

particular regard to compliance with international law. Legal advice may also be sought from outside experts.

**Syrian Arab Republic :** International legal problems are dealt with, in general, in the Ministry of Foreign Affairs within the Department of "the Legal Department and International Treaties". The Department has at present three diplomatic officers and is headed by a Director who has the rank of an Ambassador. The Director as also the other officers of the Department all have studied law in the University. International legal problems are sometimes and in special cases dealt with by the professors of international law of the Syrian Universities under the auspices of the Ministry of Foreign Affairs.

**Togo :** Problems related to international law are dealt with by the Directorate of Political and Legal Affairs in the Ministry of External Affairs in consultation with the Procureur-General of the Republic. This Department is composed of a Director and an Assistant Director, both of whom are lawyers, and a few associates.

#### Merits of the system

This system is also practised by Canada and a number of Latin American States. The countries which follow this pattern consider that the subtle admixture of legal and political factors which comprise the actual work of the International Law Division requires the skill and experience of officers trained both in law and diplomacy and for this reason they favour a system whereby legally qualified Foreign Service officers alternate between the Legal Division and diplomatic missions abroad and occasionally other Divisions in the Foreign Office. Thus the system provides them with practical knowledge and experience in international relations. The basis for this policy is the belief that it helps to prevent the separation, both physical and intellectual, which occurs between Legal Advisers on the one hand and policy makers on the other if the Legal Advisers are divorced from the mainstream of foreign policy planning.

It also affords promotional opportunities as officers are not obliged to remain for long periods at a fixed rank which can

occur if they have to remain all the time in the Department of International Law alone. It also creates the possibility of recruiting trained persons in the Foreign Service; it helps to train a large number of Foreign Service officers in the field of international law which is important, particularly having regard to the fact that a Foreign Service officer today has to deal with a certain number of legal questions even when he is posted in a diplomatic mission abroad. Apart from this, it avoids the tendency within the Foreign Office to treat the legal advisers as specialists to be consulted only on technical questions rather than as day to day policy formulators. Moreover, it also safeguards against the psychological factor which sometimes is found in the attitude of regular Foreign Service officers in regard to the specialist in the Legal Division as some kind of a poorer cousin.

One great snag in this system, however, appears to be that it often leads to lack of continuity. It has frequently happened that due to normal promotions and transfers, a situation may arise where all the officers of the Department are new and may not be aware of the decisions which had been taken by their predecessors in the past without spending a good deal of time in looking up back papers. Another problem which arises is that Foreign Service officers who may be called upon to deal with legal work at a particular stage are more often engaged in the course of their tours of duty in other types of work and they may not be fully conversant with the latest developments in the field. Moreover, international law problems not only arise in the Foreign Office, but in various other Governments also and one may often be faced with the task of coordination between such Departments and the Foreign Office.

#### (iii) *Establishment of a Specialist Division in the Foreign Office*

The third method which has found favour in some countries is to have a specialist division within the Foreign Office to deal with all matters concerning international law and treaties and to man the Division with specialists who are not members of the regular Foreign Service. Britain adopted this system when

she decided to have a regular set up in the Foreign Office for dealing with international legal problems. In the United States of America the pattern is very much similar. Within the Asian-African region, according to information available with us, this system has been adopted in :—

**India :** In India, legal advice on international legal problems is rendered by the Legal & Treaties Division, a specialist Division of the Ministry of External Affairs. It renders advice not only to the Foreign Office but to other Ministries/Departments also concerned with international legal questions. The Division is manned by qualified legal experts who constitute an *ex cadre* personnel, i.e. they belong neither to the regular Foreign Service nor to the general legal advisory service of the Government. Apart from tendering advice on questions of international law, officers of the Division participate in treaty negotiation and enforcement, preparation of briefs on international legal questions when litigation arises in respect thereof either before national courts or arbitral tribunals, the International Court of Justice and other international organisations and assistance in the formation of foreign policy even on political matters either in consonance with the tenets of established legal order or affecting minimal changes therein.

The Legal and Treaties Division is headed by a Legal Adviser (with the rank of Joint Secretary) who is assisted by directors, deputy directors, four assistant legal advisers and ten law officers.

