



**UNITED NATIONS APPEALS TRIBUNAL**  
**TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2024-UNAT-1468

**Louis Savadogo**  
**(Appellant)**

**v.**

**Registrar of the International Tribunal**  
**for the Law of the Sea**  
**(Respondent)**

**JUDGMENT**

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Before:	Judge Graeme Colgan, Presiding Judge Gao Xiaoli Judge Katharine Mary Savage
Case No.:	2023-1855
Date of Decision:	28 June 2024
Date of Publication:	7 August 2024
Registrar:	Juliet E. Johnson

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Counsel for Appellant: Ludovica Moro

Counsel for Respondent: Ximena Hinrichs Oyarce (ITLOS Registrar)

**JUDGE GRAEME COLGAN, PRESIDING.**

1. Louis Savadogo is a former staff member of the International Tribunal for the Law of the Sea (ITLOS or Tribunal). His case concerns his challenge to his non-appointment to the P-5 post of ITLOS Head of Legal Office/Senior Legal Officer, a decision made as long ago as February 2019 (the contested decision).
2. The ITLOS Joint Appeals Board (JAB) dismissed his challenge to his non-appointment, and implicitly and consequentially, to the ITLOS decision to appoint another person to that role. The JAB issued its “Report” now the subject of this appeal on 19 June 2023 as ITLOS/JAB/2022/9 (JAB Decision).<sup>1</sup> The JAB concluded that while Mr. Savadogo had not established that his candidacy was not given full and fair consideration, his due process rights were, nevertheless, not respected by ITLOS. The JAB awarded Mr. Savadogo USD 2,000 to compensate him for the consequences of this breach. The JAB Decision is now the subject of Mr. Savadogo’s appeal before the United Nations Appeals Tribunal (Appeals Tribunal or UNAT).
3. For the reasons set out below we dismiss Mr. Savadogo’s appeal and affirm the JAB Decision.

**Facts and Procedure**

4. There is a lengthy and convoluted history to this matter, the relevant features of which may be summarised as follows.<sup>2</sup>
5. Mr. Savadogo was a longstanding staff member of ITLOS. He had remained static in his role for some time. He wished to progress within ITLOS using his qualifications, skills and experience in the law of the sea. He applied for appointment to an advertised higher position with the Organization, P-5 Head of Legal Office/Senior Legal Officer.
6. The vacancy announcement (VA) for the position for which Mr. Savadogo applied unsuccessfully included as a “qualification” or “experience”, the holding of an “Advanced

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<sup>1</sup> Case No. *ITLOS/JAB/2022/09*, Report adopted on 19 June 2023.

<sup>2</sup> *Louis Savadogo v. Registrar of the International Tribunal for the Law of the Sea*, Judgment No. 2023-UNAT-1337 (2023 UNAT Judgment); *Louis Savadogo v. Registrar of the International Tribunal for the Law of the Sea*, Judgment No. 2022-UNAT-1189 (2022 UNAT Judgment); and *Louis Savadogo v. Registrar of the International Tribunal for the Law of the Sea*, Judgment No. 2021-UNAT-1123 (2021 UNAT Judgment).

University degree in international law with specialization in law of the sea”.<sup>3</sup> Candidates were not, however, asked to submit documentary evidence of their educational qualifications.

7. Applications were considered initially by the ITLOS Appointment and Promotion Board (APB). The APB recommended to the ITLOS Registrar (the Registrar) five candidates, including Mr. Savadogo, for advancement in the appointment process. Two of the five candidates recommended were current ITLOS staff (including Mr. Savadogo) and so it was decided that evaluation of the written tests would be outsourced for independent evaluation. These recommendations were endorsed by the Registrar and in turn referred to the President of the Tribunal (the President). Following the President’s endorsement of the shortlisted candidates, they were considered by the Tribunal at its 46th Session on 28 September 2018. The Tribunal approved the list, directed interviews of the five candidates and authorised the President to select the successful candidate. With the withdrawal of one shortlisted candidate in circumstances referred to later, the remaining four underwent a written test and, thereafter, interviews.<sup>4</sup> This process followed ITLOS Administrative Instruction ITLOS/AI/2017/05 (Procedure for the selection of candidates for vacant posts).

8. The four remaining candidates took a written test on 4 December 2018. Interviews took place on that same day for three of the candidates, and on 6 December 2018, for Mr. Savadogo. First interviews were conducted by the Registrar and the Deputy Registrar, and second interviews were conducted by the President.

