Report on the IMF Administrative Tribunal 30th Anniversary Conference

November 19, 2025

Session 1: The Sources of International Administrative Law

Moderator: Professor John R. Crook, International Arbitrator, former Judge of the NATO Administrative Tribunal

Speakers: Judge Maria Vicien Milburn, Judge of the European Bank for Reconstruction and Development Administrative Tribunal (EBRDAT), the Inter-American Development Bank Administrative Tribunal (IDBAT) and the IMFAT

Me Rémi Cèbe, Partner at Sicault & Cèbe, A.A.R.P.I., and Lecturer at the Université Paris 2 Panthéon-Assas

Brian Patterson, Deputy General Counsel, Legal Department, IMF

Judge Raul Pangalangan, President of the Administrative Tribunal of the Asian Development Bank, Judge of the World Bank Administrative Tribunal (WBAT), and former Judge at the International Criminal Court

Mercedes Carrillo, Secretary, Administrative Tribunal of the Organization of American States (OASAT)

Paul Jean Le Cannu, Registrar, IMFAT

Professor August Reinisch, Professor at the University of Vienna, and Special Rapporteur of the International Law Commission of the United Nations on "the settlement of disputes to which international organizations are parties"

Rapporteur: Anna Holloway, Senior Legal Counsel, International Centre for Settlement of

Investment Disputes (ICSID)

The Session 1 speakers, exploring the Sources of International Administrative Law, addressed four topics.

The first two speakers, **Judge Maria Vicien Milburn**, and **Me. Rémi Cèbe** considered the first topic: **What law or laws are applied by international administrative tribunals (IATs)?**

Judge Vicien Milburn first provided some context against which the matter of the sources of international administrative law should be considered. She drew attention to the fact that the time period over which these sources have evolved is relatively short (the first IAT, under the auspices of the League of Nations, having been established nearly a century ago). She explained that IATs exist to provide staff of international organizations a forum to hear employment disputes. Although the United Nations and other public international organizations enjoy immunity from domestic legal process, this immunity does not absolve them of legal liability. Under their constituent instruments, these organizations are obliged to provide appropriate mechanisms for dispute settlement in circumstances where they maintain immunity but nonetheless bear legal responsibility.

Turning to the sources of international administrative law, Judge Vicien Milburn discussed the statutes of IATs, noting that, while in many cases these reference only the internal law of the organization, some, such as the Statute of the IMFAT, also refer to "generally recognized principles of international administrative law concerning judicial review of administrative acts." The Commentary on the IMFAT Statute does not define what those principles are but stipulates that they "have been extensively elaborated in the case law of both international administrative tribunals and domestic judicial systems, particularly with respect to decisions taken under discretionary powers."

In terms of the development of these "generally recognized principles of international administrative law," Judge Vicien Milburn noted that IATs, starting with the earliest tribunals (those of the International Labor Organization (ILOAT) and the United Nations (UNAdT)), have identified or recognized those generally recognized principles, and have consistently articulated both due process rights (such as the right to be heard, the right to be represented by counsel, equality of arms, etc.), and substantive rights. In this regard, Judge Vicien Milburn highlighted the first decision of the World Bank Administrative Tribunal (WBAT) in *de Merode* (1981), which held that in addition to the contract of employment, conditions of employment may also be established by the practice of the organization, the jurisprudence of other international administrative tribunals, as well as general principles of law. In a similar vein, Judge Vicien Milburn highlighted several principles developed by the UNAdT during her tenure as Executive Secretary. For example, in 1989, the UNAdT established the general principle that it was empowered to fill lacunae in the law by drawing on extraneous sources, such as the jurisprudence of the International Court of Justice (ICJ). On that basis, the Tribunal declared itself competent to exercise jurisdiction over locally recruited staff (UNAdT Judgement No. 461, *Zafari v. UNRWA*), thereby providing access to justice for thousands of local area staff who previously had no recourse to the UNAdT.

In 1990, relying *inter alia* on the principle of the independence of the international civil service enshrined in Article 101 of the UN Charter, the Tribunal held that, by deferring to the views of the People's Republic of China in deciding not to extend the applicants' appointments, "the decision [of the Secretary General] was vitiated by extraneous reasons contrary to the interests of the United Nations." This judgment required the UN to amend its personnel policies and to grant permanent appointments to Chinese and Russian staff members who wished to exercise their right to permanent employment at the UN (UNAdT Judgement No. 482, *Qiu, Zhou, Yao v. UN Secretary-*

General).

