

# 2019

## AIIB LEGAL CONFERENCE

September 11-12, 2019  
AIIB Headquarters  
Beijing, China



## Efficient Multilateral Institutions and the Role of International Administrative Law



ASIAN INFRASTRUCTURE  
INVESTMENT BANK

# Welcome to AIIB

The mandates of all multilateral institutions are instrumentalized by the international civil service. In this way, the employment law that governs the appointment, incentivization and integrity of this multinational workforce is essential to the success and effectiveness of every international organization.

By examining the role of the law of employment relations of multilateral institutions—international administrative law—it is intended to gain a greater understanding of how best to maximize the mission impact of intergovernmental organizations. The third annual AIIB Legal Conference intends to bring together the insights of, and afford a dialogue between, experts in this field.

Our five panels will address the following broad themes: (1) the extent to which international administrative law is inherent to the international legal status of multilateral institutions; (2) the formal dispute resolution role afforded by international administrative tribunals and the part they play in the successful mandates of multilateral institutions; (3) the considerations of employment-related dispute resolution and international administrative law in creating an efficient workplace culture for multilateral institutions; (4) the legal basis and dynamics of international administrative law and (5) critical aspects of international administrative law that go to the heart of the efficiency and effectiveness of multilateral institutions, namely integrity and performance management.

As in past years, we are also pleased that this year's AIIB Legal Conference will afford the basis of the third volume of the AIIB Yearbook of International Law, to be published by Brill Nijhoff and launched at the Annual Meeting of AIIB's Board of Governors, in Beijing, China, July 2020. In this way, the dialogue between preeminent academics, jurists and practitioners begun at the third annual AIIB Legal Conference will inform and engage with the broadest possible audience.

## **Gerard Sanders**

General Counsel, Asian Infrastructure Investment Bank

## **Peter Quayle**

Chair, 2019 AIIB Legal Conference

## **TABLE OF CONTENTS**

Welcome to AIIB .....	i
Legal Conference Schedule .....	1
Abstracts	
<i>International Administrative Law and the International Legal Status of Multilateral Institutions</i> .....	4
<i>International Administrative Law and the Formal Resolution of Employment-Related Disputes of Multilateral Institutions</i> .....	6
<i>International Administrative Law and the Creation of Efficient Workplace Cultures of Multilateral Institutions</i> .....	8
<i>International Administrative Law and the Internal Legal Framework of Multilateral Institutions</i> .....	10
<i>International Administrative Law and the Integrity and Performance Management of Multilateral Institutions</i> .....	12
Biographies .....	14
2019 AIIB Yearbook of International Law .....	21

# Legal Conference Schedule

## DAY 1: Wednesday, Sep. 11, 2019

8:45–9:30 a.m. Registration and Coffee

9:30–9:45 a.m. Welcome Remarks:  
• Gerard Sanders, General Counsel, Asian Infrastructure Investment Bank  
• Peter Quayle, Chair, 2019 AIIB Legal Conference

9:45 a.m.–noon Panel 1:

International Administrative Law and the International Legal Status of Multilateral Institutions

**Chair:** Christopher Smith, Chief Counsel, Finance, Asian Infrastructure Investment Bank

- Alice Lacourt, Senior Legal Adviser, Commonwealth Secretariat, ***The Commonwealth Secretariat Arbitral Tribunal: A Relationship with International, Human Rights and Domestic Laws?***
- Edward Chukwuemeke Okeke, Senior Counsel, World Bank Group, ***The Tension between the Human Rights Principle of Access to Court and the International Law Principle of Jurisdictional Immunity of International Organizations***
- Fady Zeidan, General Counsel, The Global Fund to Fight AIDS, Tuberculosis and Malaria, ***Resolving Employment-Related Disputes at the Global Fund: The Journey of a Public-Private Partnership***

Noon–1 p.m. Lunch, 21st Floor

1–3:15 p.m. Panel 2:

International Administrative Law and the Formal Resolution of Employment-Related Disputes of Multilateral Institutions

**Chair:** Rüdiger Woggon, Assistant General Counsel, Asian Infrastructure Investment Bank

- Norbert Seiler, Managing Director and Deputy General Counsel, European Bank for Reconstruction and Development, ***The Evolution of a Staff Grievance System: The Case Study of the European Bank for Reconstruction and Development***
- Steven Hill, Legal Adviser and Director of the Office of Legal Affairs, North Atlantic Treaty Organization, ***Experience with NATO's Administrative Tribunal: A Contribution to Organizational Effectiveness?***
- Alayne Frankson-Wallace, Executive Director, Office of Administration of Justice, United Nations, ***The 10th Anniversary of the Internal Justice System of the United Nations: Lessons Learned***

3:15–3:45 p.m. Tea

# Legal Conference Schedule

3:45–6 p.m. Panel 3:

International Administrative Law and the Creation of Efficient Workplace Cultures  
of Multilateral Institutions

**Chair:** Ranjini Ramakrishnan, Senior Counsel, Corporate, Asian Infrastructure Investment Bank

- David Eatough, General Counsel, European Stability Mechanism, ***Building an International Financial Institution Administrative Tribunal from Scratch: Lessons and Aspirations***
- Rishi Gulati, Fellow, London School of Economics and Political Science, ***The Place of International Arbitration in Resolving Employment-Related Disputes of International Organizations***
- Gang Li, Regional Ombudsman and Acting Chief, Office of the United Nations Ombudsman and Mediation Services, United Nations, ***The Value of Alternative (Informal) Dispute Resolution System in the Governance of Multicultural International Organizations***

6:15–8:15 p.m. Conference Dinner, Fifth Floor

## DAY 2: Thursday, Sep. 12, 2019

9–9:45 a.m. Coffee

9:45 a.m.–Noon Panel 4:

International Administrative Law and the Internal Legal Framework of Multilateral Institutions

