

REVIEW OF LEGAL ACTIVITIES OF THE COMMONWEALTH SECRETARIAT

Memorandum by the COMMONWEALTH SECRETARIAT

Introduction

The activities of the Commonwealth Secretariat in the legal field, as established and guided by Meetings of Commonwealth Law Ministers over the years, have developed into a substantial, day-to-day workload for the Legal Division. The Commonwealth Law Bulletin represents the most significant investment of our resources. Requests for assistance and for information are received daily, most often by telex and these are dealt with as swiftly as the means at our disposal permit. In these, as in all aspects of our work, the members of our staff are privileged in being able to draw upon the enthusiasm of a brotherhood of law which in a Commonwealth setting achieves a reality and a substance which may be illusory elsewhere. We are always conscious of the demands we are called upon to make on our Commonwealth colleagues, and endeavour to keep these precise, simple to meet and to a minimum.

2. This environment is ideally suited to the catalytic approach: those of goodwill are invariably quick to take up and turn to account any suggestions they see as helpful, and also give generously of their time and talent when they are convinced both of the need for action and of the readiness of governments to give serious consideration to their proposals. In an era of shrinking resources the challenge has been to make what is available go further, and to identify and utilise the resources of others. This has given special urgency in particular to our work for small island states - a concern permeating all facets of the Secretariat's work.

3. A major development during the period under review has been the establishment within the Legal Division of the post of Commonwealth Fraud Liaison Officer at the level of Assistant Director, to enhance international co-operation to counter fraud - a post requested by Commonwealth Law Ministers when they last met, in Barbados in 1980. A number of commissioned studies have been arranged in support of this initiative, and the volume and variety of requests for assistance received to date is eloquent testimony of the need for it. We have dealt in some detail with our activities in this regard, as Ministers may wish to inform themselves more closely in this respect. The post was established in November 1981 for an initial period of three years. As the decision whether to continue the service beyond November 1984 must be taken before the next Meeting of Law Ministers, some initial indication of its usefulness would be helpful.

4. Significant progress has also been made in the review of the 1966 Commonwealth Scheme for the Rendition of Fugitive Offenders, culminating in a Meeting of Commonwealth Governments held at Marlborough House in November 1982, the first Commonwealth *ad hoc* meeting of its kind in the legal area. A report of this Meeting will be distributed separately.

5. Another important development was our active participation within The Hague Conference on Private International Law in connection with the Convention on the International Abduction of Children by a Parent or Guardian. Following the discussions of Law Ministers at Barbados, we were able to convene a caucus of the Commonwealth members of The Hague Conference on the eve of its deliberations in an exercise which helped to lay the basis for a successful conclusion to the work of the Conference.

6. We have consistently maintained an "open door" approach and, as a matter of policy, have given consideration to every request and suggestion for action we have received. We have, however, necessarily endeavoured to limit our involvement in the activities of other organisations to those in fields in which the Commonwealth perspective introduces a major element or which might otherwise be overlooked. We have seen our primary role in this regard as being to encourage the work of others, and only to become directly involved when there are compelling reasons for us to do so. By so doing we have striven to avoid duplication of effort, and have also fostered the interest of others equipped and able to do so, to attend to additional activities which might otherwise fall upon the Secretariat.

7. Mention has been made of the flow of ad hoc requests for information which we receive, and Ministers may be interested in two, in particular. Each concerned litigation of

constitutional importance and of international interest. In each case we were able, overnight, to provide in triplicate (for prosecution, defence and judge) case law and other materials which the law officers of the governments could not have obtained within their regions and required to rebut arguments advanced by well-funded defence lawyers. In so doing the Secretariat's unique position to provide speedy assistance was illustrated. Also demonstrated was a lack of materials, some measures of which might be overcome if libraries and large law firms in developed countries were encouraged to donate, rather than discard, loose parts of series which include a bound volume service. We are currently exploring this possibility with a sample of law libraries and with the British Council.

Commonwealth Law Bulletin

8. Production of the Commonwealth Law Bulletin continues to be the principal focus of our activity in collating and disseminating information on legal developments. While a substantial part of the Bulletin is prepared in the Division, an indispensable role is played by correspondents in Commonwealth capitals who not only regularly send us material but also give vital assistance in helping to fill the many requests for further information we receive as a consequence.

9. The Bulletin continues to appear quarterly, and to a timetable that even a Law Minister's Meeting cannot disturb. The January issue will be arriving in Law Ministries as Ministers gather in Colombo, and the manuscript for the April issue will have already gone to the printers.

10. The Bulletin attracts a growing volume of complimentary comment, particularly from law draftsmen (who find it an indispensable tool in their work), law reformers and members of the judiciary. Additionally, the Bulletin is increasingly depended upon by jurisdictions whose receipt of primary legal matters is being affected by foreign exchange constraints and the requirement for Law Ministries to bear their share of necessary cutbacks. We exercise strict editorial control over its contents, but despite our determination to keep its size to the absolute minimum, in 1981 and 1982 the Bulletin extended to some 1,625 and 1,622 pages respectively. In its nine years of publication nearly 10,000 printed pages have been produced. This growing volume of useful and informative material has highlighted the need for a professionally-prepared cumulative index. This is now in hand, with the end of 1983 as the target date for completion. Such an index should serve to make much more readily accessible a unique storehouse of Commonwealth expertise and experience, and to facilitate still further the use made of comparative material.

