

Sub-Committee that there should be uniformity to avoid possible difficulties in applying these provisions.

Article 17

The Sub-Committee is of the view that, in order to make the intention of Article 17(1) clearer, the phrase "in respect of the claim asserted" should be inserted between the words "the limitation period" and "shall".

Article 18

The approach of Article 18(1) is to make a new limitation period of *four years* commence to run afresh upon the performance of the acts specified in Article 18(1). This may be in conflict with the policy behind Article 10 which provides a shorter limitation period (two years) for certain claims. To create harmony within the Convention, the Sub-Committee suggests that the phrase "a new limitation period of four years" in Article 18(1) be changed to the following phrase :

"a limitation period as provided in Article 8 shall commence to run afresh".

Article 19

For the same reasons stated in regard to Article 18(1), the Sub-Committee is of the view that the phrase "a new limitation period of four years shall commence to run" in Article 19(1) should be replaced by the following phrase :

"a limitation period as provided in Article 8 shall commence to run afresh".

Article 22

It is the view of the Sub-Committee that this article is desirable and should be contained in the Convention. In the absence of an overall cut-off point, the period might be substantially prolonged to such an extent that the purpose of prescription is defeated.

Article 30

It is the view of the Sub-Committee that Article 30 needed to be carefully considered by the United Nations Conference, in the light of the various constitutional procedures in different States for implementing international conventions.

Article 36

The Sub-Committee is of the view that the test contained in the proviso to Article 36 could be made more definite, by specifying the time at which the seller and buyer must have their places of business in States parties to a different convention. The problem created by this Article can be identified by the following example :-

A (the buyer) has his place of business in State X, and B (the seller) in State Y. At the time of the conclusion of the contract both States are parties to this Convention which, therefore, applies. However, only State X is a party to another convention which also deals with limitation. After the institution of legal proceedings, however, State Y has also acceded to the other convention,

With regard to the future programme of the Sub-Committee, it was noted that the Secretariat of the UNCITRAL intended to prepare an analytical compilation of the comments and proposals sent by Governments and interested international organisations some time after the 30th of June 1973. Since the analytical compilation, which would be circulated to member governments and Secretariat of the Committee, may disclose future matters for consideration, the Sub-Committee is of the view that this subject should be taken up again at the next session of the Committee, which will be held shortly before the United Nations Conference on Prescription (Limitation) on International Sale of Goods. In this connection, the Sub-Committee requests the Secretariat of the Committee to examine the analytical compilation and to place any necessary comments at the next session of the Committee.

VII. ORGANISATION OF LEGAL
ADVISORY SERVICES ON
INTERNATIONAL LAW

(i) INTRODUCTORY NOTE

At the tenth session of the Committee, held in Karachi in January 1969, it had been decided to take up for discussion at one of the sessions of the Committee the question of *Organisation of Legal Advisory Services in International Law* as being a matter of common concern on which exchange of views and information would be useful in order to enable the governments of Asian-African States to benefit from each other's experiences in the field.

Since information available on the Organisation of Legal Advisory Services on International Law questions in Asian-African States was extremely limited, the Committee's Secretariat addressed a communication to the governments of all Asian-African States, and in response thereto replies were received from sixteen governments, namely Botswana, Dahomey, Indonesia, Iran, Japan, Jordan, Kenya, Kuwait, Malawi, Nepal, Pakistan, the Philippines, Syrian Arab Republic, Togo, Uganda and Zambia. These replies alongwith a short general note, prepared by the Secretariat, were placed before the Committee at its fourteenth session held in New Delhi in January 1973.

At the New Delhi session, the subject was taken up in the plenary meetings held on the 15th and the 18th of January 1973 when the Delegates of Arab Republic of Egypt, India, Indonesia, Iran, Malaysia, Republic of Korea and Sri Lanka and the Observer for the United States of America made statements outlining the system of legal advice on international legal questions prevalent in their respective countries. At that session, a suggestion was mooted for holding of periodic meetings of Foreign Office legal staffs of the member States under the auspices of the Committee. The Commonwealth Secretariat also expressed a desire to be associated with any future meeting of Foreign Office Legal Advisers that may be organised by this Committee.