**Chair:** Xuan Gao, Chief Counsel, Institutional, Asian Infrastructure Investment Bank

- Shin-ichi Ago, Vice President, Asian Development Bank Administrative Tribunal; Professor of Law, Ritsumeikan University and Professor Emeritus (Former Law Dean and Vice President), Kyushu University, ***What is International Administrative Law? Concepts and Origins***
- Celia Goldman, Registrar, International Monetary Fund Administrative Tribunal and Judge, European Stability Mechanism Administrative Tribunal, ***How International Organizations' Immunities Shape the Development of International Administrative Law***
- Damien Eastman, Assistant General Counsel, Asian Development Bank, ***Terms and Conditions of Appointment: Beyond the Written Contract of Employment of International Civil Servants***

Noon–1 p.m. Lunch, 21st Floor

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# Legal Conference Schedule

1–3:15 p.m. Panel 5:

International Administrative Law and the Integrity and Performance Management  
of Multilateral Institutions

**Chair:** Peter Quayle, Chief Counsel, Corporate, Asian Infrastructure Investment Bank

- Brian Patterson, Assistant General Counsel, International Monetary Fund, ***To Resolve or Report Misconduct: The Duty of a Manager of an International Organization***
- Eric LeBlanc, Chief Counsel, Administrative Affairs Division, African Development Bank, ***Procedural Requirements in Staff Misconduct Cases: The Evolving Approach of the African Development Bank Administrative Tribunal***
- Laurent Germond, Director, Employment Law, European Patent Office and Estelle Martin, Head of Department, Employment Law, European Patent Office, ***Macro-Trends in the Performance Management of International Civil Servants: Their Legal Implications***

3:15–3:45 p.m. Tea

3:45–4:45 p.m. Closing Plenary:

Efficient Multilateral Institutions and the Role of International Administrative Law

**Chair:** Gerard Sanders, General Counsel, Asian Infrastructure Investment Bank

4:45–6 p.m. 2019 AIIB Legal Conference Farewell Reception, 21st Floor

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# International Administrative Law and the International Legal Status of Multilateral Institutions

## ***Panel 1: International Administrative Law and the International Legal Status of Multilateral Institutions***

*Chair: Christopher Smith, Chief Counsel, Finance, Asian Infrastructure Investment Bank*

**Alice Lacourt, Senior Legal Adviser, Commonwealth Secretariat**

### **The Commonwealth Secretariat Arbitral Tribunal: A Relationship with International, Human Rights and Domestic Laws?**

What are the continuities and distinguishing features of the Commonwealth Secretariat Arbitral Tribunal (CSAT) alongside international administrative tribunals? Are these features contiguous with the distinctiveness of the Commonwealth as an intergovernmental organization? This paper examines the circumstances in which CSAT was established, the role it was designed to fulfill, its relationship with the Commonwealth's governing bodies and its interface with generally recognized principles of international administrative law. It also considers the role of CSAT in upholding the Commonwealth Secretariat's privileges and immunities and its relationship with public international law including international human rights law, together with the domestic law and legal traditions of Commonwealth member countries. It also considers cases challenging CSAT jurisdiction in the courts of the Secretariat's host country and areas that might be tested in the future. This paper concludes by examining the Secretariat's implementation of decisions by CSAT, and in light of academic writings and independent external evaluation of the Tribunal, assessing how effective CSAT is in achieving the aims for which it was set up and how it might evolve.

**Edward Chukwuemeke Okeke, Senior Counsel, World Bank Group**

### **The Tension between the Human Rights Principle of Access to Court and the International Law Principle of Jurisdictional Immunity of International Organizations**

The major controversy about immunity from legal process is that without access to court or adequate alternative recourse, there may be a denial of justice. Even where a recourse to an alternative dispute resolution mechanism is available, there is still the issue whether that mechanism meets the requisite standards of impartiality and independence for the determination of a legal claim. As a starting point, this paper touches upon the international human rights instruments that provide for access to court, addresses the nature and purpose of the immunity from legal process of international organizations and then discusses how national courts and international courts and tribunals—especially the European Court of Human Rights—have dealt with the interplay between these competing or conflicting principles. Most importantly, this paper addresses whether the jurisdictional immunity of international organizations is conditional on the availability or provision of alternative dispute resolution mechanism. In this regard, do the proceedings of international administrative tribunals meet the standards of such instruments as Article 6(1) of the European Convention on Human Rights? This paper concludes with an exploration of whether the principles of access to court and of immunity from legal process for international organizations could be reconciled.

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# International Administrative Law and the International Legal Status of Multilateral Institutions

**Fady Zeidan, General Counsel, The Global Fund to Fight AIDS, Tuberculosis and Malaria**

## **Resolving Employment-Related Disputes at the Global Fund: The Journey of a Public-Private Partnership**

The Global Fund to Fight AIDS, Tuberculosis and Malaria is a unique multilateral institution as it was originally established as a nonprofit foundation under Swiss law before gradually evolving into an international organization. The first part of this paper examines the genesis of a new public-private partnership by considering its institutional features and the initial administrative arrangements concluded between the Global Fund and the World Health Organization to enable the Global Fund to conduct its operations. The paper continues to examine the internationalization of the status of the Global Fund through the prisms of the privileges and immunities of the organization and its officials, and the resolution mechanisms of employment-related disputes. Considerations regarding the legal framework applicable to the Global Fund's employees—personnel essential to the success and effectiveness of the institution—are also addressed.

