Dalhousie Law Journal

Volume 5 | Issue 1 Article 7

1-1-1979

The Federal Ministry of Justice as Government's Legal Adviser to the Ministry of External Affairs in Nigeria

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I. *Introduction*

Before the establishment of the Federal Ministry of Justice, there was in existence the Colonial Legal Department which was headed by a Britain. He was the Registrar and Taxing Master of the then Supreme Court between 1863 and 1901. In addition to this duty, he functioned both as the Queen's Advocate and the Queen's Proctor.

The exact date in which the office of the Attorney-General was created is not known but there is evidence that it was created during the era of Lord Lugard.[1] The first incumbent of the office of the Attorney-General was Sir Donald Kingdon who was in office for almost twenty years. He vacated the office in 1943 to become the Chief Justice of Nigeria.

The Law Officers Act[2] made provision for the offices of the Attorney-General, Solicitor-General and Crown Counsel[3] who were designated as Law Officers of the Federal Government. The Attorney-General and other Crown Counsel had the right to practice ex-officio as "barristers, advocate and Solicitor" of the Supreme Court of Nigeria. They also had the right to appear in court in all parts of the Country as Counsel.[4]

The Federal Ministry of Justice was formally established on October 1, 1960 when Nigeria attained independence. The first incumbent of the office of the Attorney-General was Mr. Justice T.O. Elias.[5]

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This paper arises from a series of lectures delivered by Professor R. St. J. Macdonald on "The Role of Legal Advisers of Ministries of Foreign Affairs" at the Summer Session of the Hague Academy held at the Hague between July 25 and August 12, 1977 in which the writer participated.

1. T.O. Elias, "The Office and Duties of the Federal Attorney-General in Nigeria", [1972] N.L.J.P. 149
2. Cap 100, Laws of the Federation of Nigeria, 1958
3. The present designation is State Counsel.
4. s.3 amended by L.N. 155/60 repealed by No. 33 of 1962
5. Justice T.O. Elias is now a Judge of the International Court of Justice.

The Ministry was then divided into three departments, *viz*: the departments of the Solicitor-General; Administrator-General and the Director of Public Prosecutions. The developing economy of the country necessitated the expansion of the Ministry in the early sixties. In a reorganisation exercise, the Ministry was divided into five divisions. These are the divisions of the Solicitor-General; Industrial and Mercantile Law; Research, Law Review and Law Reporting; International and Comparative Law; Constitutional and Administrative Law and Director of Public Prosecutions.

In April, 1968, following the creation of States,[6] the Ministry lost to the Lagos State Ministry of Justice the department of Administrator-General which dealt with the administration of estates of deceased persons within the former federal territory of Lagos.[7]

In July, 1977, the Ministry was again reorganised. We will now examine the present structure of the Ministry in the light of the reorganisation.

II. *Organisational Structure*

By a circular letter[8] sent to all officers of the Federal Ministry of Justice, the Solicitor-General and Permanent Secretary announced certain changes in the Ministry. The circular stated that the reorganisation was approved by the Federal Executive Council.[9]

There are now five departments in the Ministry and these are the Department of Public Prosecutions;[10] the Department of Legislative Drafting;[11] the Litigation and Public Law Department; the International and Comparative Law Department and the Administration and General Services Department.[12]

Three departments[13] are further sub-divided into six divisions. They include the Constitutional, Administrative Law and Civil

6. See the States (Creation and Transitional Provisions) Decree No. 14 of 1967
7. The former territory of Lagos came under the jurisdiction of Lagos State after the creation of the States and administration of estates of deceased persons is a state subject.
8. The letter carries Reference No. MJ 928 Vol. VIII dated 8th July, 1977
9. *Id.* at para. 1 of the circular
10. This department is headed by the Director of Public Prosecutions.
11. This department is headed by the Legal Draftsman. The head of this department was formally designated as the Parliamentary Counsel. It would appear that the present nomenclature is preferred although the functions remain the same.
12. Each of the three departments is headed by a Director. See Para. 1(a) of the circular, *supra*, note 8
13. Other than the departments of Public Prosecutions and Legislative Drafting.

Litigation Division; the Law Review and Law Reform Division; the International and Comparative Law Division; the Mercantile and Industrial Law Division; the Law Reporting and Law Research Division; and the Division of Administration and Supervision of Legal Advisers in outside Ministries.[14] Each of the divisions is headed by an Assistant Director.

It does not appear that the reorganisation affects the substance of the function of the Ministry. Apart from changes in nomenclature[15] and the abrogation of the division of the Solicitor-General,[16] the format and substance of the structure in terms of the Ministry's functional operations remain basically the same.

