

SYMPOSIUM ON JOOST PAUWELYN AND KRZYSZTOF PELC, “WHO GUARDS THE
‘GUARDIANS OF THE SYSTEM’? THE ROLE OF THE SECRETARIAT IN WTO
DISPUTE SETTLEMENT”

UNSEEN AND EVERYDAY: INTERNATIONAL SECRETARIATS
UNDER THE SPOTLIGHT

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In “Who Guards the ‘Guardians of the System’? The Role of the Secretariat in WTO Dispute Settlement,” Joost Pauwelyn and Krzysztof Pelc make a novel and compelling contribution to our understanding of the secretariat of the World Trade Organization (WTO). Firmly grounded in principal-agent theory, their analysis nonetheless resonates with—and thereby suggests some advantages in pursuing—other, complementary approaches that probe the complex inner lives of the secretariats of international organizations. Two central themes in the article, one explicit and the other implicit, provide especially useful entry points for comparison and linkages with these other approaches. In exploring these themes, this Essay aims to build on Pauwelyn and Pelc’s insightful work to encourage more critical engagement with the governance dynamics and effects of international secretariats.

This Essay cites selectively from a burgeoning body of scholarship that examines the secretariats of international organizations from a wide range of perspectives. Traditional international legal scholarship still tends to view international organizations through the lens of state-centered, functionalist frameworks, which afford little attention to the (relative) autonomy or activities of their secretariats. Similar approaches can be found in most studies by political scientists and economists, who see international organizations as providing rational solutions to problems of coordination among states. On the other hand, the functions, influence, and internal dynamics of international organizations’ secretariats have increasingly become objects of inquiry in other disciplines, including history, sociology, anthropology, political economy, organization studies, public administration, and more. Drawing inspiration from the insights, methods and sources of these disciplines, a relatively small cohort of international law and international relations scholars have likewise started to investigate these issues.

Unseen Actors

One set of explicit claims in Pauwelyn and Pelc’s article concerns the visibility (or otherwise) of various actors in the WTO’s dispute settlement system (DSS). In particular, the role of the WTO’s Secretariat in the DSS has been “largely overlooked,”¹ and its full function has been “kept hidden from view.”² That hiddenness is deliberate:³ the

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¹ Joost Pauwelyn & Krzysztof Pelc, *Who Guards the “Guardians of the System?” The Role of the Secretariat in WTO Dispute Settlement*, 116 AJIL 534, 535 (2022).

² *Id.* at 554.

³ *Id.* at 538.

WTO has a “preference for opacity” and the Secretariat’s role is “overlooked by design.”⁴ Moreover, since its origins in the 1980s and 1990s, the DSS-centered Secretariat has grown considerably due to several “unforeseen factors.”⁵ Notwithstanding efforts to make the WTO’s dispute processes “open” and “transparent,”⁶ the organization risks becoming seen as illegitimate “[a]s the full role of the Secretariat increasingly comes to light.”⁷ The authors therefore prescribe “greater clarity” and “more transparency” about the true role of the Secretariat, increasing the external visibility of staff and their contributions to particular proceedings, and limiting internal legibility by constructing institutional firewalls between staff involved in various aspects of the process.⁸ The article thus confirms and extends the findings of Joseph Weiler’s classic analysis of “the rule of lawyers and the ethos of diplomats,” which similarly centered on questions of legitimacy,⁹ while making an important contribution to a growing literature on the issue of transparency in global governance.¹⁰

Much recent scholarship on international organizations aims to bring to light the unseen functions and influence of their administrative organs. At this point, it would be an exaggeration to describe these organs as “invisible,”¹¹ though of course considerably more has been written about older and larger international bureaucracies such as the United Nations or the World Bank than the WTO, even including its predecessor, the General Agreement on Tariffs and Trade (GATT).¹² There is by now a long tradition of scholarship on the executive heads of international organizations, some of it biographical—on a continuum from the hagiographical to the critical¹³—and some more analytical or normative.¹⁴ Multi-volume projects on the history of the United Nations and the International Labour Organization, among others, have illuminated the workings and impacts of their secretariats.¹⁵ Exciting new research continues to disclose insights into how international bureaucracies emerged and evolved at crucial moments in the interwar period, during the Cold War, and in the era of decolonization.¹⁶

⁴ *Id.*

⁵ *Id.* at 547.

⁶ *Id.* at 556.

⁷ *Id.*

⁸ *Id.* at 565–66.

⁹ Joseph H.H. Weiler, *The Rule of Lawyers and the Ethos of Diplomats: Reflections on the Internal and External Legitimacy of WTO Dispute Settlement*, 35 J. WORLD TRADE 191 (2001).

