



**The Hague Round Table**  
for international civil servants

STAFF MEMBERS OF  
INTERNATIONAL ORGANIZATIONS IN  
THE COVID ERA:

# KNOW YOUR RIGHTS.

*Organised by The Hague Round Table for  
International Civil  
Servants*

*Presented by Mr. Edward Flaherty (Schwab  
Flaherty &  
Associates) and Ms. Renuka Dhinakaran  
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# Some «ZOOM» etiquette reminders/tips, Some Housekeeping details:

- All mikes will be muted during the presentation to avoid extraneous noise and/or feedback.
- We will normally take all your questions at the end of the presentation, but if you have a critical point to raise during the presentation, please press the raise your hand button at the bottom right of your screen under *... more/* and I will unmute and recognize you.
- If I don't see your hand, please use the chat to get my attention.
- All participants will get a certificate of participation by email in the coming days.

# Edward Patrick Flaherty

- Edward Patrick Flaherty is an American lawyer and senior partner in the Swiss law firm of Schwab, Flaherty, & Associés in Geneva; he has practiced law for 35 years.
- He focuses his law practice on representing whistleblowers, staff associations, staff members and third parties working for or injured by international organisations such as the UN, UNHCR, WIPO, WHO, ILO, etc. He has represented several IO staff members in test cases before the European Court of Human Rights, and in US Federal Courts. He is also cofounder of IO Watch (<http://www.iowatch.org/>), and the Centre for Accountability of International Organisations (<http://www.caio-ch.org/> See also [www.unreform-now.org](http://www.unreform-now.org)). He is admitted to practice before the US Supreme Court, and the Supreme Judicial Court of Massachusetts. He received his BA from Tufts University, and his Juris Doctor from Suffolk University Law School, Boston, cum laude.
- He is currently representing the Swiss not-for-profit association Hear Their Cries—Stop Child Rape in Aid ([www.heartheircries.org](http://www.heartheircries.org)) in class actions against the UN and other UN/IOs and NGOs on behalf of child rape victims of their staff. He was also lead counsel in two cases litigated before the 2<sup>nd</sup> Circuit Federal Court of Appeals challenging the immunity of UN/IOs (Brzak and Ishak v UN, Lubbers, Annan et al., [08cv2799, certiorari denied], and Veiga v WMO, Jarraud et al., [08cv3999]).

# Working for an IO in the Age of COVID

- The recent world-wide disruption and tragic devastation caused by COVID-19 has made the role and obligation of employers in keeping their staff safe during the pandemic a widely discussed topic
- While private employers ignore their obligations to staff at their own peril from the risk of litigation under local health and safety laws from employees who contract the virus while at work, international organisations are subject to similar risks, although on different grounds.

# What makes an IO's obligation different now?

- Actually, there is nothing new, except the lethality and contagiousness of COVID 19!
- IO's have always had and continue to have an overarching duty of care to its staff to shield them from unnecessary or avoidable injury.
- This includes a *duty to adopt appropriate measures to protect the health and ensure the safety of staff members* (see ILO Administrative Tribunal "ILOAT" Judgment 3689, consideration 5, Judgment 4239, consideration 21, Judgment 3025, consideration 2, Judgment 2403, consideration 16).
- Emanating from this duty is the right of staff of international organisations *to insist on appropriate safety measures to protect their health and safety* (Judgment 3025, consideration 2).

# What about the UNAT/UNDT on Duty of Care?

- While most IO's subscribe to the ILOAT, some are now subject to the UN's UNDT/UNAT system, (most UN entities and programmes, plus WMO, IFAD, and maybe UPU).
- The UNDT/UNAT has a similar regime for duty of care:

Staff regulation 1.2(c) enshrined an obligation of duty of care incumbent on the United Nations vis-à-vis its staff, as follows: Staff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations. In exercising this authority the **Secretary-General shall seek to ensure, having regard to the circumstances, that all necessary safety and security arrangements are made for staff carrying out the responsibilities entrusted to them.**