Apart from the above structure, the Ministry still maintains the practice of sending out Law Officers to other Government Ministries to help in the legal work of such Ministries.[17]

It must be pointed out that no Law Officers are sent to the Ministry of External Affairs. The International and Comparative Law Division[18] which serves the Ministry of External Affairs operates from the Ministry of Justice.

III. *Recruitment of Staff and Conditions of Service*

a) *Recruitment*

The procedure for recruiting staff into the Ministry is similar to that adopted in other Federal Government Ministries. The Attorney-General, who is the political head of the Ministry, is directly appointed by the Head of the Federal Military Government on the recommendation of the Supreme Military Council.[19] During the civilian regime, he was appointed by the President on the advice of the Prime Minister.[20]

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14. Para. 1(b) of the circular, *supra*, note 8
15. The names "Director" and "Assistant Director" are innovations.
16. The abrogation of the division of the Solicitor-General is a worthy exercise. Hitherto, the creation of the division had given the impression to the public that the jurisdiction of the Solicitor-General was concentrated more on that division although in real practice, he was co-ordinating the works of all other divisions.
17. The Law Officers are not part of the staff of the ministry for which they work. They do not owe any allegiance beyond the rendering of Legal opinions and carrying out prosecutions and defence of cases. They are neither on the staff list nor payroll of the ministry concerned.
18. See p.10
19. See 8(e) of the Constitution (Basic Provisions) Decree No. 32 of 1975
20. *Cf.* the position under the Draft Constitution in which the president has the power under s.123 to appoint his ministers.

The Attorney-General is the only Minister[21] who is appointed to office without contesting election or belonging to a political party as such.[22] Similarly, the Solicitor-General and Permanent Secretary of the Ministry is appointed by the Head of the Federal Military Government on the recommendation of the Supreme Military Council.[23] He is the professional head of the Ministry and is directly answerable to the Attorney-General in the performance of his duties.

Apart from the above special cases, appointments in the Ministry are done by the Federal Public Service Commission. The procedure for appointment is simple. Prospective employees apply directly to the Secretary of the Public Service Commission who in turn sends the applications to the Ministry for short-listing. After this exercise, the names of applicants who are *prima facie* qualified are returned to the Secretary of the Public Service Commission who arranges an interview. A senior member of the Ministry is invited to the Interview Panel to assess the suitability of applicants. Successful applicants are offered appointment and they assume duty in the ministry.

Before a candidate is considered for appointment, he must have obtained the LL.B. degree of a recognized university and must have achieved at least a second class (lower division) grade. In addition, he must have been called to the Nigerian Bar.[24] It is now a condition that he must, unless exempted, have also completed his National Youth Corps Service and obtained a certificate to that effect.[25]

b) *Conditions of Service*

Candidates who have satisfied the minimum requirements for appointment and are fresh from university[26] are appointed as State Counsel.[27] They serve a minimum probationary period of two years before being considered for advancement to State Counsel Grade II. Apart from this general rule, candidates employed in the ministry

21. He is designated Attorney-General and Commissioner for Justice under the Military Regime.
22. There is no law which forbids him from belonging to a political party in so far as he is manifestly seen to be impartial in the performance of his duties.
23. Decree No. 32, 1975, *supra*, note 19 at s. 8(e)
24. See the Legal Education (Consolidation *etc.*) Decree No. 13 of 1976
25. See National Youth Service Corps Decree No. 24 of 1973
26. This also includes persons who have no professional experience after graduation.
27. The appropriate position is Pupil State Counsel.

are given positions commensurate to their experience and educational background.

Officers in the ministry enjoy the same security of tenure as their counterparts in the other ministries. It is the practice in Nigeria to give its civil servants security in the service. This security could only be tampered with in proven cases of wrong-doing by the particular civil servant.

Officers in the Ministry have opportunities of further professional training while on the job.[28] For instance, they are sent to universities abroad for post-graduate studies relevant to their field of work. They also receive short in-service training designed to facilitate their work in the ministry.[29] It is known that officers benefit from the training programme every year.