9. There were three questions in the written test, two of which had been prepared by an external expert and one by the Registrar and Deputy Registrar. The written tests were graded by three external experts. Mr. Savadogo was ranked second out of the four examinees, his written test scoring a 57 percent mark while the selected candidate was ranked first (for this metric) with a significantly higher score of 78 percent.<sup>5</sup>

10. On 4 February 2019, the Registrar sent a memorandum to the President recommending the appointment of the selected candidate (Selection Memorandum). The Registrar noted that the top two candidates were both internal candidates at the P-4 level, although Mr. Savadogo had more seniority in terms of tenure in the Organization. The Registrar remarked that the

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<sup>3</sup> JAB Decision, para. 1.

<sup>4</sup> *Ibid.*, paras. 6-8.

<sup>5</sup> *Ibid.*, para. 9.

selected candidate had experience in a governmental ministry and had passed a Language Proficiency Exam (LPE) in both working languages of the ITLOS, whereas Mr. Savadogo had not passed the LPE in English. The Registrar stated that both had performed well in their interviews, but the selected candidate rated much better on the written examination.

11. On 7 February 2019, Mr. Savadogo was advised of his non-appointment. Although not required to do so, on 26 February 2019, the Administration provided him with the results of his written test. Following his request for a review of the decision not to appoint him, Mr. Savadogo was advised on 1 April 2019 that the decision would not be changed. Mr. Savadogo then lodged a complaint about his non-appointment with the ITLOS Conciliation Committee. Conciliation failed to resolve his complaint and Mr. Savadogo then, on 20 April 2019, filed his application with the JAB challenging his non-selection.<sup>6</sup>

#### *JAB Proceedings*

12. The JAB consideration of this case, conducted over no fewer than six occasions, included calling for and assessing background materials including information about the educational backgrounds of the shortlisted candidates, evidence of the educational qualifications of the successful candidate and a redacted version of the Registrar's report to the President addressing the written tests and interviews of the candidates.<sup>7</sup>

13. In particular, the JAB requested information regarding how the selected candidate fulfilled the requirement of having an "Advanced University degree in international law with specialization in law of the sea". The Registrar advised that the selected candidate had a first-level academic degree in law, had passed a state examination in law, and held a Master of Laws (post graduate) degree, for which the candidate had indicated his main course of study was "Public International Law, Law of the Sea".<sup>8</sup>

14. The JAB was also provided with the Registrar's view that the reference to "specialization in the law of the sea" in the VA was "not to be understood as requiring that the degree must be exclusively specialized in the law of the sea".<sup>9</sup> Candidates could demonstrate

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<sup>6</sup> *Ibid.*, paras. 10-14.

<sup>7</sup> The redactions related to information about candidates that was irrelevant to this case.

<sup>8</sup> *Ibid.*, para. 48.

<sup>9</sup> *Ibid.*, para. 32.

their specialized knowledge in other ways, including by studying the law of the sea as part of a Master's program, as the selected candidate had.

15. The JAB followed up with a request for information on the courses taken by the selected candidate as part of his Master's degree, which was provided by the Registrar.

16. The JAB inquired of the Registrar, as Chair of the APB, whether there was a discussion by the APB in its meeting of 24 August 2018 about the educational qualifications of the candidates on the shortlist. The Registrar referenced the APB report of 28 August 2018, in which it was stated that the APB reviewed the applications on the basis of the VA, considered the applications and candidates, and that the APB took into account the objective criteria in the VA.<sup>10</sup>

17. The JAB made recommendations to the Registrar about the outcome of Mr. Savadogo's appeal on 27 December 2020 and the Registrar subsequently decided to dismiss Mr. Savadogo's appeal against his non-appointment.<sup>11</sup>

18. There followed an appeal by Mr. Savadogo to the UNAT, which issued the 2022 UNAT Judgment, directing his case to be reconsidered by a re-constituted JAB which had decisive, as opposed to only recommendatory, powers.<sup>12</sup>

19. Mr. Savadogo's case was back before the UNAT in 2023 when he sought to enforce the 2022 UNAT Judgment. In the 2023 UNAT Judgment, the Appeals Tribunal dismissed Mr. Savadogo's application but directed that the JAB rehear his case within three months of that Judgment.<sup>13</sup>

20. At the time of the publication of the 2023 UNAT Judgment, the re-constituted JAB had already begun its reconsideration of the case. Reconsideration concluded on 19 June 2023, which was when the JAB issued the impugned JAB Decision underlying the present appeal.

