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EDITORIALE SCIENTIFICA

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THE DUTY OF CARE ON INTERNATIONAL ORGANIZATIONS: EMERGING TRENDS IN CONTEMPORARY JURISPRUDENCE

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1. *Introduction*

In recent decades, both natural and man-made disasters have increased in frequency, scale, and impact, affecting a growing number of people and causing substantial material damage.[1] Recognizing the urgent need for assistance during emergencies – including protection, food, water, shelter, sanitation, and medical care – several International Organiza-

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[1] According to The Global Humanitarian Assistance Report 2023, p 11: «In 2022, long-term, complex crises continued to be the norm, and the number of people requiring humanitarian assistance was greater than ever. New and ongoing conflicts (such as in Ukraine, Myanmar and Ethiopia), climate change-related disasters (such as in Pakistan and the Horn of Africa), and the ongoing socioeconomic fallout from the Covid-19 pandemic (such as in Sri Lanka) drove an increase in the number of countries in crisis. As existing crises within countries continued to deepen, the number of countries experiencing protracted crisis and the number of countries with high levels of humanitarian need also grew in 2022. In 2022, an estimated 406.6 million people living in 82 countries were assessed to be in need of humanitarian assistance – continuing a trend of consistent annual growth. This represents an increase of one-third, from 306.0 million people living in 73 countries in 2021, and growth of more than two-thirds (67%), from 243.8 million people in 2020 (excluding needs related to Covid-19)»: available at https://devinit-prod-static.ams3.cdn.digitaloceanspaces.com/media/documents/GHA2023_Digital_v9.pdf, p. 25. The costs of these events have increased dramatically: according to Swiss Re «insured losses from natural catastrophes outpaced global economic growth over the past 30 years: From 1994 to 2023, inflation-adjusted insured losses from natural catastrophes averaged 5.9% per year, while global GDP grew by 2.7%. In other words, over the last 30 years, the relative loss burden compared to GDP has doubled» (https://www.swissre.com/press-release/New-record-of-142-natural-catastrophes-accumulates-to-USD-108-billion-insured-losses-in-2023-finds-Swiss-Re-Institute/a2512914-6d3a-492e-a190-aac37feca15b). Although limited to the calculation of insured losses, this figure represents well how dramatic the situation has become.

tions (IOs) have emerged as key providers of security, post-conflict reconstruction aid, technical assistance, and humanitarian aid. Notably, the United Nations (UN) and its agencies, along with regional bodies like the European Union (EU) and the African Union (AU), have assumed prominent roles in these efforts. In the meantime, the evolving internal situation in many countries receiving the international support, poor security situation, fragile economies, increase of extreme weather conditions as a consequence of climate change, new and old diseases associated with natural disasters, stressful working conditions due to financial or security constraints, all have negatively affected the quality of life of international workers and their physical and mental health conditions.

According to a report issued by the UN Secretary-General in November 2023, more than 20,000 staff were deployed in countries ranging from hardship category B to E, considering factors such as safety, security, healthcare, housing, climate, isolation, and amenities.[2] Similarly, as of April 2024, the European Union had about 2,000 staff engaged in 13 EU Civilian CSDP Missions, marking a significant increase from previous years.[3] The UNSG stated, in another report issued in September 2023,[4] that in the period between January 2022 and June 2023 «violent extremist groups expanded across the Sahel and Central and East Africa, and remained a persistent threat across many other parts of the world. Those groups continued to issue propaganda casting humanitarian workers and organizations, including the United Nations, as legitimate targets and inciting their affiliates and sympathizers to attack them».[5] The SG also underlined that in the period under consideration about 2,380 UN staff were affected by safety and security incidents.[6] This represents a significant increase compared to the previous decades. Against this background, it is generally agreed that all International Organizations deploying field operation in non-permissive areas have a precise Duty of Care (DoC) towards their staff. According to the UN High-Level Working Group on «Reconciling duty of care for UN personnel with the need "to stay and deliver" in high-risk environments», «the duty of care constitutes a non-waivable duty on the part of the organizations to mitigate or otherwise address foreseeable risks that may harm or injure its personnel and their eligible family members. […]».[7]

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[2] Report of the UN Secretary-General, Composition of the Secretariat: Staff demographics, Report of the Secretary-General, A/78/569, 10 November 2023. In the UN, all duty stations are categorized into one of six categories. A to E duty stations are rated on a scale that assesses the difficulty of working and living conditions with A being the least and E, the most difficult. Categories are arrived at through an assessment of the overall quality of life. In determining the degree of hardship, consideration is given to local conditions of safety and security, health care, housing, climate, isolation and level of amenities/conveniences of life. See more at https://icsc.un.org/Home/DataMobility.
In 2023 the EU had 50 field offices in 42 countries with a high number of employed (national and international staff) working in the field: European Commission, Commission Staff Working Document General Guidelines on Operational Priorities for Humanitarian Aid in 2024, SWD (2023) 354 final, 8 November 2023, p 46, available at htps://commission.europa.eu/system/files/202311/SWD_2023_354_F1_STAFF_WORKING_PAPER_EN_V5_P1_3048169.PDF. Furthermore, at the end of 2023, there were 21 EU operations and missions deployed in which about 2500 military and 1500 civilians were working: https://www.eeas.europa.eu/eeas/missions-and-operations_en#9620tp ://www.eeas.europa.eu/eeas/missions-and-operations_en#9620.

[3] Data provided in the *Factsheet on Civilian CSDP Mission personnel*, ARES (2024)2948354 22/04/2024.

[4] Safety and security of humanitarian personnel and protection of United Nations personnel, Report of the Secretary-General, A/78/369, 20 September 2023.

[5] *Ibidem*, para 4.

[6] *Ibidem*, Annex I at page 20.

[7] UN High-Level Committee on Management, Thirty-first Session, 22-23 March 2016, Final Report, HLCM Working Group on «Reconciling Duty of Care for UN personnel while operating in high-risk environments», available at https://unsceb.org/sites/default/files/imported_files/2016.HLCM_.11%20-

Considering these statistics, the UN General Assembly (UNGA), in its Resolution 78/118 adopted in December 2023, expressed deep concern over «the increasing trend of safety and security incidents, including while carrying out duties, which affect humanitarian personnel and United Nations and associated personnel, as well as locally recruited personnel».[8] The inclusion of locally recruited staff in the DoC framework is a welcome change that recognizes the significance of their contributions and the risks they face, given that local staff account for a large majority of casualties, incidents, cases of kidnapping, harassment, banditry and intimidation.[9] This shift is reflected in UNGA Resolution 78/118, which emphasizes the need to enhance the safety and security of locally recruited personnel while maintaining operational effectiveness. The UNGA also requested the UN Secretary-General (UNSG):

«to keep under review the relevant United Nations safety and security policy and to enhance the safety and security of locally recruited personnel, while maintaining operational effectiveness, and calls upon the United Nations and humanitarian organizations to ensure that their personnel are adequately consulted on, informed about and trained in the relevant security measures, plans and initiatives of their respective organizations, which should be in line with applicable national laws and international law».[10]

Finally, it should be noted that after the COVID-19 crisis, several IOs decided to re-examine and revise (where necessary) their internal polices related to the DoC. For example, in September 2019 the UNSG adopted an updated version of its bulletin «Addressing discrimination, harassment, including sexual harassment, and abuse of authority»,[11] in which several aspects of the issue here under scrutiny have ben innovated.[12] In addition, OCHA adopted a new «Duty of Care Framework», which was endorsed in 2019 by the PSMC[13] while UNESCO updated, in 2021, its «Staff regulations and staff rules»[14]. Similar trends occurred at regional level: the OSCE Office for Internal Oversight launched, in 2021, an audit on the fulfilment of DoC obligations.[15]

%20Final%20Report%20on%20HLCM%20Strategic%20Group%20on%20Reconciling%20duty%20of%20care%20for%20UN%20personnel%20while%20operating%20in%20.pdf.

[8] UNGA Resolution 78/118. Safety and security of humanitarian personnel and protection of United Nations personnel, adopted on 8 December 2023.

[9] For a recent article dealing with similar issues, please refer to K. OKSAMYTNA, S. BILLERBECK, *Race and International Organizations*, in *International Studies Quarterly*, 2024, 68(2).

[10] UNGA Resolution 78/178, para 41.

[11] UNSG ST/SGB/2019/8, which superseded ST/SGB/2008/5.

[12] The revision of the UNSG Bullettin must be read in conjunction with the April 2018 Report of the UN High-Level Committee on Management (HLCM), Cross-functional Task Force on Duty of Care for personnel in high-risk environment, available htttps://unsceb.org/sites/default/files/imported_files/2018.HLCM_.5.Rev_.1%20-%20Duty%20of%20Care%20Task%20Force%20Report.pdf.

[13] Available at https://resourcecenter.undac.org/wp-content/uploads/2021/01/OCHA-Duty-of-Care-Framework_PSMC-endorsed.pdf.

[14] https://unesdoc.unesco.org/ark:/48223/pf0000375491. A more detailed analysis of all these recent documents devoted to redefining the precise contours of the Duty of Care obligations incumbent on International Organisations highlights that in a few cases the emphasis is on the general principles, while in others it is on the details of the obligations and to the identification of the duty bearers within the organisations themselves.

