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Transnational Justice: Unveiling the Dynamics of International Administrative Tribunals and Administrative Law

Mahar Waqar Fazal¹

Zheng Zhihua²

¹Ph.D. Scholar (International Law), Zhongnan University of Economics and Law, China

E-Mail: adv.maharwaqarfazal@gmail.com

²International Shipping Law School, East China University of Political Science and Law, China

E-Mail: seerechti@gmail.com

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Abstract

This research article explores the realm of international administrative law, focusing on the pivotal role of international administrative tribunals in adjudicating disputes and ensuring accountability across transnational contexts. Beginning with a post-World War II historical overview, it underscores the tribunals' significance in safeguarding individuals' rights within international organisations. Through an examination of the evolution of international administrative law, including the proliferation of specialised tribunals and refinement of norms, it navigates the tension between autonomy and accountability. Drawing on legal scholarship and practical considerations, it addresses challenges such as defining administrative authority and diverse adjudication approaches. The exploration of the Law of International Civil Service is central to the discussion, providing a framework for understanding applicable legal norms. This research contributes to a clearer understanding and effective implementation of international administrative law in contemporary global governance, offering insights crucial for legal scholars, practitioners, and policymakers.



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Corresponding Author's Email: adv.maharwaqarfazal@gmail.com



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1. Introduction

In an interconnected world where borders blur and challenges transcend national boundaries, the pursuit of justice takes on a transnational dimension. At the heart of this pursuit lie international administrative tribunals, enigmatic entities tasked with arbitrating disputes and upholding accountability in a realm that extends beyond the confines of individual states. International administrative tribunals stand as beacons of transnational justice, offering a forum for individuals and entities to seek recourse against actions by international organizations (VanSchaack, 2015). Charged with the weighty responsibility of adjudicating disputes arising from employment, contractual, or disciplinary matters within these organizations, these tribunals wield significant influence over the lives and livelihoods of those subject to their jurisdiction. Yet, their authority is not derived from traditional notions of state sovereignty but rather from the consent of member states and the foundational principles of international law (Kumm, 2004).

The genesis of international administrative tribunals can be traced back to the aftermath of World War II, a period characterized by the birth of the United Nations and the emergence of a new world order (Kissinger, 2015). As international organizations burgeoned in number and scope, so too did the need for mechanisms to safeguard the rights of individuals within their purview. As mentioned by Liang (2012), “It was against this backdrop that the first tribunals, such as the Administrative Tribunal of the League of Nations and the International Labour Organization Administrative Tribunal, came into being, laying the groundwork for a burgeoning field of transnational jurisprudence.”

Over the ensuing decades, the landscape of international administrative law has undergone a profound transformation, marked by the proliferation of specialized tribunals and the evolution of substantive and procedural norms. From the United Nations Dispute Tribunal to the International Criminal Court, these tribunals represent a diverse array of adjudicatory bodies, each with its own mandate and jurisdictional scope (Liang, 2012). Yet, they share a common commitment to upholding the principles of fairness, transparency, and accountability in the exercise of administrative authority.

At the heart of the nexus between international administrative tribunals and administrative law lies the tension between autonomy and accountability. On the one hand, these tribunals serve as bulwarks against arbitrary and unlawful actions by international organizations, providing a vital check on their exercise of power (Alvarez, 2016). On the other hand, they must navigate a complex web of legal and political considerations, balancing the imperatives of institutional independence with the demands of legitimacy and effectiveness.

As the author embarks on this exploration of transnational justice, it is essential to recognize the challenges and opportunities inherent in the realm of international administrative law. From the quest for universality and consistency in decision-making to the imperative of ensuring access to justice for all stakeholders, the road ahead is fraught with complexity. Yet, it is also illuminated by the promise of a more just and equitable world, where the rule of law knows no borders and the rights of individuals are safeguarded without prejudice or discrimination.

Embarking on an exploration of “International Administrative Law” (IALaw) is akin to navigating a labyrinthine maze, where the very essence of “administration” lacks a universally agreed-upon definition.

Unlike the clearly demarcated territories of legislative and judicial powers, the domain of administrative authority often appears nebulous, inviting diverse interpretations across legal systems worldwide (Schwöbel, 2011). This divergence is only amplified by the contrasting characteristics of common law and continental law systems, each contributing its own set of complexities to the tapestry of administrative law.

Across jurisdictions, the approach to adjudicating matters related to administrative acts or decisions varies, with some establishing specialized administrative courts while others entrust such cases to ordinary courts. The addition of the "international" qualifier to administrative law introduces an additional layer of intricacy, prompting scholars to grapple with interpreting IALaw through their unique perspectives.