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# International Administrative Law and the Formal Resolution of Employment-Related Disputes of Multilateral Institutions

## ***Panel 2: International Administrative Law and the Formal Resolution of Employment-Related Disputes of Multilateral Institutions***

*Chair: Rüdiger Woggon, Assistant General Counsel, Asian Infrastructure Investment Bank*

**Norbert Seiler, Managing Director and Deputy General Counsel, European Bank for Reconstruction and Development**

### **The Evolution of a Staff Grievance System: The Case Study of the European Bank for Reconstruction and Development**

Since its inception in 1991, the European Bank for Reconstruction and Development (EBRD) has gradually adapted its internal dispute resolution mechanism by increasing the scope of the mechanism and enhancing the due process protections afforded to staff. Since 2006, EBRD has maintained a two-tier system for the review and adjudication of staff grievances. The most recent reform, implemented in early 2018, introduced changes to the first tier of the process intended to enhance efficiency and flexibility at a reasonable cost to staff members and EBRD, without compromising the legitimate interests of either party. Bearing in mind that internal dispute resolution processes need to be lean, EBRD's new Administrative Review Committee conducts inquiries to establish the facts giving rise to the grievance, and in Committee meetings to hear witnesses, where neither party is represented by legal counsels. Once the Administrative Review Committee is satisfied that it has established the facts giving rise to the grievance, it reports its findings and recommendations on the matter to the President for decision. This paper analyzes these reforms to EBRD's staff grievance system and examines the external and internal rationales for this evolution.

**Steven Hill, Legal Adviser and Director of the Office of Legal Affairs, North Atlantic Treaty Organization**

### **Experience with NATO's Administrative Tribunal: A Contribution to Organizational Effectiveness?**

The North Atlantic Treaty Organization (NATO) Administrative Tribunal is a five-judge panel that was created in 2013 following a process of reforming NATO's internal justice system. The reform process took into account the interests of various stakeholders internal to NATO and also responded to external legal developments, in particular engaging Article 6 of the European Convention on Human Rights and the protection of the right to a fair trial. Since 2013, the Tribunal has issued approximately 125 judgments in a wide range of matters. This paper endeavors to take stock of experience with the Tribunal since 2013. Although largely based on the perspective of NATO management, this paper also seeks to reflect the perspectives of other stakeholders, such as staff members and NATO Allies. Using a selection of published judgments, the paper analyzes the different ways in which the Tribunal has contributed to the effectiveness of the organization in a period of rapid adaptation. By way of conclusion, the paper also addresses some inherent limits upon the ability of an international organization's internal justice system to effect organizational adaptation.

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# International Administrative Law and the Formal Resolution of Employment-Related Disputes of Multilateral Institutions

**Alayne Frankson-Wallace, Executive Director, Office of Administration of Justice, United Nations**

## **The 10th Anniversary of the Internal Justice System of the United Nations: Lessons Learned**

The staff of the United Nations (UN) generally do not have access to local courts and domestic tribunals to resolve disputes arising from their employment with the UN, due to the privileges and immunities that the UN enjoys. Prior to 2009, the General Assembly recognized that the UN had an internal justice system that was, among other things, slow and cumbersome, with a system of administrative review that was flawed, and that the system needed to be professionalized. Following extensive internal consultations and a review by a redesign panel comprised of independent experts, in 2009 the UN implemented a new internal system for the administration of justice for its staff. The General Assembly decided that this new system should be: independent, transparent, professionalized, adequately resourced and decentralized, consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike. It has been 10 years since the implementation of this new system. This paper examines the formal part of the system—a management evaluation function and a two-tier Tribunal system with independent professional judges—in the context of the key principles stated by the General Assembly at its establishment and its impact on the efficient mandate delivery of the UN. The following elements of the system are considered: independence, transparency, professionalism, adequate resources, efficiency, decentralization, rule of law, due process, ensuring respect for the rights and obligations of staff members and the accountability of managers and staff members and, on the other hand, the accountability of the judges. This paper concludes by identifying some lessons learned at this stage of the system's operation, arguing that the accountability of all players in the system is an essential contributing factor to organizational efficiency and the delivery of the UN's indispensable mandate.

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# International Administrative Law and the Creation of Efficient Workplace Cultures of Multilateral Institutions

## ***Panel 3: International Administrative Law and the Creation of Efficient Workplace Cultures of Multilateral Institutions***

*Chair: Ranjini Ramakrishnan, Senior Counsel, Corporate, Asian Infrastructure Investment Bank*

### **David Eatough, General Counsel, European Stability Mechanism**

#### **Building an International Financial Institution Administrative Tribunal from Scratch: Lessons and Aspirations**

The European Stability Mechanism Administration Tribunal (ESMAT) was established in 2014 to meet the needs of a new intergovernmental organization. This paper examines the background and decisions that lay behind the creation of the ESMAT and considers the unusual options and policy choices that presented themselves, given the way in which the European Stability Mechanism (ESM) was constituted. The ESM stands largely outside the European Union's (EU) legal order, as a matter of public international law, but within the EU as a matter of its governance and scope of action. The ESM's activities and mandate must be very closely coordinated with the competent EU institutions to ensure consistency with EU law. This paper covers the way in which procedural and resourcing challenges were resolved with the help of the European Free Trade Association Court, and its registry—based, like the ESM, in Luxembourg—to which were outsourced the physical forum for oral hearings and the registry function. This paper examines the lessons learned and advice received from well-established international organizations. This paper also deals with the underlying philosophy and aspirations of the ESM's Human Resources and legal function in the context of the ESM's mandate and desired employee relations. What role does the ESM see for other means of dispute resolution for staff and how can these be met? This paper concludes by examining the impact of the current fragmented state of jurisprudence of international administrative tribunals. From this, certain questions and observations may be proposed, including the danger of always having regard to the lowest common denominator of precedent, which may drive litigation avoidance at all costs, to the detriment of the institution's needs. Examples of more consensus-driven approaches to agreed applications on points of law are also given.