[15] OSCE, OIO, Learning from Working during the COVID-19 Pandemic, Final Report, 12 October 2021, available at http s://www.osce.org/files/f/documents/a/9/507401.pdf. In the OSCE several agile auditing tasks have been undertaken in 2020 including on the following topics: «Critical staff/in-premises contamination prevention; Connectivity; Survey on staff situation, challenges and concerns; Remote working enablers;

Before defining the precise goal of this article, it is important to detail which aspects of the Duty of Care obligations will be here investigated. Indeed, in recent decades, the concept of Duty of Care has expanded and exerted influence over new areas of law, primarily due to contributions from both national and international jurisprudence. For example, in European public law, the "duty of care" or "diligence" principle has been consistently referenced by the Court of Justice of the European Union due to its central role in calibrating the intensity of judicial review of EU acts at legislative, regulatory, and single-case decision-making levels.[16] In the health sector, it has become a critical principle regulating clinical and nursing practice.[17] Furthermore, in international sport law, the principle has garnered significant interest concerning the welfare of athletes.[18] The DoC surfaced also in several national legal system at Constitutional level,[19] and in the wider public law as, for example, a duty applicable to directors and officers to set governance standards in the public sector,[20] a general duty of the state to actively protect its citizens temporarily located outside national border,[21] as a specific obligation related to corporate responsibility to respect and enforce human rights also by parent and subcontracting companies.[22] In the environmental field, it imposes statutory liability on agents who interact with the environment to avoid causing harm,[23] and serves as a basis for holding governments accountable for their climate actions based on human rights.[24]

In fact, the duty of care is a fundamental principle that applies broadly to administrative actions, not just within specific sectors. In EU administrative law, it is associated with

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Detailed update on HR risks; Analysis of the evolution of leave balances; Follow-up on emerging risks handling, and Programmatic delivery in the OSCE- ODIHR».

16 H.C.H. HOFMANN, *The Duty of Care in EU Public Law – A Principle Between Discretion and Proportionality*, in *Review of European Administrative Law*, 2022, 13(2), pp. 87-112.

17 L. SHEAHAN, S. LAMONT, *Understanding Ethical and Legal Obligations in a Pandemic: A Taxonomy of "Duty" for Health Practitioners,* in *Journal of Bioethical Inquiry*, 2020, 17(4), pp. 697–701; I. DOWIE, *Legal, Ethical and Professional Aspects of Duty of Care for Nurses*, in *Nursing Standard*, 2017, pp. 16-19; S. FULLBROOK, *The Duty of Care: An Update Current Legal Principle*, in *Journal of Perioperative Practice*, 2005, 15(2), p. 78 ff.

18 K. CARPENTER. *Extending the Duty of Care to Achieve Justice for Abused Match Officials*, in *International Sports Law Journal*, 2022, 22, pp. 116-131. See also T. GREY-THOMPSON, *Duty of Care in Sport: Independent Report to Government*, 2017, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/610130/Duty_of_Care_Review_-_April_2017__2.pdf.

19 P. J. COOPER, *The Duty to Take Care: President Obama, Public Administration, and the Capacity to Govern,* in *Public Administration Review*, 2011, p. 7 ff.

20 B. SAUNDERS, *The Public Sector Duty of Care and Diligence*, in *University of New South Wales Law Journal*, 2019, 42(2), p. 652.

21 See more on this in H. LEIRA, N. GRAEGER, *The Duty of Care in International Relations, Protecting Citizens Beyond the Border*, London, 2019.

22 S. COSSART, J. CHAPLIER T., BEAU DE LOMENIE, *The French Law on Duty of Care: A Historic Step Towards Making Globalization Work for All*, in *Business and Human Rights Journal*, 2017, 2, pp. 317-323. On the specific issue of the need of platforms to abide by a "duty of care," going beyond today's notice-and-takedown based legal models to more proactively weed out illegal content posted by users, see: D. KELLER, *Systemic Duties of Care and Intermediary Liability*, *The Center for Internet and Society at Stanford Law School Blog*, May 28, 2020, available at https://cyberlaw.stanford.edu/blog/2020/05/systemic-duties-care-and-intermediary-liability.

23 R. GREINER, *Environmental Duty of Care: from Ethical Principle Towards a Code of Practice for the Grazing Industry in Queensland (Australia)*, in *Journal of Agricultural and Environmental Ethics*, 2014, 27(7), pp. 527-547 and B. MAYER, *The Duty of Care of Fossil-Fuel Producers for Climate Change Mitigation, Milieudefensie v. Royal Dutch Shell District Court of The Hague (The Netherlands)*, in *Transnational Environmental Law*, 2022, 11(2), pp. 407-418.

24 P. MINNEROP*, Integrating the "Duty of Care" under the European Convention on Human Rights and the Science and Law of Climate Change: The Decision of The Hague Court of Appeal in the Urgenda Case*, in *Journal of Energy & Natural Resources Law*, 2019, 37(2), pp. 149–179.

the principle of good administration and is often viewed as a general principle guiding administrative conduct. Therefore, the DoC is not only a criterion used by courts to review administrative actions but also a principle that must be upheld by administrative bodies and enforced by law-making bodies.[25]

This investigation will focus exclusively on examining the precise contours of the duty of care as an obligation incumbent on IOs towards their civilian staff, particularly the mobile workforce operating in challenging contexts.[26]

Based on these premises, in the present study, we first provide a summary of the key findings from our 2018 publication. Subsequently, we examine the decisions on the subject issued by international courts between 2018 and 2024: this period has been extremely relevant for the evolution of the notion and interpretation of the duty of care and for its implementation within several IO's Our aim is to identify whether and to what extent these judgments have solidified previously observed trends, adapted to the evolving situation in the field, and expanded the notion of DoC to cover new areas and obligations incumbent on IOs. Unfortunately, with a few worthwhile exceptions,[27] in the recent years these legal aspects of the DoC have been neglected by international law scholars. This analysis will therefore not only outline the updated parameters of the DoC expected from IOs towards their mobile workforce,[28] but also provide pertinent information for decision-makers within IOs to adjust and innovate internal policies to align with international obligations. It will also enable the staff of IOs to gain a better, updated understanding of their rights.

2. *Key Findings of the 2018 Investigation*

The comprehensive investigation conducted in 2018 contributed to a more precise definition of the content of the Duty of Care, drawing from relevant documents and jurisprudence available at the time. The jurisprudential contribution in this regard proved pivotal and notably spurred other UN actors, such as the UNGA and the UNSC, to take a more

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[25]According to the study *«The General Principles of EU Administrative Procedural Law. In-depth Analysis»* issued in 2015 by the Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs, Legal Affairs, the he duty of care is a general principle of EU Administrative act and it «includes the right of every person to have his or her affairs handled impartially, fairly and within a reasonable time. It obliges the administration to carefully establish and review all the relevant factual and legal elements of a case taking into account not only the administration's interests but also all other relevant interests, prior to making decisions or taking other steps. Impartiality requires the absence both of arbitrary action and of unjustified preferential treatment including personal interes». The document is available at https://www.europarl.europa.eu/RegData/etudes/IDAN/2015/519224/IPOL_IDA(2015)519224_EN.pdf.

[26] Although it is true that, thanks to the cross-fertilization among various judiciary bodies very often the same DoC obligation are binding also States vis-à-vis their national staff, our main focus will be on the obligations incumbent on IOs.

[27] See, for example, A. SPAGNOLO, *The Boundaries of the Duty of Care of International Organizations Towards Their Civilian Personnel Deployed Abroad: Insights from the Recent ILOAT Case-law*, in *Diritti umani e diritto internazionale*, 2019, 3, p. 561 ff. and F. CAPONE, *The Quest for Remedies (for Duty of Care Violations) Before International Administrative Tribunals*, in *Diritti umani e diritto internazionale*, 2019, 3, p. 539 ff.

[28] Mobile working force must be understood in the frame of this article as any person, international or local, recruited or seconded, temporary or permanent staff, working for or on behalf of or in any case under the responsibility of an International Organization. The specific content of the Duty of Care may, however, vary depending on the circumstances and the level of risk faced by the different categories of personnel.

proactive stance in this domain. Furthermore, international jurisprudence has exerted a significant influence on the content of policies adopted by these UN institutions, exemplifying a notable instance of inter-institutional cross-fertilization.

The 2018 research identified the following ten constitutive principles of the Duty of Care:

Principle 1 – Safe working environment: International Organizations have a duty to provide a working environment conducive to the health and safety of their personnel.[29]

Principle 2 – Active protection of staff: International Organizations shall actively protect their officers facing general and specific challenges and/or threats. It is the duty of the International Organization, as an employer, to make the inquiries necessary for a reasonable and careful assessment of the risks connected to employment, taking into consideration the nature, context, and specific requirements of the work to be performed. When using independent contractors, International Organizations must use reasonable care in selecting them and maintain sufficiently close supervision over them to make sure that they use reasonable care.[30]

Principle 3 – Protection of private property: International Organizations shall act with care and consideration about their personnel's private property.[31]

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[29] The International Organization's specific obligation to provide a safe working environment for its employees has been consistently upheld by various international administrative tribunals. The term "workplace" has to be intended in a wide sense, including the headquarters, any country of deployment/activity of the personnel, as well as wherever the Organization has ongoing official business. The employer has a duty to act with reasonable care to prevent and mitigate any harm to the health and safety of its personnel. The specific measures to be adopted will vary depending on a number of factors, including the severity and likelihood of the risks identified (see Principle 2), the context, the nature of the employment, specific vulnerabilities of the personnel, *etc.* In order to discharge this duty, the International Organization must allocate financial and human resources to ensuring health and safety in the workplace as a matter of priority, taking concrete and targeted steps towards the fulfilment of this obligation. In any case the measures should not be discriminatory and personnel should not be deprived of protection due to the nature of their employment contract with the Organization (e.g. temporary staff, consultants, *etc.*). See also para. 32 of the UNGA 78/118.

