The principle of acquired rights

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The principle of acquired rights

I. Nature and origin
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I. Nature and origin

- One of the foremost general principles governing the international civil service
- Developed and continually applied by the international administrative tribunals, in particular the ILOAT, and affirmed by doctrine
- Must be respected by any IGO in the adoption and application of its employment law
II. Purpose

- To strike the delicate balance between the competing needs of
  
  A) IGOs to adapt their functioning and employment conditions to evolving circumstances
  
  B) personnel to have stability of employment conditions and to be protected against arbitrary change and erosion
  
- Recognition that international civil servants do not participate in a democratic legislative process and, thus, require enhanced protection
III. Content
The notion of acquired rights

A right the staff member may expect to survive any amendment of the rules

broader than the rule of non-retroactivity

protected as a general principle even without explicit provisions

Ayoub, ILOAT No. 832
• When is a right acquired?

• Evolving approach of the Tribunal
• Acquired rights result from contractual provisions
  • *Sherif*, ILOAT No. 29

• Acquired rights are not restricted to contractual provisions but can also derive from statutory provisions, if considered essential/fundamental
  • *Lindsey*, ILOAT No. 61

• Acquired rights may also derive from a decision
  • The essential/fundamental nature is established with a three-pronged test relating to the nature of the provision, the reason for the impugned change and its consequences
  • *Ayoub*, ILOAT No. 832
The Ayoub test
(ILOAT No. 832)

Nature of the term

Reason for the change

Consequence on the individual

UNAdT, No. 1225
ATBIS, No. 1/2006
WBAT, de Merode, No. 1
ADBAT, Mesch and Siy 3, No. 18
Los Cobos and Wenger, ILOAT No. 391
Cumulative impact

Ayoub 2, ILOAT No. 986
“A run of small amendments may offend against the whole spirit of the rules, and to ignore them would be a miscarriage of justice ... The full set of decisions is material in ruling on the plea of breach of acquired rights.”

UNAdT, Brede II, No. 404
“... the Tribunal is bound to express its concern at measures which, taken individually, are of limited effect but which, taken as a whole, amount to erosion, and may seriously harm the integrity of the international civil service.”
III. Selected jurisprudence

- Salary and adjustment
- Allowances
- Pension and adjustment
- Financial considerations
Salary

*Settino, ILOAT No. 426*

“The right to salary and to the well-established allowances, such as those for dependents, is essentially a fundamental right.

But this does not mean that every item making up the salary or allowance and every detail of the process by which it is calculated are to be deemed inviolate; or that minor benefits – what are sometimes called ‘fringe benefits’- are to be treated as unchangeable features of a contract that may last for 30 years or more.”

*See also: Mertens 2, ILOAT No. 371*
Salary adjustment

**Allaert 3, ILOAT No. 1821**

“[Staff members] have acquired rights neither to a particular level of adjustment nor to a particular methodology. They have, of course, a legal right to a methodology for salary adjustment … ”

**Berthet 2, ILOAT No. 1912**

“International civil servants do not have an acquired right - any more than national civil servants - to an automatic indexing of their salaries.”
Allowances

Guirao Sanchez, ILOAT No. 1886

“the outright abolition of the expatriation allowance would violate an acquired right, although there is no acquired right to the amount and the conditions of payment of the allowance.

… [Since the impugned decisions] consists of a progressive reduction of the expatriation allowance, and not its outright abolition, resulting from general budgetary restrictions, the Tribunal finds that [it] does not violate the right of the complainant to the maintenance of his acquired rights.”

See also: Los Cobos and Wenger, ILOAT No. 391
Pension

*Lamadie 2, ILOAT No. 365 + Biggio 3, ILOAT No. 366*

“Someone who offers his services to an organisation may of course be expected to give decisive importance to the provisions on his pension rights. Any curtailment should therefore be regarded as affecting an acquired right.”

*Ayoub 2, ILOAT No. 986*

“The relations of staff with an international organisation do not end when they leave its employ. The pension scheme forms part of the administrative arrangements they may look forward to and, like pay, pensions are governed by basic rules that are binding on the organisation.”

*UNAT, Connolly-Battisti*, No. 400 ; UNAdT, No. 1253
Pension adjustment

ILOAT No. 2793

“The principle ... that the methodology adopted by an international organisation to determine its staff members’ salary adjustments must result in stable, foreseeable and clearly understood results also applies to retirement pensions.”

*Berthet 3, ILOAT No. 2089*

“To accept that pensions must always be adjusted to keep in line with post-retirement salary increases would be to expose pension funds to an uncertain and unmeasurable future liability which might well in the end wipe out the funds themselves.”
Financial considerations

Ayoub 1, No. 832: “Nor can the finances of the body … be discounted.”

Berthet 2, No. 1912: “the budgetary situation of the organisation and the member States … could be taken into consideration.”

Guirao Sanchez, ILOAT No. 1886

Cuvillier 3, No. 990: “The Tribunal rejects (the) solution which is prompted merely by a desire to make savings.”

Allaert 3, No. 1821: “The mere desire to save money at the staff’s expense is not by itself a valid reason for departing from an established standard of reference.”

UNAdT, Christy, No. 546
UNAdT, Upadhya, No. 537
UNAT, Connolly-Battisti, No. 400
Acquired rights: *quo vadis*

- Historically, administrative tribunals have established general principles protective of staff rights in the interest of the proper functioning of the international civil service

- Marked evolution in the political and budgetary landscape of IGOs as well as in the social structure of the wider labour market
  - Will this have an impact on the approach of the tribunals?
  - Need for guidance
Thank you