**Pakistan :** International legal problems are handled by a specialist division in the Foreign Office called the "Legal and Treaties Branch". The Legal and Treaties Branch is a part of the Ministry of Foreign Affairs and has no connection with the Ministry of Law. Law Advice is sought by the political desks as and when any problem arises in their work. It is also sought by other Ministries/Division of Government regarding their problems of international law. As a rule advice given is generally acted upon.

The Legal & Treaties Branch is composed of the following :—(1) Legal Adviser—Joint Secretary—Director General;

two Deputy Legal Advisers (rank Deputy Secretary) and one Assistant Legal Adviser and one Section Officer. The posts of legal officers are *ex cadre* posts and they do not belong to the regular Foreign Service. Post-graduate qualification in international law and some experience in the field is regarded necessary.

Preparatory work for international conferences on international legal questions is done by the Legal & Treaties Branch in consultation with the Ministries/Divisions of the Government most directly concerned with the matter administratively. If the subject is such as not to concern any other Division of the Government, the preparatory work and policy directions are formulated within the Ministry of Foreign Affairs itself.

**Sri Lanka :** Legal advice on international law questions is given by the Legal Division of the Ministry of Defence and Foreign Affairs, which was established as a specialist division in 1963. The Legal Division furnishes legal advice not only to all Branches of the Ministry of Defence and Foreign Affairs, but also to all other Ministries and Departments involved in foreign transactions covering such subjects as shipping, foreign loans, civil aviation, tourism, etc. This specialist division, which is the repository of the Government's treaty commitments, is consulted on a regular basis in the drafting, interpretation, execution and administration of treaties in which Sri Lanka is a party. Its advice is also sought concerning initiatives taken by Sri Lanka within the United Nations, the Specialised Agencies and other international organisations. In recognition of the fact, that most international political initiatives have a legal aspect and are often couched in legal terms, formulation of foreign policy within the Foreign Office is carried out in consultation with the Legal Division.

The Legal Division of the Foreign Ministry exists side by side with the Government's general advisory service which in Sri Lanka is the Attorney-General's Department. Foreign Office legal specialists consult Attorney-General's Department as and when necessary in national interest. Correspondingly, the Attorney-General's Department seeks the advice and assistance

of the Legal Division of the Foreign Ministry on international law questions.

#### Merits of the system

Persons who are normally recruited to posts in such specialist divisions are those with experience in law practice or teaching who are prepared to take up international law advising as a career. This qualification assists them in understanding the practical aspects of the questions that arise from time to time not only in the Foreign Office but also in the various other Departments of the Government, because international law questions arise not only in Foreign Offices but they do arise at the same time in various other departments that deal with foreign countries and foreign problems in their own right separately. Thus, legal advisory service is not only the problem of foreign policy in the political sense, but also foreign policy in the technical, functional, economic, commercial and other spheres. Therefore, the particular merit of this system is that it leads to specialisation in a field where specialisation has become so important and ensures continuity with the result that the work can be far more expeditiously disposed of. Also, international affairs, foreign policy and international law are today so closely inter-related that it becomes essential having regard to the multifarious problems that arise in the Foreign Office from day to day that expert legal advice be available, as it were, from counsel "within the house".

Further, the sources of international law are frequently difficult to determine and much of international law even at present remains in a formative stage. The formation of international law is, however, a process capable of direction through constant State practice. The maintenance of consistency in the State practice, desirable in itself, is also a means of establishing norms of customary international law felt to be desirable by a particular State. It requires a specialist in constant touch with the practice of his own and other States to remain familiar with the sources of international law and current trends in the development of international law. For that reason Foreign Ministry is the 'location of choice' for the practising interna-

tional lawyer called upon to advise his Government on a regular basis.

The proponents of this system also hold that as the highly specialised field, it has not been found to fit readily into the scheme of a State's general legal advisory service. It is often the case that international law questions cannot be resolved by reference to a clear-cut universally recognised and readily accessible rules as in domestic law, and general legal advisory services the world over have traditionally shown a reluctance to give opinions in these circumstances on what often appear to them to be questions of international policy rather than law. Further, career prospects in a State's general legal advisory service tend not to encourage specialisation to the degree called for by the field of public international law. The line of ascent in the career of a member of a State's general legal advisory service may be expected to run through its traditional hierarchy of positions to the highest courts in the land. The arena of the international law specialist lies elsewhere, and the rewards of a career of intense specialisation lie in a totally different direction. It is in the milieu of international negotiations, claims and counter-claims and in becoming part of international law that he would seek fulfilment, and the Foreign Ministry is the only institution which would in most countries offer entry to and opportunities for advancement in this particular field.