The salary structure is not different from what is obtainable in other ministries. It does not appear from the salary structure that there is any concession, remuneration wise, made to officers in the ministry by virtue of being professionals.[30]

IV. *The Office and Duties of the Attorney-General*

a) *Office*

Section 88(1) of the Republican Constitution creates the office of the Attorney-General of the Federation who is also the Minister for Justice. The Attorney-General, a lawyer by profession, must be an advocate in Nigeria and have been so qualified for not less than ten years.[31] By this provision, the Attorney-General is the only federal minister required by law to possess a professional qualification. As the political head of the Ministry, the Attorney-General deals not only with policy matters but also with legal matters. In the performance of his duties, the dichotomy between the two is in certain areas blurred.[32]

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28. See H.C.L. Merillat ed., *Legal Advisers and Foreign Affairs* (N.Y.: Oceana Publications, 1964) at 88

29. All training programmes are carried out in consultation with and approval by the Staff Development Division of the Federal Ministry of Establishments.

30. It will be noted that the Pupil State Counsel is placed on the same salary scale with his graduate counterpart who is appointed as Assistant Secretary in the administration cadre. The Pupil State Counsel merely enjoys an incremental benefit in the same scale.

31. s. 88(4), Republican Constitution, 1963

32. *Cf.* the position in the United Kingdom and the United States. H.C.L. Merillat, *supra,* note 28 at 19

b) *Duties*

The Attorney-General performs numerous duties in the Ministry. We will, however, deal with only those which affect the Ministry of External Affairs. As the Chief Law Officer of the Federal Government, Section 104 of the Constitution vests in the Attorney-General the power to institute, take over or discontinue a criminal action in a Court of Law. The above duty of the Attorney-General is, however, exercised by the Director of Public Prosecutions.[33]

A case which deals with international law in which the Attorney-General gave his consent to prosecute was the *Jozsina*.[34] The crew of the *Jozsina* were charged with importing fire arms[35] into Nigeria contrary to sections 18 and 28 of the Fire Arms Act,[36] as amended by the Fire Arms (Amendment) Decree No. 31 of 1966 and for improperly importing goods[37] through a prohibited port[38] contrary to section 44 of the Customs and Excise Management Act, 1958. The accused persons were tried in a Magistrate's Court which has the right to impose a maximum of ten years imprisonment by virtue of the Fire Arms (Amendment) Decree, 1967. The argument was that a Prize Court and not a Magistrate's court had jurisdiction to try the members of the crew.[39] Witman Scott describes a British Prize Court as:

> a court of the law of Nations though sitting here (Britain) under the authority of the King of Great Britain. It belongs to other nations as well as to our own; and what foreigners have a right to demand from it is the administration of the law of the nations, simply and exclusively of the introduction of principles borrowed from our own municipal jurisprudence, to which it is well known they have at all times expressed no considerable repugnance.[40]

The point must be made that Prize Court is not an international

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33. T.O. Elias, "The Office and Duties of the Federal Attorney-General in Nigeria", [1972] N.L.J.P. 152
34. *Daily Times* (Lagos) November 14, 1967. The consent was required under s. 3 of the Territorial Waters Decree, 1967
35. These were 460 cases of shotguns, 11,000 guns in all and 250 cases of cartridges.
36. Cap. 69, Laws of the Federation of Nigeria
37. The goods consisted mainly of reams of paper and salt.
38. The *Jozsina* passed through the Calabar port which was at the material time prohibited.
39. Prize Court administers prize law which is not municipal law in the real sense of the expression.
40. (1807), 6 C. Rob. 341 at 348

court but on the contrary it is a municipal court performing essentially international functions. It does not appear that any injustice was done in the trial of the case by the Magistrate's Court. The accused persons pleaded guilty to the two counts and were convicted accordingly. After the conviction, the Federal Military Government, following the advice of the Ministry of Justice, deported the crew from Nigeria to Holland as prohibited immigrants.[41]

The International and Comparative Law Division of the Ministry, which performs the bulk of the work on international law, functions under the general supervision of the Attorney-General and the Solicitor-General. The Attorney-General also leads important delegations to international conferences and makes effective contributions to the development of international law.

c) *Relationship with other bodies*

In the performance of his duties, the Attorney-General maintains a cordial relationship with the Solicitor-General and other law officers in the Ministry. He is also a member of the Federal Executive Council and acts as Government's Legal Adviser to the Supreme Military Council and the National Council of States. His functions in both bodies are merely advisory and no more.[42]

d) *Tenure of Office*

Under the 1963 Constitution, the Attorney-General, like any other Minister, stays in office for a period of five years[43] although he could be re-appointed at the expiration of the term.[44] The position under the Military Government is different. The Attorney-General and Commissioner for Justice, has no specified tenure. He could, like any other Commissioner, be removed from office or re-assigned at any time.[45]

V. *The Role of the International and Comparative Law Division*

The International and Comparative Law division of the

41. See L. N. 117 — 123 of 1967
42. See Decree No. 32 of 1975
43. The term has been reduced to four years under the Draft Constitution of Nigeria, 1976
44. For example, Mr. Justice T.O. Elias, the first Attorney-General after independence stayed in office for twelve years — 1960-1972.
45. It will be noted that three Attorneys-General have changed hands since Mr.