### **Rishi Gulati, Fellow, London School of Economics and Political Science**

#### **The Place of International Arbitration in Resolving Employment-Related Disputes of International Organizations**

International arbitration is one of the oldest frameworks to resolve international disputes. Whether international arbitration can be used to resolve disputes between international organizations and their staff members to a greater extent than is presently the case is the central concern of this paper. First, this paper considers whether international arbitration can form a reasonable alternative mode of dispute resolution that can constitute a functional substitute to international administrative tribunals or national courts as a matter of legal principle. While the answer to that first question can be given in the affirmative, there are numerous issues that need to be born in mind before arbitration is adopted as a preferred forum to resolve the employment disputes of international civil servants. In the second and significant part of this paper, the

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# International Administrative Law and the Creation of Efficient Workplace Cultures of Multilateral Institutions

following issues are scrutinized: (1) how should the costs of the arbitration be allocated, (2) what is the procedural and substantive law that is to be applied and (3) how arbitral awards can be enforced in light of institutional immunities. Without clarifications on such issues, adopting an arbitral mechanism is likely to enhance uncertainty and cause serious delays in the resolution of international administrative disputes. This paper concludes by suggesting a preferred approach to arbitrate the employment-related disputes of international organizations, taking into account both institutional and employee concerns.

**Gang Li, Regional Ombudsman and Acting Chief, Office of the United Nations Ombudsman and Mediation Services, United Nations**

## **The Value of Alternative (Informal) Dispute Resolution System in the Governance of Multicultural International Organizations**

Employees of international organizations continue to only increase in number, diversity, skills and experience. International civil servants have become a group of familiar and active figures on the world stage. Enriching the competencies in providing services required by these international entities, such talented and diverse groups function together and produce rich and creative contributions. Yet, this dynamic process can also result in disputes and tension both among the employees and between the employees and the employer organizations. All international organizations, including the United Nations, have been making legislative and systemic changes to ensure that their administrative law framework should allow all levels of staff to obtain due process, regardless of their location and grade. Despite all the best intentions, the number of disputes and cases brought forward to the various administrative tribunals has been increasing. Yet, the administration and staff alike are becoming increasingly aware that recourse to various tribunals is not inevitable, and there are other methods and channels that offer quality solutions to the disputes among all parties. This paper argues that a quality alternative (informal) dispute resolution system is crucial to create a decent working place and improve social health within the organization, eventually leading to a healthy governance of it. This paper analyzes the root cause for employment-related disputes and draws upon the example of the Office of the United Nations Ombudsman and Mediation Services. It concludes by arguing for the value of alternative (informal) dispute resolution system in the governance of multicultural international organizations.

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# International Administrative Law and the Internal Legal Framework of Multilateral Institutions

## ***Panel 4: International Administrative Law and the Internal Legal Framework of Multilateral Institutions***

*Chair: Xuan Gao, Chief Counsel, Institutional, Asian Infrastructure Investment Bank*

**Shin-ichi Ago, Vice President, Asian Development Bank Administrative Tribunal; Professor of Law, Ritsumeikan University and Professor Emeritus (Former Law Dean and Vice President), Kyushu University**

### **What is International Administrative Law? Concepts and Origins**

Since I assumed my judicial duties at the Asian Development Bank Administrative Tribunal (ADBAT), I have been asking myself what kind of law I am supposed to apply when hearing a case. Having been a student of public international law for the most part of my career, and the Asian Development Bank being an intergovernmental organization, I first thought that public international law would be the source of law applied in the Tribunal. However, it does not seem to be the case. I soon encountered a difficulty of understanding the notion of international administrative law. Reference to this notion was made in a few decisions of the ADBAT and the classic textbook of Professor C.F. Amerasinghe, “The Law of the International Civil Service”, had a whole chapter about it. It appeared to me that it was what international administrative tribunals had been applying. However, my understanding of international administrative law is different from what is commonly used: mine is closer to the Global Administrative Law advocated by a group of scholars at the Law School of New York University. Whatever scholars argue about the sources of international administrative law, a great number of judgments are rendered almost every day somewhere in the world. I have participated in a number of decisions of ADBAT during the past five years, without clearly knowing what I was really applying. This paper addresses this fundamental issue of the concepts and origins of international administrative law. It concludes by arguing, tentatively, that international administrative tribunals are applying a *sui generis* law, which is a part of public international law or international institutional law, or, in other words, something close to the case law of international administrative tribunals.

**Celia Goldman, Registrar, International Monetary Fund Administrative Tribunal and Judge, European Stability Mechanism Administrative Tribunal**

### **How International Organizations’ Immunities Shape the Development of International Administrative Law**

This paper argues that an international organization’s (IO’s) immunities should be understood not only as a boundary protecting the international character of the IO but also as a bridge across which national and international norms are transported. Because IOs and their member states strongly value immunity from judicial process, they have established internal accountability mechanisms. The most highly developed of these accountability mechanisms are the international administrative tribunals. As IOs’ immunities come under increased scrutiny by national and international courts, the dialogue across the fence of jurisdictional immunities becomes noisier. How does this dialogue shape the development of international administrative law? This paper argues, first, that IOs are incentivized to create and maintain

# International Administrative Law and the Internal Legal Framework of Multilateral Institutions

a judicialized system for the resolution of staff disputes. An examination of recent developments reveals increased attention to the shifting landscape of organizational immunities. Second, because IOs' immunities exist by the consent of states, and are accordingly vulnerable to withdrawal, the dialogue across the boundary of immunities also shapes the content of IOs' internal law. For example, an IO's welcome in the host state may be conditioned on its staff members' compliance with national law. Accordingly, IOs often incorporate into their standards of staff conduct that noncompliance with local laws may result in disciplinary action. In this way, the host state communicates powerfully the norms of its own community across the boundary of immunities. IOs' immunities accordingly play a dual role in shaping the development of international administrative law: not only do they serve as boundaries within which a separate body of law has flourished; they also provide bridges between IOs and national and international norms. The interests of IOs and their member states in maintaining immunities have shaped both the architecture of IOs' dispute resolution systems and the content of their internal laws.