In the light of discussions at the New Delhi session, the Committee's Secretariat prepared an analytical note on the basis

of the information available with the Secretariat on the system prevalent in Britain, the United States of America and twenty-two Asian-African countries. This note has been circulated to all the Asian-African governments and will be modified in the light of observations that may be received. Thereafter, it will be placed before the proposed Conference of Legal Advisers to serve as a basis of discussion.

(ii) NOTE PREPARED BY THE COMMITTEE'S SECRETARIAT ON ORGANISATION OF LEGAL ADVISORY SERVICES ON INTERNATIONAL LAW

Introduction

Although international law has been known and respected through the ages, it is only in more recent years that international law has come to occupy a pivotal position in the relations between nations comprising the entire gamut of a State's sphere of activities. It was not so long ago that international relations in the true sense were confined to a few States in Europe which alone were deemed competent to decree by agreement among themselves as to what they would regard to be the law applicable in relations between nations. With the birth of new nations in the present century and especially since World War II, the era following decolonisation and the ever-increasing complexities of international relations, international law has come to play a dominant role in the affairs of nations. The establishment of the United Nations itself postulates international law to be the basis for relations among its member States, and this has largely contributed towards the growing tendency on the part of governments to rely more and more on international law and practice in support of their policies and actions.

International law, in the modern sense, not only touches upon the political aspects of a State's relations with other States but embraces the field of trade and commerce, communications, transport etc. International conferences have become the order of the day at which governments have to be represented; there are in force voluminous treaties which are being multiplied every day to regulate the conduct of nations in different spheres which require to be interpreted and applied. In addition, there are the usual questions which frequently arise concerning the protection of the interests of the nationals of a State in other States, border disputes, refugee situations, utilisation of the resources of the State, protection of a country's diplomatic and consular

representatives abroad many other problems which arise in the day-to-day functioning of a government. All this means that not only the Foreign Office but many other government departments also have to be kept abreast of the correct position and the most recent developments in international law relating to their sphere of activity. In modern time a government cannot function without competent legal advice on international law questions since in the international community of today State's action is always liable to be criticised or challenged as being contrary to the norms of international law and no State, however powerful, can afford to ignore world opinion. The newly independent States which had limited experience of international law or relations during the period of colonial domination had to face difficulties in finding men and material from indigenous sources to fill their role in world affairs, but most of these countries have now been able to cross over such initial hurdles. It is indeed remarkable that many of the countries in Asia, Africa and the Latin Americas have not only been able to organise adequate legal advisory services to meet their own requirements but have been able to make substantial contribution to the growth and development of international law in recent years and in providing competent staff for international organisations.

Organisation of Advisory Services

A brief survey of the practices obtaining in different countries of the world in the matter of organisation of legal advisory services on international law reveals three distinct patterns, namely (i) linking of the advisory services on international law with the general legal services of the government; (ii) establishment of a separate International Law Division in the Foreign Office and linking the same with the regular Foreign Service for the purpose of manning the posts in the International Law Division; and (iii) establishment of a specialist Section or Division in the Foreign Office charged with rendering of international law opinions and manned by specialist officers who are not members of the regular Foreign Service. Some countries have a mixed system, that is to say, whilst maintaining a small International Law Section in the Foreign Office, the ultimate responsibility for

rendering advice is vested in the Attorney-General or the principal law officer of the government.

(i) *Linking of the advisory services on international law with the general legal services of the government*

This pattern appears to be in vogue in some countries in Asia and several African countries which were formerly parts of the British Empire. The reason for this practice is not far to seek since even under the colonial rule these territories had fairly well organised government departments charged with the task of rendering legal advice to all government departments. This was usually headed by an Attorney-General or a Minister of Justice and qualified legal officials were recruited to man posts in this department. When the colonial rule ended, there was already a well established department known in various countries as the Department of Law or the Department of Justice, or the Attorney-General's Department or Chambers which was charged with the rendering of legal advice to the government on all matters. International law was naturally included within the competence of this Department. It may be stated that even in England until the year 1885 the responsibility for rendering international law opinions vested with the Law Officers of the Crown, and in France the entire legal advisory service including that on international legal questions was centralised in the *Conseil d'Etat*. To begin with, the Legal Departments in the newly independent countries hardly had any person conversant with international law and consequently they had to rely heavily on outside sources. But gradually new officers with specialised knowledge and training in international law were recruited to deal specially with international law questions, even where the government had decided to retain the system of centralised Law Department to deal with all legal questions including questions on international law. In some of the Asian-African countries even though small international law sections have been established in Foreign Offices, certain broad links are still retained with the Attorney-General's Department or the Ministry of Justice which is charged with rendering of legal advice to Government Departments. According to information available with us, this pattern is followed in the following countries :—

