



INTERVIEW: EBRD GENERAL COUNSEL MICHAEL STRAUSS



Michael Strauss took up his post as EBRD General Counsel at the start of 2020. Before coming to the EBRD, Mr Strauss was a partner with the Washington DC law firm Harris, Wiltshire & Grannis and had previously practised law at Cleary, Gottlieb, Steen & Hamilton in London and Paris. He has also worked in the legal departments of the International Monetary Fund (IMF) and the World Bank Group's Multilateral Investment Guarantee Agency (MIGA), served as a Senior Advisor at the US Treasury and represented the United States of America on the Board of the Asian Development Bank (ADB). Mr Strauss is a graduate of Stanford Law School, The Fletcher School of Law & Diplomacy and Williams College.

As the EBRD General Counsel, Mr Strauss oversees the Bank's Legal Transition Programme (LTP). Michel Nussbaumer, Director of the LTP, interviewed Mr Strauss about his career, his previous exposure to legal reform and his views on the EBRD's role in the sector.

Michel Nussbaumer: What motivated you to become a lawyer?

Michael Strauss: Thinking back, I recall three motivations. First, like so many others, I felt that lawyers were on the frontlines of social change and the delivery of justice, so I felt I would be best prepared to make a difference in the world as a lawyer. Second, I have always felt a profound need to know how things work – how the cogs fit together and what rules make systems function. In particular, I sought to understand how different societies organise people's claims and rights when those bump up against each other, overlap or even conflict. I guess this also explains my foray – academic and professional – into the field of economics. Finally, in the United States of America, where I grew up, if you hope to be a leader, you often start as a lawyer. I think each of these motivations partially explain what led me to the EBRD.

MN: Is there a moment you are particularly proud of in your career?

MS: Yes, but it is not at all what you would expect. It happened in my first year as a lawyer, while I was still studying for the New York Bar. A young Somali man had been denied asylum in the USA for misidentifying the name of his clan in his initial interview. My firm had taken the case pro bono and appealed on the basis that he had been treated as an adult even though he had fled Somalia as a child. As a new lawyer on an old case, I scoured the transcripts and it became clear that there was a translation mistake. I think

it took someone having a fresh look at the case to identify this hidden defence. Eventually, this is how he won his appeal and gained asylum – something that possibly saved his life.

MN: How can lawyers change the world? Who are your legal heroes?

MS: See above! Everywhere you look, lawyers are making a difference in the world. Lawyers I know are fighting for the right to free speech, prosecuting war crimes, combating discrimination in the use of the death penalty, promoting desperately needed investment into developing countries and establishing best practices for legal reform for countries in transition.

No list of lawyer heroes would be complete without Abraham Lincoln and Gandhi. And most Americans also revere a famous fictional lawyer from the American South, Atticus Finch (from Harper Lee's novel, *To Kill a Mockingbird*), who fought for the rights of the unjustly accused. There are echoes of Atticus Finch in the highly successful Innocence Project in the USA, which has worked to exonerate the innocent and the wrongly convicted. Consider each hero a deeply principled lawyer who faced enormous pressure to cut corners or make political accommodations. Each lawyer found a way to achieve important outcomes without compromising integrity. Finally, I would include the legal heroes of the movements for civil rights: Thurgood Marshall and Ruth Bader Ginsburg, who so brilliantly, creatively and valiantly fought for civil rights for women and racial minorities through the courts.

MN: What contribution can lawyers working in international financial institutions (IFIs) make to achieving the Sustainable Development Goals (SDGs)?

MS: I am glad you asked that question because I think it is a crucial subject. Achieving the SDGs should guide our work here – with the LTP to the fore. The EBRD’s most direct contribution will naturally fall in SDGs 6 to 13, which speak to sustainable economic growth, energy, infrastructure and reduced inequality. But lawyers in particular have an additional opportunity to contribute to SDG 16 (Peace, Justice and Strong Institutions). The work of the IFIs in that regard is best showcased at the annual Law, Justice and Development Week, hosted by the legal department of the World Bank in Washington DC each year. Needless to say, it should be a source of pride at the EBRD that the LTP is a key player among the IFIs in effecting change in the legal regimes of economies where we invest, as this work advances so many components of the SDGs.

MN: In your previous jobs, did you have any exposure to, or involvement in, technical cooperation with governments regarding law reform? If so, do you have any advice on what works or what does not?

MS: I had exposure, though not expertise, ranging from the IMF’s banking and central bank technical assistance to the US Treasury’s Office of Technical Assistance, and then in oversight of technical assistance generally on the Board of ADB. One of the most effective (if among the smallest) programmes I witnessed was an ADB-funded moveable property registry in the Pacific island nation of Samoa, which simplified the process for pledging security over moveable assets. The most important lesson I have gleaned from what I have seen is uncontroversial: legal reform programmes succeed when there is domestic ownership and they are less likely to succeed if they are “top down” or “one size fits all”. As an adjunct professor at Fletcher last year, I had the privilege of teaching some of the achievements and pitfalls of land tenure registries as a driver of development and transition, including extracting some lessons I learned from observing ADB’s experience with mortgage registration in Samoa.