Ministry[46] is the division which is mainly involved in matters relating to international law and practice. It renders advisory opinions on foreign affairs. The staff of the division belong to the Ministry of Justice and they operate from the Ministry. The Ministry of External Affairs is located in a different building not in close proximity with the division.

The division is headed by a Director assisted by different categories of Law Officers who have proven knowledge of international law. The staff of the division work under the general supervision of the Attorney-General and the Solicitor-General.

The division deals with different aspects of international law including customary international law and practice. The duties of the division include rendering of advisory opinions on international law matters, including treaties, conventions, agreements, international organisations, air and sea law, state jurisdiction, the law of armed conflict, settlement of international disputes and other comparative legal problems. The division also vets and prepares bilateral and multilateral treaties, conventions, and agreements on different subjects, including trade, education and culture.

In rendering its services in the field of international law, the division is constantly faced with the interpretation of local legislation including the Extradition Decree, 1966[47] as amended, the Territorial Waters Decree, 1967[48] as amended,[49] Diplomatic Immunities and Privileges Act, 1962,[50] and other local statutes.[51] It also deals with conflict of laws problems in relation to statutory[52] and customary marriages, legitimacy and legitimation of children, succession and inheritance and extra-territoriality of jurisdiction in criminal cases.[53]

In rendering advice, the division is guided by the law without giving consideration to any extraneous matter. Such is the practice when the law in a given situation is clear. The position, however,

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Justice T.O. Elias vacated the office in February 1972. (This statement is valid as at 31st January, 1978).

46. The writer served in the division for eighteen months.
47. No. 87 of 1966
48. No. 5 of 1967
49. See Territorial Waters (Amendment) Decree, 1971
50. No. 42 of 1962
51. *Eg.*, Enforcement of Foreign Judgments Act
52. See the Matrimonial Causes Decree No. 18 of 1970.
53. See ss. 12 and 14 of the Criminal Code, (1958) Cap Laws of the Federation of Nigeria; *R* v. *Osoba* (1961), All N.L.R.1; *The S.S. Lotus case* (1927), Series A No. 10 (2W.C.R. P.20)

becomes difficult if there is no clear cut answer to a problem particularly where there is no clearly stated legal norm or standard for international action. Such situations arise mostly in matters dealing with the progressive development of international law as basis for the interpretation of local legislation. In such situations, the Law Officers in the division are guided by the general principles of international law as they apply to the case.

Although Law Officers in the division are guided by the general principles of international law when rendering advisory opinions, they also take into serious consideration the effects such opinions would have in the maintenance of international comity amongst nations. They are always reminded of their duty first to the progressive development of international law and secondly to the development of the municipal law as it relates to international law without disrupting the social amity amongst nations.

The division also takes up the responsibility of prosecuting or defending matters on behalf of the State before international institutions. For instance in 1968, a senior official of the division "attended a special session of the Council of International Civil Aviation Organisation held in Montreal, Canada, to prosecute Nigeria's complaint against Portugal for violating Nigeria's air space."[54]

A situation might arise when officers of the division are asked to defend an action which is bad in law, that is, contrary to the principles of international law. In such a situation, they can discharge their responsibilities only if they uphold the rules of international law which would eventually best serve their national interest.[55]

The staff of the division are regularly called upon to serve as Legal Advisers to Government delegations within and outside the country. In this respect, officers have, in the past, attended conferences of the United Nations and its agencies, the Organisation of African Unity and the newly established Economic Community of West African States. Attendance at such conferences provides adequate forum for the exchange of ideas between officers of the division and their foreign counterparts and this sort of interaction helps in the development of international law both at the international and municipal levels.

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54. Elias, *supra*, note 33 at 158
55. *Id.* at 159

The International and Comparative law division is not the only division dealing with international law matters. As rightly indicated by Mr. Justice Adebiyi, the Mercantile and Industrial Law Division also deals with certain matters relating to international law.[56] This division, as the name implies, deals with mercantile and industrial law matters in the field of international law.