The research endeavors to unravel the complexities surrounding International Administrative Tribunals (IATribunals) within the broader context of public international law. By delving deep into the subtleties of IALaw, our aim is to discern its foundational principles and essence as they relate to international administrative adjudication. Through a thorough examination of this multifaceted domain, we endeavor to shed light on its enigmatic nature, offering invaluable insights for legal scholars, practitioners, and policymakers alike.

2. International Administrative Tribunals: A Comprehensive Overview

Since the establishment of the first administrative tribunal in 1927 by the League of Nations or the International Labour Organization (ILO), several similar organizations known as "Administrative Tribunals" have been formed (Schwöbel, 2011). Following World War II, as highlighted by Schwöbel (2011), "the United Nations (UN) created its administrative tribunal in 1949, which later developed into the United Nations Dispute Tribunal (UNDT) and subsequently the United Nations Appeals Tribunal (UNAT) in 2009." Many UN specialized agencies, including the "World Health Organization, as well as other international and regional organizations, joined the ILO Administrative Tribunal" (Gulati, 2018). In addition, international financial institutions (IFIs) have established their tribunals to handle complaints from staff members about employment relations.

These courts were created to offer redress for purported harm experienced by employees during their work for these organizations, as required by treaties. If independent judicial mechanisms for redressal are not provided, international organizations would be forced to renounce their immunities and submit to the jurisdiction of local legal systems (Silverstein, 2017). An example of this is a legal issue that was brought before the French courts concerning a member of the staff of the "African Development Bank (AfDB). This case highlighted the significance of internal judicial systems in settling employment conflicts.

Within the context of these tribunals, the term "administration" largely refers to the management of staff rather than the organization's exercise of executive power (Cane, 2010). Staffing and employment contracts are important administrative activities, but the executive position goes beyond personnel problems to include carrying out tasks required by the organization's constitution. This encompasses tasks such as finalizing loan contracts, conducting economic evaluations, and giving decisions to achieve the organization's goals.

Despite their nomenclature, labeling these tribunals as International Administrative Tribunals (IATribunals) may lead to misconceptions regarding their scope. While they adjudicate on

administrative decisions, they are judicial bodies established independently by the organization's general assembly, distinct from administrative review bodies (AGO, 2022). Pre-litigation processes, akin to administrative commissions, precede tribunal proceedings, ensuring exhaustion of internal remedies.

3. Nature of International Administrative Tribunals

International administrative tribunals exist in a complex intersection, frequently characterized by uncertainty. These courts are established by international organizations to resolve disputes that arise between the organizations and their staff members. However, it is still difficult to clearly categorize these entities as either judicial bodies, advisory organs, or subordinate committees, even though this classification is crucial for determining the enforceability of their decisions and comprehending their interactions with other organizational organs (Klabbers, 2015).

In a significant 1954 advisory opinion, as discussed by Theil (2017), “the International Court of Justice (ICJ) confronted this complex issue regarding the United Nations Administrative Tribunal (UNAT).” The ICJ's verdict established the fundamental principles for protecting international officials through the legal system. Examining the fundamental legal principles of UNAT, the ICJ identified important signs of its judicial nature in the Act (Rosenne, 2006). The terms “tribunal” and “judgment,” along with its authority to “pass judgment upon applications,” were interpreted as clear proof of UNAT's inherent judicial character.

Further bolstering the classification of administrative tribunals as judicial entities are a myriad of discernible traits, primarily revolving around the composition of these adjudicatory bodies. An essential characteristic is their independence from the disputing parties, coupled with their permanency and immutability in composition—a trait not subject to alteration by the disputing parties themselves (Aronson, 2010). While some skepticism may arise from the absence of a mandate for specialized legal qualifications among tribunal members, in practice, these tribunals are typically constituted of individuals possessing requisite legal acumen.

Additionally, administrative tribunals bear the imprimatur of international organs, bound by the mandate to apply the domestic law of the international organizations to which they belong. This corpus of law, often dubbed “infra-international law,” finds its wellspring in a plethora of legal instruments, ranging from contractual documents to constituent instruments and staff regulations. Moreover, when rendering their judgments, these tribunals may also draw upon general principles of law and the tenets enshrined in instruments such as the Universal Declaration on Human Rights (Theil, 2017).

While acknowledging the international character of administrative tribunals, the ICJ also underscored their distinctive nature, recognizing them as entities of special character. Although vested with limited jurisdiction, administrative tribunals play an indispensable role in adjudicating complaints lodged against international organizations (Pellet et al., 2014). This nuanced perspective distinguishes them from conventional inter-state disputes, rendering administrative tribunals as *sui generis* international judicial organs.