- Furthermore, the existence of such duty has been consistently upheld by different international administrative tribunals (see, among others, Edwards, UNDT/2011/022; former UN Administrative Tribunal Judgments No. 872, Hjelmqvist (1998), No. 1125, Mwangi (2003), No. 1204, Durand (2004), and No. 1273 (2006); International Labour Organization Administrative Tribunal Judgment No. 402, In re Grasshoff (Nos. 1 and 2) (1980); Asian Development Bank Administrative Tribunal Decision No. 5, Bares (1995)).
- The duty of care encompasses that of securing prompt and adequate treatment for those serving in hazardous duty stations in the event of medical emergencies (see former UN Administrative Tribunal Judgments No. 872, Hjelmqvist (1998), No. 1204, Durand (2004), and No. 1273 (2006)).

# Health and Safety Measures

- The internal laws of most IOs require the Executive Head to take all appropriate measures to protect the health and safety of officials working on the premises (see ILOAT Judgment 3319).
- Even if there is no specific reference in an IOs internal laws about protecting health and safety of staff, such a duty nevertheless is generally an implied term of a staff member's employment contract.
- Dealing with a pandemic is relatively unprecedented for IOs (most coming into existence after WWII), yet the duty of care an IO owes its staff during a pandemic is to take reasonable steps under the circumstances (sufficient cleaning and sanitation, socially distanced work-spaces, provision for distance working, special accommodations for medically vulnerable workers, adherence to national safety protocols, etc.).

# What are reasonable steps under COVID?

- Ensuring adequate medical advice or treatment is available for all staff as required
- Isolation/quarantine plan in case of infection at workplace
- Contact tracing (inside and outside the office)
- Sufficient cleaning and sanitation
- Socially distanced work-spaces
- Provision for distance working
- Special accommodations for medically vulnerable workers
- Adherence to national safety protocols



# What if you get sick even with such precautions?

- First, get adequate medical care
- Send a note to HR if you suspect you became infected while at work, or were close to colleagues when you might have been contagious
- Make a declaration for compensation for service-incurred illness (some IO's have very short deadline—at IOM its 8 days!!—very important)

# What does a violation of the IO's duty of care entitle you to?

- An IO's failure to take 'reasonable steps' to protect the health and safety of its staff members and to avoid foreseeable injury will result in the organization being liable for the damages to its staff members caused by its negligence (often beyond the statutory benefits provided for normal service-incurred illness or injury)
  - Generally, the compensation for service-incurred illness/injury is usually reimbursement of the deductible you must pay (often 20%) of medicines and treatment, recrediting of statutory sick and/or annual leave used for service-incurred absences
  - If the IO's negligence caused the illness, then your actual damages (material and moral damages) are recoverable in an appeal—true in ILOAT/UNDT-UNAT cases.
  - But remember, you bear the burden of proving that you were infected at work (or while on official mission)
    - May be problematic with COVID (invisible virus)
    - Burden is easier if IO has not taken the «reasonable precautions» mentioned before, or if colleagues you were exposed to are diagnosed with the virus

# What if you are medically vulnerable to the virus?

- The ILOAT has already determined that an organisation has an obligation to protect its staff by providing adequate protective clothing (Judgment 3698, consideration 5) and must provide flexible working conditions where a staff member's particular status requires it (Judgment 3861, consideration 9)
- If your doctor is of the opinion (get it in writing) that your own condition (co-morbidity, age, etc.) puts you at particular risk for a bad outcome if infected, then IO should make additional accommodations to reduce your risk of exposure (work from home, from outside the duty station?)
  - Must be based on a medical opinion, not your own concerns

That's a Wrap!  
End of Presentation.  
Thank you.



- We'll now take your questions—please use the «raise your hand» button on the bottom of your screen under *...more!* and wait to be called on. Please be sure to «press lower your» in the same place when called on.
- Suggestions/comments welcome: [flaherty@int-lawyers.co](mailto:flaherty@int-lawyers.co)