The point must be emphasised that in practice there is no clear cut division of responsibilities between the two divisions in certain areas of international law practice. For instance, there are known cases when a matter on trade is referred to either division, depending upon the nature of the problem involved and the Law Officer most suitable to handle it at the particular time.[57]

It is obvious from our brief discussion that the International and Comparative Law Division of the ministry is not the only division dealing with international law matters. However, it is the only division and arm of government dealing directly with the Ministry of External Affairs on matters relating to international law. The division is a "repository of all the International Treaties, Conventions and Agreements entered into or acceeded to by Nigeria. It also keeps copies of Treaties, Conventions, and, Agreements under which Nigeria inherited rights and obligations on the attainment of independence."[58]

VI. *Procedure for Obtaining Advice and Legislation Drafting*

Matters on foreign affairs are referred to the Ministry not only by the Ministry of External Affairs but also by other Ministries. Some of the other Ministries which deal with foreign affairs include Internal Affairs, Education, Trade, Industries and Information.[59]

The procedure adopted for obtaining legal advice and legislation drafting on matters relating to international law is similar. It is proposed to discuss the procedure in three parts: legal opinion, vetting and preparation of treaties, conventions and agreement and finally legislation drafting.

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56. Adebiyi, "Background Paper on Nigeria" in H.C.L. Merillat, *supra*, note 28 at 84

57. The distribution of work to the division in the Ministry is the responsibility of the Solicitor-General assisted by the Directors. He can therefore assign any job to any division or officer as he deems fit in the circumstances and in the best interest of the particular work.

58. Adebiyi, *supra*, note 56 at 85

59. The list is not exhaustive.

1. *Legal Opinion*

Any Ministry seeking legal opinion on any aspect of international law prepares a brief or memorandum[60] on the subject matter for consideration by the Ministry of Justice. The usual practice is for the Permanent Secretary of the instructing Ministry to forward the request to the Solicitor-General of the Federation for opinion.[61] The request may take the form of a letter setting out in detail the facts of the particular case and the opinion sought.

On receipt of the papers, the Solicitor-General passes them to the appropriate division for action. If the opinion sought is not clear or certain aspects are missing, the Law Officer handling the matter has to write to the instructing Ministry to clarify such issues.[62] The Law Officer conducts some research into the legal issues involved and renders an opinion on the subject matter for consideration by his immediate senior colleague. If the matter is of such importance that it has to be seen by the Solicitor-General, it is accordingly sent to him. There are occasions when the Attorney-General looks at a final opinion before it is sent to the instructing Ministry.[63]

2. *Vetting and preparation of documents*

It is also the practice for Ministries to send documents relating to international law to the Ministry of Justice for vetting. Such documents include bilateral and multilateral treaties, conventions, agreements, protocol and notes verbal.

The procedure is that the instructing Ministry sends the documents to the Ministry of Justice with a covering letter indicating specifically what is required to be done. If it is merely to determine the legality of Nigeria being a party to the document, this has to be clearly stated; in which case, the advice relates only to that aspect. On the other hand, the instruction may be that the document should be vetted and or entirely rewritten to reflect the country's stand on the subject matter.

The document is assigned to an officer, mostly in the

60. This could take the form of either a letter or a minute in a file.

61. It is not necessary that the Permanent Secretary sign the request personally. As a matter of practice, requests for legal opinions are generally sent by officials in the name of the Permanent Secretary, although he can sign it in person.

62. It will be noted that a Law Officer can only do this after clearance from his immediate Senior colleague unless it is a routine matter.

63. It is only legal matters touching on policy that are referred to the Attorney-General.

International and Comparative Law Division, for action. It is duly considered on its merits and appropriate action is taken. If the document is for vetting, comments are made on the articles or paragraphs which are amended or re-written. In most cases, the suggested amendments are reflected in the draft, giving appropriate reasons. In cases where an entirely new draft is to be prepared, this is done and sent to the instructing Ministry.

If the instructing Ministry is not satisfied with the draft either in its amended form, or in its entirety, it is the practice to bring any such objections to the immediate notice of the Ministry of Justice for clarification and further action if need be.[64]

3. *Legal drafting*

Legislation drafting becomes necessary if the need arises to promulgate a law on an aspect of international law as it relates to the domestic jurisdiction of the country. Such legislation may be initiated by the Ministry itself in the light of current developments in international law or it may be at the instance of another Ministry. In certain cases, the rationale behind the legislation is to conform with international obligations as a member of the international institutions. On the other hand, legislation could be for the protection of the municipal law of the country in the light of a current international practice. On the whole, what is paramount on the part of the Ministry is to ensure the progressive development of international law in so far as such development does not jeopardise the national law on the subject matter.