Botswana : There is no legal department in the Foreign Office of Botswana. Legal advice is obtained, whenever the need arises, from the Attorney-General's Chambers. The Attorney-General is consulted invariably on all matters relating to international legal questions and his advice thereon in normal circumstances is absolute.

Malaysia: Under the Constitution of Malaysia, the Attorney-General is the advisor to the Government on legal matters, and, therefore, concentration of all governmental legal advice is in the Attorney-General's Chambers. Officers of the Chamber who belong to Judicial and Legal Service are sent from time to time for post-graduate courses in public international law and these officers on their return act as legal advisers on international law. In the Foreign Office also there is a career diplomat with legal qualifications who deals with all matters relating to treaties.

Nepal : Legal problems on international law are dealt with by the "International Law Opinion Section" of the Ministry of Law and Justice. The Section, at present, has a strength of two Under-Secretaries, two Section Officers and other ancillary staff. The Section works under the direction, control and guidance of the Joint Secretary and the Secretary. Most of the officers of the Section have obtained higher degrees or specialised training in international law. All the officers belong to the Judicial Service of the His Majesty's Government which forms a distinct cadre of the civil services. The primary function of the Section is to provide expert legal advisory service to His Majesty's Government, its various Ministries and Departments and to bring to bear coordination and harmonisation into and to channelise the work of various Ministries in their international legal dealings. The advice given, though not necessarily binding as are all legal advice, carries with it considerable weight with the receiving Ministries who very rarely act contrary to the advice so given. The Section acts as the central depository of all treaties and agreements to which Nepal is a party. Officers of the Ministry have also to prepare for and participate in international conferences and seminars on international law.

Nigeria : In Nigeria, the Chief Law Officer of the Federal Government is the Attorney-General of the Federation who is

also the political head of the Federal Ministry of Justice. The Solicitor-General of the Federation is the head of the Permanent Law Officers who work under the general direction and control of the Attorney-General in the offering of legal advice to all departments of the Federal Government on all legal questions. The Federal Ministry of Justice has two Divisions concerned with providing legal advice on the conduct of foreign affairs, namely (i) the Industrial and Mercantile Law Division; and (ii) the Public International Law and Comparative Law Division. The former Division is headed by a Principal Crown Counsel who is assisted by a Senior Crown Counsel and some Crown Counsel. The bulk of the work of this Division comes from the Ministry of Commerce and Industry, which is responsible *inter alia* for External Trade, Industrial Development and Industrial Research. The Public International Law and Comparative Law Division is also headed by a Principal Crown Counsel with a complement of one Senior Crown Counsel and a number of Crown Counsel. This Division is responsible for providing legal advice to the Ministry of Foreign Affairs and Commonwealth Relations on the conduct of relations with other governments, international organisations (including United Nations) and nationals of other countries. In the course of its work this Division provides a Legal Officer as a member of the Nigerian team in any negotiations on foreign affairs with any other government. Occasionally when trade agreements are negotiated, the legal member of the Nigerian team is provided by the Industrial and Mercantile Law Division. The Public International Law and Comparative Law Division is a repository of all the international agreements or conventions entered into or acceded to by Nigeria. It also keeps copies of all such agreements or conventions under which Nigeria inherited rights or obligations on the attainment of independence.

As regards procedure, there are two ways for obtaining legal advice by the Ministries. One is by addressing a letter to the Solicitor-General of the Federation setting out the problem and requesting advice thereon. This is a common practice, especially in minor matters. The other method is by addressing a note to the Solicitor-General through the file of the Ministry concerned. This method will usually consist in writing a self-contained note setting out the facts of the matter and asking for

legal advice on specific points. This mode is normally adopted in important matters. Within the Ministry of Justice itself, such letters or files are assigned to the relevant Division for action. Generally, routine matters are settled at the head of the Division level, but more important matters are usually brought to the attention of the Solicitor-General or his deputy or even for the information of the Attorney-General (Commissioner of Justice). All international agreements and conventions are, as a rule, cleared with the Attorney-General before they are considered by the Federal Executive Council.

