

Wouters, Jan (ed.): Legal Advisers in International Organizations. Cheltenham, Northampton: Edward Elgar Publishing 2023. ISBN 978-1-78536-316-0. 428 pp. £145.00

I. Introduction

The role of international ‘Legal Adviser’ has consistently raised fascination about the prospect of ‘competing allegiances’, whereby advisers conceivably owe both a specific duty as counsel to a named state or institution, yet also a general duty to the integrity of international law itself.¹ The absence of higher judicial review implies such special responsibilities – to engage with the law so as not to ‘subvert or erode the international legal order’.² The diverse ways in which these allegiances are reconciled has long been studied in the context of foreign ministries yet, as Jan Wouters’ recent edited volume observes, the topic of *Legal Advisers in International Organizations* remains ‘a little-known world’.³ This collection of essays seeks to remedy that gap, by bringing together 30 current or former legal advisers, representing around 15 organisations, to offer a window into this consequential domain of international law. Along with an introductory framing chapter by Wouters and James Rischbieth, the book is comprised of 16 substantive chapters, which are divided into two halves that cover ‘global organizations’ and ‘regional and cross regional organizations’ respectively. Reviewing these chapters, the book offers three interrelated but independently valuable contributions, with each level of analysis progressing towards increasingly specialised and personalised practitioner insights.

II. Guide to International Organisations

The first contribution of the book is as a descriptive reference guide to the general history and institutional structure of leading global organisations.

¹ See Matthew Windsor, *Advising States: The Government Lawyer in International Law* (Oxford University Press, forthcoming), Chapter 5; Antonio Cassese, ‘Remarks on Scelle’s Theory of “Role Splitting” (*dédoulement fonctionnel*) in International Law’, *EJIL* 1 (1990), 210-231.

² Hans Corell, ‘The Role of the Legal Adviser of the Department of State’, *AJIL* 85 (1991), 358-373 (361).

³ Jan Wouters and James Rischbieth, ‘Legal Advisers in International Organizations: Uncovering a Little-Known World’ in: Jan Wouters (ed.), *Legal Advisers in International Organizations* (Edward Elgar 2023), 1-30 (1).

The legal adviser is, paradoxically, often hidden from these narratives, being the observer of the organisation within which they are situated. A reader with little to no interest in the role of legal advising could usefully rely on the book to gain a contemporary and fine grained institutional account of the United Nations (UN) System, The European Union (EU), or of various more specialised organisations that range from the World Health Organisation (WHO), to the International Bureau of the Universal Postal Union (the last sometimes held out by international lawyers as the archetypal example of the unexceptional but indispensable role of international law). The recollections often go back to the founding of the post-war international order, such as American interests in establishing the International Atomic Energy Agency (IAEA) in 1957 and the way these continue to frame its current work – ranging from weapons inspections in Iraq through the 1990s, to monitoring Iran’s more recent nuclear program.⁴ This is not to overlook that these generic accounts remain intertwined with nuances of a legal adviser’s perspective. An example is the chapter on the Organization for Security and Co-operation in Europe (OSCE), which combines its general overview with a more specialised examination of whether the history and non-treaty basis of the OSCE grants it international legal personality – an issue unlikely to receive such attention from a non-lawyer.⁵ The extensive foregrounding of the history and purpose of each organisation is perhaps a statement in itself, of the extent to which most legal advisers are fully integrated into the policies and mission of an institution, rather than sitting apart from it in something like an impartial judicial role.⁶ The book thus provides a thorough ‘nuts and bolts’ guide to the organisations in question, which would otherwise be hard to locate within a single integrated volume.

III. The Work of Legal Advising

The second more specialised contribution builds upon organisational overviews to illuminate the day-to-day practice of legal advising – including the

⁴ Peri Lynne Johnson, ‘The Legal Adviser of the IAEA: History, Mission, Processes, and Key Developments in the International Nuclear Legal Framework’ in: Jan Wouters (ed.), *Legal Advisers in International Organizations* (Edward Elgar 2023), 259-287 (261, 275, 283-284).

⁵ Lisa Tabassi and Stephen Walsh, ‘The Role of the Legal Adviser in the OSCE’ in: Jan Wouters (ed.), *Legal Advisers in International Organizations* (Edward Elgar 2023), 372-290 (373).