[30] International Organizations have a positive duty to actively protect their officers facing general and specific challenges and threats. This includes addressing specific challenges linked, for instance, to gender or sexual orientation, as well as addressing cases of physical and non-physical violence in the work place. Fulfilling this duty requires having in place a system for analysing available data on the security situation in a given area, a sound security risk assessment and risk management system, continuously updated security and emergency plans, and an appropriate decision-making procedure that guarantees that decision-makers are duly informed about the situation in the field and have the professional capacity to take informed decisions in due time. While the employer shall not require the employee to work in a place that she knows or ought to know to be unsafe, some tasks and assignments carry inherent risks. It is a clear duty of the International Organization, as an employer, to assess whether the risk is abnormal having regard to the nature of the employment and what context – and employment – specific measures should be adopted in order to mitigate and eliminate the identifiable risks. Risk assessments should be carried out at the pre-posting/pre-deployment phase, as well as on a regular basis at different stages of the employment, in order to account for changing circumstances and newly emerging risks. Whenever the employing Organization outsources specific activities, and especially those that might affect the safety, security and well-being of the employees, it must exercise reasonable care in the selection of the contractor and then maintain sufficiently close supervision over the latter to ensure that the all the contractual clauses are respected and fully implemented. In the UNGA 78/118 there are several paras devoted to these aspects, with special emphasis on the needs to cooperate with other actors (international and local) (para 47), to allocate adequate financial resources for the safety and security of UN staff (para 48); to strengthen the security management of the UN (para 42), to collect in a more systematic manner all relevant info on security incidents (para 27).

[31] The Duty of Care implies that International Organizations have a broad duty to act with care and consideration not only with regard to the members of their staff, but also towards their property. This obligation en-

Principle 4 – Fair labour contracts: International Organizations shall offer labour contracts that are fair and take into due consideration the particular nature of the risks associated with the specific working context and with the personnel's specific tasks.[32]

Principle 5 – Informed consent: International Organizations shall make available to personnel adequate information about the potential dangers they might face and about the situation in the country of destination.[33]

Principle 6 – Non-discrimination and respect of personal dignity: International Organizations shall treat the workforce in good faith, with due consideration, and with no discrimination, in order to preserve their dignity and to avoid causing them unnecessary injury.[34]

Principle 7 – Remedy: International Organizations shall have in place sound internal administrative procedures, act in good faith, and have functioning internal investigation mechanisms to address requests and complaints by their personnel within a reasonable time.[35]

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tails assisting the personnel when their property, by reason of their present or former office with the Organization, suffers threats or attacks. It also requires the Organization to take all necessary precautions when it decides to relocate the personal effects of its personnel from one place to another. The obligation is particularly stringent when it is not physically possible for the personnel to carry out the relocation because they are deployed far from their duty station, especially if the duration of the deployment lies solely within the discretion of the Administration.

[32] The jurisprudence of the administrative tribunals has contributed to defining the International Organizations' duty to offer "fair contracts". The notion of fairness has been interpreted, in cases of disputes with staff deployed overseas, to include: social services; the guarantee that, in the case of transfer from one post to the other, this will be carried out with due respect for the dignity of the personnel concerned, particularly by providing them with work of the same level as that performed in their previous post and matching their qualifications; the payment of the agreed salary (which has to be fair considering the specific working conditions) on a regular basis; appropriate consideration for the period spent abroad on official mission; and the founding of decisions to reduce staff following a reconfiguration of the mission on grounds which are not manifestly unfair or erroneous.

[33] Informed consent is a key principle of the Duty of Care and must always be fulfilled to assist the person in his/her decision whether or not to accept to be deployed. Consequently, International Organizations have a duty to provide adequate information to their personnel about the potential dangers they might face in the mission they have been assigned to and update them continuously, should the external situation so require. The information to be provided to staff includes not only the political and security situation in the country but also proper information about specific challenges related to issues such as gender, sexual orientation, and access to medical care in the case of specific medical needs of the staff (such as HIV/AIDS). Proper information has to be provided, furthermore, about the need for vaccinations and immunizations, cultural issues, specific environmental problems *etc.*). Very much in line with this, in para 31 of its Resolution 78/118, the UNGA requested the SG to «continue to take the measures necessary to ensure that United Nations and other personnel carrying out activities in fulfilment of the mandate of a United Nations operation are properly informed about and operate in conformity with mandatory security risk management measures and relevant codes of conduct and are properly informed about the conditions under which they are called upon to operate and the standards that they are required to meet, including those contained in relevant national laws and international law».

[34] The relations between an International Organization and its personnel must be governed by good faith, respect, transparency and consideration for the personnel's dignity. The prohibition on discriminatory treatment includes both direct and indirect discrimination, and entails both substantial and procedural aspects. This principle must be observed in all aspects of the work relationship, including in case of transfer of a staff member from one post to another or changes to his/her job title. This duty also implies that the employer must inform the personnel in advance of any action that may imperil their rights or harm their rightful interests.

[35] International Organizations must have in place an efficient and independent internal system to allow their staff to submit grievances and complaints and to see the latter answered in a proper and timely manner. Part

Principle 8 – Medical services and insurance policy: The International Organization has a duty to provide effective medical services to personnel, especially during and after an emergency, through a sound insurance policy, and adopt the necessary measures to guarantee the well-being of the staff.[36]

Principle 9 – Functional protection: The International Organization should exercise its functional protection towards its personnel in full respect of international law.[37]

Principle 10 – Training of staff: International Organizations shall provide their personnel with adequate training and equipment to safely carry out the tasks to be performed.[38]

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of this obligation entails ensuring that proceedings move forward with reasonable speed. The contours of the obligation to properly and promptly investigate any grievances submitted by staff can vary depending on the gravity of the specific case submitted. Cases of serious misconduct, such as those involving harassment, and especially those involving physical or sexual violence, need to be prioritised, be dealt with quickly and with specific attention to the rights and the dignity of the person in question.

[36] This duty must be fulfilled during the entire contractual assignment abroad and especially during an emergency situation and in its aftermath, and must guarantee that those who have suffered an incident receive the necessary medical and psychological attention for the necessary time after the traumatic event.

The sending Organization is required to offer proper health insurance that must cover the case of death and all possible incidents, including those related to malicious acts and terrorist acts. The insurance policy of any deploying institution should be continuously subject to updates and revision to make sure that it properly reflects the evolution of the situation in the country of deployment and/or new and emerging threats.

The International Organization has to adopt all possible measures to prevent excessive stress and to promote the well-being of its staff, such as measures to facilitate the maintenance of proper connections with their families and their dependents (e.g. putting at their disposal free or reasonably cheap internet connections and phone calls or providing for work breaks which should be long enough to allow family reunions) as well as facilitated access to psychological support during the mission and afterwards. Very much in line with this, the UNGA, in its Resolution 78/118 requested the SG «to provide counselling and support services to United Nations personnel affected by safety and security incidents, and emphasizes the importance of making available stress management, mental health and related services for United Nations personnel throughout the system». Para 34.

[37] International Organizations must do whatever is reasonably possible to protect, directly or in coordination with the State of nationality, their staff suffering violations of their rights perpetrated by the State of the territory where they are performing their official activities. Although functional/diplomatic protection is a discretionary right of International Organizations according to international practice and rules, whenever the violation of rights concerns a staff member, the sending institution should use the tools available in the frame of diplomatic protection (such as request for clarification, request to stop the assumed illegal act *etc.*). Exercising functional/diplomatic protection might be necessary for the sending Organization, acting directly or in close coordination with the State of nationality of the staff member to properly discharge its Duty of Care, provided that the person is suffering a violation of his/her rights and that there are no valid and credible arguments presented by the International Organization not to exercise such protection. In para 23 of its Resolution 78/118 the UNGA requested the UNSG «to take the measures necessary to promote full respect for the human rights, privileges and immunities of United Nations and associated personnel, and also requests the Secretary-General to seek the inclusion, in negotiations of headquarters and other mission agreements concerning United Nations and associated personnel, of the applicable conditions contained in the Convention on the Privileges and Immunities of the United Nations, 16 the Convention on the Privileges and Immunities of the Specialized Agencies 17 and the Convention on the Safety of United Nations and Associated Personnel».

[38] International Organizations have a duty to provide their personnel with adequate training and the necessary equipment to carry out safely the task to be performed. This is a risk-minimising tool, especially in case of personnel's deployment to the field and to high-risk areas. Adequate training should focus, among others, on safety and security aspects, cultural awareness, and specific threats, as well as on the relevant law to be applied and respected in the area of deployment and, on the legal status (including immunities and privileges, where applicable) of the staff. In its Resolution 78/118 the UNGA requested the UNSG to provide to all the staff deployed in the field, «adequate training in security, human rights law and international humanitarian law is

3. *Recent Jurisprudence of International Tribunals*

3.1. *Cases Further Developing Past Jurisprudence and Introducing Significant Innovations*

After summarizing the key findings from our previous investigation, our focus now shifts to identifying recent developments in relevant international administrative tribunals. First, we discuss recent contributions that further develop and expand upon trends identified in the past. Subsequently, we examine several recent cases addressed for the first time by international judges.

