

# **The Role of a Legal Adviser of an International Organization**

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by

Hans Corell

Welcome to the first of my two presentations on "The Role of a Legal Adviser of an International Organization".

The purpose of my two presentations is fourfold: My intention is to, first, describe the conditions under which a Legal Adviser works. I then intend to describe in general terms the United Nations Office of Legal Affairs, its management and staff. Thirdly, I will share with you some of my experiences in the legal field during my 10 years as the UN Legal Counsel between 1994 and 2004 and the role that the UN Office of Legal Affairs played at that time. I will then conclude with some general reflections on the role of the Legal Adviser, based on my 42 years in public service.

In this first presentation I will address parts one and two. Consequently, the second presentation will be on the two remaining parts.

You will also note that my presentations will be rather personal and from a practical angle rather than form an academic discourse.

## First part: the conditions under which a Legal Adviser works

When I joined the Ministry for Foreign Affairs in Sweden in 1984, I had been serving in my country's Judiciary for 10 years between 1962 and 1972. Thereafter, I had worked in the Ministry of Justice, mainly doing legislative work, namely drafting legislative bills from the Government to Parliament.

Eventually, I was among the officers designated to supervise the administration of the Swedish National Legal Gazette, which proved to be a very valuable experience when I joined the United Nations.

In the Judiciary, I first served as a law clerk assisting senior judges both in the Court of First Instance and the Court of Appeal. In my country Sweden, you can go directly from law school to a District Court, and you will soon be allowed to sit on the bench in less significant cases. In parallel in those days you were also judge registrar of titles to land. This proved to be an important experience when the UN was entrusted with the administration of Kosovo, to which I will revert.

In 1968, I became an Assistant District Court Judge, which meant that I could basically deal with all kinds of cases, except the most serious crimes or complicated private law disputes.

In the Ministry, I had the privilege of being involved in many different legal fields, for example real estate law, company law, administrative law, constitutional law, including the relationship between the Realm and the Church of Sweden, which in those days was a state church. This is no more the case; it would not correspond to international obligations on freedom of religion.

In the Ministry for Foreign Affairs my task was much more operational. I had a staff of about 80 people, dealing with public international law, international legal assistance, consular matters, human rights and treaty law.

My task was also to be Head of the Swedish delegation in negotiations with other countries, either in a multilateral context or in bilateral negotiations. One of the most interesting charges was to be Head of the Swedish delegation in negotiations concerning the delimitation of the maritime boundaries in the Baltic Sea between Sweden and the then Soviet Union, Poland, and Finland. This experience was invaluable when I found myself in charge of supervising Law of the Sea matters in the UN Office of Legal Affairs.

From 1985 - 1993 I was a member of Sweden's delegation to the United Nations General Assembly and also participated in negotiations in the Council of Europe and the

Conference on Security and Co-Operation in Europe (CSCE). The latter is nowadays referred to as the Organization on Security and Co-Operation in Europe (OSCE).

In 1992, I was appointed a CSCE rapporteur on war crimes in Croatia and Bosnia-Herzegovina together with two colleagues. In February the following year, we presented the first draft of a statute for what later became the International Criminal Tribunal for the Former Yugoslavia. Again, this experience was extremely valuable during my time in the UN Secretariat when the Office of Legal Affairs was involved in setting up several tribunals.

One of the most interesting aspects of my work as Legal Adviser in the Foreign Ministry was the interaction with colleagues in other countries, the Legal Advisers of Ministries for Foreign Affairs from all over the world. In the Council of Europe we had a special committee for these officers that met twice a year to discuss matters of common interest.

A similar but informal effort was initiated on the margin of the meetings of the Sixth Committee of the United Nations General Assembly. This was an initiative that I and my colleagues in Canada, India, Mexico and Poland took in the late 1980s. Today this has developed into what is commonly referred to as the International Law Week that takes place in New York at the end of October every year.