⁶ See Miguel De Serpa Soares, ‘The Role of the Legal Adviser in an Inclusive, Networked Multilateralism’ in: Jan Wouters (ed.), *Legal Advisers in International Organizations* (Edward Elgar 2023), 32-50 (32).

types of cases and controversies dealt with, as well as administrative responsibilities. Here the book identifies at least two differences distinguishing legal advisers to an international organisation from their foreign ministry counterparts. The first is the more fragmented notion of ‘*the client*’ such that, rather than being responsible to a ‘government or minister’, the legal adviser must liaise between ‘a broad range of officials and organs’.⁷ The second is said to be that, since organisations are a ‘relatively *novel phenomenon* in international law’ compared to states, legal counsel are called upon to be commensurately more ‘inventive and creative’.⁸ In this context, there is no substitute for direct and personal observations from the legal advisers themselves, who offer a sense of what their practice of law looks and feels like. Notable reflections on the human experience include that it ‘sometimes felt like working in a fire brigade: anything could happen during the day and sometimes things developed extremely fast’,⁹ or that advisers warning of legal risks in an urgent matter might experience ‘heavy pressure to give in’.¹⁰ As with the book’s first contribution, considerable space is set aside for essentially describing organisational charts for legal advisers and departments, albeit combined with analytical reflections by the personnel in question. An illustrative example is the detailed overview by Pascale Hélène Dubois et al. of the roles and duties of the legal service within the World Bank Group, while also observing that their advice is ‘authoritative but only to the extent that it relates to the World Bank’s legal framework or matters of legal policy’.¹¹ Personal opinions on the institutional structures governing legal advisers can also be found, such as Maria Vicien Milburn’s claim that amendments aimed at enhancing the independence of the United Nations Educational, Scientific and Cultural Organization (UNESCO) Legal Adviser may have had unintended consequences of increasing political interference by member states.¹²

⁷ Wouters and Rischbieth (n. 3), 8, original emphasis. Citing Herbert C. L. Merillat (ed.), *Legal Advisers and International Organizations* (Oceana Publications 1966), viii.

⁸ Wouters and Rischbieth (n. 3), 8, original emphasis. Citing Merillat (n. 7), ix.

⁹ Hans Corell, ‘The Role of the Legal Adviser in the United Nations: A Testimony’ in: Jan Wouters (ed.), *Legal Advisers in International Organizations* (Edward Elgar 2023), 51-77 (57).

¹⁰ Marco Ferrazzani, ‘The European Space Agency: The Role of the Legal Counsel in a Specialized Organization and as a Space Law-Maker’ in: Jan Wouters (ed.), *Legal Advisers in International Organizations* (Edward Elgar 2023), 391-411 (406).

¹¹ Pascale Hélène Dubois, Frank Fariello, Collin Swan, Corinne Champilou, Sheherezade Cariño Malik and Naicheng Deng, ‘The World Bank Group Sanctions System’ in: Jan Wouters (ed.), *Legal Advisers in International Organizations* (Edward Elgar 2023), 227-258 (243-244).

¹² Maria Vicifen Milburn and Chantal Claxton-Proust, ‘The Role of the Legal Adviser in UNESCO’ in: Jan Wouters (ed.), *Legal Advisers in International Organizations* (Edward Elgar 2023), 118-144 (128).

The issue of how legal and policy considerations are reconciled through the person of the legal adviser emerges as a key theme in the book – in part by virtue of ‘the fact that international law is typically in flux and is often not settled’.¹³ Hans Corell cites as his ‘lodestar’ the words of former UN Secretary General Dag Hammarskjöld, that ‘neutrality’ in the performance of legal advising duties meant ‘respect for law and respect (for) truth’, which together constitute a form of ‘integrity’.¹⁴ Corell’s ‘two consistent and principle points’ are, firstly, that the legal adviser ‘must have direct access to the minister or organizational head’ and, secondly, that they ‘should be present when important matters are discussed at the highest level’.¹⁵ The rationale in each case is not that the legal adviser has a direct policymaking role but, rather, that they must proactively identify legal matters embedded in policy considerations. The need to engage legal advisers at all stages of policymaking is a recurrent observation, with the chapter on the North Atlantic Treaty Organization (NATO) Headquarters noting the need to engage on policy issues ‘from the beginning, in order to ensure that legal factors are given full weight throughout the policy development process’,¹⁶ while the same consideration applies in the Organisation for Economic Co-Operation and Development (OECD) by virtue of the ‘thin line that separates legal opinion and policy advice’.¹⁷ The pragmatism of the legal adviser’s perspective remains ever-present however, with the OSCE chapter combining its call to engage legal advisers in policymaking with acknowledgment that ultimately ‘operational considerations may override legal advice’.¹⁸ The outcome may thus be some synthesis of legal and policy considerations, such that the legal adviser’s duties can include to ‘supervise the coherence of legal politics in external relations’.¹⁹

¹³ Wouters and Rischbieth (n. 3), 7.

