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**COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW
(CAHDI)**

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**ITEM 8 B: PRESENTATION OF THE ROLE OF THE OFFICE OF LEGAL ADVISER
IN THE APPLICATION OF INTERNATIONAL LAW IN DOMESTIC LAW IN
SWITZERLAND**

Document submitted by the delegation of Switzerland

Introduction

In Switzerland the Federal Council, a seven-member body elected by Parliament, forms the government. The Federal Council is assisted by the Federal Chancellery whose head is also elected by Parliament and attends Federal Council sittings without the right to vote. Consequently, the federal administration is also divided into seven federal Departments (Ministries), themselves subdivided into Offices.

The function of Legal Adviser to the Federal Department of Foreign Affairs is performed at present by the Director of the Directorate of Public International Law (DDIP). In the organisational structure of the Department of Foreign Affairs, the DDIP has the status of a federal office and is placed on a par with the Political Directorate, the Directorate for Development and Co-operation and the Directorate of Resources and of the External Relations Network. The DDIP has direct access to the Head of the Department of Foreign Affairs (i.e. Minister of Foreign Affairs), thereby ensuring close collaboration between the Legal Adviser and the Head of Department. For example, the Head of the DDIP participates in the weekly meetings convened by the Head of Department to discuss current foreign policy matters. The DDIP's position also enables it to deal with the other directorates on an equal footing and thus to establish working relations with the other offices both within and outside the Department of Foreign Affairs.

Role of the Office of Legal Adviser in the application of international law in domestic law

The role of the DDIP as laid down in the Order on the organisation of the Federal Department of Foreign Affairs (RS 172.211.1),¹ is essentially to handle legal questions relating to public international law and Switzerland's external relations. Nonetheless, the Director of the DDIP also engages in activities concerning the application of international law *within* Switzerland. Indeed, one of the multiple functions performed by the DDIP is to ensure that the Swiss authorities interpret and apply the rules of public international law in a proper manner.

a. Preliminary phase of legislative procedure

This is particularly the case in the preliminary phase of the legislative procedure. The federal offices are consulted on any bill which the Federal Council intends to put to Parliament. During the consultation, the office responsible for the bill invites the other administrative entities concerned to give their opinion, with a view to preparing the message that accompanies draft legislation submitted to Parliament. These messages explicitly contain a section on "Compatibility with Switzerland's international undertakings". As a result, each bill's compatibility with international law is automatically subject to the scrutiny of the relevant office, that is the DDIP. The DDIP accordingly examines the bill, whether it is of an economic, legal or other nature, to ensure that it does not impinge on Switzerland's obligations under international law. In this context, the Office of Legal Adviser to the Department of Foreign Affairs contributes directly to the implementation of international law in domestic law by assessing the compatibility of draft legislation with international law.

¹ Cf. Appendix.

b. Bilateral consultations between offices

This type of consultation also takes place bilaterally between offices. It is frequent practice for an office to invite the DDIP to give a legal opinion on questions which relate to public international law. For example, the Federal Department of Justice and Police, the administrative body responsible for mutual assistance in judicial matters, can request a legal opinion from the DDIP on questions of international law raised by a procedure of judicial co-operation with another country. This is what happens, for instance, where a case of judicial assistance raises questions about immunities.

In the past, the DDIP has also been invited by administrative entities, other than the Federal Department of Justice and Police, to deliver legal opinions or explanatory notes on varied public international law topics. For example, the DDIP has been invited on occasion to deliver an explanatory note on the interpretation of UN Security Council resolutions. A significant example was when the Finance and Economy Section of the Political Directorate put questions on Security Council Resolution 1373 (2001) against terrorism. Thus the DDIP was able to contribute its expertise in interpreting a Security Council resolution in order that it could be fittingly applied by Switzerland both outside and inside its borders.