Uganda : In Uganda, legal advice on international law matters is tendered by the Ministry of Justice. However, there is also a legal section in the Ministry of Foreign Affairs called the "Economic, Legal and Cultural Division". This Division is normally manned by a person with legal qualifications, but sometimes any Foreign Service officer could be assigned to head this Division. In either case, reference is always made to the Ministry of Justice for expert advice.*

Zambia : In Zambia legal advisory service to the Government is centralised, i.e. there is no attachment of legal advisers to Government Ministries. The Legal Advisor on International Law is a section in the Ministry of Legal Affairs which is headed by the Minister for Legal Affairs and the Attorney-General. The Section which consists of only two lawyers advises the Government for and on behalf of the Minister for Legal Affairs and the Attorney-General. Legal advisory service being centralised the initiative is always taken by Government Ministries. Besides advising, the Legal Advisors appear in courts of law in cases involving the Government not necessarily in matters touching international law.

Merits of the System

The Governments which follow this system consider it to be advantageous on account of the fact that under the pattern of

* It is, however, the intention of the Ministry of Foreign Affairs to establish a self contained Legal Division manned by qualified lawyers in international law.

distribution of their governmental functions the ultimate responsibility for rendering legal advice on all matters rests with the Minister of Justice or the Attorney-General who is the Principal Law Officer of the Government. Legislation which requires to be enacted for giving force to treaties is also his responsibility. Since the Minister of Justice or the Attorney-General is in a position to co-ordinate the work of all Government Departments in the legal sphere, it is found to be advantageous to have the international law advising function to be also vested in the Department under his charge, particularly as a good many Government Departments apart from the Foreign Office are today directly concerned with international law questions.

The other reason in support of this system, which is sometimes put forward, is that the Attorney-General's Department or the Ministry of Justice acts independently of the administrative Ministries and occupies practically the position of independent legal advisers to those Departments. As a consequence, it is stated, the Attorney-General's Department is able to bring about objectivity and independence in the examination of international law problems which may not be possible if the legal advisers become part and parcel of the administrative Ministries.

The third reason, which is given in support of the system, is that international law cannot be wholly divorced from municipal legal systems, and as a consequence, it is better to have the entire legal advisory service organised in the same Department under the control of the Attorney-General or the Minister of Justice.

An additional reason, which appears to have substance in several cases, is the question of prospects of the persons who are appointed to work on international legal questions. It is said that if the officers who have to deal with international law problems were to be included in a separate Division in the Foreign Ministry, their chances of promotion would be few and far between, especially in the smaller Foreign Offices of the newly independent countries. On the other hand, they could well look forward to reach the top of the ladder if they were to be integrated with the general legal advisory services of the government. This is a

fairly important consideration because it is difficult to expect an officer to give his best if he had little or no chance of promotion and his counterpart in the general legal advisory side had all the prospects before him.

Notwithstanding these considerations, there seems to be a general trend in several countries to switch over to the pattern of having specialist divisions in Foreign Offices, and this shows that the Governments tend to regard the latter system to be more advantageous from their point of view. It is often said that international law calls for a great deal of specialisation and is so inextricably mixed up with policy considerations of the Government that a Legal Adviser is best able to serve his Government if he were a part and parcel of the Ministry of Foreign Affairs and responsible to the Minister in charge.

(ii) *Establishment of an International Law Division in the Foreign Office linked to the regular Foreign Service*

The second pattern which is gradually gaining ground in many countries is to have a department of international law within the Foreign Office itself and to man the posts by officers of the Foreign Service who may be posted on a tour of duty in the International Law Division. In countries where this pattern is followed, regular members of the Foreign Service who have had a University degree or training in International Law are eligible to be posted to the International Law Division. The head of the Division usually has the rank of an Ambassador or Minister Counsellor who is assisted by other Foreign Service officers of varying ranks depending on their number and the size of the Division. In addition to the diplomatic officers, a few lawyers are sometimes included on a permanent basis who are not liable to be transferred. The International Law Division which is directly responsible to the Minister for Foreign Affairs, is often sub-divided in two or three sections to deal with international law advisory work, treaties, codification and development of international law which section is usually charged with the examination of drafts of international conventions and preparations for international legal conferences. In larger Foreign Offices individual officers of the International Law Division are

assigned specific departments so that the officer concerned could act as the legal adviser of the department assigned to him subject to the overall supervision of the head of the Division. According to our information the countries which follow this pattern are :