The one drawback in this system is that in smaller Foreign Offices the specialists who staff the International Law Division may lack prospects for promotion and it is often frustrating for persons employed as specialists to find that officers in the Foreign Office who are much less qualified going up to top posts only by reason of their being members of regular Foreign Service. This is a situation which needs to be tackled and if it can be solved by providing enough opportunities for the law specialists, this may perhaps prove to be the best system. But at the same time it is feared that if these law specialists become a part of the Foreign Service and they go on diplomatic missions, they may or may not mostly remain legal. They may acquire diplomatic skills but at the expense of their law skills. It is, therefore, suggested that the International Law Division must

continue to be a specialist division with a separate cadre of its own, and in regard to promotions, it should supply the same prospects as the regular Foreign Service. More precisely, "separate but equal" should be the rule rather than the exception.

*(iv) Mixed System*

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 on international legal questions is vested in the Attorney-General or the Principal Law Officer of the Government. This pattern is in vogue in Kenya and Malawi, subject to certain variations.

**Kenya :** International legal problems in Kenya are handled by two departments which act in co-operation. These are (i) The Attorney-General's Chambers which, constitutionally, is the Advisor to the Government on all legal matters, both domestic and international; and (ii) the Legal Division of the Ministry of Foreign Affairs. Almost all issues of international law are channelled through the Ministry of Foreign Affairs. Once a document is received which requires either Government comments or action, the Legal Division of the Ministry of Foreign Affairs studies the document, prepares the comments and forwards the same to the Attorney-General's chambers for their comments. After the exchange of comments, a final paper is prepared to incorporate the views of the two departments, and that constitutes the legal position of the Government on the subject. The method of obtaining legal advice is the exchange of comments by the two departments producing one view on the subject. In case of difference of opinion on a particular legal point, the view of the Attorney-General becomes final.

At present, the Legal Division has four lawyers who are civil servants. The Attorney-General's Chambers also assign certain lawyers in the Chambers to deal with issues on international law.

The preparation for international conferences of legal questions is largely done by the Legal Division of the Ministry of Foreign Affairs in consultation with the Attorney-General's Chambers.

**Malawi :** International legal problems are not handled by any particular Ministry in Malawi. The competence to deal with the same has been distributed among the various Ministries depending upon their sphere of interest. In general, however, the Attorney-General's Chambers are responsible for all legal advice to the Government, be it on domestic issues or on international legal problems. One such exception is that all international boundary problems are the concern of the Treaties Officer in the Ministry of External Affairs. Further, most straightforward technical subjects such as air services agreements (where air law might be involved), the law of the sea (e.g. Geneva Conventions of 1958 and the Third Law of the Sea Conference) are fields in which the Treaties Officer advises the relevant Government department on the legal implications involved without involving the Attorney-General's Chambers. However, the Treaties Officer himself is seconded from the Attorney-General's Chambers and is ultimately answerable to the Attorney-General although he ordinarily works in the Ministry of External Affairs.

The method of obtaining legal advice is as follows : Ordinarily, the Ministry of External Affairs refers anything that might have legal implications to the Treaties Officer but where advice is sought on complex issues which necessitate amending domestic legislation, then either the Permanent Secretary for External Affairs or where necessary, the Treaties Officer, on his own initiative when he is not quite sure about his opinion, refers the problem to the Attorney-General.

The method of dealing with preparatory work for international conferences on international legal questions is first by consulting the Attorney-General on whether the domestic law is compatible with the subject under discussion, and secondly, consultations with the particular Ministry which is concerned with the subject under discussion. For example, anything that concerns Patents and related matters would be referred to the Registrar-General's Department since the Registrar is directly responsible for patents, trade marks and designs. If need be, the Registrar and his subordinates would meet and discuss the subject of the Conference with officials of the Ministry of External

Affairs and representatives of the Attorney-General's Chambers so as to formulate a unified method of approach.