Finally, Judge Vicien Milburn observed that, since their establishment, both the UNAdT and the ILOAT have developed the doctrine of acquired rights, now recognized as one of the cornerstone principles of international administrative law and frequently relied upon by other tribunals. In her view, these developments demonstrate that IATs have shown that they may apply a system capable of evolution, which may echo principles found in other bodies of law, while retaining their own character.

Last, Judge Vicien Milburn highlighted an increasing trend of IATs to invoke the principle of duty of care. The notion of a duty to protect and assist employees was articulated as far back as 1964 (by the ILOAT), and by 1981, the European Union Civil Service Tribunal had defined that duty. The term "duty of care" itself was first used by the ILOAT in 1998, and today encompasses not only a duty of "protection and assistance", but is also closely related to other general principles of international administrative law: the obligation to act in good faith and with transparency; the duty of protection and to provide a safe and adequate work environment; the duty to afford staff due diligence and due process; the duty to respect and the right to dignity; the duty not to cause officials undue injury, distress or disappointment; the duty to give proper reasons for a decision; and the duty to ensure a positive and harmonious working environment, free from intimidation and hostility. Elsewhere, reliance on duty of care as a standard has been on the rise, including at the WBAT and the IMF Administrative Tribunal (IMFAT), with the latter addressing duty of care on the merits in at least three cases since 2015, including in the context of workers' compensation eligibility and obligations with respect to employee health and safety. In Judge Vicien Milburn's view, the principle of duty of care, therefore, may afford aggrieved employees with new avenues of recourse, and offers fertile ground for further evolution and precision by IATs.

For his part, **Me. Rémi Cèbe** elected to address the topic at hand by focusing on the exclusion of the application of national laws by IATs, and the exceptions to that exclusion.

To start, Me. Cèbe noted the general principle: by virtue of their international legal personality, their status as subjects of international law, and the principle of independence, intergovernmental organizations (IGOs) are not subject to national laws and their officials and employment relationships are subject to their internal law and not to national laws. IGOs' officials hold many different nationalities. As a result, IGOs prefer to avoid the application of different national laws to officials in the same IGO, as this could appear to breach equal treatment and non-discrimination principles. This preference remains even though it could be argued that, legally speaking, officials who do not share the same nationality are not in the same factual and legal situation and could be treated differently. Excluding the application of national laws avoids such issues, advancing familiarity and predictability.

While this is the legal position, pragmatic interests are also served. Me. Cèbe then turned to the exceptions to that general principle.

First, exceptionally, national laws may be taken into consideration when reference is made to them in employment contracts or staff regulations and rules (though, as a matter of practice, many IGOs will incorporate any referred provisions into their regulations, effectively freezing them).

Second, IGOs and IATs may refer to national laws from a comparative law perspective, or consider them where relevant to a factual element (e.g., determining legal status of officials, interpreting a contract or determining an official's personal – e.g., marital or parental – status). In this context, Me. Cèbe referenced the decisions of the IMFAT in Judgment No. 2001-2, Judgment No. 2006-6 and Judgment No. 2017-1 (recognizing a municipal judgment of divorce invoking the "public policy" of its forum to allow for the enforcement of orders for family support and division of marital property). He also referred to a 2025 decision of the ILOAT, in which the widespread legal recognition of same-sex marriage by many countries was taken into account in construing the meaning of the word "spouse."

Me. Cèbe pointed to the determination of officials' remuneration as a further factual element as to which national law may exceptionally be taken into account. In this regard, Me. Cèbe mentioned the "Fleming Principle." This principle provides that, in order for organizations within the United Nations system to be able to attract and retain highly qualified staff, such organizations should seek to offer general service staff conditions of employment at least comparable to those offered by the best local public and private sector employers at their duty station, the assessment of which necessarily requires regard to the conditions of employment in force, in accordance with national law, in the locality concerned.

The next set of two speakers, **Mr. Brian Patterson**, and **Judge Raul Pangalangan** considered the second topic: **Administrative practice as a source of international administrative law (IAL) before IATs**.