In essence, the nature of international administrative tribunals resides within a realm of nuanced complexity. They emerge as indispensable arbiters within the international organizational landscape, entrusted with the solemn duty of dispensing justice and

safeguarding the rights of international officials.

4. Party Identification and Binding Effects in Tribunal Decisions

Identifying the parties involved before to the Tribunal is crucial in evaluating the consequences of its decisions (Zarbiyev, 2012). If the parties involved in the dispute are the staff member in question and the Secretary General or another administrative officer, the conflict is categorized as "between component parts of an organ." As a result, the organization as a whole is not obligated to follow the decision made. In contrast, the ICJ offered a different viewpoint, considering the organization itself as a party, and viewing the Secretary General as simply its representative. Therefore, due to the Tribunal's definitive and irrevocable rulings in accordance with its Statute, the organization is required to comply with the verdict and fulfill any compensation granted to the staff member.

Therefore, it is mandatory for all organs of the United Nations, including the General Assembly, to abide by the decisions made by the Tribunal (Öberg, 2005). The Court highlighted the firmly established legal principle that decisions made by such judicial bodies are legally obligatory for the parties involved in the dispute. The enforceability of an administrative tribunal's decision depends on two key factors: the court-like characteristics of the body and the organization's participation as a party in the conflict. Nevertheless, a persistent debate remains: whether the principal organ is completely bound by the tribunal's rulings or has the power to modify or reject the tribunal's awards under specific situations. The Court emphasized in its 1954 advisory opinion that the UNAT Statute intentionally does not include any provision for reviewing its rulings, indicating a conscious decision made by the General Assembly (Benvenisti, 2018).

The International Court of Justice (ICJ) rejected the idea of the General Assembly acting as a reviewing body due to its makeup and functions, which are not suited for a judicial role. This is especially true when the United Nations Organization is one of the parties involved in the dispute. The Court emphasized that, as mentioned by Akande (1997), "to examine a UNAT award, there must be a specific provision in its Statute or another governing legal instrument." As a result, the General Assembly can only affect the finality of the Tribunal's verdicts by making changes to its Statute or by creating an additional document, which would prevent the Assembly from having retroactive authority. Furthermore, the Court did not exclude the possibility of the Tribunal modifying a verdict in exceptional situations when new crucial facts are discovered. This situation is different from the concept of "appeal" as defined in Article 10(2) of the Statute of UNAT (Rosenne, 2006).

To strengthen its position, the Court rejected various arguments, including claims about the necessity of a tribunal with the authority to make decisions that are binding on the General Assembly, as well as conflicts between the binding nature of Tribunal awards and the U.N. Charter's provisions on the Assembly's budgetary powers (Gomula, 1991). In the end, the Court upheld the General Assembly's broad jurisdiction to decide the specifics of creating a tribunal, which includes the power to relinquish its control over UNAT verdicts. In addition, the Court dismissed arguments that questioned the General Assembly's implicit authority to restrict or regulate the Secretary General's authority in personnel affairs. The Court referred to Article 101 of the U.N. Charter as the basis for the Assembly's ability to exert such control.

Therefore, any further acts taken by UNAT, which were approved in advance by the Assembly as stated in the UNAT Statute, were within the defined boundaries set by the General Assembly (Gomula, 1991). The most disputed debates revolved around the interpretation of UNAT as a subordinate body according to Article 22 of the Charter. Judge Hackworth's prudent methodology encouraged upholding the organization's authorities within rational boundaries, highlighting that the principle of implicit powers should supplement, rather than supersede,

declared powers (Schermers & Blokker, 2011). He contended that the presence of a specific provision, like Article 22, prevented the utilization of the doctrine of implied powers to rationalize the establishment of a tribunal with a distinct character. If UNAT were considered a subsidiary organ in the conventional sense, it would not possess the power to enforce its choices on the main organ.

5. Legal Frameworks in International Administrative Tribunals

Once it is determined that an International Administrative Tribunal (IATribunal) is a legal entity that resolves conflicts inside international organizations, a crucial question emerges about the governing legislation within these tribunals. Which legal framework should judges strictly follow?

One can mistakenly assume that “International Administrative Law” (IALaw) can be applied based on its similarity to the term “administrative.” However, the concept of IALaw, although frequently mentioned by judges, applicants, and respondents in IATribunal proceedings, is frequently misused (AGO, 2022). Instead, these courts should adopt a more precise legal framework, maybe referred to as “International Civil Service Law,” which corresponds to their function of resolving employment issues within international organizations.