## II. Nature of work in the International Law Division

### (i) *Advisory Functions*

The primary and most important function of an International Law Division is to render advice to the Government on issues affecting its foreign policy and other questions which involve some international law elements. In so far as the Foreign Office is concerned, a good deal of its work involving relations with other States often involves, directly or indirectly, questions of international law or practice and consultations with the legal advisers become necessary before the Minister can decide upon the action that is to be taken in a particular case or cases. It has now become an almost invariable practice for the Minister to consult his legal advisers before making a policy statement, both in and outside the Parliament, and particularly so when it contains a reference to any acts or omissions on the part of some other State or States. Apart from purely routine communications between the Foreign Office and its diplomatic missions and consular posts abroad and the internal administration of the Foreign Service, there is hardly any matter which does not require consultation with the legal advisers. This is the reason why in larger Foreign Offices, such as in Britain or the United States, the Legal Adviser's Department is organised into branches corresponding to the organisation of the Foreign Office as a whole in various territorial and specialist divisions so that any problem arising in a particular division of the Foreign Office can be immediately referred to the Legal Adviser concerned. Beginning with questions relating to a country's frontiers, utilisation of its natural resources like the waters of an international river or the sea adjacent to its coast, treatment of foreign nationals in its territory, protection of its citizens abroad, examination of policies and practices of other States, the work of the Legal Adviser's Department extends even to such relatively minor matters as customs privileges of a diplomat and granting or refusal of passports. If a Government wishes to make a representation to a foreign Government or lodge a protest, the

Foreign Office has to be satisfied that its stand is correct in accordance with the norms of international law and naturally the Legal Adviser has to be consulted before the Government takes any action.

Although the desirability and the need for frequent consultations with the International Law Division are well recognised, practice varies from State to State regarding the stage at which legal advisers are to be consulted and the method adopted for referring problems to the International Law Division. Experience shows that whilst the majority of the legal issues which arise in the work of a Foreign Office are relatively easy to tackle, there are some problems which need consideration and scrutiny at the highest level or necessitate a great deal of research. In the countries which maintain an International Law Division in the Foreign Office, consultation between the Foreign Service officers and the Legal Department on most of the questions become a routine matter and advice is tendered sometimes verbally and at times by recording short minutes on the case file. This is particularly so in those Foreign Offices where the legal adviser is kept in the picture at all stages and the telegrams and communications received from missions or posts abroad are either endorsed or circulated for information to the Legal Department. In the more complicated cases which may require not only the attention of the legal adviser of the Foreign Office, but may call for a reference to the Principal Law Officer of the Government, a more formal procedure is often resorted to which involves preparation of a comprehensive statement of the case in the concerned political division of the Foreign Office giving the history of the case, background information, issues involved, the possible repercussions of the suggested action etc. A good many of the matters which have to be dealt within the Foreign Office require expeditious disposal and this is possible if the legal adviser has a specialised knowledge of his subject and is kept in the picture regularly in relation to the work of the Foreign Office as a whole and is not regarded as an outsider to be consulted only when a problem arises.

Apart from the Foreign Office, as already stated, there are a large number of other departments whose work at some

stage or the other involves questions of international law. Thus, for example, the Ministry of Interior is very much concerned with the question of the protection and treatment of aliens, granting of asylum, extradition of fugitive offenders etc. whilst the Treasury or the Ministry of Finance would be directly responsible for questions relating to foreign aid, customs administration, taxation, and development programmes with foreign collaboration. The Ministries or Departments of Trade and Commerce are generally responsible for implementation of bilateral and multilateral trade agreements whilst the Ministries of Aviation, Transport and Communications would be concerned with matters relating to air transit agreements, shipping and other means of transportation, broadcasting, postal services, etc. The Ministry or the Department of Defence is also concerned with international law in the matter of use or deployment of the armed forces including passage of warships and aircraft.

A few of the governments like the United States or the United Kingdom have separate legal advisers for some of those departments who deal with questions concerning both municipal and international law. The method of consulting the departmental legal adviser in such cases is very much similar to the system set out above adopted by larger Foreign Offices, that is to say, the legal adviser is kept in the picture in the day-to-day functioning of the department. Since matters relating to these departments cannot be handled in an isolated fashion and may involve the general policy of the Government in foreign affairs, the legal advisers of the department concerned are known generally to keep closely in touch and act in consultation with the Foreign Office legal department. In a vast majority of the countries, however, these departments normally seek advice from the general legal advisory department which is organised under the Attorney-General or the Minister of Justice. The Attorney-General's department may at times post resident legal advisers in the Ministries or Departments concerned but they form part and parcel of the general legal advisory services.