21. By then, in March 2023, Mr. Savadogo had separated from service with ITLOS.

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<sup>10</sup> *Ibid.*, paras. 41-42.

<sup>11</sup> *Ibid.*, para. 17.

<sup>12</sup> 2022 UNAT Judgment, para. 25.

<sup>13</sup> 2023 UNAT Judgment, para. 110.

*Impugned JAB Decision*

22. The JAB considered its role to be to determine whether the applicable rules and regulations had been applied; whether Mr. Savadogo's application had received full and fair consideration; to ensure that discrimination and bias were absent; to ensure that proper procedures had been followed; and to review whether all relevant material had been taken into account. Recognising the discretion of the ITLOS to make such appointments absent these disqualifying factors, the JAB considered that it could not substitute its decision for that of the Administration, even if it considered that Mr. Savadogo was the most suitable candidate.

23. The JAB applied what it called the presumption of regularity of the Administration's decision whereby once a low threshold established this regularity, what it described as the burden of proof shifted to the applicant to rebut that presumption. The JAB further stated that Mr. Savadogo had to discharge this burden at the clear and convincing evidential standard. It followed that the JAB needed to be satisfied clearly and convincingly that Mr. Savadogo was denied a fair chance of selection.<sup>14</sup>

24. The JAB first evaluated Mr. Savadogo's claim that he was not given full and fair consideration on the grounds that the candidates were not properly evaluated against the education requirement of the VA. The JAB considered that the Registrar was free to require that experience in the law of the sea could have been acquired through professional experience, academic qualifications or both. However, in this case, the VA stated that the candidate should have an "advanced University degree in international law with specialization in the law of the sea". The JAB considered that it was within Registrar's discretion to determine what constituted a degree with "specialization in the law of the sea", but that this had to be within the bounds of reasonableness. The JAB concluded that at a minimum, "some evidence of study of law of the sea would appear to be necessary".<sup>15</sup>

25. The JAB observed that the selected candidate held a Master's degree with specialized elements of the law of the sea. While recognising that Mr. Savadogo was also so qualified, it was within the ITLOS's discretion to determine that the successful appointee also met this qualification and so was not disqualified from further assessment on other criteria.

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<sup>14</sup> JAB Decision, para. 24.

<sup>15</sup> *Ibid.*, paras. 35-36.

26. The JAB observed that the report of the APB did not contain an assessment of the qualifications of the candidates, but rather a listing of qualifications. Although the Registrar stated that the APB had discussed the qualifications of the candidates, no written record of this discussion was provided to the JAB.<sup>16</sup>

27. The JAB noted that one of the shortlisted candidates had no educational qualifications involving the law of the sea, which “raise[d] serious doubts as to whether the evaluation of the applications considering the education requirements of the vacancy announcement were properly carried out”.<sup>17</sup> The JAB also observed that the information about the coursework taken by the selected candidate in his Master’s program seemed to be gathered in response to the JAB’s request and was not available or considered by the APB when it evaluated the candidate.

28. The JAB concluded that the record did not indicate that the evaluation of the candidates against the requirements of the vacancy announcement was properly carried out. However, given the evidence submitted to the JAB, the JAB concluded that if a proper evaluation had been undertaken, the four shortlisted candidates who took the written test and were interviewed would not have changed.<sup>18</sup>

29. The JAB next turned to Mr. Savadogo’s claim that there had been no comparative analysis of the candidates. Mr. Savadogo’s view was that even if he had not had the highest written test score, he fulfilled the vacancy requirements to a greater degree than the other candidates. The JAB considered that the Selection Memorandum, which summarised the results of the written test and interview, demonstrated sufficiently that a comparative analysis had been done. The JAB considered that it was within the Registrar’s discretion to consider that the results of the written test were an important element of the recruitment process.<sup>19</sup>

30. The JAB rejected Mr. Savadogo’s claim that the Registrar’s impartiality was compromised because of their long history of animosity, finding no evidence in support of this allegation.<sup>20</sup>

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<sup>16</sup> *Ibid.*, paras. 42-43.

<sup>17</sup> *Ibid.*, para. 47. This was the candidate who withdrew their application at the shortlist stage, although apparently having succeeded in getting shortlisted without the requisite academic qualifications.

<sup>18</sup> *Ibid.*, para. 54.

<sup>19</sup> *Ibid.*, para. 59.

<sup>20</sup> *Ibid.*, para. 64.

