied, the OPCW will be compelled by international administrative law to reimburse the affected staff member for that amount" (emphasis added).²⁵ It is also clear here that IALaw is referred to as a substantive norm and not procedural principles such as *estoppel* or *audi alteram partem*.

Citing other tribunals' decisions is also problematic. Tribunals tend to rely on other, normally more authoritative, tribunals in cases where they are unable to find concrete sources of law to apply in their particular case. However, where is the rationale for relying on them? It is not certain whether the decisions of other tribunals correctly applied the law. The *de Merode* case,²⁶ heard by the World Bank Administrative Tribunal (WBAT), for example, has been cited in numerous IATribunals.²⁷ The interpretation methods used by

²² James CRAWFORD, *Brownlie's Principles of Public International Law*, 9th ed. (Oxford: Oxford University Press, 2012) at 34.

²³ Cf. *supra* notes 16 and 17 provide examples.

²⁴ *Elmi v. Secretary-General of the United Nations*, *supra* note 16 at para. 38.

²⁵ *Kasperski v. European Patent Office*, *supra* note 16 at para. 5.

²⁶ *De Merode et al v. World Bank*, [1981] WBAT Decision No. 1.

²⁷ See *Mr. E. Verreydt, Applicant v. International Monetary Fund*, [2016] IMFAT Judgment No. 2016-5 at paras. 80, 87, and 106; *Appellant v EBRD (Respondent)*, [2006] EBRDAT Decision No. 2006/AT/04 at paras. 72-3; *Mirella et al v. Secretary-General of the United Nations*, [2018] UNAT Judgment No. 2018-UNAT-842 at para. 23; *Mesch and Siy v ADB (No 4)*, [1997] ADBAT Decision No. 35 at paras. 14, 18, 21, 26, 41, and 45 (and in the Dissenting Opinion).

WBAT to come to its conclusion in this particular case cannot have referenced earlier decisions – logically by it being the very first to be heard. It must have been derived from somewhere, but where? Citing *de Merode* does not clear up the question of what the principle behind its decision is.

IATribunals have tended simply to refer to the concept of IALaw whenever they could not clearly say what they were applying. When the European Bank for Reconstruction and Development (EBRD) Administrative Tribunal states, for instance: “The Tribunal also noted that there is no principle in international administrative law that imposes 100% of salary be paid in case of service incurred illness” (emphasis added),²⁸ the Tribunal appears to justify its decision by referring to IALaw because, otherwise, it may be open to a criticism that the Tribunal made its decision in vacuum. Likewise, when the WBAT states: “according to well-established principles of international administrative law, grade should correspond to position and compensation should correspond to grade” (emphasis added), we are left with an uncertainty as to the concrete law with which the Tribunal came to its decision.

A very interesting finding was made in a UNDT decision. In 2017, when the UNDT had to judge whether an “equal pay for equal value of work” principle was to be applied in that particular case, the applicant stated: “This principle of the inclusion of pensions into the concept of equal pay for work of equal value has been accepted in the context of jurisprudence and General International Administrative Law under the Equal Remuneration Convention 1951” (emphasis added).²⁹ This phrase, “General International Administrative Law under the Equal Remuneration Convention 1951”, is a strange expression. Is it saying that general IALaw is a part of ILO Convention of 1951 (No. 100)? Or *vice versa*? The judgment implies that the ILO Convention provides a reference point to define what is included in the word “remuneration”. The reasoning behind the judgment seems to suggest that the principle of equal remuneration for equal value of work, enshrined in the ILO Convention of 1951 (No. 100), had become customary international law and, therefore, it could be used as a source of law in the adjudication of the IATribunals. The Tribunal, although rejecting the applicant’s plea that he should have been entitled to a higher pension payment in his Special Post Adjustment position, judged on the basis of the equal remuneration for equal value of work principle, and thereby agreed tacitly to accept the application of ILO Convention of 1951 (No. 100), which had allegedly been transformed into a general principle of international law. A more interesting point of this judgment is that the Tribunal even accepted the definition of the remuneration in the ILO Convention to include pension payments.³⁰ The UNDT eventually accepted the “interpretation” of the Convention by the ILO’s supervisory body.³¹

This case is better than earlier ones where decisions simply referred to IALaw without specifying what concrete rules are meant to be included in IALaw. A particular ILO Convention was referred to here, and the decision explicitly records that the tribunal took an international treaty as its source of law. However, since it was apparently not sure whether it could use an ILO Convention as a reference point, it invented a strange phrase, “general IALaw under the Equal Remuneration Convention 1951”, thereby justifying to itself that it made the right reference.

²⁸ *Appellant v. EBRD (Respondent)*, [2018] EBRDAT Decision No. 2018/AT/01 at para. 16.

²⁹ *Glavind v. Secretary-General of the United Nations*, [2017] UNDT Judgment No. UNDT/2017/053.

³⁰ *Equal Remuneration: General Survey*, International Labour Organization Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference 72nd Session (1986) at Report III (Part 4B), para. 17.

³¹ The word interpretation is in quotation marks, because the ILO’s supervisory bodies are not authorized to interpret the ILO Conventions whose implementation they supervise. The right is only given to the ICJ by virtue of Art. 37 of the ILO Constitution.