While the definition of the DoC has been extensively discussed in the past,[39] some additional innovative elements emerged in a 2022 decision by the UN Appeals Tribunal (UNAT). The Tribunal emphasized that «the duty of care has a multidimensional nature and can have different meanings depending on the context in which it is applied,» further asserting that «the Organization's duty of care towards its staff members implies, first and foremost, that it has to provide a harmonious work environment that protects the physical and psychological integrity of its staff members».[40] Additionally, according to another decision of the same Tribunal, the risks to be mitigated are

«not only of occupational security risk (e.g., due to an armed conflict) or health risks (e.g., due to exposure to contagious diseases) or safety risks (e.g., work in substandard facilities), but also of risks arising from the prolonged exposure to high stress situations, instances of violence, harassment or discrimination, and any factor compromising health, security and wellbeing in the workplaces as well».[41]

The administrative tribunals have also affirmed the significance of contributions emerging from case law in better defining the contours of the duty of care obligation. In a

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provided so as to enhance their security and effectiveness in accomplishing their functions» (para 31). In the subsequent para 33 of the same Resolution, the GA, after having expressed appreciation for the efforts carried out by the UNSG to make sure that personnel receive adequate safety and security training, stressed «the need to continue to improve training so as to enhance cultural awareness and knowledge of relevant law, including international humanitarian law, prior to their deployment to the field» (para 33).

[39] According to a legal dictionary, the Duty of Care is «A requirement that a person acts toward others and the public with watchfulness, attention, caution, and prudence that a reasonable person in the circumstances would. If a person's actions do not meet this standard of care, then the acts are considered negligent, and any damages resulting may be claimed in a lawsuit for negligence» (The Free Dictionary by Farlex. http://legal-dictionary.the free dictionary.com/duty+of+care Accessed 22 February 2024). The legal concept of Duty of Care, which is well known and developed in many national legal systems, presumes therefore that «individuals and organizations have legal obligations to act towards others and the public in a prudent and cautious manner to avoid the risk of reasonably foreseeable injury to others. This obligation may apply both to acts and omissions» (See more on this the study written by L. CLAUS, *Duty of Care of Employers for Protecting International Assignees*, *Effectif*, 2010, 13). A more precise definition of the Duty of Care principles has been discussed at length inside the UN and especially in the frame of the High-Level Committee on Management and its High-Level Working Group on «Reconciling duty of care for UN personnel with the need "to stay and deliver" in high-risk environments». This WG adopted a comprehensive definition of the Duty of Care which largely sums up the main findings emerging from recent international practice. According to the WG, «the duty of care constitutes a non-waivable duty on the part of the organizations to mitigate or otherwise address foreseeable risks that may harm or injure its personnel and their eligible family members. […]». Cit.

[40] UNAT 2022 063 para 72.

[41] UNAT 2022 033 para 55. In the following para the UNAT stated that «The standard of care is determined by requirements of reasonableness. It will vary depending on the circumstances of the case»: para 56.

decision adopted in 2023, the International Labour Organization Administrative Tribunal (ILOAT) stated that the case law provides evidence

«that the duty of care is greater in a rather opaque or particularly complex legal situation, as is often the case when it is necessary to determine staff rights in technical fields, such as the determination of pension rights».[42]

In the realm of administrative law, judges have also significantly contributed to the further development of previous case law, particularly concerning the definition of the beneficiaries of the DoC and the legal sources on which it is based. Regarding beneficiaries, the UN Dispute Tribunal (UNDT) stated in 2021 that «the Organization's duty of care is owed to all staff members rather than to one staff member only».[43]

Concerning legal sources, the 2018 investigation led to the conclusion that the legal basis of the DoC principles draws from a multitude of sources. These include the statutes and internal regulations of various international organizations, contract law, customary international law, general principles of law, and, notably, the body of international human rights law.[44] Additionally, an autonomous DoC principle or the "duty of protection and assistance",[45] which IOs owe to their staff, contributes to this legal framework. The multiplicity and diversity of legal sources on which the DoC is founded are evident in a recent decision of UNAT. In this decision, the judges clearly indicated that the DoC

«Is crystallised in an implicit and explicit way in the obligations the Organization has towards its staff that are contained in both hard and soft law instruments, Policies, Regulations and Rules, Administrative Instructions and other internal acts of the Organization».[46]

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[42] ILOAT 4492 2023, para 9.

[43] GVA 2021 072 para 53.

[44] The duty of the sending Organization to properly "protect and take care of" its employees has been often associated with the obligation incumbent on States (and International Organizations) to protect life as a basic human right. This duty is spelled out in the main relevant international treaties, such as the 1966 International Covenant on Civil and Political Rights (Art. 6) or the 1950 European Convention on Human Rights (Art. 2).

[45] The notion of "Duty of Protection and assistance" is sometimes used by International Administrative Tribunals as an alternative wording for Duty of Care: this is the case, for example, of the Administrative Tribunal of the Council of Europe which prefers to use the terms duty of protection and assistance: see, for example, Administrative Tribunal of the Council of Europe, *Natalia Kravchenko v. Secretary General*, 27 January 2011, Appeal No 466/2010, where the Tribunal concluded stating that «The Tribunal does not believe that the Secretary General breached any duty of protection and assistance […]» The preference of this Administrative Tribunal for this wording may be explained considering that Art 40 of the Council of Europe Staff Regulations deals with the question of protection for staff members in their official capacity. It reads as follows:

«Article 40 - Protection of staff members in their official capacity

1. Staff members may seek the assistance of the Secretary General to protect their material or non-material interests and those of their family where these interests have been harmed without fault or negligence on their part by actions directed against them by reason of their being a staff member of the Council.

2. Where the Secretary General deems that the conditions set forth in the above paragraph are met, he or she shall decide what form such assistance may take and the amount up to which the Council shall pay the costs incurred in the defence of the interests referred to in paragraph 1, including the costs of any legal action taken. If the Secretary General considers that legal action may harm the interests of the Council, he or she may ask the persons concerned not to take such action; in such cases, if they do not take legal action, the Council shall make good the material damage suffered by the persons concerned, provided that they assign their rights to the Council».

On 7 March 2002, the Secretary General of the Council of Europe adopted Instruction No. 44 on the protection of human dignity at the Council of Europe.

[46] UNAT 2022 033. GVA 2021 072. Also, the GVA confirmed, in the Case No. UNDT/GVA/2021/018 Order No. 72 (GVA/2021), that «the duty of care on the part of the Organization has been codified and in-

While recent jurisprudence maintains continuity with previous interpretations, references to the sources of the DoC persist in general terms, leaving ample room for future developments. Furthermore, recent international case law has reinforced and elaborated on the fundamental components of the DoC expected from IOs. In a 2023 decision, UNAT affirmed that «the relations between an international organization and its staff members must be governed by good faith, respect, transparency, and consideration for their dignity». Consequently, an organization must treat its staff,

«with proper consideration and avoid causing them undue injury. It must care for the dignity of its staff members and not cause them unnecessary personal distress and disappointment where this could be avoided (..)…and ... provide a safe and adequate environment for its staff».[47]

An innovative aspect of the dynamics between an IO and its staff surfaced in a decision rendered by ILOAT in 2021. The case revolved around a staff member's request to change his working environment due to challenging relations with colleagues, which he deemed unsafe and detrimental to his health. In this instance, the complainant seemed to assert that the IO's Duty of Care encompassed the obligation to provide a new position whenever requested. However, the Tribunal dismissed this assumption and concluded that the IO involved in the case...

«did not breach its duty of care and stresses that it is not always possible to cater to the needs of each individual employee, as the product or result of the work being done is often justifiably considered a higher priority over the individual's personal interests».[48]

The original approach taken by the Tribunal in this case lies in its novel method of balancing the competing interests involved, explicitly indicating that, under certain circumstances, the interests of the IOs may prevail over those of the staff member. This same principle guided the ILOAT in a case examined in 2023, where, once again, the central challenge was to strike a balance between the conflicting interests of the IO and its staff. In this case, the key issue revolved around the decision to reassign a staff member against their wishes. While various aspects of this issue had been considered in previous cases, in 2023, the ILOAT affirmed that

«While the head of an international organization must take into account the organization's interests as well as the staff member's abilities and interests in the exercise of the discretion to transfer a staff member, in cases where the two are at odds, greater weight may be accorded by the decision-maker to the interests of the organization».[49]

Once more, the judges arrived at the conclusion that the specific needs and priorities of the IO can legitimately take precedence over those of the staff. This principle holds true under the condition that the Organization has diligently made every effort «to consider in good faith all relevant performance information prior to its decision...».[50] This trend has

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corporated into the Staff Regulations and Rules, thus ensuring such protection to all staff members as a term of their employment:» p. 9.

[47] UNAT 2022 033. In another recent case, ILOAT clarified that the obligation to respect the dignity of its staff, implies also that notion of underlined that «A staff member whose service is not considered satisfactory is entitled to be informed in a timely manner as to the unsatisfactory aspects of his or her service so that steps can be taken to remedy the situation. Moreover, he or she is entitled to have objectives set in advance so that he or she will know the yardstick by which future performance will be assessed.» ILOAT 2414 2023 para 23.

[48] ILOAT 4345 2021, para 5.

[49] ILOAT 4687 2023, para 5.