31. The JAB considered Mr. Savadogo's complaint that his due process rights were violated because he had made multiple requests for information about the recruitment process that were ignored. The JAB observed, however, that he had received the breakdown of the written scores and his ranking during the conciliation process, so it was available to him before he filed his application with the JAB.<sup>21</sup>

32. Nevertheless, the JAB found that the Registrar could have provided Mr. Savadogo with a copy of the redacted Selection Memorandum containing the analysis of the candidates, and that had the Registrar done so, it might have brought an end to the challenge because Mr. Savadogo could have seen that his claims were unfounded. The JAB considered the failure to provide this memorandum to Mr. Savadogo constituted a violation of his due process rights and awarded him USD 2,000 in moral damages.<sup>22</sup>

33. The JAB dismissed Mr. Savadogo's claim that his expectations had been raised that he would be selected when he took the written test because he had been given a document entitled "Computation sheet for salary on promotion within a category".<sup>23</sup>

34. As the JAB found that the Administration's decision in favour of the selected candidate was within the Registrar's discretion, the JAB denied Mr. Savadogo's other requested remedies, including two years' salary.<sup>24</sup>

#### *Procedure before the Appeals Tribunal*

35. Mr. Savadogo filed an appeal of the JAB Decision with the Appeals Tribunal on 26 September 2023. Included in that appeal were two requests for additional evidence. Unfortunately, and contrary to the UNAT's practice, these requests were buried in the pleadings in support of the appeal rather than being advanced as separate motions. It was not until the appeal was being prepared for consideration that the requests were identified. By Order No. 558 issued on 10 May 2024, the UNAT directed the Registrar to respond to the two requests.<sup>25</sup>

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<sup>21</sup> *Ibid.*, para. 70.

<sup>22</sup> *Ibid.*, para. 74.

<sup>23</sup> *Ibid.*, para. 79.

<sup>24</sup> *Ibid.*, paras. 82, 84 and 87.

<sup>25</sup> *Louis Savadogo v. Registrar of the International Tribunal for the Law of the Sea*, Order No. 558 (2024), para. 7.



36. Mr. Savadogo's requests were for production of documents. The Respondent advised the UNAT that the documents (evaluations of the university degrees of the shortlisted candidates and minutes of the evaluations of the shortlisted candidates comparing them against the objective criteria of the vacancy announcement) were not prepared and therefore did not exist. In these circumstances no order for disclosure was made. However, at the same time (16 May 2024) the Respondent made further written submissions associated with the issue of whether such documents should have been prepared. Accordingly, Mr. Savadogo was allowed to file and serve written submissions in reply, which he did. All additional submissions just described have been considered by us on this appeal.

37. We have taken these additional submissions for both parties into account in our "Considerations".

### **Submissions**

#### **Mr. Savadogo's Appeal**

38. Perhaps acknowledging the futility or mootness of his appeal following his separation from service with ITLOS, Mr. Savadogo does not request rescission of the non-selection decision; however, he submits that the Appeals Tribunal should find and rule on various errors of the JAB and award him remedial compensation.

39. Mr. Savadogo submits that the JAB erred in finding that he had failed to substantiate unfairness and bias by the Registrar. He argues that the Registrar was evasive in explaining the criteria upon which the selection would be based. He further states that a candidate cannot be fairly evaluated by a person with whom he has had persistent conflictual relations. The fact that the evaluation was outsourced is irrelevant because the Registrar chose the external assessors.

40. Mr. Savadogo submits that the same JAB panel should not have re-considered his claims and a new panel should have been constituted.

41. Mr. Savadogo submits that the JAB erred in law by substituting its own criterion with respect to the interpretation of the education qualification of "specialization in the law of the sea". The JAB exceeded its discretion in its interpretation of the VA in violation of the principle of *tu partere legem quam ipse fecisti*. We understand this to mean that ITLOS is bound by its own applicable rules, and it is inequitable to relieve it of compliance with them.

42. Mr. Savadogo rejects the JAB's determination that "specialization in the law of the sea" does not have a fixed definition. He avers that the term "specialization" does indeed have a fixed definition in the context of a university degree. He submits that the words must be interpreted in light of their ordinary meaning, and that the phrase "unequivocally refers to an advanced degree in international law focused in the field of the law of the sea".

43. Mr. Savadogo submits that the JAB erred by allowing that "specialization in the law of the sea" could encompass "some evidence of study of the law of the sea" or "education qualifications involving the law of the sea". He argues that the phrase in the VA unequivocally means that the university degree was "focused on the law of the sea" as the primary subject.

44. Mr. Savadogo argues that the JAB erred in finding that the Registrar had discretion to determine what counts as "specialization" so long as it was within reasonable bounds. He contends that the phrase "university degree with specialization in the law of the sea" is an impersonal and objective criterion.