Drawing on his 25 years' experience as a lawyer working in the administration of the IMF, **Mr. Brian Patterson** began by observing that when written rules do not provide clear guidance, administrators often seek counsel regarding what precedent, past practice, and the practice of similar organizations is. While this tendency reflects a natural preference for certainty, in bureaucracies, it risks generating a bias to always treat past practice as a binding precedent, which undermines the obligation to exercise good judgment in each case. At the same time, unpredictability and inconsistency are also problematic, given that predictability, transparency and equal treatment are fundamental to the rule of law.

Accordingly, administrative practice can become a source of binding law under certain conditions, as recognized by international administrative tribunals. Tribunals have not cohered around a single test for determining when practice becomes obligation. For the IMF, authoritative commentary to the IMFAT's statute explains that the internal law of the institution can include administrative practice of the organization in certain circumstances when that practice gives rise to legal rights and obligations. For this proposition, the commentary cites the WBAT's first judgment, *de Merode*, and its holding that legal obligations arise when an organization's consistent practice is established out of the conviction that it is legally obligated to act in this manner (a test similar to that used for customary international law). Mr. Patterson noted that assessing whether this test is satisfied can be challenging, in part because states and international organizations and other legal persons do not usually express their subjective opinions and their beliefs in the same way that humans do. In these circumstances, tribunals and scholars are left usually to draw inferences from the evidence, which can turn back to the practice's consistency, regularity and uniformity. Consequently, the test can be somewhat circular, but it remains, in Mr. Patterson's view, workable.

Mr. Patterson noted that, since the WBAT articulated the test in *de Merode*, it has been adopted elsewhere, including by the ILOAT. That tribunal's Judgment 1610 emphasized that a practice must be constant and consistent to reflect a general rule, and later its judgments have applied this principle more briefly. The same tribunal has also noted that practices are not immutable and established practice may be expressly abolished by new rules (a notion also reflected in the IMFAT's statute commentary).

It can be potentially problematic, Mr. Patterson warned, where this test is not applied rigorously. He warned of two problematic scenarios. The first is where written rules deliberately require the exercise of judgment, and administrators have a tendency to want to blindly follow prior practice, which amounts to a misfeasance or abuse of authority. This scenario was at issue in the IMFAT's *Sachdev* case, where the IMFAT rejected the argument that the past practice of promoting a deputy to a more senior role had to be followed. The second problematic scenario is where practices relating to implementation arise in areas not addressed by written rules; such practices should not automatically be treated as binding, especially when introduced by frontline HR staff not necessarily authorized to bind the institution. The IMFAT's third Judgment (issued in 1996 in the *D'Aoust* case) considered such a situation, rejecting a claim that a practice on salary setting was binding, given its lack of formal endorsement. In that case, the evidence showed that the practice had been adopted at a fairly technical/ junior staff level, was not published, not widely known, and never considered by the senior leadership of the institution.

Mr. Patterson ended his remarks by noting that, given the importance for staff and the institutions to have some flexibility, and the need to balance that with predictability and transparency, the test articulated first in *de Merode* strikes the right balance.

Judge Raul Pangalangan reflected on the evolving role of administrative practice as a source of law in international organizations.

Drawing on his experience as a former judge of the International Criminal Court, Judge Pangalangan contrasted the strict approach of criminal tribunals (where invoking unwritten law would provoke strong objections) with the more nuanced position of administrative tribunals. He noted that when these tribunals were first established decades ago, concepts such as access to justice and the right to redress were not central to institutional thinking. For these international organizations to voluntarily submit to independent tribunals made up of "outsiders" and accept decisions by these external judges was a significant step, reflecting a certain confidence and righteousness of these organizations. Against this background, one might think that an organization could feel ambushed if their newly created tribunal then starts invoking a source of law not listed in the statute or the terms of reference. Yet, surprisingly, when the landmark first decision of the WBAT, *de Merode*, did just that, it was ultimately praised and embraced by the organizations, and followed by other IATs, including the Asian Development Bank's Administrative Tribunal (AsDBAT), of which Judge Pangalangan was the first Executive Secretary. In that case, with Professor Elihu Lauterpacht as President, the AsDBAT held that "the fact that such provisions were not formally incorporated does not show the absence of the obligation, but merely the insufficiency of the bank's expression of pertinent obligation."