¹⁴ Corell (n. 9), 56. Citing Dag Hammarskjöld, *The International Civil Servant in Law and Fact, Lecture Delivered to Congregation at Oxford University (30 May 1961)* (Clarendon Press 1961).

¹⁵ Corell (n. 9), 63–64.

¹⁶ Steven Hill, ‘Practicing Law at NATO Headquarters’ in: Jan Wouters (ed.), *Legal Advisers in International Organizations* (Edward Elgar 2023), 337–350 (341).

¹⁷ Nicola Bonucci, ‘The Organisation for Economic Co-Operation and Development (OECD) and Its General Counsel: An Evolving Role in an Evolving Organization’ in: Jan Wouters (ed.), *Legal Advisers in International Organizations* (Edward Elgar 2023), 315–336 (330–331).

¹⁸ Tabassi and Walsh (n. 5), 389.

¹⁹ Ferrazzani (n. 10), 405.

IV. The Jurisprudence of Legal Advising

It is the third contribution of the book that offers the richest material for critical analysis however, which is legal advisers' conceptions of the international legal order – beyond allegiances to any specific organisation. Authors were asked to reflect upon these broader systemic questions, including the contribution of each organisation towards 'the rule of law, human rights, international law, and the law of international organizations'.²⁰ The question of duties towards the international legal order itself resurfaces in the context of dual roles – as general legal counsel protecting the interests of a named organisation, but also as 'international civil servant and protector and promoter of international law'.²¹ The EU chapter frames commitment to the 'rule of law' as itself a policy position,²² with the function of legal advisers based on 'not only legal principle but also ethics', such that they are 'both *counsellor and conscience* of the Council'.²³ In consequence, the authors characterise the role as involving, not 'telling the Ministers what they want to hear but, rather, what they need to hear'.²⁴ This remains a nuanced position however, with the adviser still required to 'adopt a tone that appropriately balances legal and policy considerations'.²⁵ Further contributions on this theme include the UNESCO legal adviser's emphasis on contribution 'to the development of international law', which is only more significant in the 'context of an increased politicization of international organizations and with multilateral organizations under pressure'.²⁶ Likewise is the International Civil Aviation Organization's 'efforts to ensure respect for the rule of law in the field of air law',²⁷ the WHO's impact on 'the development of public international law',²⁸ and NATO's mission of 'contributing to the mainte-

²⁰ Wouters and Rischbieth (n. 3), 15, 18.

²¹ Wouters and Rischbieth (n. 3), 30; Frederick J. Kenney Jr and Simone Egerton, 'The Legal Affairs Office of the International Maritime Organization' in: Jan Wouters (ed.), *Legal Advisers in International Organizations* (Edward Elgar 2023), 194-226 (215).

²² Ricardo Gosalbo Bono and Frederik Naert, 'Legal Advisers in the European Union: The Case of the Council Legal Adviser and the Council Legal Service' in: Jan Wouters (ed.), *Legal Advisers in International Organizations* (Edward Elgar 2023), 289-314 (292).

²³ Gosalbo Bono and Naert (n. 22), 293, original emphasis.

²⁴ Gosalbo Bono and Naert (n. 22), 295.

²⁵ Gosalbo Bono and Naert (n. 22), 297.

²⁶ Vicien Milburn and Claxton-Proust (n. 12), 144.

²⁷ Ludwig Weber and Artur Eberg, 'The International Civil Aviation Organization' in: Jan Wouters (ed.), *Legal Advisers in International Organizations* (Edward Elgar 2023), 145-158 (158).

²⁸ Claudia Nannini and Gian Luca Burci, 'The Office of the Legal Counsel of the World Health Organization' in: Jan Wouters (ed.), *Legal Advisers in International Organizations* (Edward Elgar 2023), 159-193 (193).

nance of international peace and security: the keystone of the UN Charter'.²⁹ It is these substantive characterisations of the international legal order that provide some cause for reflection on the book's particularistic standpoint, including the extent to which it can be read as a truly 'international' text.