45. Mr. Savadogo points out that the Appeals Tribunal as previously opined in the 2023 UNAT Judgment that the ITLOS may not change the rules of the game during a recruitment procedure.<sup>26</sup> He claims that this rationale applies *mutatis mutandis* to the present appeal, because the interpretation of "specialization of the law of the sea" was changed from its objective meaning.

46. Mr. Savadogo submits that he was the only candidate who met the requirement of holding an advanced university degree with a specialization in the law of the sea. Moreover, his experience as a senior Legal Officer in charge of the Legal Office for more than 10 years was completely disregarded.

47. Mr. Savadogo submits that the JAB erred in both fact and law in holding that he was fully and fairly considered for the post. He argues that the Selection Memorandum was not an overall comparison and reasoned assessment of the candidates. Mr. Savadogo notes that this memorandum does not refer to the objective criteria of the academic qualification.

48. Mr. Savadogo points out that the Selection Memorandum discussed an unpublished requirement, namely, which candidate had passed the LPE for French and English. Mr. Savadogo argues that passing the LPE for either language was not a criterion in the VA.

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<sup>26</sup> 2023 UNAT Judgment, para. 99.

49. Mr. Savadogo submits that there was no specific analysis as to how the qualifications and experience of the selected candidate were clearly superior to his. Accordingly, he was not given full and fair consideration for this post and the JAB's finding to the contrary is unsupported.

50. Mr. Savadogo submits that the JAB erred by introducing arguments that were not raised by the parties, such as the interpretation and definition of the term "specialization" as well as how to interpret his own degree "doctorat en droit". Further, the JAB erred in opining that the written test could by itself be considered an evaluation of legal analysis and writing, when this was not raised by the Registrar.

51. Mr. Savadogo submits that the Registrar's failure to provide him a copy of the Selection Memorandum despite repeated requests constituted an abuse of process, and that the JAB failed to adequately compensate him for this.

52. Mr. Savadogo submits that the JAB's conclusion that his chance of promotion would not have changed had the correct procedure been followed, is completely unfounded. He argues that the irregularity was of such a nature that had it not occurred he would have had a foreseeable and significant chance of promotion. Mr. Savadogo demonstrated that he fulfilled all the criteria listed in the VA while the selected candidate did not. Accordingly, Mr. Savadogo submits that the non-selection decision should have been set aside, although that cannot result in his appointment to that role now.

53. Mr. Savadogo argues that even if the non-selection decision is not set aside, the procedural violations warrant a compensation award of 6 to 18 months. In addition, he has submitted medical evidence to support the psychological harm to him from being in the same position in ITLOS for more than 20 years and the unprecedented treatment of him by the Registry. Given this, the JAB's award of USD 2,000 in moral damages was unreasonable.

54. Mr. Savadogo requests that the Appeals Tribunal rule that the JAB erred in concluding that he was given full and fair consideration and that his non-selection was lawful. Mr. Savadogo requests that the Appeals Tribunal rule that the JAB's quantification of damages was inadequate and award him two years' salary as compensation.

55. Mr. Savadogo additionally requests non-material or moral damages for emotional distress, damage to professional reputation and humiliation.

56. Mr. Savadogo requests that the Appeals Tribunal order the payment of legal fees of Euros 15,000, and Euros 10,000 for improper delay of internal proceedings, and USD 2,000 for the Registrar's delay in executing the 2022 UNAT Judgment.

57. As referred to above, we now record the additional submissions made by Mr. Savadogo in relation to his request for "evaluations of the university degrees of the shortlisted candidates" and for "minutes of the evaluations of the shortlisted candidates and their comparison against the objective criteria of the vacancy announcement."

58. Mr. Savadogo submits that the fact that the documents that he requested were not prepared represents a procedural flaw that affected his right to full and fair consideration of his candidacy. Mr. Savadogo references UNAT jurisprudence on the importance of full and fair consideration of applications.

59. Mr. Savadogo repeated his assertion that the selected candidate "clearly" does not hold the qualifications requested by the VA, because the selected candidate has a Master's degree in public international law with courses in the law of the sea, whereas he has a higher post-graduate degree (a PhD) "fully centered on the law of the sea".

60. Mr. Savadogo repeated his complaint that the Registrar elevated the importance of the written test over other factors in making the selection.