The function of promulgating legislation is that of the department of legislative drafting. The Federal Government has given directives on the procedure for the preparation of federal legislation.[65] We may briefly state the procedure here:

i) The Commissioner responsible for the subject submits a memorandum to the Federal Executive Council setting out the main points on which legislation is proposed and seeking the authority of the Council to have a decree drafted. After the approval by the Federal Executive Council of proposals for the initiation of legislation, drafting instructions are issued from the instructing Ministry to the Ministry of Justice for the preparation of the legislation. The draft decree is then

64. In most cases the Ministry of Justice merely clarifies the legal issues.
65. See *Federal Government Publication,* Federal Ministry of Information, Printing Division, Lagos, (1971)

included in or annexed to a memorandum seeking final approval, except where otherwise directed by the Federal Executive Council in the conclusions.[66]

ii) When authority to draft is given, the Ministry concerned arranges for two copies of the drafting instructions and of any supporting documents.[67]

iii) Drafting instructions are required to be set out in plain language. They give as fully as possible the purpose and background of the decree and should state what existing legislation affects the subject matter. They do not take the form of a layman's draft decree. Where a proposal is based on an existing piece of legislation, whether of Nigeria or any other country, this fact is stated and the instructions refer the draftsman to the legislation. If the decree is intended to replace an earlier one which has not been published in the gazette, the text of the earlier one is provided.[68]

iv) It is the responsibility of instructing Ministries to ensure that drafting instructions reach the Ministry of Justice as soon as possible after drafting authority is obtained, in order to allow sufficient time for the drafting of the decree and its submission to Council where necessary,[69] and its subsequent publication in the gazette.[70] There are occasions when meetings are arranged between the legal Draftsman and the Instructing Ministry to discuss the modalities of the proposed decree.

v) If Council approves the decree with or without any changes, it authorises its submission to the Head of the Federal Military Government for his signature.[71]

vi) In exceptional circumstances, where the matter is urgent and the proposed legislation is not long or complex, the Commissioner concerned may, in his memorandum,[72] seek the authority of Council for the legislation to be drafted and submitted for signature without further clearance made to it.[73] Should Council agree to this procedure, the provisions of paragraphs 8 and 9 will not apply.

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66. Procedure for the Preparation of Federal legislation — Federal Ministry of Information Publication (1971), Para. 3
67. These have to be retained by the Legal Draftsman and must not include the Ministry's file. *Id.* at para. 4
68. *Id.* at para. 5
69. *Id.* at para. 8
70. *Id.* at para. 11
71. *Id.* at para. 9
72. *Id.* at para. 3
73. *Id.* at para. 10

vii) Where authority to submit a draft decree for signature has been given, it is the function of the draftsman, acting on the specific authority of the Ministry concerned, to arrange for the draft decree to be submitted through the Secretary to the Federal Military Government for signature by the Head of the Federal Military Government.[74]

viii) In connection with the submission of the draft decree for signature, the additional responsibilities of the instructing Ministry are as follows:

a) to ensure in consultation with the draftsman that the copy of the draft decree submitted for signature is in the form approved by Council, with special reference to any changes required by Council to be made on the draft submitted to it;

b) to correct with meticulous care any proof received from the draftsman and to inform him immediately whether the proof is correct;

c) to prepare, in consultation with the draftsman, an Explanatory Note[75] to the decree;[76]

ix) When a decree has been signed by the Head of the Federal Military Government, the signed copy is to be held by the Solicitor-General for preservation in the Ministry of Justice and he may if necessary inform the Ministry concerned.[77]

x) Arrangement for publication of the signed decree in the gazette is the responsibility of the draftsman, acting on the specific authority of the Ministry concerned.[78]

xi) Where an act or decree is to be brought into force by subsidiary instrument, the Ministry concerned is responsible for requesting the Ministry of Justice to draft the instrument which is subsequently published in the gazette after the necessary approval.[79]

Inter-Ministerial meetings

As indicated above, inter-ministerial meetings between officials are held[80] whenever it is necessary to do so in the process of accomplishing the different stages of procedure. For instance,

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74. *Id.* at para. 11
75. Explanatory note is designed to explain briefly and in ordinary language the purpose of the decree.
76. *Id.* at para. 12
77. *Id.* at para. 13
78. *Id.* at para. 14
79. *Id.* at para. 15
80. See (1962), 56 A.J.I.L. P. 639

where an issue is so important that it cannot be easily disposed of by mere official correspondence, the initiating Ministry would call an inter-Ministerial meeting to consider it. This could be a preliminary move aimed not only at briefing the other Ministries involved but also to arrive at certain strategies and conclusions which might facilitate action on the subject matter. The representative of the Ministry of Justice also discusses preliminary issues that might assist the Ministry concerned in setting out the details for the draft. It is a matter of experience that such inter-ministerial meetings are helpful to the Ministry of Justice.