¹⁰ Megan Donaldson & Benedict Kingsbury, *The Adoption of Transparency Policies in Global Governance Institutions: Justifications, Effects, and Implications*, 9 ANN. REV. L. SOC. SCI. 119 (2013); *TRANSPARENCY IN INTERNATIONAL LAW* (Andrea Bianchi & Anne Peters eds., 2013).

¹¹ JOHN MATHIASON, *INVISIBLE GOVERNANCE: INTERNATIONAL SECRETARIATS IN GLOBAL POLITICS* (2007).

¹² See generally BOB REINALDA, *INTERNATIONAL SECRETARIATS: TWO CENTURIES OF INTERNATIONAL CIVIL SERVANTS AND SECRETARIATS* (2021); FRANCINE MCKENZIE, *GATT AND GLOBAL ORDER IN THE POSTWAR ERA* (2020).

¹³ See, e.g., DAVID MACFADYEN, MICHAEL D. V. DAVIES, MARILYN NORAH CARR & JOHN BURLEY, *ERIC DRUMMOND AND HIS LEGACIES: THE LEAGUE OF NATIONS AND THE BEGINNINGS OF GLOBAL GOVERNANCE* (2019); PATRICK SHARMA, *ROBERT McNAMARA’S OTHER WAR: THE WORLD BANK AND INTERNATIONAL DEVELOPMENT* (2017).

¹⁴ See, e.g., *ETHICAL LEADERSHIP IN INTERNATIONAL ORGANIZATIONS: CONCEPTS, NARRATIVES, JUDGMENT, AND ASSESSMENT* (Guilherme Vasconcelos Vilaça & Maria Varaki eds., 2021); *SECRETARY OR GENERAL? THE UN SECRETARY-GENERAL IN WORLD POLITICS* (Simon Chesterman ed., 2007). For an early and still salient analysis, see Robert W. Cox, *The Executive Head: An Essay on Leadership in International Organization*, 23 INT’L ORG. 205 (1969).

¹⁵ On the ILO, see *Century Project – ILO’s History Project*. From the UN Intellectual History Project, see, e.g., *UNITY AND DIVERSITY IN DEVELOPMENT IDEAS: PERSPECTIVES FROM THE UN REGIONAL COMMISSIONS* (Yves Berthelot ed., 2004).

¹⁶ ANNE ORFORD, *INTERNATIONAL AUTHORITY AND THE RESPONSIBILITY TO PROTECT* (2011); PATRICIA CLAVIN, *SECURING THE WORLD ECONOMY: THE REINVENTION OF THE LEAGUE OF NATIONS, 1920–1946* (2013); Megan Donaldson, *The Survival of the Secret Treaty: Publicity, Secrecy, and Legality in the International Order*, 111 AJIL 575 (2017); *ORGANIZING THE 20TH CENTURY WORLD: INTERNATIONAL*

Many of these works are descriptive and focus on international bureaucracies that are not principally concerned with supporting courts and tribunals. Nevertheless, several of their findings align with those of Pauwelyn and Pelc. First, numerous international secretariats besides the WTO's undergo significant expansions, both numerically and in the scope of their activities, in ways that are unforeseen by their founders.¹⁷ As a result, they too come to exercise a degree of (bounded) autonomy, unseen—or escaping oversight—by their member states.¹⁸ Second, international secretariats exercise significant expert authority,¹⁹ and rely on this authority to legitimize expanding beyond their original mandates. In Pauwelyn and Pelc's telling, WTO Secretariat staff exercise a potent mix of expertise in law, economics, and substantive issue areas such as agriculture or sanitary measures. Other organizations' secretariats may similarly advance claims to expertise in economics (e.g., the World Bank),²⁰ in public health (the World Health Organization),²¹ or in any of a myriad technical specializations.

Other findings of this broader scholarship on “unseen” actors in international organizations appear to be less present in Pauwelyn and Pelc's account. International organizations are important nodes for exchanges and circulations among transnational networks of experts, or epistemic communities, who are not themselves staff of the organization.²² International secretariats establish linkages between, and “borrow” authority from, these networks to expand their own mandates.²³ In part through such interactions, international secretariats also often serve as seedbeds or conduits for particular ideas, norms or ideologies, including development, planning, economic growth, and financial liberalization.²⁴ Quinn Slobodian has argued that, during the 1980s, lawyers in the GATT's Secretariat championed a version of neoliberalism (“the Geneva School”) through the idea of “constitutionalizing” the world economy.²⁵ Likewise, scholars of international secretariats are increasingly interested in their “hidden” roles in perpetuating and legitimizing unequal power relations between the Global North and South. Pauwelyn and Pelc do not argue that the Secretariat's unseen influence on DSS proceedings has infused