Turning to the doctrinal basis of the principle articulated in *de Merode*, Judge Pangalangan emphasized two elements in assessing administrative practice as law: actual practice and *opinio juris*, the belief that the practice is obligatory. From the staff member's perspective, he noted, the argument is straightforward: if a rule has been interpreted consistently in prior cases, applying it differently now would violate equality and predictability. In such instances, the law is not the administrative practice itself, but the principle of equality, the principle of non-discrimination, and the need for predictability. He explored the tension between the objective element (practice) and the subjective element (moral conviction), turning to legal philosophy to illustrate this. In this regard, he referenced Martti Koskenniemi's discussion of "the normative force of habit," and his questioning of whether the distinction between practice and conviction is meaningful, suggesting that the two often converge in reality. He also invoked Roberto Mangabeira Unger's metaphor of "anointing power with piety" in circumstances where there is asymmetrical power belonging to management with staff being the recipient of the exercise of that power, to caution against elevating mere administrative habit into law.

The third topic, **Precedent and IATs**, was addressed by **Ms. Mercedes Carrillo** and **Mr. Paul**

Jean Le Cannu.

Mercedes Carrillo began by providing a general definition as a matter of context: precedent is a judicial decision that provides a principle, standard or guidance for future cases with similar facts or legal issues. Precedents form the foundation of the doctrine of *stare decisis*, which requires courts to follow prior decisions to ensure predictability, coherence, and consistency in the law, and operates both vertically (tribunals are bound by decisions of a superior body) and horizontally (tribunal persuaded by its own jurisprudence). The doctrine is more prevalent in common law countries where judges play a significant role in shaping the law through their decisions.

Ms. Carrillo noted that the approach to precedent is a little different in international law. She explained that Article 38 of the Statute of the ICJ, the authoritative statement about what the sources of international law should be, considers precedent as a subsidiary rather than primary source of law, limited to assisting as an interpretive aid. In the context of international organizations, she emphasized that establishment agreements, treaties, or charters are the main sources of internal law, supplemented by formal instruments such as resolutions, staff rules, and executive orders, and, lastly, practice. Accordingly, the applicable law for each tribunal of an international organization will be different.

Ms. Carrillo reported that she has reviewed the statutes of 20 of the 27 known international administrative tribunals, and none explicitly list precedent as either a primary or subsidiary source of law in their statutes. Nonetheless, judges on these administrative tribunals are still, as a matter of practice and at their own initiative, using precedent to reinforce their decisions.

Mr. Paul Jean Le Cannu added to the conversation by focusing on the notion of cross-fertilization, i.e., international administrative tribunals invoking and relying on one another’s judgment in their own judgments, and the impact that this may have on the development of a common jurisprudence.

Mr. Le Cannu noted that a recent study by Jason Morgan-Foster provides empirical data about the practice of international administrative tribunals. That data shows that not all administrative tribunals engage equally in the practice of cross-fertilization. Thus, older tribunals like the ILOAT and UNAdT have tended to not cite the decisions of other tribunals (though arguably this reflects the fact that until the 1980s there were fewer decisions to which these tribunals could have cited). But more recently created tribunals, such as the WBAT, the AsDBAT, and the IMFAT, have freely and extensively referred to one another's past decisions. For example, between 1994 and 2020, the IMFAT referenced decisions of the WBAT over 370 times and cited the ILOAT 142 times.

In terms of the impact that this practice has had, Mr. Le Cannu cautioned that data about the frequency of cross-references does not address the question of whether there is actually substantive convergence. However, there in fact is broad agreement that the trend is toward convergence, while divergences remain in a few key areas, including for example the standard of proof in disciplinary cases and the different outcomes that can derive from differences in the scope of jurisdiction of IATs.

Mr. Le Cannu concluded his remarks by noting that complete harmonization or unification is not necessarily desirable, if only to afford international organizations the flexibility they need to address issues that are specific to them.

The final topic of the Session 1, presented by **Professor August Reinisch**, was **the work of the International Law Commission (ILC) on the settlement of disputes to which international organizations are parties**.