VII. *Philosophy and Content of Advice*

The Federal Ministry of Justice as Government Legal Adviser on foreign affairs sees international law as a sound basis of unifying the diverse municipal laws of states in the context of the United Nations resolutions. In the performance of its duties, the Ministry is guided by the principles of international law in so far as these principles do not directly derogate from the municipal obligations of the country. As a matter of fact, the Ministry holds the pragmatic and progressive view that international law has a vital role to play in the general development of international relations amongst nations. It does not hold the conservative view that international law is not law properly so called and cannot bind the international relations of States. The interest of the Ministry goes beyond the mere application of principles of international law but also takes active steps towards its orderly global development.[81]

The Ministry has made considerable contribution in the field of international law. It maintains a publication which deals with the treaty obligations of Nigeria. So far, three volumes have been published[82] covering the period October 1, 1960, to June 30, 1970.[83] By this publication the Ministry makes available at a glance the treaty obligations of Nigeria. The Ministry has always been involved in the preparation of bilateral agreements with other countries which foster international relationships.[84]

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81. It would be recalled in this regard that the former Attorney General Dr. T. O. Elias served in the International Law Commission for a good number of years as a Rappateur.
82. See *Nigeria's Treaties in Force*, Vols. I, II and III
83. See *Annual Report of the Federal Ministry of Justice* 1st October 1972 to 30th September, 1973 at 5-6
84. For instance between 1st October 1972 and 30th September, 1973, the

VIII. *Relationship with the Government and the Public*

The Ministry of Justice as a government organ maintains good relationship with other organs of government. We have earlier indicated that the Law Officers are appointed by the Federal Public Service Commission.

The relationship of the Ministry with the Government is further consolidated by the functions of the Attorney-General. It was pointed out that the Attorney-General is a member of the Federal Executive Council. He also acts as Legal Adviser to the Supreme Military Council and the National Council of States. In these capacities, the Attorney-General co-ordinates the activities of the Ministry on the one hand and those of the Government on the other.

The office of the Solicitor-General also attracts considerable connection between the Ministry and the other governmental organs. In his capacity as the professional and administrative head of the Ministry, the Solicitor-General maintains regular contacts with his colleagues in the other Ministries and these contacts are fully explored to the mutual benefit of the different organs in the progressive development of international law.

The relationship between the Ministry and outside lawyers, particularly from the Universities, is not close. The practice of seeking legal advice from academic lawyers and private legal practitioners versed in international law has not developed properly in the Ministry. Dr. Elias made the following observation on the subject:

> Consultation with or employment of private legal practitioners or University teachers has not generally been considered to be a satisfactory mode of rendering legal service to the Government. Although the service of private legal practitioners or University law teachers may gainfully be employed for special purposes such as for instance, to obtain commentaries on the draft international convention in the process of formulating government policy, or to investigate special problems, such as the attempt to find an acceptable legal definition of the word "aggression", considerations of practical convenience and

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Ministry was involved in the negotiation and preparation of the following agreements:
a) Air service Agreement between Nigeria and Ghana;
b) Trade Agreement between Nigeria and Czechoslovakia;
c) Trade Agreement between Nigeria and the Republic of Guinea and
d) Trade Agreement between Nigeria and the Republic of China. See Annual report of the Ministry, *id.* at 6

security and of the time factor would seem to rule out this system for general use.[85]

It is known that the Ministry occasionally invites university teachers to perform certain duties.[86] There are cases where outside legal opinion could be sought without necessarily affecting the security of the nation. Such cases include the vetting or preparation of drafts on international treaties, conventions, and agreements, giving legal opinion on certain matters which need considerable research and which are more in the domain of academics than mere practitioners of international law.[87]

It is the view of the writer that such interaction of ideas between the Ministry and the academics will be of immense value to the progressive development of international law.