Initially, at these meetings of Legal Advisers, we discussed extensively the role of the Legal Adviser in a Ministry for Foreign Affairs. In that context, we established a list of literature which is now available on the UN Legal Counsel's website. I will revert to this matter when I come to my fourth and concluding point in this presentation.

At the national level, a Legal Adviser assists his or her government. However, in the United Nations, the situation is different since the UN is an intergovernmental organization. Hence, the issues have an added degree of complexity.

In the performance of their duties within the United Nations, the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall also refrain from any action which might reflect on their position as international officials and responsible only to the organization.

There is a corresponding obligation on the part of the members of the United Nations. They undertake to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities. Unfortunately, this obligation is not always honored.

In the UN, the Legal Counsel advises all the six main organs of the United Nations; needless to say, as far as the International Court of Justice is concerned, this advice will only relate to administrative matters. A particular feature is that advice must be given also in situations when it is clear that the organs concerned may have different interests.

For the Legal Counsel the predominant activity is to advise the Secretary-General and the Secretariat. This activity spans over many areas: administrative law, contracts, labor law, tort, arbitration, etc. The overriding public international law questions are of course the most delicate, in particular when advice is given to the General Assembly and the Security Council.

Second part: a description in general terms of the United Nations Office of Legal Affairs, its management and staff

The United Nations Office of Legal Affairs (OLA) has six distinct units: the Office of the Legal Counsel (OLC), the General Legal Division (GLD), the Codification Division (COD), the Division for Ocean Affairs and the Law of the Sea (DOALOS), the International Trade Law Branch (ITLB), and the Treaty Section.

In those days, a special arrangement also existed for the secretariat of the United Nations Administrative Tribunal. Administratively the secretariat was attached to OLA. But this is no longer the case.

In OLA, there is also an Executive Office. Let me in this context emphasize how important it is for a Head of Department to work closely with such an office. In all, OLA consisted of some 170 staff members. This definitely also meant that the Head of the Office must be a manager. It is often said, but it needs reiterating: your staff is your most important resource.

Therefore it is imperative that a Head of Department takes good care of his or her collaborators. It is of course for others to assess my performance in this respect.

One thing that I am very proud of is that we managed to reach a goal set by the UN General Assembly, namely that there should be gender balance within the Secretariat at the professional level and at the level of Director and above.

These goals were reached in 2000 and 2003, respectively. An important tool in this endeavor was employing graphs to monitor the performance of the Office as a whole and of each unit. I often used graphs, e.g. to monitor backlogs that had been allowed to develop over the years. Graphs are effective since they give an immediate impression of where you are in relation to goals set up.

In a Christmas skit, staff pulled my leg about these graphs. The relationship between the number of legal opinions given and legal opinions followed was described in a very witty manner. In OLA there was very serious business, but there was also a lot of laughter!

In the debate one often hears criticism of the UN Secretariat: bureaucratic and full of overpaid staff. This description is utterly unjust, and it certainly fits badly on OLA. I was fortunate to have an excellent staff. The odd ones who are not so successful can be found in in any organization. I was privileged to work with knowledgeable and dedicated staff members who worked hard – in some cases extremely hard.

Let us now look at the different units of OLA and see what their role is. In so doing, one can also better understand the role of the Legal Adviser.

First should be mentioned the OLC, which assists the Legal Counsel in the overall direction and management of OLA. It coordinates the legal advice and the services that are given to the United Nations as a whole. This Office also prepares legal opinions, studies and advice on the interpretation of the UN Charter and on the interpretation and drafting of rules of international public law.

An important element of the latter activity is preparing opinions and advice on the interpretation of international criminal and humanitarian law.

The OLC also prepares agreements and other legal instruments regulating UN relations with Member States, intergovernmental organizations, non-governmental organizations and other legal entities. Of special importance in this context are the UN peacekeeping missions and other UN operations that are in constant need for legal arrangements and advice.

It should also be mentioned that the OLC also advises United Nations organs and conferences on the conduct of their business.