From the information available, it is not very clear as to how international law problems arising in the various departments which are serviced by the general legal advisory depart-

ment under the Attorney-General are handled, and what is the relationship of that department with the Foreign Office legal adviser in relation to the international law problems where a separate international law department is maintained in the Foreign Office. It is desirable that if international law problems arising in the departments other than the Foreign Office are to be handled by a different set of legal advisers, close co-ordination would be necessary between them and the Foreign Office legal adviser in cases when the Foreign Office has a legal department of its own.

#### *(ii) Treaty-making and interpretation*

Another important branch of the work of the International Law Division is treaty-making and their interpretation. As a matter of fact, a good deal of advisory work not only in the Foreign Office but also in other Government Departments involves interpretation of treaties. Consequently, if the legal adviser is associated with the negotiation and conclusion of treaties, he is better suited to render advice on problems which may involve interpretation of that treaty. The practice in the Arab Republic of Egypt, Britain, Dahomey, India, Indonesia, Iran, Japan, Jordan, Kuwait, Pakistan, Philippines, Republic of Korea, Syria and Togo is usually to associate an officer of the Foreign Office legal department from the early stages of negotiations irrespective of the fact that the treaty may directly be related to the work of some other government department. Experience has shown that in matters of drafting as well as on substantive issues, the legal adviser's viewpoint should be set forth at the outset as it is often difficult to rectify a defect once the parties have come to an agreement after hard bargaining. It may be worthwhile to adopt this practice, especially in connection with the conclusion of political treaties and more important trade agreements.

Preparation of full powers and steps for ratification of treaties are generally taken practically in all countries in the Treaties Section of the Foreign Office. The Treaties Section is usually one of the wings of the Legal Adviser's Department where the Foreign Office maintains a legal department of its own.

*(iii) Preparation of Court Cases*

Although handling of litigation and preparation of court cases on behalf of the Government is generally the responsibility of a centralised department like the Treasury Solicitor in Britain or the Department of Justice in the United States and in the Attorney-General's Department or the Ministry of Justice in the case of Botswana, Kenya, Malaysia, Malawi, Nepal, Uganda, Zambia and most other countries, it is now generally accepted that the conduct of cases before the International Court of Justice or International Arbitral Tribunals should vest with the legal department of the Foreign Office. The legal Advisers of the U.S. State Department and of the British Foreign Office often act as the Agent for their Governments before the International Court of Justice and it is normally the practice for many other States to accredit either an Ambassador or their Foreign Office legal adviser as the Agent. Preparation of a case before the International Court of Justice or an international arbitral tribunal not only requires the collection of a good deal of factual data and legal material on the question at issue, but it also necessitates submission of detailed briefs containing arguments prior to the oral hearing. This is normally done in the International Law Section of the Foreign Office. A number of international organisations have their own committees or tribunals like the International Civil Aviation Organisation or the International Labour Organisation for settlement of disputes. Presentation of cases before such committees or tribunals is similar to that of conducting cases before the International Court of Justice or international tribunals. This work is also gradually being taken over by the Foreign Office legal adviser though other Government departments may be more directly concerned with the subject-matter of the dispute. Cases involving international law before national courts and tribunals are usually handled by the department which is normally concerned with Government litigation, but here again the Foreign Office legal adviser is often associated with the preparation of the case.

In Britain, one of the functions which the Foreign Office legal adviser performs in regard to cases before the local courts is to consider the question of issue of certificates when the court

desires to be informed of the status of a foreign State or a foreign sovereign or a person claiming to be entitled to immunity from the jurisdiction of the court. In the United States though such a certificate is issued in the form of a suggestion by the Department of Justice, it is so done usually at the instance of the Foreign Office legal adviser. In the newly independent countries, the practice of issuing certificates has yet to be developed, but there is no doubt that when the courts adopt the practice of accepting such certificates, the task would fall on the legal adviser of the Foreign Office to determine judicially in each case whether or not to issue a certificate in a particular case.

