CHAPTER 8

The Intersecting Professions of the International Law Adviser and Diplomat in a Rising Asia: Australia, India and Malaysia

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I Introduction

This contribution examines the roles of international law advisers working for governments in the Asia Pacific region, and in particular the relationships between these roles and the practice of diplomacy. To do so, it draws on three case studies – Australia, India and Malaysia. The focus is on the institutional arrangements for the professional practice of international law within government, and the central argument is that these arrangements play a critical role in shaping the professional roles and identities of international law advisers. Guiding this investigation are three overarching questions: to what extent is the primary site of practice of government legal advisers within foreign ministries, or is the picture more complex, with legal advisers spread out in other arrangements across (or outside) government? How do these institutional arrangements reflect, and also condition, the professional identities of these legal advisers – in particular where legal advisers simultaneously assume several professional and institutional functions, or shift from one to another? And, more broadly, what might these arrangements reveal about how governments perceive the relationships between the professions of international law and diplomacy?

Asia is a rising force on the international stage, currently undergoing rapid and profound transformation. It is the world’s most populous region, the

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world’s largest producer of goods and services, and in a few years will be the world’s largest consumer of them. Many Asian countries have experienced phenomenal economic growth and social changes, and are becoming increasingly influential on the world stage. In part, this was what led former Chinese premier Wen Jiabao to foreshadow in 2006 that the twenty-first century could become the “Asian century”.2 Commentators noted that he ‘was voicing a belief that the world’s economic centre of gravity is shifting to Asia, away from the United States ... and Europe, and that with this will come greater political, strategic, and cultural influence for the nations of the region.’3 The unprecedented scale and pace of Asia’s transformation has led many States to reflect on the implications for their role in the region.4 The region will confront significant challenges in the coming decades – requiring both active diplomacy and increasing engagement with international law. There will therefore be a rising need for legal expertise within governments, to support them as they engage more deeply with the interpretation, application and development of international law. It will also be increasingly important to develop a clearer understanding of how international law services are delivered across the region, and who the main actors are in the region’s different international law communities.

This contribution is presented from the vantage point of an international lawyer experienced in working as an international law adviser for the Australian government, with many interactions with other international lawyers, diplomats and academics across the Asia Pacific region. Part 2 discusses the professional intersections of legal advisers and diplomats, while Part 3 provides short case studies of the three countries, describing how they situate their international law advisers within government. Part 4 offers some general observations emerging from the case studies. A caveat is necessary at this juncture; given the enormous diversity of countries across the Asia Pacific region, it is difficult to make generalisations about broad trends across the region, and about what might reflect an “Asian” or “Asia Pacific” perspective or perspectives. While this is so for other regions also, the heterogeneity of

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