To start, Professor Reinisch outlined the evolution of the work on this topic within the ILC. Initially placed on the Commission's long-term program in 2016 under the title *Settlement of international* *disputes to which international organizations are parties*, it was included in the active program in 2022, with Professor Reinisch appointed Special Rapporteur. In 2023, the title of the topic was amended to clarify that *all* disputes involving international organizations—international *and* domestic—would be addressed. Professor Reinisch noted that work has been slowed by the UN liquidity crisis, which curtailed the Commission's sessions, leaving the topic at the stage of having a provisionally adopted set of draft guidelines on definitions and on disputes between organizations and states, while discussion on disputes between organizations and private parties needs to be resumed within the Commission. Guidelines are meant to provide more flexibility and can, *inter alia*, be used to convey recommendations where no binding rules exist.

Turning to the substance of the draft guidelines as they currently stand, Professor Reinisch noted that the guidelines first address, in "Part One", foundational concepts, including the scope of the guidelines, and definitions of "international organization." He highlighted the Commission's weeks-long effort to refine the definition of an international organization after some past more cryptic approaches, ultimately agreeing on a formulation that "international organization means an entity possessing its own international legal personality, established by a treaty or other instrument governed by international law, that may include as members, in addition to states, other entities, and has at least one organ capable of expressing a will distinct from that of its members."

"Part Two" of the guidelines focuses on disputes between organizations and between organizations and states, and includes draft guidelines 3, 4, 5 and 6. Professor Reinisch stated that of these, draft guideline 4 is the most crucial. Titled "Resort to Means of Settlement," it draws on Article 33 of the UN Charter to emphasize good-faith settlement of disputes under the spirit of cooperation, using the means of dispute settlement appropriate to the circumstances and nature of the dispute. Draft Guideline 5 addresses accessibility of dispute settlement mechanisms, emphasizing the importance of making these more widely accessible for disputes involving international organizations. In this regard, Professor Reinisch commented that while there is a well-known problem of availability and accessibility of dispute settlement mechanisms in the context of disputes with private parties, also international organizations may have disputes with other international organizations or states in which case they cannot access the ICJ. Turning to draft guideline 6, Professor Reinisch underscored that this seeks to ensure that means of dispute settlement, including arbitration and judicial settlement, conform to rule-of-law requirements, including independence and impartiality of adjudicators, and due process.

While Parts One and Two have been provisionally adopted in 2023 and 2024, Professor Reinisch explained, “Part Three”, containing draft guidelines 7 through 11, are elaborated in a third report presented in 2025 but not yet discussed in substance. However, Professor Reinisch is hopeful they will be adopted in 2026.

Draft Part Three addresses disputes between international organizations and private parties, and Professor Reinisch emphasized that “private parties” references entities *other than* states and international organizations. In his opinion, the core matters in this part are jurisdictional immunity and access to justice, addressed in draft guidelines 9, 10 and 11. Draft guideline 9 provides that the jurisdictional immunity of international organizations serving the purpose of ensuring their independent functioning should be respected, and Professor Reinisch commented that the fact that there is no single regime governing immunity, but rather a broad array of treaties containing often specific rules on immunity, was relevant to the approach to drafting this guideline. Draft guideline 10 provides that arbitration, judicial settlement, or other reasonable alternative means of dispute settlement shall be more widely accessible for the settlement of disputes between international organizations and private parties. Professor Reinisch remarked on the influence of international human rights law on the drafting of this guideline. Last, draft guideline 11 addresses the question of whether alternative means of dispute resolution offered are reasonable, by stipulating that the mechanisms made available shall conform to procedural rule of law as well as human rights requirements, including the independence and impartiality of adjudicators and due process.

In his concluding remarks, Professor Reinisch stressed that these recommendations draw on human rights norms and customary international law, citing the ICJ’s 1973 Advisory Opinion on UNAdT Judgment No. 158, which characterized due process as the right to timely adjudication, the right to present one’s case and comment on one’s opponent’s case, the right to equality of arms, and the right to reasoned decisions. Professor Reinisch noted that he hoped these core procedural rules, combined with the requirements of independence and impartiality of adjudicators, would be matters of broad agreement. Finally, he commented that respect for jurisdictional immunity must be contingent on the availability of fair and accessible alternative dispute resolution mechanisms, and expressed hope that the guidelines will guide organizational and state practice in this field.