[50] UNDT 2021 062 para 6.

been followed also by the European General Court in a case examined in 2019,[51] by the European Ombudsman,[52] and by the Council of Europe Appeals Tribunal. The latter stressed that «according to the relevant case-law, a transfer may take place in the interest of the Organisation to the detriment of other interests, including the interests of the individuals affected…» and that in the case under review the Council of Europe Secretary General «did not overlook the appellants' interest to keep their former jobs but found that there were overriding interests pertaining to the Organisation's reputation, functioning and security which prevailed. Within her wide scope of discretion, the Secretary General decided that the interests of the Organisation carried greater weight than those of the individual staff members to remain in their jobs».[53]

As ensuring the safety and security of staff members is a crucial aspect of the DoC, recent jurisprudence has significantly contributed to defining the precise content of these obligations and updating them in response to the continuously evolving challenges facing the international community. In a recent case, the UNDT expanded upon the notion of risks to the well-being of staff that the IO must mitigate or prevent. According to the Tribunal, the

«duty of care risks are constituted not only of occupational security risk (e.g., due to an armed conflict) or health risks (e.g., due to exposure to contagious diseases) or safety risks (e.g., work in substandard facilities), but also of risks arising from the prolonged exposure to high stress situations, instances of violence, harassment or discrimination, and any factor compromising health, security and wellbeing in the workplaces as well…. The standard of care is determined by requirements of reasonableness. It will vary depending on the circumstances of the case…».[54]

In another decision, UNAT emphasized the varied manifestations of the Duty of Care, contingent upon specific circumstances.[55] This underscores the necessity for IOs to

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[51] According to the EU General Court «as a preliminary point, it should be noted that the administration's duty to have regard for the welfare of officials, as expounded in the case-law, reflects the balance of reciprocal rights and obligations established by the Staff Regulations in the relationship between the administration and the civil servants. A particular consequence of this balance is 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, in so doing, it should consider not only the interests of the service but also those of the official concerned …. At the same time, it is apparent from the case-law that requirements of the duty to have regard for the welfare of officials cannot prevent the appointing authority from adopting the measures it deems necessary in the interests of the service… The EU Courts have also pointed out that, although it is the case that, in taking a decision concerning the situation of an official, the authority must take into account not only the interest of the service, but also those of the official concerned, that consideration cannot prevent the authority from undertaking a rationalisation of departments if it deems that this is necessary…»: Judgment of the General Court (Second Chamber, Extended Composition), 7 February 2019, in Case T-11/17, RK, *applicant, v. Council of the European Union supported by the European Parliament*.

[52] The European Ombudsman, dealing with a case of job cancellation, reached the conclusion that the DoC does not entail placing the personal interests of a staff member before the interest of the service: European Ombudsman, Decision in case 1279/2017/KT *on an EU Agency withdrawing an offer to extend a staff member's work contract*, 31 May 2018, available at https://www.ombudsman.europa.eu/en/decision/en/96148#_ftn9.

[53] Council of Europe Appeals Tribunal, Appeals Nos. 739/2023, 740/2023 and 741/2023, *E.T. and Others v. Secretary General of the Council of Europe*, Judgment , https://rm.coe.int/0900001680aefdb8.

[54] UNDT 2023 046, para 55 and 56.

[55] According to the Tribunal, «the duty of care will manifest itself in different ways depending on the particular circumstances…. Duties of care vary in their detail in different cases: for example, the same duty may require the provision of military-grade personal protective equipment to some staff in warzones, but not to others running educational programmes in peaceful locations». UNAT 2022 463 para 16.

adopt a flexible approach, ensuring the provision of «reasonable and practicable protections and support for staff in particular situations».[56] Very much in line this obligation, the EU Ombudsman, in a recent decision, reminded the European Commission that «giving effect to the rights of persons with disabilities entails a heightened duty of care by the EU administration as an employer».[57] The World Bank Administrative Tribunal[58] and the European Civil Service Tribunal,[59] reached almost identical conclusions on the specific matter.

The duty of IOs to provide complete and detailed information to their staff has been addressed in several recent cases. This obligation commences when the staff is appointed and extends until the conclusion of their contractual obligations with the IO. In recent years, jurisprudence has contributed additional clarity regarding the precise contours of this specific aspect. For instance, in a 2023 case, the ILOAT clarified that the obligation to provide adequate and timely information to staff can only be considered fulfilled when the staff member is satisfied with the completeness and clarity of the information received. Otherwise, according to the Tribunal

«if the complainants were to continue to wish for additional information concerning the method used to calculate his pension, the Organisation should, under its duty to provide information and its duty of care, endeavour to meet his expectations, provided, at least, that they are formulated with sufficient clarity».[60]

Furthermore, in another case, the same Tribunal underscored that the DoC entails the IO providing its staff «with the necessary information»,[61] emphasizing that «the reasons for a decision must be sufficiently explicit to enable the person concerned to make an informed decision accordingly». These reasons «must also enable the competent review bodies to determine whether the decision is lawful, and, in particular, enable the Tribunal to exercise its power of review».[62]

Additionally, according to the Tribunal's case law, an organization's duty of care towards its staff includes the obligation «to provide procedural guidance to a staff member

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[56] UNAT 2022 463, para 16.

[57] EU Ombudsman, *Decision concerning the European Commission's refusal to grant a 'double dependent child allowance' to a staff member with a child with a disability* (case 535/2021/VS), 23 February 2023, para 4. Available at https://www.ombudsman.europa.eu/en/decision/en/166450.

[58] World Bank Administrative Tribunal, 2023, Decision 692, *GJ 2 Applicant v. IBRDR*, available at https://tribunal.worldbank.org/sites/default/files/judgments-orders/GJ%20%28No.%202%29%20v.%20IBRD%20692.pdf: «127. The Tribunal observes that the record indicates that the Bank has embarked on a process of review of its disability programs intended to enhance its duty of care to staff. The Tribunal notes that the facts of this case highlight some of the concerns which were identified in the internal audit report of the Bank's disability programs and which have led to recommendations for changes…. The Tribunal considers that the difficulties associated with claim processing delays are likely exacerbated for a staff member with health concerns, irrespective of whether such health concerns ultimately render a staff member eligible for disability benefits under the Bank's rules. In this regard, the Tribunal acknowledges the Bank's efforts and encourages the Bank to implement the recommendations to its disability programs as expeditiously as practicable».

[59] «Au demeurant, les obligations découlant du devoir de sollicitude sont substantiellement renforcées lorsqu'est en cause la situation d'un fonctionnaire dont il est avéré que la santé psychologique est affectée. En pareille hypothèse, l'administration doit examiner les demandes de celui-ci dans un esprit d'ouverture particulier»: Arrêt du Tribunal de la Fonction Publique de L'union Européenne (deuxième chambre), 17 février 2011, dans l'affaire F-119/07, *ayant pour objet un recours introduit au titre des articles 236 CE et 152 EA, Guido Strack partie requérante, contre Commission européenne.*

[60] ILOAT 4554 2023.

[61] ILOAT 4499 2023.

[62] ILOAT 4467 2013, para 7.

who is mistaken in the exercise of a right, insofar as that may enable them to take effective action. If there is still time, it must inform a staff member of the available means of redress».[63] Whenever possible, the organization should also disclose the budgetary reasons for denying specific requests made by the staff.[64] In other cases, the Tribunal went even further by stating that «if a staff member has mistakenly addressed an appeal to the wrong body, that body is required to forward the appeal to the competent body».[65] Moreover, there is a precise duty to inform staff in advance «of any action that may imperil their rights or harm their rightful interests» and that there is a precise duty to inform in advance the staff «of any action that may imperil their rights or harm their rightful interests».[66] The Council of Europe Dispute Tribunal reached almost identical conclusions in a case examined in 2020 in which it highlighted that

«an organisation, as part of its duty of care for its staff, 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».[67]

This jurisprudence aims to prevent procedural rules from inadvertently becoming a trap for staff members who may misunderstand the procedure for exercising their right of appeal.

Shifting focus to another component of the DoC obligation, specifically the protection of the health and personal well-being of staff deployed in the field, the jurisprudence of relevant tribunals over the last six years has contributed to a better definition of the detailed content of this obligation. Firstly, recent jurisprudence clarified that any IO «has a duty of care to ensure a harmonious work environment and protect staff members from harm by way of, inter alia, taking appropriate preventive and remedial measures in each specific case».[68] This duty is an inherent part of the employment relationship and a fundamental condition of service, which must be fulfilled by the Administration with due diligence and without delay. An organization that disregards this duty is liable to pay damages to the staff member concerned. Moreover, the UNDT, in another case, reiterated that «it is a general principle in Labour and Social Security laws of any system that the obligation of an employer concerning the protection of its employees' health from the negative effects of the working environment is directly connected to the sole role of the employer, fully and

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[63] ILOAT 4369 2021, para 4. ILOAT confirmed that part of an organisation's duty of care towards its staff is to provide procedural guidance to a staff member who is mistaken in the exercise of a right insofar as that may allow them to take effective action. If there is still time, it must inform a staff member of the available means of redress.

[64] ILOAT 4220 2020, para 12.

[65] ILOAT 4140 2019, para 6. The Tribunal also added that «In particular, if a staff member has mistakenly addressed an appeal to the wrong body, that body is required to forward the appeal to the competent body».

[66] ILOAT 4072 2019, para 8.

[67] Council of Europe Administrative Tribunal, Appeal No. 665/2020, *Ilknur YUKSEK (II) v. Secretary General of the Council of Europe*, available at https://rm.coe.int/0900001680a17018. In a previous decision, issued in 2018, the same Tribunal stated that «an employer must consequently inform officials in advance of any action that may imperil their rights or harm their rightful interests». Council of Europe, Administrative Tribunal, Appeals Nos. 587/2018 and 588/2018, *Jannick DEVAUX (II) and (III) v. Secretary General*, available at https://rm.coe.int/090000168093dd11.