61. Mr. Savadogo submits that the Registrar failed to apply objective criteria in a consistent manner, resulting in a manifestly unreasonable decision. He submits that he had a significant chance of being selected and given that he worked at ITLOS for twenty years without being promoted and that this case has gone on for more than five years, these facts should be considered by the UNAT when determining a compensatory award in his favour.

### **The Registrar's Answer**

62. The Registrar submits that the facts and procedural history of the case are correctly reflected in the JAB Decision. However, the Registrar rejects Mr. Savadogo's statement that he was "in charge of the coordination of the Legal Office for over ten years". The Registrar submits that from 2001 to 2012 all Legal Officers were supervised directly by the Registrar.

63. The Registrar submits that Mr. Savadogo's complaints about lack of career progression are a result of being recruited at a high-level (P-4) in a small organization of only 38 staff members, which can necessarily offer limited career advancement opportunities. There are 20 posts in the General Service category and 16 in the Professional category (with only two posts at the P-5 level), one D2 (Deputy Registrar) and one Assistant Secretary-General (Registrar).

64. The Registrar submits that the JAB did not err in fact or in law in finding that the recruitment process and the contested decision were lawful.

65. The Registrar submits that the ITLOS followed the recruitment process set forth in ITLOS/AI/2017/05. The Registrar specially notes that in order to guarantee fairness and transparency of the process, the written test taken by the candidates was evaluated by external evaluators who received the tests without any indication of the candidates' names. The Registrar points to the 2023 UNAT Judgment in which such outsourcing of the grading of written tests was considered by the Appeals Tribunal to be "*prima facie* at least, objective and unbiased".<sup>27</sup>

66. The Registrar argues that ITLOS/AI/2017/05 does not require the APB to do more than it did, which was to prepare a recommendation of a shortlist of the candidates based on its review of the objective criteria of the VA against the candidates. According to the Administrative Instruction, the APB "draws up a list of proposed candidates" and is not required to provide further documentation. The Registrar points out that the *curricula vitae* of the candidates were appraised not only by the APB but also by the Registrar, the President, the Committee on Staff and Administration of ITLOS and by the whole of the Tribunal. The Registrar submits that all candidates, including Mr. Savadogo, were fully and fairly considered.

67. The Registrar submits that the procedural violation found by the JAB, i.e., the failure to provide Mr. Savadogo information on the written test scores of the other candidates and how the selected candidate met the vacancy requirement, occurred after the contested decision was taken, and thus cannot undermine the lawfulness of the contested decision.

68. The Registrar rejects Mr. Savadogo's assertion that the JAB exceeded its competence by establishing its own definition of the meaning of the phrase "specialization in the law of the sea".

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<sup>27</sup> *Ibid.*, para. 89.

The Registrar submits that the JAB correctly held that it was within his discretion to determine what constituted a degree with a “specialization in the law of the sea”.

69. The Registrar rejects Mr. Savadogo’s claim that “specialization in the law of the sea” has a fixed meaning, i.e., that the advanced university degree must be specialized *exclusively* in the law of the sea. The Registrar submits that it means that the degree has to include “some specialization” in the law of the sea, and that this can be demonstrated in different ways, including studying the law of the sea in a Master’s program as the selected candidate did.

70. The Registrar submits that the JAB was correct to conclude that the selected candidate’s course of study for his Master’s program sufficiently covered the law of the sea, and that the Registrar’s determination that the selected candidate met the objective criteria did “not go beyond the bounds of reasonableness”.

71. The Registrar contends that the JAB correctly concluded that the Selection Memorandum “constituted a reasoned and documented record of th[e] evaluation” of the candidates. The Registrar acknowledges that the JAB stated that a more detailed analysis would have been desirable, but nonetheless, Mr. Savadogo failed to establish that a comparative analysis was not carried out.

72. The Registrar rejects Mr. Savadogo’s claim that there was an “unpublished requirement” to have passed the LPE in English and French. The Registrar submits that reference to the LPE in the Selection Memorandum was merely a commentary on the candidates’ language skills in light of the requirements in the VA.

73. The Registrar submits that there is no requirement that when a case is remanded by the UNAT that the remanded case must be heard by a differently composed panel. The UNAT made no such order here, and it was within the JAB’s competence to establish its composition. In the 2023 UNAT Judgment, the Appeals Tribunal rejected a similar argument by Mr. Savadogo.<sup>28</sup>

74. The Registrar likewise contends that Mr. Savadogo’s unhappiness that the JAB adopted its earlier report on the merits of the selection decision (dated 10 December 2020) should be disregarded. The case was remanded to the JAB on procedural grounds and there was no reason for the JAB to change its view on the merits of Mr. Savadogo’s case.