**Damien Eastman, Assistant General Counsel, Asian Development Bank**

## **Terms and Conditions of Appointment: Beyond the Written Contract of Employment of International Civil Servants**

Identifying the “terms and conditions” of appointment that define the employment relationship between staff of an international organization and the employing international organization can itself pose a challenge. Beyond the express written terms set forth in the contract of appointment, what other terms and conditions make up the “ensemble of conditions of employment”—identified by the World Bank Administrative Tribunal—between the employee and the organization, and consequently give rise to a cause of action for breach? International administrative tribunals have extensively addressed whether a term is fundamental and essential, and the scope of an organization's right to revise the terms and conditions of employment. However, there is far less jurisprudence addressing what, in fact, those terms and conditions include. By drawing upon the jurisprudence of the Asian Development Bank Administrative Tribunal, this paper endeavors to provide some answers to this question, including terms that are implied and other terms outside the written terms of appointment that govern and, in some cases, survive the termination of the employment relationship.

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# International Administrative Law and the Integrity and Performance Management of Multilateral Institutions

## ***Panel 5: International Administrative Law and the Integrity and Performance Management of Multilateral Institutions***

*Chair: Peter Quayle, Chief Counsel, Corporate, Asian Infrastructure Investment Bank*

**Brian Patterson, Assistant General Counsel, International Monetary Fund**

### **To Resolve or Report Misconduct: The Duty of a Manager of an International Organization**

This paper considers the fulcrum of the integrity and high ethical standards demanded of international civil servants, namely the express or implied duty to resolve or report misconduct incumbent upon managers of international organizations. It argues that such duty is founded in the implied duties of loyalty and care that are owed to the employer organization. This paper examines the case study of the International Monetary Fund (IMF) where, in the context of enhancing the staff protections from retaliation, the IMF recently codified this duty to resolve or report misconduct through internal rule-making. It examines the practical aspects of implementing this duty, including the value of timely resolving or reporting misconduct, confidentiality considerations and whistleblower protections. This paper also analyzes the legal principles recognized by the IMF Administrative Tribunal that may be considered to frame this essential duty.

**Eric LeBlanc, Chief Counsel, Administrative Affairs Division, African Development Bank**

### **Procedural Requirements in Staff Misconduct Cases: The Evolving Approach of the African Development Bank Administrative Tribunal**

The robustness and integrity of disciplinary procedures is essential to safeguarding the independence and effectiveness of international civil servants. Therefore, the way in which international administrative tribunals address alleged procedural irregularities and deficiencies in the disciplinary process—and generally in the review of administrative decision-making—is of pivotal importance to the effectiveness of international organizations. Drawing upon the case law of the African Development Bank Administrative Tribunal (AfDBAT), this paper examines how international administrative law addresses arguments of procedural irregularities and violation of due process, with specific reference to staff misconduct cases. It also scrutinizes the extent to which the AfDBAT, in addition to determining whether an irregularity exists or not according to the applicable rules and principles, takes into consideration such elements as (1) the prejudice sustained by an applicant, (2) the fairness of the process and (3) the gravity of the misconduct prior to arriving at a conclusion. This paper concludes by analyzing the way in which the decision to impose a disciplinary measure may be vitiated or sustained by the AfDBAT and whether the procedural irregularity or other due process violation should lead to the award of damages.

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# International Administrative Law and the Integrity and Performance Management of Multilateral Institutions

**Laurent Germond, Director, Employment Law, European Patent Office and Estelle Martin, Head of Department, Employment Law, European Patent Office**

## **Macro-Trends in the Performance Management of International Civil Servants: Their Legal Implications**

This paper explores prominent performance management trends within intergovernmental organizations before going on to evaluate their legal implications. What then are the different ways of combining well-settled generally recognized principles of international administrative law, including acquired rights and right of appeal, with career systems increasingly focused on promoting meritocracy (the what), continuous feedback (the how) and people managers (the who) of performance managing the international civil service. Drawing in particular upon the example of the European Patent Office and from selected jurisprudence of international administrative tribunals, this paper aims to identify the balance between the legal features specific to managing the performance of employees of international organizations on the one hand, and the demands for accountability and sustainability in the delivery of their public service mission, on the other. This paper concludes by establishing how this public service mission can emerge strengthened.

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## **Panel 1: International Administrative Law and the International Legal Status of Multilateral Institutions**

*Chair: Christopher Smith, Chief Counsel, Finance, Asian Infrastructure Investment Bank*



Christopher Smith is Chief Counsel, Finance at the Asian Infrastructure Investment Bank (AIIB). Prior to joining AIIB, Mr. Smith was Senior Attorney at Cleary Gottlieb Steen & Hamilton, having worked in several of the firm's offices across the United States and Europe. He holds a JD from the University of Michigan, an MA from Johns Hopkins University and a BA from Tufts University. He is qualified to practice law in the State of New York. Prior to law school, Mr. Smith served as a US Peace Corps Volunteer in Armenia.

### **Alice Lacourt, Senior Legal Adviser, Commonwealth Secretariat**



Alice Lacourt is the Commonwealth Secretariat's most senior legal adviser on issues concerning the operations of the Commonwealth Secretariat. She is responsible for the Secretariat's representation in litigation before the Commonwealth Secretariat Arbitral Tribunal and for advising on governance and compliance; contract, procurement and human resource issues; and on the public international law aspects of the work of the Commonwealth Secretariat. Prior to joining the Commonwealth Secretariat, she was Assistant Legal Adviser, then Legal Counsellor, at the UK Foreign and Commonwealth Office and was posted for three years to the UK Mission to the United Nations as First Secretary (Legal). Her work for the UK's Diplomatic Service covered a wide range of public international law issues including international criminal law, international humanitarian law and human rights law, counterterrorism and sanctions. She has spoken on independence of states, sanctions and crimes against humanity.