These bilateral consultations inviting the DDIP to make pronouncements on a great variety of matters enable the offices whose functions are linked with domestic law to satisfy themselves that their activities remain consistent with Switzerland's obligations under international law.

c. Role in the application of international law by judicial bodies

The DDIP also has an indirect role in the application of international law by the Swiss judicial bodies. There have indeed been several occasions when the Federal Court, Switzerland's highest judicial authority, has referred to legal opinions delivered by the DDIP and published in the *Revue suisse de droit international et de droit européen* for determining cases that raise international law issues, such as questions of judicial assistance, extradition or immunity. In addition, sometimes though much more seldom, the Federal Court may expressly ask the DDIP for a legal opinion on a pending case. Thus, by performing an *amicus curiae* function, the DDIP gives the Court the benefit of its expertise on public international law in order that it may be properly interpreted and applied by the national judicial bodies.

Role of the Office of Legal Adviser in framing foreign policy

As mentioned above, besides its role concerning the application of international law in domestic law, the Office of Legal Adviser performs functions relating to Switzerland's foreign policy. As international law significantly affects Swiss foreign policy, the Legal Adviser and his Office are regularly involved when the Swiss position on a given foreign policy situation needs to be defined. This is especially so in a situation or crisis where the question of right to neutrality and policy on neutrality must be addressed.

The DDIP is also in charge of international humanitarian law – another priority of Switzerland's foreign policy – and of human rights, collaborating with the other competent bodies of the Federal Department of Foreign Affairs (Political Division IV) and of the Federal Department of Justice and Police which is responsible in particular for pleading Switzerland's case before the European Court of Human Rights. In that connection, it should be mentioned that the DDIP recently published three reports at the request of the Federal Council (neutrality, Switzerland as depositary of the Geneva Conventions, asymmetric conflicts and international humanitarian law) which are

before Parliament and available to the public on the administration's website (<http://www.eda.admin.ch/eda/fr/home/doc/publi/ppol.html>).

Moreover, the DDIP is responsible for preparing Switzerland's ratifications of international treaties and for drafting laws in the foreign policy sphere (for example, the Federal Act on the host state). Finally, the Swiss Federal Council assigned interdepartmental co-ordination concerning international action against terrorism, and the problem of foreign potentates' illicit assets, to the DDIP.

Conclusion

The functions of the Legal Adviser and of his Office have a foreign and a domestic aspect. The post and the incumbent are closely associated with the framing of Swiss foreign policy and in that capacity operate in direct liaison with the Head of the Department of Foreign Affairs. Although the primary function of the Office of Legal Adviser to the Department of Foreign Affairs is to deal with legal questions relating to public international law and to Switzerland's external relations, it plays an important part in applying public international law in domestic law. As has been explained, there is a standing dialogue between the Office of Legal Adviser and the other administrative entities of the government, and sometimes even with the Federal Court. This dialogue ensures the fullest possible compliance with international law in legislative, administrative and judicial activities in Switzerland.

Appendix

172.211.1

**Order
on the organisation of the Federal Department
of Foreign Affairs
(Org DFAE)
of 29 March 2000 (as at 4 July 2006)**

The Swiss Federal Council,
having regard to Articles 43(2) and 47(2) of the Act of 21 March 1997 on the organisation of government and administration (LOGA),
having regard to Article 28 of the order of 25 November 1998 on the organisation of government and administration (OLOGA),
orders:

(...)

Article 9 Directorate of Public International Law

1. The Directorate of Public International Law shall deal with the legal questions relating to public international law and to the external relations of Switzerland.
2. It shall pursue the following objectives:
 - a. ensuring that the Swiss authorities interpret and apply all rules of public international law in a proper manner;
 - b. promoting the observance and development of public international law.
3. In this context, it performs the following functions:
 - a. assisting the Federal Council with legal advice in the conduct of foreign policy;
 - b. participating in the drafting of public international law, in particular during the negotiation, conclusion and implementation of international treaties;
 - c. dealing with the law of neighbourhood and transfrontier co-operation, particularly relations with the Principality of Liechtenstein;
 - d. conducting the procedure for conclusion of international treaties, managing the relevant documentation, and acting as depositary;
 - e. in addition, it is responsible for the following fields:
 1. human rights, with due regard to the competences of the other departments,
 2. international humanitarian law,
 3. international security and neutrality,
4. European law, in conjunction with the Office for Integration and subject to the powers of the Federal Justice Office regarding verification of the compatibility of Swiss law with European law,
5. Rhine shipping and maritime shipping.