[68] 2023 UNAT 1329, para 38. According to UNAT, the Administration has a precise interest in keeping a good work environment as «Prohibited conduct interferes with work, creating intimation, hostility and an offensive work atmosphere, which can be extremely harmful to staff and to the good quality of service». UNAT 2021 1122, para 73.

exclusively empowered to rule on the working environment». In other words, this DoC exists regardless of the factors that caused the danger at work.[69] In a recent case, the ILOAT stated that in the case under scrutiny, the WHO

«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».[70]

These obligations are applicable also when alleged harassment remains undemonstrated, as

«the subjective perception of being harassed – when sustained by an objective situation of crisis or conflict in the workplace and producing a certain negative impact on the health conditions of the staff member – may already be relevant in causing moral damage».[71]

Furthermore, the timing of the response has been deemed of crucial importance, necessitating evaluation based on the severity of the situation reported by the complainant. In a case examined in 2021, the ILOAT explicitly affirmed that «harassment cases should be treated as quickly and efficiently as possible, in order to protect staff members from unnecessary suffering». Given that in the specific case the procedure took over 21 months, the Tribunal concluded that «this period is excessively long and constitutes a breach of the duty of care».[72] The same rules apply also

«in a situation in which the delay may impact on the health of the staff member, aggravating his/her psychological harm .... In other terms, prompt action by the Administration is not only a pillar of good administration, but it is also an expression of the duty of care by the Administration, whenever the delay of the Administration, in the circumstances of the case (when psychological harm is claimed), is potentially aggravating the moral harm claimed by the staff member».[73]

Another pertinent aspect that has been affirmed and further elaborated upon in recent years by international administrative judges pertains to the right to appeal and its detailed content. In a very recent case, the ILOAT, after reaffirming that IOs have, as part of their DoC, an obligation to maintain a properly functioning appeal system that adheres to established rules and regulations, clarified that,

«Denying the complainant the opportunity to exercise his right to an effective internal appeal denied the fundamental safeguards provided by that right. Neither administrative inefficiency nor a lack of resources can excuse this failure».[74]

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[69] UNDT 2022 023 para 100.

[70] ILOAT 4600 2023, para 6.

[71] UNDT 2022 033, para 59.

[72] ILOAT 4243 2021, para 24.

[73] UNDT 2023 046, paras 53 and 54. In a decision issued in 2021, the UNAT, having taken note of the delay in answering the to the Military Prosecutor in due time so as to avoid the imminent arrest of the UN officer and that the above mentioned reply was halted by the Senior Legal Officer without a proper justification, concluded that «Such kind of administrative faux pas up the hierarchy of the Organization undermines the team spirit and collegiality of staff members, reflects badly on their morale and does not serve the long-standing interests of the Organization and therefore should be avoided in the future». UNAT 2021 1167 para 48.

[74] ILOAT 47489 2024, para 7.

The issue of the timing of appeal procedures has also been addressed. In a case examined in 2019, the ILOAT emphasized that appeal procedures must provide a timely response to staff requests. The Tribunal evaluates delays in internal appeals, considering that:

«Delay in an internal appeal concerning a matter of limited seriousness in its impact on the appellant would be likely to be less injurious to the appellant than delay in an appeal concerning an issue of fundamental importance and seriousness in its impact on the appellant».[75]

In recent years, due to factors such as financial constraints, the impact of COVID-19, and the restructuring of field operations, international tribunals have faced an increasing number of disputes related to employment termination. Recognizing the sensitive nature of these decisions and their profound impact on the lives and expectations of staff, recent jurisprudence has contributed to updating the requirements that organizations must adhere to when deciding not to renew contracts or to dismiss an employee. In a specific case examined in 2020, the UNDT recalled findings from previous cases, highlighting that the administration is always obligated «to demonstrate that all reasonable efforts have been made to consider the staff member concerned for available suitable posts». Moreover, «[w]here there is doubt that a staff member has been afforded reasonable consideration, it is incumbent on the Administration to prove that such consideration was given».[76] The Tribunal introduced a new concept of a shared responsibility

«between the Organization, who must act fairly and transparently, and the affected staff member who should act proactively by timely and completely applying for vacant positions».[77]

The precise meaning of the obligation to "act fairly" in similar circumstances has been further defined in another case brought before the UNDT. In this instance, the Tribunal solemnly affirmed that,

«the Administration has to demonstrate that it has made good faith efforts to find a suitable post for the staff member whose post would be abolished by:

a. Considering him/her for suitable posts that are vacant or likely to be vacant in the future;

b. Assigning him/her on a preferred or non-competitive basis (bearing in mind his competence, integrity and length of service, as well as other factors such as nationality and gender); and

c. Finding an alternative post for him/her at his/her category and grade level or even at a lower grade, if, in the latter case, the staff member concerned has expressed an interest».[78]

In the meantime, the same Tribunal also refined the parameters of the related obligations incumbent upon the staff member concerned, outlining that he or she

«has to be fully competent to perform the core functions and responsibilities of an available position and show interest in a new position by timely and completely applying for the post».[79]

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[75] ILOAT 4100 2019, para 7. In another case, the UNAT confirmed that if there is an unreasonable delay in the appeal process «… the complainant is entitled to an award of moral damages…». UNAT 5098 2019 para 10.
[76] UNDT 2020 158, para 48.
[77] UNDT 2020 158, para 49.
[78] UNDT/2020/158, para 52.
[79] UNDT/2020/158, paras 53 ff.

In another case, the same Tribunal identified an additional criterion for evaluating the decision of an IO to abolish a job position. This decision, in addition to being fair, must also be «reasonable, legal, rational, procedurally regular, devoid of bias, capriciousness, or arbitrariness, and proportionate».[80]

3.2. *Cases Addressing Novel Issues Linked to the Evolution of the Wider International Context*

In the past years, the jurisprudence of international administrative tribunals has grappled with new challenges faced by staff operating in the field. These include evaluating staff members operating under highly stressful conditions, the working conditions during the COVID-19 pandemic, issues related to visa issuance, protecting personal data, addressing the impact of the «Me Too» movement, recognizing new family structures in same-sex couples, handling matters related to gender identity changes, and accommodating requests for changes in gender identity within the UN Administrative system.

As international staff working in the field have increasingly encountered extremely stressful situations, particularly in recent times, there have been instances where immediate reactions were necessary, sometimes to save lives. Consequently, personnel decisions made in these circumstances have occasionally conflicted with legal obligations. In response, organizations have initiated procedures to sanction staff for such violations. In one such case, a former Security Officer at the FS-4 level, employed with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo («MONUSCO») in Kinshasa, contested a disciplinary measure of dismissal imposed on him for serious misconduct. Interestingly, the applicant did not dispute the events leading to his dismissal but strongly argued that the Administration failed to consider the mitigating circumstances of his case when imposing the sanction. The decision of the UNDT, adopted on August 7, 2020,[81] played a significant role in addressing a relatively new issue that has seldom arisen in the past. By reiterating the Organization's duty of care towards its staff members, especially those operating in challenging contexts such as the one in question, the Tribunal identified several mitigating circumstances that the Administration should have considered and that should have prompted the IO to impose a less severe sanction. These are the circumstances which should have led the IO to a less severe sanction:

«a. The fact that the Applicant has admitted the misconduct and fully cooperated with the investigation;

b. The fact that a request for a waiver of his immunity was made to MONUSCO and the Applicant's imminent arrest by the local authorities;

c. MONUSCO's delay in answering the Military Prosecutor in due time so as to avoid the Applicant's imminent arrest and the fact that Mr. Levine had halted the reply without a proper justification;

d. The risks for the Applicant's life and well-being related to the hazardous duty station where he was working».[82]

The lack of a swift reaction from the Mission should have been taken into account by the Organization when determining the disciplinary sanction, potentially resulting in a less severe punishment.[83] While the mitigating circumstances mentioned above (under let-

[80] UNDT 2020 024, para 56.
[81] UNDT 2018 123.
[82] UNDT 2018 123, para 69.
[83] UNDT 2018 123 paras 70 and 71.

ters a-c) are based on general principles of fair treatment and respect for the dignity of the staff member (and were already part of the jurisprudence of the UNDT), the last mitigating circumstance is truly innovative. The judge overseeing the case requested that the UN properly consider the stressful and risky working conditions of the applicant. While this request seems well-founded and convincing, it would have benefited from further clarification to prevent future abuses or misunderstandings. For example, it would have been important to underline that this specific mitigating circumstance applies only to those illegal acts which:

a) are, at first glance (*ictu oculi*), strictly related to the risk perceived by the staff member and aim exclusively to minimize the perceived risk;

b) are, at first glance (*ictu oculi*), proportional to the perceived risk;

c) are adopted as an immediate reaction to the risky situation; and

d) do not constitute a violation of basic human rights.

Given the significance of the COVID-19 pandemic in the last years, it is inevitable that it has also impacted the staff of IOs, particularly those working in countries with limited access to health institutions. This has led to tensions between staff and their respective employers, which, in a few cases, have been brought to the attention of the competent administrative Tribunals. In examining the working arrangements requested by employers during the COVID-19 period, judges have paid special attention to the specific circumstances in which staff were operating. In a decision from 2021, addressing a staff member's request to work from home to reduce the risk of COVID-19 exposure, the administrative tribunal concluded that

«having regard to the circumstances that the safety conditions in UNAMA have improved with virtually no current active COVID cases among UN staff members in Afghanistan, the Tribunal finds that the Organization has met its duty of care …». [84]

In a more recent case, the UNAT arrived at a seemingly different conclusion by rejecting a request to work from home to mitigate the risks of COVID-19 exposure presented by a staff member with pre-existing health conditions. In this specific instance, according to the judges,

«the Administration failed to properly exercise its discretion in not granting the Applicant telecommuting arrangements for around two months. As such, the Organization failed to fulfil its duty of care towards the Applicant …».[85]

Indeed, it is important to recognize that these two cases are rooted in distinct facts and circumstances. Therefore, it would be premature to conclude that they are contradictory.