[ORGANIZATIONS AND THE EMERGENCE OF INTERNATIONAL PUBLIC ADMINISTRATION, 1920–1960s](#) (Karen Gram-Skjoldager, Haakon Andreas Ikonomou & Torsten Kahlert eds., 2020); OMER ALONI, [THE LEAGUE OF NATIONS AND THE PROTECTION OF THE ENVIRONMENT](#) (2021); DANIEL STINSKY, [INTERNATIONAL COOPERATION IN COLD WAR EUROPE: THE UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE, 1947–64](#) (2021); ELISABETH ROEHLICH, [INSPECTORS FOR PEACE: A HISTORY OF THE INTERNATIONAL ATOMIC ENERGY AGENCY](#) (2022); EVA-MARIA MUSCHIK, [BUILDING STATES: THE UNITED NATIONS, DEVELOPMENT, AND DECOLONIZATION, 1945–1965](#) (2022).

¹⁷ See generally GUY FITI SINCLAIR, [TO REFORM THE WORLD: INTERNATIONAL ORGANIZATIONS AND THE MAKING OF MODERN STATES](#) (2017).

¹⁸ See, e.g., [AUTONOMOUS POLICY MAKING BY INTERNATIONAL ORGANISATIONS](#) (Bob Reinalda & Bertjan Verbeek eds., 1998); [DECISION MAKING WITHIN INTERNATIONAL ORGANISATIONS](#) (Bob Reinalda & Bertjan Verbeek eds., 2004). The influence of secretariats on decision making in international organizations was already well recognized and analyzed half a century ago: ROBERT W. COX, ET AL., [THE ANATOMY OF INFLUENCE: DECISION MAKING IN INTERNATIONAL ORGANIZATION](#) (1973).

¹⁹ [THE POLITICS OF EXPERTISE IN INTERNATIONAL ORGANIZATIONS: HOW INTERNATIONAL BUREAUCRACIES PRODUCE AND MOBILIZE KNOWLEDGE](#) (Annabelle Littoz-Monnet ed., 2017); [THE ROLE OF “EXPERTS” IN INTERNATIONAL AND EUROPEAN DECISION-MAKING PROCESSES: ADVISORS, DECISION MAKERS OR IRRELEVANT ACTORS?](#) (Mónika Ambrus, Karin Arts, Ellen Hey & Helena S. Raulus eds., 2014).

²⁰ MATTHIAS SCHMELZER, [THE HEGEMONY OF GROWTH: THE OECD AND THE MAKING OF THE ECONOMIC GROWTH PARADIGM](#) (2016).

²¹ NITSAN CHOREV, [THE WORLD HEALTH ORGANIZATION BETWEEN NORTH AND SOUTH](#) (2012).

²² Michel Christian, Sandrine Kott & Ondrej Matejka, *International Organizations in the Cold War: The Circulation of Experts Beyond the East-West Divide*, 1 *STUDIA TERRITORIALIA* 35 (2017).

²³ Guy Fiti Sinclair, *Forging Modern States with Imperfect Tools: United Nations Technical Assistance for Public Administration in Decolonized States*, 11 *HUMANITY J.* 54 (2020).

²⁴ [PLANNING IN COLD WAR EUROPE: COMPETITION, COOPERATION, CIRCULATIONS \(1950s–1970s\)](#) (Michel Christian, Sandrine Kott & Ondřej Matějka eds., 2018); MICHELE ALACEVICH, [POLITICAL ECONOMY OF THE WORLD BANK: THE EARLY YEARS](#) (2008); MATTHIAS SCHMELZER, [THE HEGEMONY OF GROWTH: THE OECD AND THE MAKING OF THE ECONOMIC GROWTH PARADIGM](#) (2016); JEFFREY M. CHWIEROTH, [CAPITAL IDEAS: THE IMF AND THE RISE OF FINANCIAL LIBERALIZATION](#) (2010).

²⁵ QUINN SLOBODIAN, [GLOBALISTS: THE END OF EMPIRE AND THE BIRTH OF NEOLIBERALISM](#) 257 (2018).

trade law doctrine with any ideological or normative bias, or led to any particular distributive consequences. Readers might speculate whether the use of “*ad hoc* panelists . . . pulled from the ranks of trade policy officials”²⁶ would lead to more or less the same legal outcomes, even without such influence, and further studies could helpfully explore this question.

