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UNITED STATES OF AMERICA

1. What is the title, rank and position of the Legal Adviser?

The Legal Adviser of the U.S. Department of State has the formal rank of an Assistant Secretary of State. The Legal Adviser heads the Office of the Legal Adviser, a separate operating bureau of the Department, and typically functions as a close adviser to the Secretary of State as well as to the U.S. Government on issues of international law. The Legal Adviser is a Presidential appointee subject to confirmation by the U.S. Senate. The position of Legal Adviser of the Department of State was first established by the U.S. Congress in a statute adopted in 1931, although predecessor positions (Solicitor and Examiner of Claims) can be traced back to the mid-19th century.

2. What are the principal functions of the OLA ?

The Office provides legal advice and services to the senior leadership of the Department of State and all its operating components on issues arising in the conduct of foreign affairs. The objective is to ensure compliance with applicable domestic law related to the foreign affairs function as well as the international legal obligations of the United States. Much of the work is advisory, but members of the Office are often actively involved in the formulation as well as implementation of policies and programs. Department lawyers frequently serve on or even lead delegations to international negotiations and conferences and represent the United States before international courts and tribunals.

The Office also provides advice within the U.S. government on questions of public international law. Its members have special expertise and responsibility for the negotiation, interpretation and ratification of treaties and other international agreements. The Office represents the United States, as agent, before international courts and tribunals (including the ICJ and the Iran-US Claims Tribunal). As in many other governments, it endeavors to ensure consistency in positions taken on issues of international law, especially in the negotiation of treaties and before international courts and tribunals. Members of the Office prepare the annual Digest of U.S. Practice in International Law.

3. Please give a brief description of staff employed by the OLA, including overseas staff

The Office of the Legal Adviser currently comprises some 250 fulltime employees, including 165 attorneys formally admitted to the practice of law, all of who have Juris Doctor (or equivalent) degrees and many of who have advanced (specialized) degrees in international law. Other members include highly qualified paralegals, treaty analysts, information technology specialists, and budget, administrative, and other support personnel.

State Department lawyers are typically recruited from outside the government or from other government agencies and serve as members of the Civil Service (not part of the foreign or diplomatic service). The selection process for positions within the Office is intensely competitive. On occasion, appropriately qualified members of the Foreign Service may serve tours in the Office and members of the Office may leave to join the Foreign Service or other parts of the international affairs community.

All attorneys are based in Washington, with only a few exceptions. Two attorneys are currently assigned to the U.S. Mission to the United Nations (New York), two to the U.S. Mission to International Organizations (Geneva), and two to the U.S. Embassy at The Hague. Recently, attorneys have been temporarily assigned to the U.S. Embassy in Baghdad. New attorneys typically rotate assignments within the Office after 2 years, and periodically thereafter, to broaden their experience and take on new challenges. Outside rotational assignments can include the National Security Council and the U.S. Congress.

In addition to its full-time attorneys, the Office is able to draw on the services of outside experts (for example, professors of law or practicing specialists) in various international legal fields as consultants, when needed.

4. Briefly describe the organization and structure of the OLA

The Legal Adviser reports directly to the Secretary of State. Four Deputy Legal Advisers supervise some 22 Assistant Legal Advisers, who are experienced senior attorneys charged with managing one of the regional or functional offices described below (which vary in size from two to twenty staff attorneys). An Executive Director is responsible for overall management, budget, administrative, personnel, and information resources support.

The Office is organized to provide direct legal support to the Department of State's various operating bureaus. This structure is intended to ensure the most timely and effective advice and to foster close attorney-client relationships.