*(iv) Codification and development of International Law*

One important aspect of the work of the International Law Division which has arisen in recent years relates to codification and development of international law. It is well known that since the establishment of the United Nations and the creation of the International Law Commission, a systematic attempt is being made to progressively develop rules of international law in order to suit modern conditions and in the context of an international community composed of independent nations all over the world. An attempt is also being made to codify and formulate principles of international law on some of the important topics in the form of law-making conventions so as to do away with nebulous and customary rules which may or may not be acceptable to all nations. This involves careful examination of formulations made by the International Law Commission as also preparatory work for participation in international conferences where the work of codification in the form of conventions normally takes place. In recent years, the Law of the Sea, Diplomatic and Consular Relations, the Law of Treaties are some of the subjects which have necessitated close attention of every Foreign Office and the task has naturally fallen on the legal adviser's department. Apart from the Sixth Committee of the United Nations and the International Law Commission, there are various other forums where international law is being codified or progressively developed, such as within the Organisation of African Unity, the Organisation of American States, the Council of Europe and various other forums. The United Nations

Commission on International Trade Law and the United Nations Commission on Trade and Development are handling legal questions in the field of trade and commerce and the work of these bodies, though in the specialised field of trade, would need examination by the legal adviser's department in conjunction with the legal advisers of the departments which are directly involved.

### **III. Status of the Legal Adviser and his role in policy making**

The status of a legal adviser in practically every country all over the world has usually been kept at a high level so that by reason of his position in the Government, he is able to effectively participate in policy formulations. Thus, the Attorney-General or the Minister of Justice is normally a person of cabinet rank who is called in to advise the Government on important issues and is associated with the policy formulations of the Government as a whole. This trend is equally reflected in the rank and status which is given to the Foreign Office legal adviser. Thus, in the United Kingdom, the first incumbent of the post of legal adviser in the Foreign Office was given the rank of an Under Secretary of State who directly dealt with the Secretary of State for Foreign Affairs. In the United States of America, the Legal Adviser of the Department of State also enjoys almost a similar status. In the Foreign Offices of the newly independent countries, the Legal Adviser is a person of the rank of an ambassador and at times that of a Minister Counsellor or a Secretary or a Joint Secretary. It is essential that this status for the legal adviser of the Foreign Office should be maintained which is commensurate with the importance of international law in the international relations of a country as a whole. It is desirable and necessary that the legal adviser should be in a position to offer independent and authoritative advice which should be given due weight by the policy-making departments of the Foreign Office and this can be so if the legal adviser is a person of high rank and directly responsible to the Minister. In view of the fact that international law is inextricably linked up with formulation of foreign policy, it is important that the legal adviser should be consulted at all stages of policy formulation and closely associated with policy making. In the countries where the Government

maintain the tradition of being guided by the advice of the legal advisers, the general practice is invariably to associate him with policy making and any tendency to make the legal adviser an instrument for justifying the decision of administrative officials is generally frowned upon. Nevertheless, the influence which the legal adviser may be expected to bring to bear on the policy formulation would depend upon his own personality, his relationship with the policy making departments of the Foreign Office and his own experience and knowledge in the field of international law.

### **IV. Recruitment and training of personnel for international law advisory service**

As already stated, the recruitment and training of personnel depends largely on the pattern of organisation of the international law advisory service in each Government. In cases where this forms a part of the general legal service, the usual method of recruitment is through regular civil service channels. Under this system, the new entrants to the service are taken on after a qualifying test and the minimum basic requirement is a university degree in law or its equivalent. The period of training comes in during the probationary period following upon his entry into the service though certain Governments have schemes for sending their officers for specialised course of training in international law at recognised institutions or universities.

In the countries where the international law advisory service is linked with the regular foreign service: officers are recruited through regular examinations or other modes of selection prescribed for entry into the regular Foreign Service. Out of these new entrants, persons who possess academic degree in law or are otherwise trained on the subject are earmarked for being posted to the legal division in the course of their career. Apart from a certain basic training which they receive in the International Law Division itself, it is very seldom that such officers are required to undergo any specialised training outside the Foreign Office. It has, however, been found that several officers either take study leave in order to obtain a higher degree in international law or take advantage of a posting in a convenient place to acquire such higher qualification in order to better their prospects.