Although the Ministry of Justice plays a dynamic role in foreign affairs, the majority of the populace seem to have a negative perception of this role. It seems to be the general feeling that the Ministry, being an organ of government, merely vindicates or justifies the policies of the government even when such policies do not conform with the principles of international law. Some people see the Ministry as a stumbling block towards the real development of international law.[88]

Whatever may be the basis for the views, it is certain that the Ministry does not merely rubber stamp the policies of the government, but is properly guided by the principles of international law in rendering its advice. When the Ministry believes that any proposed government policy will be in conflict with a principle of international law, it has to advise the government without hesitation. Although there were a few occasions when the opinion of the Ministry was not initially acceptable to the government, the conflicts were amicably resolved. It is known that the Government, on these few occasions, conceded to the opinion of the Ministry, although it felt otherwise on the matters. The Ministry is not known for manipulating the principles of international law. It tells the government of the limits it can go and underlines the possibilities and consequences of its actions in international law. It does not

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85. Elias, *supra,* note 33 at 158

86. A university teacher accompanied the delegation to the Law of the Sea Conference held in New York in 1976.

87. An example of this is the definition of "aggression" highlighted by Dr. Elias.

88. This view is widely held amongst academics.

mutilate the principles of international law in favour of the municipal dictates of its government.

IX. *Recommendations*

In the light of the foregoing discussion the following recommendations are made:

1. All legal opinions sought on foreign affairs should be routed through the Ministry of External Affairs. The present procedure where Ministries send in their individual requests directly to the Ministry of Justice is not healthy as it does not make the Ministry of External Affairs accountable in matters relating to foreign affairs.
2. The offices of the Attorney-General and the Solicitor-General should be career jobs and not a stepping stone to judgeship as is the present practice. The Legal Adviser's job should be seen as a vocation and not an outlet to another career.[89]
3. Appointments to the office of the Solicitor-General should be on merit and not on seniority. The position should be advertised and competed for.
4. Although the Law Officers in the Ministry are civil servants, they should be regarded first and foremost as professionals and treated in that light. The present position where the conditions of service of professionals are identical to non-professionals should be discouraged. In order to achieve the best results in terms of productivity, it is recommended that the professionals should be encouraged in some material way so that they find career prospects in the job.[90]
5. The Foreign Offices of the Ministry of External Affairs should maintain a Legal Attaché where certain legal matters could be treated. The present system where routine matters are referred from the foreign office through the Ministry of External Affairs to the Ministry of Justice takes considerable time. That apart, the practice does not talk well of the international image of the country.
6. The Ministry of Justice should encourage the appointment of Special Advisers on specific matters. In this respect, it is recommended that the academic lawyer should be considered on a consultancy basis when certain technical and academic matters arise. Apart from such special cases, the Ministry should always encourage interaction of ideas with the academics and the practising lawyers. Such an interaction will

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89. Such vocational system is in practice in certain countries, *e.g.* Canada.

90. As of now, most of the Staff move out of the Ministry whenever there are better job opportunities.

not only facilitate a more pragmatic development of international law, but will also be a basis for reciprocal confidence amongst the different sectors involved in the development process of the law.

7. There should also be some experiment in the area of legal planning. It is a fact that the proliferation of agencies dealing with international law makes it difficult if not impossible for one agency to plan the whole range of international law. Considering the diversity and enormity of international law, a co-ordinated planning of the legal work should be of immense advantage to the work of the Ministry of External Affairs. Although there are detractors of this view it is our considered opinion that it is vital and important in the circumstances of the development of international law.
8. The departments of International Law in our universities should be restructured, curriculum wise, to accommodate the needs of the training programme of officers of the Ministry of Justice. Such a re-organisation will put an end to the present system where officers go out of the country to receive further training on the job.

X. *Conclusion*

In March, 1967, a Seminar on International Law and African problems was held in Lagos. In that Seminar, which focused attention on the development of International Law in Africa was discussed the subject of "Government Legal Advising in the Field of Foreign Affairs." At the end of the debate the Seminar formulated the following conclusions:

a) The Legal Advisers in the field of foreign affairs, who should be competent in the field of International Law, should generally be called upon to perform a number of functions including enunciation of the law, the creation of new norms, drafting treaties, international agreements and preparation and litigation of cases in which the government is involved before international tribunals.

b) In view of the shortage of highly trained personnel in the field of international law in newly independent African States, the method best suited to such states would appear to be a central legal Ministry which would appoint officers to work in various departments of government under the general supervision and control of a Chief Legal Adviser who would invariably be the Attorney-General or Procurator-General. The method would ensure a high degree of uniformity and quality in advice.

c) The Legal Adviser in the field of foreign affairs should endeavour to render accurate and judicious advice within the

law whereby his government could achieve its aim as far as these were legally possible.

d) The newly independent states in Africa should intensify their training programme whereby suitably qualified Legal Officers, or state Attorneys would be given specialised training in the field of International law, international relations and diplomacy.[91]

The above adequately summarises the role of the Legal Adviser on foreign affairs. It would appear from our discussion that the Federal Ministry of Justice is reasonably performing the functions outlined above.

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91. See Proceedings of the Seminar on International Law and African Problems.