Everyday Practices

A second, implicit theme in the article concerns the significance of everyday practices of international secretariats. Over several pages, the authors detail the various tasks undertaken by the WTO’s Secretariat in relation to the dispute settlement mechanism: the procedures for the appointment of panelists and Appellate Body members; guidelines and decisions relating to compensation and reimbursements; the establishment of timetables, working procedures, and best practices; the preparation of the “issues paper,” distilling the “voluminous filing and exhibits” submitted by the parties to the dispute; the drafting of questions to be put to the parties; the provision of expert advice on non-legal issues; participation in hearings and internal deliberations and drafting of reports.²⁷ While some of these practices are drawn from rules in the Dispute Settlement Understanding (DSU), working procedures, other official guidance notes, and case law, these sources are supplemented with observations from participants, including panelists and Appellate Body members.

These passages connect the article, however tacitly, to a small but growing body of international law scholarship that seeks to pay attention to everyday practices—the quotidian, the mundane, the routine, and the technical—in the inner lives of international organizations. These kinds of practices often constitute the “backstage” to the more conspicuous performances and stagings that scholars and practitioners typically recognize as constituting international law; a “new way of looking” may therefore be needed to see them and appreciate their significance.²⁸ The work of WTO committees, for example, is often overlooked, but deserves study because “it is precisely on the basis of this ordinary world of apparently mundane activity, on the day-to-day interactions which together constitute the practice of governing, that we ought to build our understanding of what global governance is and ought to be.”²⁹ References to the “everyday” typically signal a sociological or anthropological orientation.³⁰ One strand of this scholarship builds on Weber’s account of bureaucratic practices to identify sources of authority, pathology, and change in international secretariats.³¹ Others follow Foucault, Bourdieu, Latour, Butler, and others, extending

²⁶ Pauwelyn & Pelc, *supra* note 1, at 547.

²⁷ *Id.* at 538–44.

²⁸ Lianne J.M. Boer & Sofia Stalk, *Backstage Practices of Transnational Law*, in [BACKSTAGE PRACTICES OF TRANSNATIONAL LAW](#) 3 (Lianne J.M. Boer & Sofia Stalk eds., 2021); *see also* Marc Abélès, *Heart of Darkness: An Exploration of the WTO*, in [PALACES OF HOPE: THE ANTHROPOLOGY OF GLOBAL ORGANIZATIONS](#) 52 (Ronald Niezen & Maria Sapignoli eds., 2017) (describing the WTO’s “Green Room” as a “backstage” site of multilateral negotiations).

²⁹ Andrew Lang & Joanne Scott, *The Hidden World of WTO Governance*, 20 *EUR. J. INT’L L.* 575, 576 (2009).

³⁰ KATHLEEN McNAMARA, [THE POLITICS OF EVERYDAY EUROPE: CONSTRUCTING AUTHORITY IN THE EUROPEAN UNION](#) (2016); LUIS ESLAVA, [LOCAL SPACE, GLOBAL LIFE: THE EVERYDAY OPERATION OF INTERNATIONAL LAW AND DEVELOPMENT](#) (2015); *see also* [PALACES OF HOPE: THE ANTHROPOLOGY OF GLOBAL ORGANIZATIONS](#), *supra* note 28; GALIT SARFATY, [VALUES IN TRANSLATION: HUMAN RIGHTS AND THE CULTURE OF THE WORLD BANK](#) (2012).

³¹ MICHAEL BARNETT & MARTHA FINNEMORE, [RULES FOR THE WORLD: INTERNATIONAL ORGANIZATIONS IN GLOBAL POLITICS](#) (2004); [INTERNATIONAL BUREAUCRACY: CHALLENGES AND LESSONS FOR PUBLIC ADMINISTRATION RESEARCH](#) (Michael W. Bauer, Christoph Knill & Steffen Eckhard eds., 2016); HERMAN T. SALTON, [DANGEROUS DIPLOMACY: BUREAUCRACY, POWER POLITICS, AND THE ROLE OF THE UN SECRETARIAT IN RWANDA](#) (2017).

theoretical and empirical work in disparate disciplines concerning practices and performativity, assemblage, and materiality.³²