The sensitive issue of data protection represents a third area of interest for International Tribunals. While not entirely new, its significance and relevance have markedly increased in recent years. In a recent case, the applicant expressed concern that their private emails had been shared with a broader audience. The ILOAT ruled in favour of the applicant, stating that the «disclosure of these confidential emails, which is not disputed by the Organization, constitutes a serious violation of the obligation of good faith and the duty of care».[86] This underscores the heightened importance of safeguarding personal data and respecting confidentiality obligations within IOs. In a subsequent decision, the same Tribunal

[84] GVA 2021 072, para 46.
[85] UNAT 2023-009, para 57.
[86] ILOAT 4253 2020, para 8.

commented on a previous ruling of the Internal Appeal Committee of the European Patent Office (EPO). It affirmed that the Tribunal's case law acknowledges a staff member's right to access and receive medical reports concerning themselves. Furthermore, it concluded that the corresponding obligation incumbent on the IO «stems from the general duty of care and the Office's duty to adequately safeguard the personal data of its staff».[87]

Problems related with the issue of visa, have also been a significant concern for international tribunals over the past years. In numerous cases, due to local circumstances, the State where the staff member was working or appointed to work did not renew the visa or rejected the visa application. In some instances, the local state even declared a member of the staff of the sending organization *"persona non grata"*. Although the problems raised by the denial of a visa issue/renewal are quite different from those related to the declaration of *"persona non grata"*, they present several similarities and points of contact and will, therefore, be examined jointly. In the case of a staff declared "*persona non grata*", the consequences for the terms and conditions of appointment are inevitable in that «the situation forces the exercise of the Secretary-General's discretion in placing the staff member outside the country where he or she lost the legitimacy to perform the function, under some kind of arrangement. In practical terms this may mean redeployment of post, reassignment, administrative leave or, ultimately, non-extension».[88]

In the past, in similar circumstances, the only duty incumbent on the organization was, according to relevant jurisprudence, to provide its officials with the necessary assistance to ensure that the rights inherent in their *status* as members of staff of that organization are complied with by the local State. However, IOs have traditionally been considered free to choose how best to approach local authorities to discharge that duty. Considering the increased number of cases in which local States are refusing or postponing the issuance of a visa or even declaring someone *"persona non grata"*, international Tribunals have better clarified what the sending organization is supposed to do to protect its staff. First and foremost, the Tribunals confirmed that the issuing of identity documents or visas to persons enjoying the privileges and immunities conferred by the seat agreement of an international organization is the prerogative of the host State. Having reiterated this basic principle, the Judges made an additional effort to better define the precise contours of this obligation incumbent on IOs. In a recent case examined and decided in 2023, the ILOAT stated that an organization is liable

«for delays in a suitable visa or identity document being issued if it has acted in bad faith, behaved inappropriately in its relations with the host State or been negligent in monitoring the progress of the case».[89]

Indeed, according to this innovative jurisprudence, the IO affected by the denial or delay of visa issuance to its staff members, or whose staff has been declared *"persona non grata"* is now required to take active and good faith measures to convince the hosting State to change its stance (unless the reasons for the decisions of the country's refusal are of a personal nature and unrelated to the applicant's position with the Organization). This represents a departure from past practices. In such cases, the IO must provide credible and reliable evidence demonstrating that the host country's refusal to grant the visa cannot be attributed to the Organization's alleged inaction but, instead, to personal issues related to the applicant. In this scenario, the Organization cannot be held accountable for the host coun-

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[87] ILOAT 4556 2023, para 10.
[88] UNDT 2019 178 para 23.
[89] ILOAT 4727 2023, para 6.

try's refusal to issue a visa to the applicant only if it provides «credible and reliable evidence demonstrating that the host country's refusal to grant the Applicant a visa cannot be attributed to the Organization's alleged inaction but, instead, to personal issues related to the Applicant himself».[90]

The crucial importance of a pro-active reaction by the affected IO to protect the visa-related rights and immunities of its staff emerged in a case adjudicated in 2020. In this case, a UN officer working with the UN Interim Security Force for Abyei (UNISFA) operation was declared *"persona non grata"* by the local authorities and consequently had to leave the country. The Note Verbale issued by the Sudanese Foreign Minister was described as "firm," leading the Mission to conclude that it had no legal obligation to attempt to obtain a new visa for the appellant at a later time. The UNDT, to which the dispute was presented by the applicant, decided to reject the applicant's request precisely in light of the fact that the wording of Note Verbale did not leave space for any doubt.[91] When the applicant submitted an appeal against this decision, the Appeals Tribunal noted, first of all, that

«…the UNDT failed to consider that the Note Verbale at the time of the non-renewal decision was dated and there was no indication that the Organization made any efforts to review the status Note Verbale with the Sudanese Government before the non-renewal. Nor was there a specific explanation provided as to why these efforts could not be made in these circumstances»,[92]

and, consequently, rejected the conclusions of the UNDT considering

«the lack of explanation from the Organization as to why it could not have made some attempt to review the Note Verbale with the Sudanese Government after some time had passed (and therefore, potentially have a visa issued to the Appellant)».[93]

In other words, the Appeals Tribunal clearly indicated that IOs are always required to maintain an active attitude when faced with the denial of a visa to one of its staff members, and they must do everything within their power to negotiate with the local State to change the decision already undertaken. The purpose of this rule is to alleviate predicaments faced by its staff. According to the UNDT, «these predicaments will be greater with regard to staff holding permanent appointments with the Organization, where a reciprocal interest in maintaining the employment relationship is readily built into the terms of appointment. This duty will be more limited with regard to staff on fixed-term appointments which do not carry an expectancy of renewal».[94]

Almost inevitably, the administrative judges have been called upon to address situations related to the «Me Too» movement. However, while issues related to gender-based harassment have received considerable attention in recent decades, only a limited number of cases specifically related to the «Me Too» movement have been submitted to these Tribunals so far. Regardless, these cases are noteworthy as they deal with issues that have also been considered by national tribunals and, very often, decided in contradictory manners. The first such case occurred on 12 April 2018. During a culinary reception at the Colombian Embassy with a group of female staff, the Applicant, a staff member of the United Nations Office on Drugs and Crime (UNODC) made a comment about the «Me Too» movement, questioning why women were speaking out about something that happened 20

[90] UNDT 2022 125 para 29.
[91] UNDT 2019 178.
[92] UNAT 2020 1068 para 41.
[93] UNAT 2020 1068 para 42.
[94] UNDT 2019 178 para 27.

years ago. The respondent, UNODC, considered this conduct to constitute harassment and abuse of authority based on two different arguments. First, according to UNODC, the Applicant made inappropriate comments towards a colleague between February and August 2018, which made her feel offended and humiliated; second, the Applicant failed to properly address complaints about another staff member's unwelcome behaviour, including of a sexual nature, thereby causing the complainant to feel offended and intimidated. Because of these accusations, UNODC imposed disciplinary sanctions on the applicant. Additionally, he was required to undergo training to improve his gender awareness and managerial sensitivity in handling harassment issues. The applicant contested this decision in front of the UNDT. Focusing on the specific accusation related to the «Me Too» movement, the UN Tribunal concluded that the Applicant expressed doubts and concerns about women speaking out 20 years later because he believed it would impact the credibility of the movement itself. The Applicant suggested that women should have spoken out earlier. The Tribunal viewed this as the Applicant expressing a personal view on a widely known situation that has sparked controversy worldwide. He expressed his ideas in the context of a social interaction among colleagues. Considering this, the Tribunal concluded that

«making an observation about certain aspects of the "MeToo" movement in an informal conversation outside the workplace could not reasonably be expected or be perceived to cause offence or humiliation towards V01, especially considering that the comments did not relate to her personally» «"freedom of speech", provided that the views are not expressed in their official capacity, do not cause any harm to the Organization or a colleague and do not have a negative impact on the work-environment»,

and that the Applicant's remarks towards complainants in the «MeToo» movement «may be improper but do not meet the threshold of harassment»[95] nor had a negative impact on the work environment.[96] These conclusions appear the result of a pragmatic approach by the judge: however, it cannot be denied that very often the decision on whether the words expressed cause a harm to the Organization and/or have a negative impact on the work environment, might prove to be difficult and sometimes even very subjective.[97] It is hoped that, considering the sensitivity of the issue, the judges will further elaborate on these limitations in future decisions.

In another recent development, international tribunals have addressed issues related to the treatment of children of same-sex couples. In a case from Spring 2023, a same sex married couple, both United Nations staff members, working with the United Nations Environment Programme and the United Nations Settlements Programme, filed an application against the UNSG. They argued that their daughter was being discriminated against in comparison to children of heterosexual married couples in terms of parental leave provided by the administration. The applicants alleged that «the administration's consistent lack of responses and provision of unclear information established a breach of duty of care to-

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[95] UNDT 2022 048 paras 219 and 221.

[96] UNDT 2022 048 para 220.