### **Edward Chukwuemeke Okeke, Senior Counsel, World Bank Group**



Edward Chukwuemeke Okeke is an international law scholar and practitioner, with over two decades of experience in the United Nations, UNESCO and World Bank. He has particular expertise in the privileges and immunities of international organizations and is an award-winning writer. He has published extensively in various journals. He also contributed two chapters in *The Convention on the Privileges and Immunities of the United Nations and Its Specialized Agencies: A Commentary*, edited by August Reinisch (Oxford University Press 2016). He is the author of *Jurisdictional Immunities of States and International Organizations* (Oxford University Press 2018).

### **Fady Zeidan, General Counsel, The Global Fund to Fight AIDS, Tuberculosis and Malaria**



Fady Zeidan is the General Counsel of the Global Fund to Fight AIDS, Tuberculosis and Malaria. He is a legal professional with more than 30 years of experience in international finance and development. Before joining the Global Fund, Mr. Zeidan served as Deputy General Counsel of the International Finance Corporation of the World Bank Group. He obtained his LL.M. at Harvard Law School, law degree at the Université Saint Joseph in Lebanon, and a degree in business law from Université de Droit, d'Économie et des Sciences Sociales in Paris II, France.

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## **Panel 2: International Administrative Law and the Formal Resolution of Employment-Related Disputes of Multilateral Institutions**

*Chair: Rüdiger Woggon, Assistant General Counsel, Asian Infrastructure Investment Bank*



Rüdiger Woggon is Assistant General Counsel of the Asian Infrastructure Investment Bank (AIIB) and a member of the management team of the Office of the General Counsel (OGC). He oversees the investment operations and finance operations related functions of OGC. He is the legal adviser to the Audit and Risk Committee of the Board of Directors and represents OGC in AIIB's Risk Committee. In addition, he manages OGC's recruitment. Before joining AIIB he was Director, Chief Counsel of the European Bank for Reconstruction and Development, where he led the legal team advising on funding operations, derivatives, repos, cash and custody accounts and a variety of other Treasury matters. After graduation from law school and admittance to the bar in 1987 in Germany, he started his legal career as an associate for a law and tax firm then became a research fellow at the University of Konstanz (Germany), where he also earned his doctorate in law. He then joined the capital markets department of Bankgesellschaft Berlin AG in Berlin and London.

### **Norbert Seiler, Managing Director and Deputy General Counsel, European Bank for Reconstruction and Development**



Norbert Seiler is Managing Director, Deputy General Counsel (Corporate) at the European Bank for Reconstruction and Development (EBRD). He is a member of the bank's Senior Leadership Group, responsible for legal aspects relating to institutional and administrative matters, treasury activities and Corporate Recovery matters. Mr. Seiler serves on various senior management committees of the bank. He is also serving as the Chair of the bank's Procurement Complaints Committee and as a member of the bank's Enforcement Committee. Having joined EBRD in 1991 shortly after its inauguration, he was the transaction lawyer for many of the bank's early operations and capital market transactions. Mr. Seiler holds master and doctorate in law degrees from the University of Vienna and a Master of Comparative Jurisprudence degree from New York University. He is admitted to the New York Bar.

### **Steven Hill, Legal Adviser and Director of the Office of Legal Affairs, North Atlantic Treaty Organization**



Steven Hill is NATO Secretary General Jens Stoltenberg's chief legal counsel. He leads a multinational legal team that provides legal advice on the whole range of issues facing the 29-member Alliance, including the law of international organizations and international administrative law. Prior to joining NATO in February 2014, Mr. Hill was Counselor for Legal Affairs at the United States Mission to the United Nations in New York, where he worked in the Security Council, the General Assembly's Sixth Committee, and other legal bodies. During that time, he closely followed efforts to reform the UN's internal justice system. In 2010-2011, he was Visiting Professor of Law at the Hopkins-Nanjing Center for Chinese and American Studies in Nanjing. From 2008 to 2010, he led the legal unit at the International Civilian Office/European Union Special Representative in Kosovo. He began his international law career in the Office of the Legal Adviser at the US Department of State, which he joined in 2001. He is a member of the Executive Council of the American Society of International Law and was selected as a Young Leader by the National Council on US-China Relations.

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## **Alayne Frankson-Wallace, Executive Director, Office of Administration of Justice, United Nations**



Alayne Frankson-Wallace is the Executive Director of the Office of Administration of Justice at the United Nations (UN). As Executive Director, Ms. Frankson-Wallace ensures the efficient management and overall coordination of the formal system of administration of justice at the UN. She has over 24 years of legal experience at the national and international level, including in the internal justice system at the UN. Prior to her appointment as Executive Director, Ms. Frankson-Wallace served as Ombudsman for the UN Funds and Programmes. She was previously the Ethics Advisor with the United Nations Development Programme. Ms. Frankson-Wallace joined the UN in 2005 as a Trial Attorney in the Office of the Prosecutor at the International Criminal Tribunal for Rwanda. Before joining the UN, she had a judicial appointment as a Resident Magistrate, and later as Senior Resident Magistrate (Ag.) in Jamaica. She began her legal career as an Associate Attorney-at-Law with Gaynair and Fraser, Attorneys-at-Law. She is a Commonwealth Scholar and holds an LL.M. in International and Commercial Law (with Distinction) from the University of Sheffield, United Kingdom, a Legal Education Certificate from the Norman Manley Law School and an LL.B. (Upper Second Class Honors) from the University of the West Indies.

## **Panel 3: International Administrative Law and the Creation of Efficient Workplace Cultures of Multilateral Institutions**

*Chair: Ranjini Ramakrishnan, Senior Counsel, Corporate, Asian Infrastructure Investment Bank*



Ranjini Ramakrishnan is Senior Counsel, Corporate at the Asian Infrastructure Investment Bank. She is formerly Senior Counsel, Institutional Administration at the World Bank, State Counsel at the International Affairs Division of the Singapore Attorney-General Chambers and Assistant Director at the Legal Aid Bureau, Singapore Ministry of Law. She received her LL.B. from the National University of Singapore and LL.M. from Georgetown University Law Center. She is qualified to practice law in Singapore.