A single book obviously cannot exhaustively cover the multitude of organisations comprising the global governance order – aiming at best for a representative sample. Yet, against this standard, it is apparent that the book's selection reflects a conspicuously Western European perspective,³⁰ not only in confining its coverage of 'regional and cross-regional organizations' to Europe and NATO, but also in the substantive perspectives of its contributors. Here the editors assert that 'one of the most important roles played by legal advisers and legal offices in international organizations is that of contributor to and protector of the *rules-based international order*' (RBO).³¹ The RBO terminology is employed throughout to denote a particular conception of international legal order, with NATO legal advisers notably using it to substantiate their self-declared membership of the 'invisible college of international lawyers'.³² Yet the RBO construct has emerged as a conspicuous point of criticism by non-Western international legal voices, who claim that these politically framed 'rules' and 'standards' derogate from established international law.³³ More contextualised accounts recognise the RBO as a reformulation of the 'liberal international order', which is itself 'best understood as a form of international myth-making narrative that underwrites western-centric geopolitical reasoning'.³⁴ Relative to 'liberal' order, the RBO 'terminology rhetorically sweeps some of its western-centric baggage under the rug'.³⁵ Thus, contrary to the book's claims for the RBO, its meaning in contemporary legal discourse is more indicative of Anthea Roberts' claim that the field of international law comprises 'a *divisible* college of interna-

²⁹ Andrés B. Muñoz Mosquera and Borja Montes Toscano, 'The Practice of Public International Law at NATO "Supreme Headquarters" (SHAPE)' in: Jan Wouters (ed.), *Legal Advisers in International Organizations* (Edward Elgar 2023), 351-371 (370).

³⁰ See generally Salvatore Caserta, 'Western Centricism, Contemporary International Law, and International Courts', *LJIL* 34 (2021), 321-342 (321).

³¹ Wouters and Rischbieth (n. 3), 29, emphasis added.

³² See Wouters and Rischbieth (n. 3), 25-26; Hill (n. 16), 350. Citing Oscar Schachter, 'The Invisible College of International Lawyers', *Nw. U. L. Rev.* 72 (1977), 217-226.

³³ See John Dugard, 'The Choice Before Us: International Law or a "Rules-Based International Order"?', *LJIL* 36 (2023), 223-232, citing the present author's approach at 225; CAI Congyan, 'On the "International Law-Based International Order"', *Soc. Sci. in China* 44 (2023), 20-38; Alexander N. Vylegzhanin et al., 'The Concept "Rules-Based Order" in International Legal Discourses', *MJIL* 2 (2021), 35-60.

³⁴ Alexandra Homolar and Oliver Turner, 'Narrative Alliances: The Discursive Foundations of International Order', *Int'l Aff.* 100 (2024), 203-220 (206).

³⁵ Homolar and Turner (n. 34), 219.

tional lawyers'.³⁶ There are associated ideological blind spots in the book, such as Corell's discordant observations that the 2003 US invasion of Iraq (led by democratically and constitutionally elected governments) was amongst the most 'flagrant violations' of international law yet, in the next paragraph, that 'the root cause of conflicts is the absence of democracy and the rule of law'.³⁷ The first two contributions of the book – of providing an authoritative overview to international organisations and the role of legal advising within – are not compromised by these ideological oversights, but they do remind that the third contribution – of reflecting on the nature of international legal order – does represent a partial perspective that non-Western voices may reasonably contest.

V. Outlook

Jan Wouters' ambitious project has yielded the most comprehensive work to date that documents firsthand insights of legal advisers into this increasingly important domain of international law. Contemporary scholars face the challenge of studying international legal order in an era when fundamental causes of change and disruption are not merely legal interpretive, but include disagreements over what 'international legal policies' are necessary to sustain the integrity of international law.³⁸ In this respect, the editors remind that 'beyond their traditional role as legal adviser and representative, all lawyers in international organizations must pay attention to the political aspects, implications, and consequences of their activities'.³⁹ For legal scholars engaging with this volume, there may be a particular satisfaction in the value that legal advisers themselves place on regular engagements with academic colleagues on the most significant issues of international law.⁴⁰ A mark of the book's success will accordingly be the extent to which that contribution to knowledge develops into a mutual exchange, for practitioners and scholars alike, over the multidimensional role of international legal advisers.

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³⁶ Anthea Roberts, *Is International Law International?* (Oxford University Press 2017), 52, emphasis added.

³⁷ Corell (n. 9), 77.

³⁸ On Legal Advisers and 'international legal policy' see Malcolm Jorgensen, *Comparative International Legal Policy: National Political Approaches towards International Legal Order*, 24 January 2024, Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper No. 2024-03, available at SSRN: <https://ssrn.com/abstract=4705207>.

³⁹ Wouters and Rischbieth (n. 3), 29.

⁴⁰ See especially Corell (n. 9), 74; Nannini and Burci (n. 28), 179-180; Hill (n. 16), 346; Ferrazzani (n. 10), 407.