III. Some Concluding Observations

The word “administrative” is employed in both IATribunals and IALaw. That the latter is supposed to be applied in an IATribunal is misleading, because the original meaning of “administrative” is more than what an IATribunal does and what IALaw implies. An IATribunal does not settle disputes over administrative acts in a larger context. Likewise, IALaw is a wide-ranging concept, also inclusive of legal norms, that apply to the administrative acts of international organizations in general. The word “administrative”, both in IATribunal and IALaw, should have been replaced by the term “civil service”. However, the term used by IATribunals has been firmly established since they were first created in 1928, and followed by a number of institutions for nearly a century. It will not be practical to now change the term to something new. Therefore, international law specialists should always keep in mind that IATribunals, while acknowledging that they exercise a judicial function and not an administrative function, only deal with legal disputes arising from the employment relations of international civil servants.

The problematical use of the word “administrative” in IALaw is even greater. First, here again, the word must be restricted to the meaning of civil service. Second, the source of IALaw is not clear. It seems that the contents of the notion cannot be determined *a priori*. Judges of IATribunals tend to refer to it whenever they cannot find appropriate sources of law to apply. These sources are sometimes judgments of other tribunals or some rules, mostly procedural, in domestic law applicable to IATribunal decisions. Sometimes, they can be general principles of public international law.

As adjudication always contains law-making elements, some of the findings of IATribunals may have law-creating elements. The WTO’s Dispute Settlement Bodies as well as the ILO’s supervisory bodies create a sort of *sui generis* set of rules in WTO law and ILO law, respectively, which had not existed before the establishment of the organizations concerned. Newly emerging principles of law that spring up from the daily activities of the organizations can be described as a sort of spontaneous law³² of international organizations.

While IALaw is a misleading concept because there is no such thing as IALaw *a priori*, if we look at the whole legal framework of adjudication in the internal justice system of international organizations we can assume that there is an emerging group of legal norms within the specific regime of IATribunals which can be called the Law of International Civil Service. It is a *sui generis* law applying to the specific legal regime of international civil service.³³

As no IATribunal, except for the IMFAT, mentions applicable laws in its statute,³⁴ it is only inductively assumed that certain groups of laws are actually applied in their decisions as sources of law. The law governing employment relations in international organizations and the law of international civil service seem to be composed of the following: (1) substantive rules such as employment contracts, staff regulations, staff rules, and administrative orders; (2) procedural and interpretative rules such as statutes of tribunals, general principles of law (e.g. *estoppel*, *good faith*, *equity*, *non-abuse of rights*, and *due process*); and (3) customary international law (e.g. certain human rights principles like non-discrimination principles).³⁵ Judicial precedents of other courts, both national and international, including other IATribunals, could be accepted as far as they are in harmony

³² Roberto AGO, “Positive Law and International Law” (1957) 51(4) American Journal of International Law 691.

³³ Amerasinghe, *supra* note 19; Amerasinghe, *supra* note 2.

³⁴ IMFAT Statute, *supra* note 20 at Article III.

³⁵ Celia GOLDMAN, “Administrative Tribunal: International Monetary Fund (IMF)” in H el ene RUIZ FABRI, ed., *Max Planck Encyclopedia of International Procedural Law* (Oxford: Oxford University Press, 2019), online: OPIL <<https://opil.ouplaw.com/view/10.1093/law-mpeipro/e1619.013.1619/law-mpeipro-e1619>> at para. 39.

with customary international law. The last qualification, in harmony with customary international law, is important. The judicial decisions of national or regional courts (such as the European Court of Human Rights) and of other IATribunals are valid laws applicable in IATribunals, insofar as they reflect established rules in customary international law.³⁶ Theoretically, other courts' decisions have no binding precedential effect on IATribunals. After all, the very establishment of an IATribunals began because of the fact that applicants cannot go to national courts.

It is heartening to see that no author has used the term IALaw in the debates that took place in the conference organized by the ILO to celebrate its 90th anniversary in 2017.³⁷ Instead, many presenters discussed the question of the “General Principles” applied in IATribunals, which was almost the same thing as others would call “General Principles of IALaw”. Even the Registrar of the IMFAT, who serves the tribunal, which in its statute explicitly mentions the word of IALaw, entitled her presentation, “Finding the Law of the International Civil Service in the Jurisprudence of Sister Tribunals”, and used both the expressions of IALaw and the law of international civil service interchangeably in her presentation.³⁸

Having said that, it is an undeniable fact that there is an emerging group of laws that spring up from a great number of IATribunal decisions, or international civil service tribunals, that form a substantive body of legal rules applicable to all of the IATs. It would seem to be a duty of academia to identify this group of laws and provide a theoretical support for practicing judges who look for an appropriate source whenever they face a *non-liquet* situation, and desperately use the concept of IALaw to overcome such difficulties. The law of international civil service is crystallizing itself and judges should not hide themselves behind an ambiguous notion of IALaw but apply the Law of International Civil Service, which includes General Principles, without any fear of being criticized for judging in a vacuum.

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Shin-ichi AGO is the President of the Asian Development Bank Administrative Tribunal, Professor at Ritsumeikan University, Kyoto, and Professor Emeritus of Kyushu University and its Vice-President and former Law Dean.

³⁶ *Ibid.* at para. 41

³⁷ Dražen PETROVIĆ, ed., *90 Years of Contribution of the Administrative Tribunal of the International Labour Organization to the Creation of International Civil Service Law* (Geneva: ILO Publication, 2017) at 215.

³⁸ Goldman, *supra* note 35 at 43–51.

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