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<sup>28</sup> *Ibid.*, para. 83.

75. The Registrar submits that given that the JAB correctly concluded that the decision in favour of the selected candidate was within the Registrar's discretion, there is no basis for material compensation to Mr. Savadogo. The Registrar requests that the UNAT reject his claim to two years' salary as additional compensation.

76. The Registrar submits that Mr. Savadogo failed to establish emotional distress, reputational harm and other psychological consequences of the contested decision before the JAB. The Registrar points out that the medical certificate provided by Mr. Savadogo was not presented to the JAB and thus pursuant to Article 10 of the Appeals Tribunal Rules of Procedure (Rules), it cannot be received now.

77. The Registrar further argues that even if the Appeals Tribunal accepted the medical certificate, this certificate is dated 6 January 2021 and does not show that there is a link between his health issues and his non-selection for the post in 2019.

78. The Registrar submits that there is no basis for an award of legal costs, because such an award is, pursuant to Article 9(2) of the Appeals Tribunal Statute (Statute) only permissible when a party has "manifestly abused the appeals process". There has been no such abuse here.

79. The Registrar lastly disputes that there was undue delay in her acceptance of the JAB's recommendation of the award of USD 2,000 in moral damages.

80. The Registrar requests that the Appeals Tribunal dismiss the appeal in its entirety.

### **Considerations**

#### *Request for oral hearing*

81. These are our reasons for declining Mr. Savadogo's request for an oral hearing. The default position is that appeals are determined on the papers filed and written submissions. Article 8(3) of the UNAT Statute and Article 18 of the UNAT's Rules of Procedure nevertheless provide that we may agree to an oral hearing if this would assist in the expeditious and fair disposal of the case.

82. Mr. Savadogo's grounds in support of his preferred position rely on a contention that we should hear the evidence of a witness or witnesses about the academic qualifications of candidates and of the reasons for the selection process. However, as with a number of other

unrelated appeals we have considered recently, this mistakes the nature of an appeal. An appeal is a review to ascertain whether the first instance tribunal's decision was erroneous rather than being a general/*de novo* reconsideration of the case. Further, it would be contrary to the statutory scheme, which requires that any oral evidence that the Appeals Tribunal may consider should be given before the first instance tribunal (i.e., in this case, the JAB) and would thus require a remission of the case to it.

83. This is a well-documented case, and we consider that all arguments can be fully addressed by reference to the record. We were not satisfied that the appeal could have been more justly and expeditiously disposed of by hearing rather than reading the parties' submissions. In these circumstances, the request for the oral hearing was denied.

#### *Qualifications for appointment*

84. A central tenet of Mr. Savadogo's case is that while he held the academic qualification for the role, the successfully appointed candidate did not. Evaluation of this argument requires first an analysis of that academic benchmark and contextual relevant information about the advertised vacancy. The educational specifications were a minimum threshold, that is, all applicants had to hold them to be considered further, but the educational qualifications were not the determining factor in who was appointed from amongst applicants holding them.

85. Breaking down the description of the academic qualifications necessary for appointment, the first requirement was for "an advanced university degree". The successful candidate's qualification (a Master of Laws degree from the London School of Economics (a university)) met that standard: it is a post-graduate degree, which is a degree that builds on an undergraduate degree and is therefore an "advanced" degree. So too was Mr. Savadogo's academic qualification, although he held a doctorate. Both applicants therefore met the threshold academic qualifications and were shortlisted.

86. The second condition affecting the academic qualification was that it required a degree in international law. That is, its areas of study include a range of international law sub-disciplines such as, for example, air and space law, the law of international treaties, international trade law, the law of armed conflict between nations and pertinently, international maritime law or, as called here, the law of the sea. Both Mr. Savadogo's and the successful candidate's qualifications met this criterion.



87. A student's "advanced" university degree may focus on one or more areas of specialization, that is discrete topics or areas of international law that are focussed on in greater detail than others so that it may be said that it or they are the student's "specialization(s)".

88. Both Mr. Savadogo and the successful candidate held the threshold academic qualifications required to be considered for the post, albeit by different means. It was not, as Mr. Savadogo appears to contend, a case that his academic qualifications being superior, he should have been appointed.