## **David Eatough, General Counsel, European Stability Mechanism**



David Eatough is the General Counsel of the European Stability Mechanism (ESM) and the European Financial Stability Facility and the Management Board member responsible for the legal affairs of both institutions and for Human Resources and Organization. Originally qualifying at the English bar in the 1980s, he worked on some of the biggest UK labor law disputes of the time. After changing career direction, he became a partner in the finance practice of Clifford Chance in London, where he stayed for 17 years, including periods living and working in Singapore and Romania. He joined the ESM in 2013 as Deputy General Counsel and was promoted to General Counsel in 2017. He is a graduate in Jurisprudence from Oxford University and is qualified as a solicitor in Ireland and as a solicitor and barrister in England and Wales.

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## **Rishi Gulati, Fellow, London School of Economics and Political Science**



Rishi Gulati is a Fellow in Law at the London School of Economics and Political Science (LSE) and a Barrister at the Victorian Bar, Australia. He has previously been a Judge's Associate at the Federal Court of Australia, laureate Research Fellow at the University of New South Wales and has worked at the Australian Attorney General's Department advising and representing the Australian Government on a range of international law issues. Mr. Gulati has appeared before numerous national and international courts, including before international administrative tribunals and arbitral tribunals. Academically, Mr. Gulati has a PH.D. from King's College London which he undertook as a Dickson Poon Scholar of Law, an Advanced LL.M. in Public International Law from Leiden University and an LL.B. (Honours) from the Australian National University. He has published several articles in leading journals, including on the topic of international administrative law. He is the co-editor of *The Elgar Companion on the Hague Conference on Private International Law* (Edward Elgar, 2019) (forthcoming) and has taught various courses in public and private international law at leading universities, including at the LSE, King's College London and the University of New South Wales.

## **Gang Li, Regional Ombudsman and Acting Chief, Office of the United Nations Ombudsman and Mediation Services, United Nations**



Gang Li has served in the Office of the United Nations Ombudsman and Mediation Services as Acting Director of Office and Regional Ombudsman since 2010. He was the first Regional Ombudsman of the UN in Kinshasa for the UN Peacekeeping Missions in West Africa from 2010 to 2012. Mr. Li has 30 years of experience with UN agencies and offices including Office of the UN High Commissioner for Refugees (UNHCR), Office of the UN High Commissioner for Human Rights and the UN Secretariat. He started his career at the UN with UNHCR in the field office in Quetta, Pakistan in 1989. He served the UN refugee agency in Afghanistan, India, the Philippines, Russian Federation, Tajikistan and at Geneva Headquarters. He also served UNHCR in emergency response teams to Bangladesh, Côte d'Ivoire, Eritrea, Liberia and Sierra Leone. He performed duties of Desk Officer, Emergency Team Leader, Senior Liaison Officer and Senior Legal Officer. Mr. Li holds an LL.M. and BA from Peking University, China. He is also a Centre for Effective Dispute Resolution certified mediator.

## **Panel 4: International Administrative Law and the Internal Legal Framework of Multilateral Institutions**

*Chair: Xuan Gao, Chief Counsel, Institutional, Asian Infrastructure Investment Bank*



Xuan Gao is Chief Counsel, Institutional at the Asian Infrastructure Investment Bank and is a member of the management team of the Office of the General Counsel. Dr. Gao has formerly served in various positions at the International Fund for Agricultural Development, the European Bank for Reconstruction and Development, International Criminal Police Organization and the People's Bank of China. He is the Deputy Editor-in-Chief of the *Manchester Journal of International Economic Law*, Editor of the *AiIB Yearbook of International Law* and has published extensively on international law issues with Oxford, Brill and Kluwer. Xuan received his Ph.D. and LL.M. from the University of Manchester and LL.B. from China University of Political Science and Law.

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## **Shin-ichi Ago, Vice President, Asian Development Bank Administrative Tribunal; Professor of Law, Ritsumeikan University; Professor Emeritus (Former Law Dean and Vice President), Kyushu University**



Shin-ichi Ago is Vice President of the Asian Development Bank Administrative Tribunal. He is also Professor at Ritsumeikan University, Kyoto and Professor Emeritus of Kyushu University (its former Law Dean and Vice President). He taught in numerous universities in Japan, as well as abroad. Since 2015, Mr. Ago is a member of the International Labour Organization's Committee of Experts on the Application of Conventions and Recommendations. He received both his LL.B. and LL.M. from the University of Tokyo and obtained his Doctorat es Sciences Politiques from the University of Geneva.

## **Celia Goldman, Registrar, International Monetary Fund Administrative Tribunal; Judge, European Stability Mechanism Administrative Tribunal**



Celia Goldman is Registrar of the International Monetary Fund Administrative Tribunal and Judge of the European Stability Mechanism Administrative Tribunal. She has been a contributor to numerous symposia on the law of international civil service, speaking on various topics. Ms. Goldman is Co-Chair of the American Society of International Law's Interest Group on International Courts and Tribunals, and a member of the European Society of International Law and the Washington Foreign Law Society. Ms. Goldman serves as Member of the Scientific Advisory Board, Max Planck Encyclopedia of International Procedural Law, and Member of the Advisory Board, Oxford International Organizations. Ms. Goldman is a graduate of the Yale Law School, where she was a Senior Editor of the Yale Law Journal. She served as Law Clerk to the Honorable Theodore R. Newman, Jr. of the District of Columbia Court of Appeals and formerly practiced employment law in Washington, DC.

