

THE AD HOC DIPLOMAT. By Maurice Waters. [The Hague: Martinus Nijhoff. 1963. xii + 233 pp. D. fl. 20.]

LEGAL ADVISERS AND FOREIGN AFFAIRS. Edited by H. C. L. Merillat. [Dobbs Ferry, N.Y.: Oceana. 1964. x + 162 pp. U.S. \$4.]

Both these books deal with legal issues in the field of foreign affairs. Dr. Waters' monograph is a study in international and municipal law of the status of *The Ad Hoc Diplomat*, whom he defines 'as those individuals assigned by a State to temporary missions, whose duties do not have the breadth of scope normally assumed to be a part of the regular diplomat's, and who may or may not have diplomatic rank' (p. 165). He is concerned with the legal status of the special agents appointed by the President of the United States, with particular reference to Colonel House and Harry Hopkins.

In view of the careful approach of Congress to the powers of the President, and the fears since earliest times that he may usurp these powers as against those of Congress, the latter has always watched with suspicion any attempt by the President to appoint an agent whose title or whose method of appointment might avoid the supervision or consent of Congress. The book is, therefore, primarily an analysis of United States constitutional law and practice. From the point of view of international practice, Dr. Waters points out that the United States does not regard such *ad hoc* diplomats as diplomats in the normal sense and would not afford any sent to them the usual privileges. The correspondence the learned author has conducted with various individuals — scholars and officials alike — in foreign countries suggest this is probably the general practice. The tendency seems to be adopt special *agreements* to define the agent's role and rights, and most countries would treat such special representatives with 'courtesy'. It is perhaps unfortunate that he does not identify his correspondents, and at times one is left with the feeling that he perhaps goes too far when he describes the views expressed in this correspondence as 'reflective of practice.' Particularly is this so when the authoritative statement comes from the 'private remarks of a German Foreign Office official', while Sir Neville Bland would probably be a little surprised to find himself described as 'a

member of Her Majesty's Government'.

Few will probably argue with Dr. Waters in his belief that the *Ad Hoc Diplomat* should receive all the diplomatic privileges and immunities incidental to the fulfilment of his task, and that the sending authority should request such treatment when seeking *agrément*.

A similarly specialised aspect of the conduct of foreign affairs is considered by the experts and governmental representatives who attended the 1963 Conference of the American Society of International Law at Princeton to consider the 'organisation and procedures by which legal advice is brought to bear on the decision-making process'. *Legal Advisers and Foreign Affairs* comprises a summary of the discussions at this Conference together with the background papers submitted by some of the delegates on the way in which their own governments seek advice on the legal issues that constantly arise in the conduct of foreign affairs. The general view seems to have been that, ideally, a Foreign Office legal adviser 'should have a high degree of professional legal competence, integrity, and independence. At the same time he should have a thorough background of the policy factors affecting the problems with which he deals and sound political judgment' (p. 1). However, while integration of the foreign and legal services results in having available personnel competent in both law and politics, it also tends to destroy the continuity which is important in the development of State practice. Some of the countries represented at the conference make great use of career diplomats possessing international law experience — and this is particularly true of Latin America, while others, especially Japan, do not hesitate to employ academic personnel for special problems.

Professor Cohen speaking of Canadian experience emphasised the problems of organising from 'scratch' — a problem likely to face many of the new countries, where there is likely to be a grave shortage of legal experts. These States, like their older colleagues are constantly faced with legal issues and, says Professor Cohen, they 'are noticeably ready to accept most of the classical and more recent rules of the international system. Indeed, it is not without significance that such states rarely challenge the primacy of the legal order which gave them their formal birth as "subjects" of the international community and which provides them with a framework of viable relations with other states — however varied may be the substantive questions that unite or divide new and old states. Whether the problem of law for such new and old states is a boundary dispute, a claim based upon nationalization of foreign assets, access to an international river, the treatment of an alien, diplomatic immunity or whether it touches on the immense conventional network from the U.N. Charter to Exchanges of Notes on matters only of bilateral interest, and often of minor content, the techniques, the traditions of international lawyer-ship are really everywhere the same. The search by all states of good will and their legal advisers is for evidence of a consensus, for a rule that is "reasonable", and for that "minimum order" to protect the interests of all. In that search there is more than one road to excellence but in the end it is the quality of the individual mind, the scope for development both technical and general, and the confidence that governments place in their lawyers that is likely to produce the optimum result with whatever manpower resources are available' (pp. 48-9).

Bearing this in mind, readers of this *Journal* will be particularly interested in the final paragraph of the paper read by Mr. Ramani. He referred to the intention to create a special Legal Department in the Ministry of External Affairs or a special section in the Attorney General's Chambers, and pointed out that local officers of the Legal Department in Malaysia are already being sent abroad for training, and concluded:

'Another possible and potential source of legal advice is the Law Faculty of the University of Singapore which teaches International Law and which has in its Faculty specialists in International Law. A proposal has been made that the University of Malaya (which is in Kuala Lumpur, the Capital of the Federation) should organise a Law Faculty of its own or that the present Law Faculty in Singapore should be shifted to and based at Kuala Lumpur. Should this proposal be favourably considered by the Government and the University, then the Federation Government will be able to have access at its doorstep to an important source of advice in the field of International Law. This, however, is a prospect for the Future' (p. 70).