- Thus, each of the Department's regional bureaus (Africa, East Asia and Pacific, Europe, Near East, South Asia, Western Hemisphere) has a counterpart Assistant Legal Adviser and staff to assist in dealing with the broad range of issues arising in a regional or bilateral context.
- Dedicated components headed by Assistant Legal Advisers also support the various functional bureaus with worldwide responsibilities (for example, Arms Control and Verification, Nonproliferation, Consular Affairs, Economic and Business Affairs, Human Rights and Refugees, Law Enforcement and Intelligence, Oceans, International Environmental and Scientific Affairs, Political-Military Affairs, Public Diplomacy, and United Nations Affairs).
- Several components of the Office focus on issues of general application to the Department's foreign affairs function, such as Diplomatic Law and Litigation (privileges and immunities, recognition, status of international organizations, litigation in U.S. and foreign courts); Private International Law (harmonization and codification of private law in such areas as international business transactions, arbitration, trusts, international child abduction and inter-country adoption, international negotiable instruments and the liability of operators of transport terminals); and Treaty Affairs (treaty law and procedure, including drafting, negotiating, applying, interpreting and publishing treaties and other international agreements of the United States; and constitutional questions including the relative powers of the President and the Congress regarding treaties and executive agreements).
- Over the past several years, a growing proportion of the Office's resources have been devoted to legal issues related to the overall management and operation of the Department as a government agency, rather than to international law. These practice areas now include Legislation and General Management (administrative and budget, appropriations, Freedom of Information); Buildings and Acquisitions (federal contracts, acquisition and development of real property abroad); Employment Law (human resources and labor relations, employee grievances); and Ethics (including professional responsibility issues, financial disclosure reporting program).
- The largest single component, finally, is the Office of International Claims and Investment Disputes, which was initially established to handle claims before the Iran-U.S. Claims Tribunal and

has since expanded to encompass virtually all claims under international law by the U.S. and its nationals against foreign governments, and by foreign nationals and governments against the U.S. Government. In addition to handling claims relating to expropriation and other property and investment disputes, and issues of state responsibility for denial of justice, wrongful death, and personal injury, this component handles claims before the UN Compensation Commission as well as the arbitration of investment claims under NAFTA and other agreements.

5. What is the OLA's place within the Ministry of Foreign Affairs ?

The Office of the Legal Adviser is one of some 23 separate operating bureaus of the Department.

6. What are the main contacts of the OLA within Government ?

The Office deals on a daily basis with a broad range of federal government departments, offices and agencies involved in the foreign affairs, national security, and law enforcement communities, including most frequently the Counsel to the President, the Legal Adviser to the National Security Council, the Department of Justice and the General Counsels of the Departments of Defense (including the various military services), Homeland Security, Commerce and the Treasury, the Special Trade Representative, and the Agency for International Development.

7. Please describe the relations of the OLA with lawyers in private practice, academics and legal institutions

Members of the Office are in frequent contact with private practitioners on matters pertaining to the Department's work, including litigation, arbitration, contracts, and other regulatory issues. Indeed, many attorneys have come to the Office from private practice and many, upon leaving, go to law firms or corporate law offices.

The Office has traditionally had strong links to the academic community in the field of international law. A number of professors serve as consultants; at most times, a highly qualified academic holds a fulltime appointment within the Office as Counselor on International Law. A number of attorneys have left the Office and government service to pursue teaching careers in American law schools.

Practitioners and academics serve on the Secretary of State's Advisory Committees on Public and Private International Law, which function as consultative bodies on legal issues of current interest and debate under the guidance of the Legal Adviser.

Members of the Office are often active in the various professional societies concerned with international law, including in particular the American Society of International Law, the American Bar Association's Section of International Law and Practice, the American Branch of the International Bar Association, and the Inter-American Bar Association, as well as state and local bar associations, committees, and other groups. Lawyers are permitted to participate in professional and academic conferences and symposia in the legal and foreign policy communities, and to teach and publish in the field of international law, subject to certain ethical restrictions. At any given time, a number of attorneys teach in Washington-area law schools on a part-time basis. Lawyers are encouraged to provide pro bono legal services to needy members of the Washington, D.C. community.

8. Please provide a brief bibliography on the OLA, if possible

J. Mathews, *The Conduct of American Foreign Relations* 46-47 (1922)

Woolsey, "The Legal Adviser of the Department of State," 26 *Am. J. Int'l L.* 124 (1932)

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Michael K. Young, "Government Lawyering: The Role of the Attorney-Adviser in the U.S. Department of State: Institutional Arrangements and Structural Imperatives," 61 *Law & Contemp. Probs.* 133 (1998)