In addition, IATribunals, being autonomous bodies inside intergovernmental organizations, function with legal immunities that protect them from the authority of the host state, which means they are not bound by local laws. Unlike domestic courts, which have inherent relevant laws, IATribunals do not have specific indicators within their statutes regarding applicable law. For Instance, as mentioned by Yee (2016), “although Article 38 of the ICJ Statute and particular international conventions provide details about the relevant law, the majority of IATribunal statutes do not address this matter. The IMF Administrative Tribunal (IMFAT) Statute contains an exemption that specifies the use of the internal law of the Fund and established principles of international administrative law for judicial review.”

The IMFAT Statute does not provide a specific definition for the term international administrative law. It appears to include ideas that are similar to the general principles of law mentioned in “Article 38(1)(c) of the ICJ Statute” (Dhinakaran, 2011). These principles mostly apply to procedural matters, which sets them apart from substantive international law standards.

Essentially, although IATribunals frequently refer to general principles of law, they may not strictly conform to the interpretation specified in Article 38 of the ICJ Statute. However, this strategy effectively avoids a situation where there is no legal framework by including ideas that are regularly used in national courts.

6. Legal Precedents and International Administrative Law

The UN Dispute Tribunal (UNDT) recently issued a decision in which it reproached the Respondent for declining to use their discretion in support of the Applicant. The court argued that the cost of retroactive promotion was deemed excessive and contended that the fulfillment of obligations under international administrative law was achieved through the payment of the Special Post Adjustment (Hovell, 2016). The tribunal stated that such reasoning constituted a

failure on the part of the Respondent to fulfill its obligations under international administrative law.

In a case, as discussed by Borrett et al., (2019) “before the International Labour Organization Administrative Tribunal (ILOAT) involving the Organization for the Prohibition of Chemical Weapons (OPCW), the OPCW contended that if national taxation was not reimbursed, it would be necessary to reimburse the affected staff members under international administrative law.” International administrative law was raised as a substantive standard in both cases, separate from procedural concepts such as estoppel or audi alteram partem.

Nevertheless, depending on rulings from other tribunals presents difficulties. Although tribunals frequently reference precedents from reputable institutions like the World Bank Administrative Tribunal (WBAT), the underlying justification for relying on such precedents remains ambiguous. For instance, the interpretation methods employed by WBAT in the de Merode case cannot be attributed to previous rulings, which raises inquiries regarding the source of the legal principles referenced.

The decision of the “European Bank for Reconstruction and Development” Administrative Tribunal to invoke international administrative law in a case concerning salary payment during illness was intended to defend its decision-making process from criticism by demonstrating that it was not made in isolation (Seiler, 2020). In a similar manner, the WBAT defended its decision about grade and pay by citing established principles of international administrative law, but the specific legal foundation remains unclear.

A significant discovery emerged in a UNDT ruling concerning the implementation of the "equal pay for equal value of work" principle. The applicant cited the “Equal Remuneration Convention 1951” as an example of General International Administrative Law, implying that this principle has acquired the status of customary international law (AGO, 2022). The tribunal implicitly acknowledged the use of ILO Convention No. 100 as a legal reference, and even included its definition of remuneration to encompass pension payments.

This case is notable because it clearly recognized an international convention as a legal authority, but there is considerable dispute about how it should be applied. Nevertheless, the tribunal explained its invocation of international law and acknowledged the importance of establishing clear legal principles by referring to the “general IALaw under the Equal Remuneration Convention 1951” (AGO, 2022).

7. Conclusion

In conclusion, the terminology of "administrative" within the context of International Administrative Tribunals (IATribunals) and International Administrative Law (IALaw) presents challenges due to its narrow connotations. While IATribunals primarily address disputes related to international civil service employment, IALaw encompasses a broader spectrum of legal norms governing the administrative acts of international organizations. Despite historical usage, it might be more accurate to consider replacing "administrative" with "civil service" to better reflect the tribunals' scope. However, practical considerations hinder a wholesale shift in terminology.

Despite the nebulous sources of IALaw, an emerging body of legal norms specific to IATribunals, termed the Law of International Civil Service, can be identified. This framework

encompasses substantive employment rules, procedural regulations, and customary international law principles. Recent discussions have seen a shift towards exploring "General Principles" applied in IATribunals, reflecting a desire for clearer and more specific legal terminology.