MN: In your opinion, what role can the EBRD play when it comes to policy dialogue and technical cooperation in the legal sector?

MS: The EBRD – specifically, the LTP – is a key player in this field. The EBRD’s recent conference on debt enforcement was a case in point, as the Bank’s LTP attracted top scholars and practitioners in this field for a highly successful event that advanced learning and best practices on the subject. Given the EBRD’s unique transition mandate, it should be no surprise that the Bank can play a crucial role in promoting the development and reform of legal rules, institutions and culture in its regions.

MN: You have served on the Board of ADB. Does ADB’s approach to legal reform differ meaningfully from the EBRD’s?

MS: It does in some ways; perhaps reflecting differences in the institutions’ core mandates, ADB does not have a full team devoted to legal reform like the EBRD does. ADB generally advises on legal and regulatory reform through grant-based or fee-based technical assistance, but also provides legal reform advice to governments as a core component of its financed projects. A classic example is that ADB has advised many borrowing member countries on the establishment of a legal framework of best practices for the use of public-private partnerships (PPPs) for the development of infrastructure. Alongside the reforms, ADB then helps its borrowers develop PPPs to provide needed infrastructure in areas such as power, water, energy and transportation.

MN: Your answer leads me to another question. As an institution investing mostly in the private sector, the EBRD does not have the benefit of incentivising government reform through loan conditionality. Do you have any thoughts on addressing this dilemma in the economies where we invest?

MS: It is one of the most salient differences compared with institutions like the World Bank and ADB and thus presents a challenge for the EBRD. But the LTP’s success itself demonstrates that governments have a high demand for legal reform support, even when the reforms are not backed by funds and the associated conditionality. The US Treasury’s technical assistance programme has had similar success. Cross-country assessment tools like the World Bank’s *Doing Business* reports also drive beneficial changes all over the world without concomitant investment. The LTP can follow the example of such highly successful

change-driving programmes. This calls for creativity and cooperation among the IFIs and across the UN system.

MN: How well do you know the economies where the EBRD invests?

MS: I am most familiar with Central Asia and the Caucasus, which include borrowing member countries for ADB. I have had the privilege of visiting every country in these regions except Tajikistan and Turkmenistan. In fact, ADB held annual meetings in Astana (now Nur-Sultan) and Baku during my time on the Board there. And while at the World Bank and in private practice, I worked on transactions in Morocco and Tunisia. Lastly, I participated in an official visit to Egypt while at the US Treasury.

MN: You mentioned cooperation among IFIs. There can be an element of competition among aid-providing institutions, as each one wants to be seen as the key player in advising governments on their reforms. Do you have any thoughts on this phenomenon?

MS: Indeed, as I am now working at my fourth IFI, I have seen this competitiveness from multiple angles. Some competitive spirit can be beneficial if it improves the service and opportunities offered to clients; I saw this firsthand with the advent of the Asian Infrastructure Investment Bank in Beijing, and ADB's healthily competitive response to the founding of a new institution on its doorstep. But there is perhaps a larger benefit to be had from effective and efficient cooperation among IFIs. As noted above, the institutions' specialisations are more than simply geographic – the EBRD has a transition mandate; ADB focuses on infrastructure and development; and the IMF leads on balance of payments issues and financial stability. We are all stronger when each institution leads with its area of strength and when we coordinate to ensure we can be trusted partners who recognise each institution's particular value proposition as a development partner.

MN: The EBRD's advisory services such as the LTP are largely funded by donors, funds that could become more scarce and constrained. Do you have any suggestions as to how we can overcome this problem?

MS: Here is another place where cooperation is key. I mentioned my own *pro bono* work and I do think that there is a sense of eagerness at top law

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firms to help with an area of work that is so important, creative and enriching (not strictly in the remunerative sense). Great organisations like the International Development Law Organization in Rome provide another path for cooperation to expand capacity. And as a former member of the Board of an IFI, I have an almost reflexive response that some technical and reform advice can be provided on a fee-paying basis to cover costs when the government can afford it. Where it cannot, developing multi-donor funds could help. You are right, though, that we will likely face increasingly straitened funding circumstances and must be as creative as possible in the face of this.

MN: Any advice to the EBRD Legal Transition Programme on its future activities?

MS: Would it be trite to say, “Keep up the good work”? What you do is essential for the economies where the EBRD invests, but also fundamental to the institution's mission. Perhaps now more than ever, the potential economic dividend achieved from strong institutions and dependable rule of law are especially apparent. And the specialised expertise that the LTP provides in achieving both is invaluable.