89. As did the JAB, we too find it surprising that ITLOS did not seek confirmation that the applicants in fact held the academic qualifications required, including the specialization requirements, as part of the initial screening and shortlisting process. Nevertheless, subsequent forensic considerations of these criteria confirm that both applicants met the minimum gatekeeping standard. In particular, the successful candidate held a Master's degree in which he had specialized in the law of the sea. With different qualifications, so too did Mr. Savadogo. The selection was not based on a comparison of their academic profiles. Once they each satisfied this threshold requirement, the comparison of the candidates moved on to other considerations.

#### *Language fluency*

90. Mr. Savadogo's case is that, although unannounced in the VA, ITLOS nevertheless took account of the successful candidate's linguistic qualification to differentiate him from Mr. Savadogo. Passing the LPE in French and/or English was not, however, a mandatory minimum qualification, as was the academic degree requirement. Rather, it was one of a range of relevant criteria that could impact the preference for one candidate over another, as no doubt were other factors including the results of the written tests and the personal interviews. ITLOS is a bilingual organisation and an ability to communicate in both of its official languages was clearly relevant to a broader assessment of candidates' suitability, as would have been, for example and in his favour, Mr. Savadogo's long experience with ITLOS. This ground of the appeal does not avail Mr. Savadogo's case.

91. We turn next to the argument that the due process errors that the Registrar committed, as were identified by the JAB and for which Mr. Savadogo has been compensated, were of a sufficient magnitude that they rendered flawed the Registrar's decision not to appoint him.

From this flows Mr. Savadogo's submission that the appointment should have been revoked and the appointment process re-commenced, or even that the JAB should have directed the appointment of Mr. Savadogo and, thereby displaced the selected candidate from the post.

92. We can detect no error in the JAB's conclusion that even if those due process errors had not been committed by ITLOS, it is probable that the same appointment decision would have been reached. We agree with the JAB that the appointment decision was not unreasonable. To go further and give directions about the appointment decision, which is properly the province of the ITLOS, would be to exceed the UNAT's (and indeed the JAB's) role in such cases.

93. We assess the foregoing to be Mr. Savadogo's principal grounds of appeal. His submissions are, however, comprehensive and he makes additional points which we will now address, albeit somewhat more summarily.

94. Mr. Savadogo asserts that the JAB wrongly concluded that he had failed to substantiate his assertions of unfairness and bias against him by the Registrar, saying in particular that even though the testing was outsourced, bias still existed because the Registrar chose the assessors. We can detect nothing to persuade us that the JAB was wrong in its conclusions in this regard. While Mr. Savadogo may or may not have had a fractious relationship with the Registrar, that is not the same thing as establishing bias in the selection process, especially when there was an independent assessment of the written tests which were an important element of the selection process.

95. Mr. Savadogo says that a new JAB panel should have been assembled for his case after it was remitted by the UNAT in 2021.<sup>29</sup> However, the UNAT's remand to the JAB at that time had nothing to do with the merits of his case but rather with the jurisdictional scheme adopted by ITLOS and once this was corrected, there was no reason why the same JAB panel could not fairly re-assess his case.

96. We do not agree that the JAB wrongly interpreted the academic qualification requirement for candidacy. The JAB was required to interpret what the VA meant and did so correctly in our view. The requirement for specialization did not extend to a full focus on a study of the law of the sea. Specialization required only that this branch of international law

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<sup>29</sup> 2021 UNAT Judgment, para. 31.

be studied in some greater depth than others, a requirement that both Mr. Savadogo and the selected candidate met.

97. We do not accept that Mr. Savadogo was the only candidate who surpassed the academic gatekeeping qualification for the reasons already set out.

98. Nor do we agree that the JAB can be said to have ignored or under-weighted Mr. Savadogo's experience as acting Head from time to time of the ITLOS Legal Office. His experience was taken into account but was one of a number of criteria evaluated and weighed in the appointment process.

99. While not unsympathetic to Mr. Savadogo's mental health issues which he claims may have been attributable to his holding the same position in ITLOS for more than 20 years, this is not an argument for either his appointment to higher office or more generally for compensation.

100. Because we do not allow the appeal, Mr. Savadogo's requests for increased compensation and costs must be denied.

**Judgment**

101. The appeal is dismissed and Decision ITLOS/JAB/2022/9 of the ITLOS Joint Appeals Board is affirmed.

Original and Authoritative Version: English

Decision dated this 28<sup>th</sup> day of June 2024 in New York, United States.

*(Signed)*

Judge Colgan, Presiding

*(Signed)*

Judge Gao

*(Signed)*

Judge Savage

Judgment published and entered into the Register on this 7<sup>th</sup> day of August 2024 in New York, United States of America.

*(Signed)*

Juliet E. Johnson, Registrar