In the third category of cases, that is where the Foreign Office maintains a specialist division composed of persons who wish to make international law advising as their career, new entrants are usually brought in who have at least a Masters Degree in Law or equivalent professional qualification coupled with a certain amount of experience in law practice or teaching. The emphasis here is not only on high academic qualifications but also on a degree of maturity gained out of experience so that they may be in a position to handle the job of a specialist in international law. Some of the Foreign Offices which adopt this pattern for their international law advisory services are known to take in university professors on secondment or persons from law practice for limited periods to man the more senior posts in the department. This facilitates availability of the services of experienced persons from time to time who may be reluctant to join Government service as a career or to subject themselves to postings and transfers outside their country.

#### V Advice from outside sources

It has been seen that even in most developed countries eminent lawyers from outside the Government are often called in and their advice sought in connection with presentation of court cases or in specific fields which require specialised knowledge and study. In Britain prior to 1885 the Foreign Office generally sought advice from various experts who were practising advocates and even the office of the Queen's Advocate was held by persons who were not regular members of the Government. Even in recent years, the British Foreign Office has not given up the practice of consulting eminent professors or of engaging as counsel legal practitioners for the presentation of their cases before the International Court of Justice or arbitral tribunals. In the United States, professors from various law schools are often requested to serve in the State Department in advisory capacities on specified fields and for specific periods. In the newly independent countries which had little or no experience in the field of international law, Governments had to rely heavily on outside lawyers not only from their own countries but also from abroad in connection with presentation of their cases before international forums as also for general advisory work on

international law. In Iran, Japan, Philippines, Republic of Korea and Syria, where the legal department in the Foreign Office is manned by regular members of the Foreign Service, the association of specialist professors has been a regular feature.

It is apparent that, however well organised a legal adviser's department in the foreign Office may be, it would have to depend on the skill and advocacy of experienced lawyers if the government's case has to be adequately presented before the International Court of Justice, arbitral tribunals or other forums. This is hardly likely to be available within the department and the government would have to depend on outside lawyer for this purpose. Apart from this, some of the fields in international law have become so specialised that it would need all the skill of a recognised expert on that particular branch to tackle the matter when an intricate problem arises. Moreover, the preparation of a case or the presentation of a Government's viewpoint may need such time-consuming process which the Foreign Office legal adviser may not be able to devote. The experience of Japan in utilising the services of professors in this kind of work has proved to be extremely fruitful. Apart from this, several countries have adopted the practice of including professors and outside lawyers in their delegations to conferences which involve drawing up of law making conventions. The need for the services of persons from these sources is all the more when the legal adviser's department of the Foreign Office is manned by regular Foreign Service officers who rotate between the Foreign Office and diplomatic posts abroad.

#### VI Library facilities

There can be little doubt that no legal adviser can effectively discharge his duties in advising his Government unless he is in possession of the tools of his trade, that is, an adequate and well-equipped library. In this regard the newly independent countries are somewhat at a disadvantage since they have not had the opportunity to build up a collection of books and materials on international law in the past and have to do so practically from the scrap. Very often, as pointed out by the Delegate of India during the New Delhi session (January 1973),

on account of the lack of proper library facilities and upkeep of archives more time is taken in locating the relevant materials than in tendering the advice. Further, it is often the case that books and journals which were published sometime ago are not readily available; and it is often difficult to make a choice since so much material in various languages is scattered over so many places. One of the sources which the legal adviser often needs to refer to is the 'back papers', that is, policy statements or previous opinions given on an identical or similar issue which are not usually available in published form. In older Foreign Offices there is usually the practice of indexing such 'back papers' so that they are readily available to the legal advisers whenever the occasion arises. The newly independent countries naturally lack this source since they were not directly concerned with foreign affairs during the colonial period. Occasions have been known to arise when legal advisers have had to make long trips to a European country to consult either old treatises on international law or look up 'back papers' in the Foreign Offices of their former colonial rulers. Fortunately, in many fields the law is being so much revised and codified that an adequate supply of United Nations material and current legal journals are likely to fill the void which may be found due to non-availability of classical works and 'back papers'.

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## VIII. THE PROTECTION AND INVIOABILITY OF DIPLOMATIC AGENTS AND OTHER PERSONS ENTITLED TO SPECIAL PROTECTION UNDER INTERNATIONAL LAW

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