## **Damien Eastman, Assistant General Counsel, Asian Development Bank**



Damien Eastman joined the Asian Development Bank (ADB) in 2014 as Assistant General Counsel for Institutional and Administrative (I&A) Affairs. He oversees the I&A team which provides legal advice and support on a wide variety of institutional, operational and administrative matters at the ADB. Prior to joining ADB, Mr. Eastman spent more than 10 years in the Legal Department at the International Monetary Fund in Washington DC, where he advised on the Fund's legal relations with its member countries and other international organizations and was responsible for the oversight of the Legal Department's internal governance advisory group. In his role as a country lawyer, Mr. Eastman worked on the Fund's European and South American financial crisis programs and numerous HIPC debt relief operations in Africa and Asia. He also developed an expertise in the area of sovereign debt litigation and restructuring. Earlier in his legal career, Mr. Eastman practiced law with Allens in Sydney and Freshfields Bruckhaus Deringer in London in the areas of international arbitration, commercial litigation and international law. Mr. Eastman holds an LL.M. from Harvard Law School, a BA from the University of Sydney and LL.B. (summa cum laude) from the University of Technology, Sydney. He is admitted to practice law in Australia and England and Wales.

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## **Panel 5: International Administrative Law and the Integrity and Performance Management of Multilateral Institutions**

Chair: Peter Quayle, Chief Counsel, Corporate, Asian Infrastructure Investment Bank



Peter Quayle is Chief Counsel, Corporate at the Asian Infrastructure Investment Bank, and a member of the management team of the Office of the General Counsel. He is formerly Associate Director, Senior Counsel at the European Bank for Reconstruction and Development and Legal Advisor of the Office of Foreign Litigation, Civil Division European Office, of the US Department of Justice. He was educated at the Universities of Oxford and London, is a solicitor of England and Wales and an accredited mediator. He is Visiting Professor of International Organizations Law at Peking University Law School and Editor of the *AiIB Yearbook of International Law* (Brill Nijhoff). His first book, *An Introduction to International Administrative Law: The Law of Employment Relations of International Organizations*, will be published by Cambridge University Press in 2020.

### **Brian Patterson, Assistant General Counsel, International Monetary Fund**



Brian Patterson is Assistant General Counsel of the International Monetary Fund (IMF), responsible for the Administrative Law Unit in the Legal Department. He joined the IMF in 2001. Mr. Patterson holds an LL.M. from George Washington Law School, his JD from Georgetown Law, and a BA from Georgetown's School of Foreign Service.

### **Eric LeBlanc, Chief Counsel, Administrative Affairs Division, African Development Bank**



Eric P. LeBlanc is Chief Legal Counsel of the Administrative Affairs Division, Office of General Counsel and Legal Services of the African Development Bank (AfDB). He joined the AfDB in 2011 after having worked as Legal Counsel in the Justice Department of the Canadian Federal Government, advising the Canadian Department of Agriculture. He was admitted to the Quebec Bar in 1997 after obtaining his Civil Law Degree at the University of Ottawa and subsequently completed a degree in taxation at HEC Montréal.

### **Laurent Germond, Director, Employment Law, European Patent Office**



Laurent Germond is Director of the Employment Law Directorate at the European Patent Office (EPO) in Munich. Prior to joining the EPO in 2013, he worked at the European Space Agency (ESA) at its headquarters in Paris, responsible for the Office of Social Affairs and Conflict Resolution. Prior to joining the ESA in 2006, and for over a period of 12 years, he has represented international civil servants from more than 60 intergovernmental organizations before a dozen international administrative tribunals. He was a lecturer at the University of Paris II (Pantheon-Assas) and was most recently appointed to the roster of judges at the Special Tribunal for Lebanon. Holding a doctorate in law, Mr. Germond is a published author about the general principles of international civil service law recognized and applied by the Administrative Tribunal of the International Labour Organization, the subject of his PH.D. thesis.

## **Estelle Martin, Head of Department, Employment Law, European Patent Office**



Estelle Martin is Head of Department, Employment Law at the European Patent Office (EPO) in Munich, leading a team of Employment Law professionals responsible for policy advice and litigation. Prior to joining the EPO in 2016, she worked at the International Criminal Police Organization in Lyon since 2001 and moved to the European Bank for Reconstruction and Development in London in 2008. Ms. Martin has dedicated 17 years to the field of Public International Law and served in three intergovernmental organizations in an advisory capacity to senior management, including on reforms of employment policies and legal frameworks. Her approach is shaped by her experience assessing legal risks under the jurisdiction of the Administrative Tribunal of the International Labour Organization and is informed by a solid grasp of HR operational challenges in the international public sector. Ms. Martin graduated in law from the University of Paris I (Pantheon-Sorbonne).

## **Closing Plenary: Efficient Multilateral Institutions and the Role of International Administrative Law**

*Chair: Gerard Sanders, General Counsel, Asian Infrastructure Investment Bank*



Gerard Sanders is General Counsel of the Asian Infrastructure Investment Bank (AIIB). He advises the President and governance bodies of AIIB, is responsible for the legal aspects of the Bank's work and leads the Office of the General Counsel. For the two years prior to joining AIIB, he was General Counsel at the International Fund for Agricultural Development, a specialized agency of the United Nations, working at its headquarters in Rome. Previously, he held various positions at the European Bank for Reconstruction and Development working in its principal office in London, most recently as Deputy General Counsel. Earlier in his career, he worked for law firms in Wellington, Washington DC and Amsterdam and in a corporate legal role in London. He graduated B.Com., LL.B. from the University of Otago, New Zealand, and has graduate law degrees from Victoria University of Wellington and Harvard Law School. He is qualified to practice law in New Zealand, the State of Victoria, Australia, and England and Wales. He is a Chartered Accountant. Mr. Sanders is a Fellow of the Chartered Institute of Arbitrators, a Chartered Fellow of the Chartered Institute for Securities and Investment, a member of the Law Society of England and Wales and a member of Chartered Accountants Australia and New Zealand. He is Visiting Professorial Fellow at Queen Mary, University of London, Founding Editor of *Law in Transition* and General Editor of the *AIIB Yearbook of International Law*.

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## International Organizations and the Promotion of Effective Dispute Resolution



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