We now come to the GLD, which is often referred to as the in-house lawyers. Their task is to prepare legal opinions, studies and advice on the Organization's administrative law, on international private law and on UN resolutions and regulations dealing with such matters.

One activity which demands considerable time from the members of the Division is to provide legal advice to the United Nations voluntary programmes and funds in connection with operational activities in the economic and social fields. This also includes the interpretation of their mandates, regulations and rules and the preparation and negotiation of standard instruments.

A very sensitive element of the Division's task is to provide legal advice on procurement, the drafting and negotiation of contracts and other commercial matters, as well as claims and disputes involving operational activities of the Organization, its organs and voluntary programmes and funds. A member of the Division always assists in the meetings of the Contracts Committee.

The activities of the peacekeeping, observer and humanitarian missions of the UN also require legal advice. This applies in particular in connection with the procurement of services for the Blue Helmets, such as troop rotation, water and food supply. During my tenure, there were sometimes claims that had to be handled by the Division. Occasionally, such claims had to be settled by arbitration. In these cases we sometimes relied on external counsel.

The Division also represents the Secretary-General before the United Nations Administrative Tribunal and provides legal services and support for the detection and

punishment of staff members and others who engage in theft, corruption or other fraudulent activities against the Organization and recovery of assets.

The next unit in this overview is the COD. The activities of this Division are completely different from those mentioned so far. The Division's task is to assist and to provide secretariat and legal research services to the Sixth (Legal) Committee of the General Assembly, to the International Law Commission and to others.

Other important activities are to prepare analytical papers, background studies and drafts of international conventions and agreements. The Division is also responsible for preparing, reviewing and coordinating studies for a very important publication which is designed to be an institutional memory of the organization: the *Repertory of Practice of United Nations Organs*.

In addition, COD prepares publications and disseminates information on international law and organizes seminars and training programmes.

Now we come to the fourth unit, DOALOS. We should remember that 70 per cent of the globe is seas. DOALOS is something of a hub within the United Nations System for managing matters relating to the seas.

The Division provides a wide range of legal and technical services to states and intergovernmental organizations. Its main focus is to conduct research and prepare studies relating to the United Nations Convention on the Law of the Sea (UNCLOS) and related agreements.

In this context the Division also assists the General Assembly and the United Nations Open-ended Informal Consultative Process established by the General Assembly. Every year, the Division prepares a report on the seas for the attention of the Assembly. On the basis of an examination of this report, the Assembly adopts a resolution on the Law of the Sea.

DOALOS also serves as the secretariat of the Commission on the Limits of the Continental Shelf. You will recall that this is one of the three organs established by the Law of the Sea

Convention. The other two are the International Seabed Authority and the International Tribunal for the Law of the Sea.

One of the six units of OLA is located in Vienna, Austria. It is the International Trade Law Branch (ITLB). The task of ITLB is to provide secretariat and legal research services to the United Nations Commission on International Trade Law (UNCITRAL) and its subsidiary bodies. It also assists other United Nations organs, bodies and conferences in matters relating to international trade law. Another task of this Branch is to collect and disseminate information on the law of international trade and provide substantive support to technical cooperation activities and training and assistance in international trade law

Finally, we have come to the sixth unit, the Treaty Section. The task of this Section is to analyse, register, file, record and publish treaties and other international agreements pursuant to Article 102 of the Charter. According to this provision, every treaty and every international agreement entered into by a member of the United Nations shall as soon as possible be registered with and published by the Secretariat.

This means that it is the Treaty Section that discharges the Secretary-General's depositary functions under multilateral treaties and issues the publications required by Article 102.

For this purpose, this Section maintains an electronic database and information system to facilitate access to treaty information and providing advice and information on treaty law and related matters.

A specific duty is to assist in formulating final clauses of treaties and agreements concluded under the auspices of the United Nations.

This brings me to the end of my first presentation. I look forward to meeting you again in my second presentation.

Thank you for your attention!