Several of Pauwelyn and Pelc's findings resonate with recent works on everyday practices in international organizations. They do not aim, of course, to undertake a thorough ethnographic investigation into panel and Appellate Body proceedings. Rather, their article astutely analyzes the complications arising from WTO members having "install[ed] a second agent [Secretariat staff] to oversee the work of the first [the adjudicators]," with the result that the Secretariat "effectively became a free agent" and "accountable to no one."³³ Nevertheless, their description of timetabling and drafting practices in the WTO Secretariat recalls scholarship that traces the circulation of documents through international organizations.³⁴ Similarly, their observations on the placement and positioning of Secretariat staff in hearings and confidential deliberations,³⁵ and the significance of buildings and spatial relationality for the work of the adjudicators,³⁶ bring to mind ethnographic work that attends to bodily postures and performances as means of enacting the law.³⁷ These elements of Pauwelyn and Pelc's account connect closely with their argument that the DSU should be understood as "a *sui generis* process of international administrative review";³⁸ as such, they recall other quasi-judicial bodies like the World Bank's Inspection Panel.³⁹

These evocative passages in the article suggest some promising lines of inquiry for scholars who might wish to approach the same settings with a different set of theoretical and empirical tools. Such approaches will inevitably produce much more complex pictures of international secretariats than those suggested by a principal-agent analysis. Through the lens of the "everyday," these are entities teeming with actors, actions, performances, and practices. Documents and other material objects have agency, and there is a continuous struggle to hold actants of all kinds together in stable arrangements. In international organizations, both principals and agents are fragmented.⁴⁰ Their secretariats draw on (and are constrained by) multiple sources of authority in addition to (and in interaction with) law, and must manage diverse relationships with other "global governors," both "internal" and "external" to the organization.⁴¹ Coherence must be viewed as "an accomplishment rather than a given."⁴²

³² Dimitri Van Den Meerssche, *Performing the Rule of Law in International Organizations: Ibrabim Shibata and the World Bank's Turn to Governance Reform*, 32 LEIDEN J. INT'L L. 47 (2019); ISOBEL ROELE, *ARTICULATING SECURITY: THE UNITED NATIONS AND ITS INFRA-LAW* (2022); RICHARD CLEMENTS, *THE JUSTICE FACTORY: MANAGEMENT PRACTICES AND THE INTERNATIONAL CRIMINAL COURT* (forthcoming); DIMITRI VAN DEN MEERSSCHE, *THE WORLD BANK'S LAWYERS: THE LIFE OF INTERNATIONAL LAW AS INSTITUTIONAL PRACTICE* (2022); Swati Srivastava, *Assembling International Organizations*, 4 J. INT'L ORG. STUD. 72 (2013).

³³ Pauwelyn & Pelc, *supra* note 1, at 548–49.

³⁴ CLEMENTS, *supra* note 32; Donaldson, *supra* note 16; Guy Fiti Sinclair, *Beyond Accountability: Human Rights, Global Governance, and the World Bank Inspection Panel*, in HUMAN RIGHTS AND GLOBAL GOVERNANCE (Nehal Bhuta & R.J. Vallejo Garretón eds., forthcoming). For an early, pathbreaking example, see RICHARD H.R. HARPER, *INSIDE THE IMF: AN ETHNOGRAPHY OF DOCUMENTS, TECHNOLOGY AND ORGANISATIONAL ACTION* (1998).

³⁵ Pauwelyn & Pelc, *supra* note 1, at 543.

³⁶ *Id.* at 562, citing Joost Pauwelyn, *The Rule of Law Without the Rule of Lawyers? Why Investment Arbitrators Are from Mars, Trade Adjudicators from Venus*, 109 AJIL 761, 797 (2015).

³⁷ VAN DEN MEERSSCHE, *supra* note 32.

³⁸ Pauwelyn & Pelc, *supra* note 1, at 536.

³⁹ Sinclair, *supra* note 34.

⁴⁰ Erin R. Graham, *International Organizations as Collective Agents: Fragmentation and the Limits of Principal Control at the World Health Organization*, 20 EUR. J. INT'L REL. 366 (2013).

⁴¹ Deborah D. Avant, Martha Finnemore & Susan K. Sell, *Who Governs the Globe?*, in *WHO GOVERNS THE GLOBE?* 1–3 (Deborah D. Avant, Martha Finnemore & Susan K. Sell eds., 2010).

⁴² BARNETT & FINNEMORE, *supra* note 31, at 40.

Closer attention to the everyday practices of the Secretariat might thus reveal the contingencies, contestations, and transformations encountered as the WTO's Secretariat rose to dominance in the DSS; the multivalent roles played by law and lawyers in enabling and restraining that rise; and thereby the possibilities and perils of countering bureaucratic pathologies with yet more law. Moreover, as noted above, further exploration of the unseen lines of influence running through the Secretariat promises to illuminate the power dynamics and ideological currents that shape international trade law. We are indebted to Pauwelyn and Pelc for raising these questions and opening up new opportunities to examine a key institutional formation of our time—the international secretariat.