Arab Republic of Egypt : In Egypt, legal advising on international law problems is vested in the Office of the Legal Adviser in the Ministry of Foreign Affairs. The functions of this department as set out in Article 2 of the Ministerial Decree No. 959 of 1960 are as under :—

- i) to study international problems with a view to considering the international problems of the Arab Republic of Egypt from the point of view of international law;
- ii) to participate in the presentation of the position of the Arab Republic of Egypt in international conferences;
- iii) to prepare drafts of treaties and agreements to be concluded by the Arab Republic of Egypt and take the necessary measures for their conclusion, promulgation, publication and registration with international organisations as well as the necessary procedure for the abrogation and termination of these treaties and agreements in accordance with the provisions of the Decree of the Council of Ministers dated September 21, 1955;
- iv) to study, prepare, and draft the subjects and questions referred to it by the Minister of Foreign Affairs.

The Department of Legal Affairs and Treaties is an integral part of the Ministry of Foreign Affairs and its Foreign Service. The officers alternate between the Department and the Egyptian diplomatic missions abroad. Assignments to the Department are made from among lawyers in the Ministry who have had some post-graduate training in international law at home or abroad or those who have served in Egyptian permanent missions to international organisations.

Dahomey : Questions pertaining to international law are dealt with by the Department of Political and Legal Affairs of the Ministry of Foreign Affairs. The Department is managed by professional diplomats. Occasionally the Department consults with the Ministry of Justice.

Indonesia : International legal problems are mostly handled or channelled through the Directorate of Legal Affairs which is an integral part of the Department of Foreign Affairs. The Directorate is headed by the Director of Legal Affairs. At present, the Directorate comprises a secretariat and three divisions, namely (i) The Division for International Law Affairs; (ii) The Division for Treaty Affairs; and (iii) The Division for Codification and Law Development Affairs. Besides the administrative staff, the Directorate has a staff of ten lawyers most of whom belong to regular Foreign Service and they are subject to rotation system. The Directorate deals with legal matters and/or legal aspects of matters including international legal problems/aspects in the advisory as well as executive capacity. The Directorate is invited by other Departments and Agencies to discuss international matters and legal problems with international legal aspects in order to find a solution or determine an attitude. The weight attached to the opinions of legal adviser normally varies depending upon whether the issue at hand is of an overriding legal or political character.

Iran : International legal problems are dealt with by the Legal Department of the Ministry of Foreign Affairs. It has a staff of ten officers including the Director all of whom are law school graduates and belong to the general cadre of the Foreign Service. The Ministry and its Legal Department are assisted by three senior legal advisers who are either law school professors or private lawyers who render their services to the Ministry on a part-time basis. The Legal Department is ordinarily engaged in handling the legal problems dealt with by the Ministry. The opinions expressed by the Department are generally adhered to, unless overruled in the light of exceptional circumstances. Preparatory work for conferences on international legal questions are handled by the Legal Department in consultation with the

Ministry's Department of International Organisations and other Agencies.

Japan : Advising the Government on legal aspects of its international activities is the primary function of the Treaties Bureau of the Ministry of Foreign Affairs. The Treaties Bureau is split into three divisions, namely (i) Treaties Division ; (ii) International Conventions Division; and (iii) Legal Affairs Division. The first two Divisions take charge of conclusion of treaties and other international agreements. The Legal Affairs Division takes charge of the following :—

