Chapter 13

The Role of Legal Advisers in International Law: The Swedish Experience

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This contribution focuses on various aspects of the role played by the Legal Adviser in international law in Sweden. I will start by making some remarks regarding the organisation of the work of the Legal Adviser because these organisational issues are essential to the proper exercise of the role of legal adviser. I will continue with some observations on the working context between law and politics and conclude with insights on the growing proactive engagement of the Legal Adviser.

Let me first of all quote the two points made by Hans Corell at the informal meeting of Legal Advisers at the UN in New York in October 2014 – two points which I fully share:

– The Legal Adviser must have direct access to the Minister in order to fulfil his or her functions, and
– The Legal Adviser should be present when important matters are discussed at the highest level, so that someone with a "legal ear" can caution if legal issues emerge during the deliberations.

1 Organisation of the Work of the Legal Adviser

The Legal Adviser in the Swedish Ministry of Foreign Affairs is the Director-General for Legal Affairs. He is one of five Directors-General; the others being the Directors-General for Administration, Political Affairs, Trade and Development.1 The Office of the Legal Adviser consists only of the Legal Adviser and a part-time secretary. The Directors-General in the Ministry do not head departments but have special supervisory responsibilities with regard to specific departments, in my case the Department for International Law, Human Rights and Treaty Law, the Department for Consular Affairs and Civil Law, and

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1 See Section 4, Regulations for the Foreign Service (UF) No 2009:5 of 24 June 2009.
the Legal Secretariat, each of which is headed by a Deputy Director-General.\textsuperscript{2} All questions from these three departments which raise matters of principle or are otherwise of substantial importance should be brought before the Legal Adviser.

The Department for International Law, Human Rights and Treaty Law has two principal legal advisers. These positions are held by international law experts with doctorates in law. They monitor the development of international law, provide advice and studies, and initiate operational activities in this field. One of the four sections in this department is responsible for international law and treaty law and consists of eight persons, mostly career diplomats. When I refer in these reflections to the role of the Legal Adviser, I am, therefore, referring to the work of an entire team of experts on international law.

\section*{II \hspace{1cm} The Working Context: Between Law and Politics}

The main challenge for the Legal Adviser and the team of experts is to keep track of situations where matters of international law may arise and provide timely advice. This is therefore a matter of framing current political challenges in legal contexts. It is also a matter of advising on the importance of using correct and accurate language. Let me take as an example the crisis around the Russian aggression against Ukraine, which involved and involves very serious principles of international law. We were somewhat surprised that when addressing this situation in the Council of Europe and the OSCE, the EU and its Member States had difficulties voicing the message on international law as clearly as our Foreign Ministers and Prime Ministers had done in the Foreign Affairs Council and the European Council.

Our role is to ensure that instructions to all Common Foreign and Security Policy working groups, as well as to our missions to international organisations, contain relevant points on international law. This is a question of mainstreaming and working horizontally.

A special feature of Swedish Government is that decisions are taken collectively by all ministers. This means that decisions are prepared in a joint drafting procedure involving all relevant ministries. Similarly, instructions to EU Council Working Groups and to our representations to international organisations are worked out between the relevant departments in the MFA and other ministries concerned. This is quite a cumbersome procedure but has the advantage of ensuring consistent Swedish messages in international fora.

\textsuperscript{2} Ibid, Section 46.