In navigating the complexities of IATribunals and IALaw, it is crucial for legal specialists to recognize and embrace this evolving framework. Grounded in substantive principles and supported by legal scholarship, the Law of International Civil Service provides a solid foundation for adjudicating disputes within international organizations. By moving away from ambiguous notions of IALaw and towards a more precise understanding of the legal norms applicable to IATribunals, practitioners and scholars alike can contribute to the development of a clearer and more effective framework for transnational justice.

References

- AGO, S. I. (2022). A Few Thoughts about the Concepts of International Administrative Tribunals and International Administrative Law. *Asian Journal of International Law*, 12(2), 207-215.
- Akande, D. (1997). The International Court of Justice and the Security Council: Is there room for judicial control of decisions of the political organs of the United Nations?. *International & Comparative Law Quarterly*, 46(2), 309-343.
- Alvarez, J. E. (2016). International organisations and the rule of law. *New Zealand Journal of Public and International Law*, 14(1), 3-46.
- Aronson, O. (2010). Out of many: military commissions, religious tribunals, and the democratic virtues of court specialization. *Va. J. Int'l L.*, 51, 231.
- Benvenisti, E. (2018). Upholding democracy amid the challenges of new technology: what role for the law of global governance?. *European Journal of International Law*, 29(1), 9-82.
- Borrett, V., Timperley, C. M., Forman, J. E., & Tang, C. (2019). Investigative science and technology supporting the Organization for the Prohibition of Chemical Weapons (OPCW). *Australian Journal of Forensic Sciences*, 51(6), 611-622.
- Cane, P. (2010). Judicial review and merits review: comparing administrative adjudication by courts and tribunals. In *Comparative Administrative Law*. Edward Elgar Publishing.
- Dhinakaran, R. (2011). Law of the International Civil Service: A Venture into Legal Theory. *International Organizations Law Review*, 8(1), 137-174.
- Gomula, J. (1991). The International Court of Justice and Administrative Tribunals of International Organizations. *Mich. J. Int'l L.*, 13, 83.
- Gulati, R. (2018). An International Administrative Procedural Law of Fair Trial: Reality or Rhetoric?. *Max Planck Yearbook of United Nations Law Online*, 21(1), 210-270.
- Hovell, D. (2016). Due process in the United Nations. *American Journal of International Law*, 110(1), 9-48.
- Kissinger, H. (2015). *World order*. Penguin Books.
- Klabbers, J. (2015). The EJIL foreword: the transformation of international organizations law. *European Journal of International Law*, 26(1), 9-82.
- Kumm, M. (2004). The legitimacy of international law: A constitutionalist framework of analysis. *European Journal of International Law*, 15(5), 907-931.
- Liang, J. (2012). The Inherent Jurisdiction and Inherent Powers of International Criminal Courts and Tribunals: An Appraisal of Their Application. *New Criminal Law Review*, 15(3), 375-413.
- Öberg, M. D. (2005). The legal effects of resolutions of the UN Security Council and General Assembly in the jurisprudence of the ICJ. *European Journal of International Law*, 16(5), 879-906.

Pellet, A., TAMS, C., & GATTINI, A. (2014). Decisions of the ICJ as sources of International Law. *Speech Text*, 1-35.

Rosenne, S. (2006). The Law and Practice of the International Court, 1920-2005 (4 vols). In *The Law and Practice of the International Court, 1920-2005 (4 vols)*. Brill Nijhoff.

Schermers, H. G., & Blokker, N. M. (2011). Chapter Three Rules for International Organs. In *International Institutional Law* (pp. 155-290). Brill Nijhoff.

Schwöbel, C. E. (2011). Global constitutionalism in international legal perspective. In *Global Constitutionalism in International Legal Perspective*. Brill Nijhoff.

Seiler, N. (2020). Evolution of the Grievance System of the European Bank for Reconstruction and Development: Lessons Learnt and Way Forward. In *The Role of International Administrative Law at International Organizations* (pp. 172-187). Brill Nijhoff.

Silverstein, R. (2017). Revisiting the legal basis to deny international civil servants access to a fundamental human right. *Mich. St. Int'l L. Rev.*, 25, 375.

Theil, S. (2017). Is the 'living instrument' approach of the European Court of Human Rights compatible with the ECHR and International Law?. *European Public Law*, 23(3).

VanSchaack, B. (2015). The building blocks of hybrid justice. *Denv. J. Int'l L. & Pol'y*, 44, 169.

Yee, S. (2016). Article 38 of the ICJ Statute and applicable law: selected issues in recent cases. *Journal of international dispute settlement*, 7(2), 472-498.

Zarbiyev, F. (2012). Judicial activism in international law—a conceptual framework for analysis. *Journal of International Dispute Settlement*, 3(2), 247-278.