(1) Affairs concerning the disposition of matters in international law and of other International matters; (2) Affairs concerning the International Court of Justice and the Permanent Court of Arbitration; and (3) Affairs concerning research on treaties, international law, and domestic and foreign laws relating to foreign affairs, and concerning arrangement and compilation of the materials necessary for the aforesaid purposes. Structurally the Treaties Bureau is comprised of a Director-General, Division Heads, some career diplomats and their assistants. Officers of the Bureau enjoy the same status as Foreign Service Officers and advance in their position as general career diplomats. University professors who are experts in their fields are also called upon for their assistance. In most cases where the Ministry of Foreign Affairs seeks an expert opinion, a recognized scholar is asked to take up the question. In some cases several scholars are asked their opinions separately. In a few cases, several scholars are invited by the Ministry of Foreign Affairs to offer opinions on a specific question through joint discussion in their meeting with the Treaties Bureau officials. Furthermore, the Ministry of Foreign Affairs holds a regular study meeting where the Ministry officials and university professors make a report alternatively on some current international legal questions. The report of the Ministry's officials usually attaches importance to the presentation of related documents and materials and their explanation. The report of university professors lays emphasis on theoretical analysis of these questions.

The Ministry of Foreign Affairs has various other bureaus which are divided according to their functions, such as the

United Nations Bureau, the Economic Affairs Bureau etc. and bureaus according to areas, such as the Asian Affairs Bureau, the European Affairs Bureau, etc. When legal questions arise in connection with the activities of any of these bureaus, legal opinion of the Legal Affairs Division is asked as a rule.

Ministries other than the Ministry of Foreign Affairs have their own departments which research into and give opinions on legal questions arising in connection with the functions under their jurisdiction. However, when international legal questions, particularly questions on the interpretation of treaties concerned or of international law in general, arise in connection with their functions, these Ministries ask the opinion of the Ministry of Foreign Affairs on such questions. Upon these requests, legal opinions are given by the Ministry of Foreign Affairs, particularly by the Legal Affairs Division.

Jordan : International legal questions are dealt with by the Legal Department of the Ministry of Foreign Affairs, from where they are sent either to the Cabinet or to the Ministry of Justice for their opinion or for implementation, if necessary. The Legal Department is administered by the head of that Department who is at the level of the rank of Ambassador and holds a legal degree and is assisted by a qualified staff. All legal matters in the Ministry of Foreign Affairs are referred to the Legal Department for its opinion which serves as a guide for the Ministry but it is not necessarily binding. Most of the Ministries and Government Institutions have their own legal consultants and the preparation for international conferences are arranged by the concerned Ministry of Government institution.

Kuwait : Legal problems concerning international affairs are handled primarily by the Legal Department in the Ministry of Foreign Affairs. The Department of Legal Advice and Legislation is also competent to render opinion *inter alia* on international legal matters upon request from the Council of Ministers or Department of State. The Legal Department is staffed with officers belonging to the general cadre of Foreign Service whose minimum training is a Bachelor of Law degree. In addition to the head of the Department, there has normally been a strength

of seven legal officers. Opinions given by the Department are given due weight. The Legal Department also undertakes preparatory work for international conferences on international legal questions.

The Philippines : In general, international legal problems are handled by the Office of Legal Affairs which is a unit of the Department of Foreign Affairs and is manned by officers of the Foreign Service who take their regular turn of posting abroad. However, in specially difficult or important cases recourse may be had to the Department of Justice whose Secretary (Minister) is the official legal adviser of the Government, or even to legal experts who are not in Government service. The Office of Legal Affairs is headed by an officer with the rank and title of Assistant Secretary, usually equivalent, depending upon the holder, to the rank of Chief of Mission or Minister Plenipotentiary. The qualifications required for officers of the Department are those of a member of the Philippine Bar and the Foreign Service. The Office of Legal Affairs is split into three divisions, namely (i) Law Division; (ii) Treaties Division; and (iii) Division of Transport and Telecommunication, each of which is headed by a Chief who is assisted by subordinate staffs. Legal issues are referred to the Office of Legal Affairs as a matter of routine. Its advice may, of course, be overruled by the Secretary of Foreign Affairs or of Justice. Philippines position papers are drafted by the Office of Legal Affairs in consultation with the Office of U. N. Affairs and International Organisations in preparation for international conferences.

Republic of Korea : In the Republic of Korea, the work of legal advising on international law matters is the responsibility of the Legal Division of the Foreign Office. The officers of this Division belong to the regular Foreign Service. The Division works in an advisory as well as executive capacity in dealing with international legal affairs. Its functions range broadly from the conclusion and interpretation of treaties including participation in the negotiations, settlement of international disputes, preparation for the international law conferences to the legal advisory work on international law. Legal opinions given by it are given appropriate weight at every stage of policy making in