[97] See more in M. STUBBS-RICHARDSON, S. GILBREATH, P. MACKENZIE L & A. REID, *It's a Global #MeToo: a Cross-National Comparison of Social Change Associated with the Movement*, in *Feminist Media Studies*, July 2023, available at https://www.tandfonline.com/doi/full/10.1080/14680777.2023.2231654?scroll=top&needAccess=true and R. GUPTA, A. GUPTA, D. NEHRA*, Going Forward with #MeToo Movement: Towards a Safer Work Environment*, in *Journal of Psychosexual Health*, 1(2), 2019, also available at https://journals.sagepub.com/doi/full/10.1177/2631831819862087.

wards them and violated their right to be treated fairly, justly, and transparently».[98] They also stressed that «they repeatedly requested for information about the leave entitlement for heterosexual couples with children born via surrogacy, including in the management evaluation request»,[99] for which they never received any reply and that «their case was not being treated in the same manner as a conventional family».[100] In their opinion, this differential treatment can only be viewed as discriminatory. On the basis of this argument, the applicants concluded that «the Administration's profound inability or lack of understanding in managing their case resulted in immense stress and loss of dignity»[101] and requested the Tribunal by way of remedies to order «an equal treatment of outcome with regards to the children of heterosexual staff members».[102] After a thorough examination of the arguments presented by both the applicants and the respondent, the UNDT concluded that the applicants failed to provide sufficient evidence to support their claim of unequal treatment in how their case was handled.[103] Furthermore, the Tribunal noted that there was no evidence in the record «about how the Administration handled any request for parental leave from a heterosexual couple whose child was the product of surrogacy».[104] As a result, the application was rejected. This decision underscores the importance of presenting compelling evidence to substantiate claims of unequal treatment.

While the outcome may be disappointing for the applicants, it is important to highlight that during the proceedings, a new document (ST/AI/2023/2 – Parental leave and family leave) was issued by the UN, which addresses the issue raised in the case. Unfortunately for the applicants, it came into effect on January 1, 2023, with eligibility for parental leave considered on or before December 31, 2022. However, this new document illustrates the UN's increased attention to the matters at hand, which has likely been influenced by the case brought forth by the applicants.

Finally, the international administrative Tribunals have also been involved in requests for change of gender identity. In a case submitted to the UNDT in August 2022, the applicant contested the decision of the UN to reject their request to have their «gender in United Nations administrative systems reflect their gender identity».[105] The applicant, a national of Denmark who was assigned male at birth, solemnly declared in front of the competent national authorities, the desire/request to be identified as a female and, accordingly, to receive a new passport. The Danish authorities issued a new passport in which the sex was marked with "X", which, according to the applicant, signifies identifying with a gender opposite to the one assigned at birth. Based on this, the applicant requested this new gender identity to be reflected in UMOJA (the UN tool managing the organization's resources). After extensive correspondence and document exchanges with the Danish authorities, OLA (UN Office for Legal Affairs) concluded that «under Danish Passport Law, the applicant is not recognized as female».[106] The applicant's request was consequently rejected, prompting them to bring the case before the UNDT. Being the first of its kind within the UN, the case garnered interest and attention. The Tribunal first provided a terminological

[98] UNDT 2023 083, para 29.
[99] UNDT 2023 083 para 30.
[100] UNDT 2023 083 para 31.
[101] UNDT 2023 083 para 32.
[102] UNDT 2023 083 para 33.
[103] UNDT 2023 083, para 58.
[104] UNDT 2023 083 para 58.
[105] UNDT 2022 129.
[106] UNDT 2022 129 para 16.

clarification to clearly distinguish between "gender identity" (how a person identifies themselves) and "legal gender," which is a legal category pertaining to personal *status*. The Tribunal then reiterated that the *status* of each staff member in UMOJA is regulated by ST/SGB/2004/13/Rev, 1, wherein it is stipulated that it will be determined by the law of the competent authority under which the personal *status* has been established. Therefore, the Tribunal carefully analysed Danish Law and, based on the information collected, reached the conclusion that «on the content of the Danish law…there is no basis to record the Applicant as female, which is what they are requesting and what the impugned decision was about».[107]

While the conclusion in this specific case may appear to leave little room for future developments, it is noteworthy that the Tribunal, after emphasizing its obligation to adhere to norms expressing international standards and its authority to refuse to apply a provision that would contradict them, made it clear that:

«as a person non-compliant with their biological sex, the Applicant has the right to an outward expression of gender identity, respect for their identification and should be protected against improper discrimination on this basis».[108]

This statement is significant: although the staff member who requested the change of their gender identity does not automatically gain access to entitlements or policies attached to the female sex or legal gender, they may, under certain circumstances, challenge the policy itself as improperly discriminatory. In this specific case, the applicant was unable to prove such discrimination.

Indeed, the Tribunal's sensitivity to emerging values and societal needs is evident in its handling of this case. It is worth noting that the Tribunal explicitly acknowledges the UN's decision to revisit the entire issue with the assistance of a working group. This can be viewed as a diplomatic way of expressing hope for prompt action on this matter.

4. *Concluding Remarks*

The analysis of recent jurisprudence from relevant international administrative tribunals regarding the implementation of DoC obligations by IOs towards their staff sheds light on several interesting new developments. Firstly, it is notable that the number of cases brought before internal tribunals of various Organizations has significantly increased over the last five years. In more than 115 cases examined by the UNDT and by the UNAT between March 2018 and March 2024 (out of 3,600 case decided in that period), and in about 200 cases examined by the ILOAT (out of 800), the applicants or the judges made reference to the duty of care. In about 40 (out of 170) cases examined in the last 6 years by the World Bank Administrative Tribunal the parties of the Tribunal mentioned the DoC.de This trend is reflected also at regional level: the Council of Europe Administrative Tribunal and the Council of Europe Appeal Board, examined in the period between 2018 and 2024 about 170 disputes: in 20 of them reference is made to the DOC. The figures of the OECD Administrative Tribunal are even more impressive: out of about an overall number of 20 cases addressed, 9 made reference to the DoC. In the EU judiciary system (Court of Justice, General Tribunal and Civil Service Tribunal), where the notion of Duty of dili-

[107] UNDT 2022 119 para 46.
[108] UNDT 2022 119 para 46.

gence[109] is often used as a quasi-synonym of DoC, in the last five years there are more that 350 document (decisions, judgments, opinions and documents submitted by the applicants). This increase in cases can be seen under both a positive and a negative light. On the positive side, it reflects a growing awareness among IO staff about their rights and the corresponding duties of their employing institutions. However, on the negative side, it may suggest that IOs are not always fully fulfilling their DoC obligations, at least according to the perceptions of the applicants. In this context, the recent efforts made by several IOs to update and integrate their internal policies related to staff treatment are welcomed as positive steps in the right direction. These efforts signify a commitment to improving the treatment of staff and ensuring that DoC obligations are met effectively. The OCHA Duty of Care Framework, adopted in March 2019, serves as an exemplary model for outlining intentions, standards, and responsibilities for operationalizing duty of care within OCHA, benefiting all its personnel.[110] However, there is still much work to be done to foster a human rights-oriented staff culture. This includes instilling a risk-mitigating attitude, implementing a robust risk assessment mechanism that incorporates the gender dimension, enhancing transparency and accountability in decision-making processes concerning staff, and paying closer attention to the specific needs of staff before and during assignments, as well as afterwards.

Achieving these goals often not only necessitates a shift in organizational approach and prioritization of organizational values within different Organizations, but also implies a financial burden. However, the investment in the well-being and safety of staff is crucial for the effectiveness and integrity of IO operations.

The recent case law, divided here into two categories – cases representing an evolution of previous jurisprudence and cases on new issues – underscores the ongoing attention of international tribunals to the issues under investigation and their willingness to set new precedents. One noteworthy aspect is the increased focus of judges on the specific needs of IOs and the importance of striking a balance between their interests and those of their staff. This heightened attention can be attributed, in part, to the historically slow implementation of DoC obligations by several IOs. In recent years, however, many IOs have introduced specific policies to fulfil the various components of duty of care, enabling judges to carefully consider the unique needs and priorities of these organizations in relation to their staff. In a recent case mentioned earlier, judges even acknowledged that in certain circumstances where the interests of the IO and its staff conflict, «greater weight may be accorded by the decision-maker to the interests of the organization».[111]

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[109] According to the Judgment of the General Court (Seventh Chamber), 28 June 2023, in Case T-752/20, *International Management Group (IMG), established in Brussels (Belgium), represented by L. Levi and J.Y. de Cara, lawyers, applicant, v European Commission* «the duty to act diligently, which is inherent in the right to good administration enshrined in Article 41 of the Charter of Fundamental Rights and which applies generally to the actions of the EU administration in its relations with the public, requires that that administration act with care and …. In the first place, it is apparent from the case-law of the Court of Justice that the duty to act diligently constitutes a rule of law intended to confer rights on individuals, breach of which is liable to trigger the non-contractual liability of the Union in certain circumstances, namely where it is established, in a given case, that that breach is sufficiently serious, in accordance with the case-law referred to». Paras 82 and 83.

[110] OCHA Duty of Care Framework, 12 March 2019, Final endorsed by the PSMC, available at: https://resourcecenter.undac.org/wp-content/uploads/2021/01/OCHA-Duty-of-Care-Framework_PSMC-endorsed.pdf.

[111] ILOAT 4687 2023, para 5.

Jurisprudence has indeed played a crucial role in clarifying the intricacies of the DoC, often inspiring the content of internal regulations adopted by relevant institutions. This underscores the tangible impact of decisions made by internal court judges on the policy decisions of various IOs. However, the real challenge for IOs lies in the full implementation of these policies, ensuring they are not merely theoretical but actively practiced. Failure to implement DoC policies effectively could tarnish an organization's reputation,[112] inviting criticism from the international community and potentially hindering its ability to attract and retain motivated and qualified staff.[113] Promptly fulfilling all components of DoC is thus not just a moral and legal obligation, but increasingly a vital tool for bolstering an organization's credibility and its ability to effectively carry out its diverse activities abroad.

[112] See also K. DAUGIRDAS, *Reputation and the Responsibility of International Organizations*, in *European Journal of International Law*, 2014, 25(4), pp. 991–1018.
[113] K. DAUGIRDAS, *Reputation as a Disciplinarian of International Organizations*, in *American Journal of International Law*, 2019, 113, pp. 221-271.