11. As a by-product, we were able to use extract from the Bulletin to produce economically and usefully a separate, distinct publication, Commonwealth Developments in Health Law, which has been widely distributed by our colleagues in the Medical Division and which has received a highly favourable reception.

Legislative Drafting

12. The shortage of law draftsmen throughout the Commonwealth continues unabated and is suffered to varying degrees. In some jurisdictions, particularly in developing Commonwealth countries, the severity of the shortage is compounded by a lack of personnel suitable for training or an inability to release suitable personnel. This has meant that some of the jurisdictions most in need have been unable to take advantage of training facilities available to them at no cost.

13. At the end of 1981, too, the Australian Government found it necessary to close the Australian Legislative Drafting Institute. The Institute has served the Commonwealth well and Ministers would wish us to express gratitude to the Government of Australia as well as to Canada and the United Kingdom for the Canadian Legislative Drafting Course and the United Kingdom's Overseas Government Legal Officers' Course. In the place of the Institute, the Australian Government is examining ways in which to assist by making available in-service training facilities for trainee draftsmen from developing Commonwealth countries in the drafting services of either the Federal or the State Governments. The post-graduate course in legislative drafting at the Cave Hill Campus of the University of the West Indies, Barbados, introduced in 1979, also affords training.

14. The need has continued for the ad hoc legislative drafting courses funded through the Commonwealth Fund for Technical Co-operation (CFTC) and organised by the Legal Division. During the three years under review some 35 trainees attended from 19 different Commonwealth countries bringing to a little over 200 the total number of draftsmen trained

since the inception of the programme in 1974/1975. Details of these courses are set out in Annex 1. Unfortunately a serious shortfall in CFTC resources throughout the period had resulted in an inevitable cutback in CFTC-funded programmes, and this was unavoidably reflected in the number of courses we have been able to hold. Happily, however, an improvement in CFTC finances has enabled it to give provisional approval for us to increase the number of courses during the current financial year, to three. Two of these will commence in early 1983, one in Sri Lanka and the other in Kenya.

15. Ministers will wish us to express gratitude not only to the CFTC for continuing to fund the programme even during times of acute financial stringency, but also to the commendable services rendered by the Course Directors, Mr O.M. de Alwis (Sri Lanka) and Mr Justice V.C.R.A.C. Crabbe (Ghana). Their personal devotion to the Commonwealth cause has helped to maintain and nurture a vital Commonwealth link. That it has been possible to hold these courses since 1980 has also been due in no small measure to the generosity of the Government of Kenya, to whom our appreciation is due for assistance and support.

16. One suggestion made to us for the development of the CFTC drafting courses is that consideration be given to the holding of an occasional short "masters' course", at which more experienced draftsmen from developing countries might study advanced techniques in the preparation of legislation (including the use made of modern aids) and share the experience and insights they have gained from their own service. The views of Ministers on the merits of this suggestion would be of assistance.

17. The question of regional law drafting units for small jurisdictions is referred to later in this review.

Commonwealth Fraud Liaison Service

Establishment of post

18. In response to the request made by Commonwealth Law Ministers at Barbados arising from their concern about the serious implications of international commercial crime for their national economies, the Commonwealth Secretary-General appointed in November 1981 an Assistant Director in the Legal Division with special responsibility for fraud prevention. This officer is now conveniently referred to as the Commonwealth Fraud Officer (CFO). According to his appointment he has the following terms of reference:

- (a) Facilitating and promoting judicial assistance between Commonwealth countries and in appropriate cases non-Commonwealth countries in regard to commercial crime enforcement and related matters.
- (b) Developing criminal commercial intelligence and other intelligence bases between Commonwealth law enforcement agencies and between Commonwealth and such other agencies as may be appropriate and to this end, in a catalytic manner engendering and enhancing the flow of information to and between Commonwealth law enforcement agencies from both official and unofficial sources.
- (c) Gathering and disseminating relevant information with particular regard to criminal modus operandi, targeting and new facilities relating to combating commercial crime and related matters.
- (d) Assisting in the development of appropriate training programmes, exchange of personnel and the publicising of existing training opportunities both within countries and organised by other international agencies.
- (e) Providing a general facility for liaison for co-operation in combating commercial crime and related matters in the Commonwealth including in the area of international investigations, and in particular the development of close liaison with the General Secretariat of ICPO-Interpol and other such international organisations.
- (f) Facilitating and, where appropriate, conduct studies relevant to the combating of commercial crime and related matters.

- (g) Assisting in the establishment of a Commonwealth Panel of Experts on Commercial Crime (as called for by Commonwealth Law Ministers at their Meeting in Barbados in May 1980) and the servicing of this Panel.

19. Given the breadth of this officer's terms of reference and the limited resources available, it has been essential to select priorities. Of prime importance has been establishing a framework for effective communication within the Commonwealth and with agencies outside the Commonwealth. However, the pursuit of general objectives has had, in practical terms, to be subordinated to the provision of immediate assistance in specific matters where this has been requested. The unexpectedly high demand for his services in the development of investigations, and the workload of other officers in the Division has inevitably severely restricted his ability to pursue other terms of reference.

20. The effectiveness of the Commonwealth Fraud Liaison Service in its first year of operation has already become clear. One approach, adopted by some Commonwealth police agencies in attempting to quantify this, is to assess the total "cash at risk". This is well over US\$8 billion. While it could of course not be asserted that the CFO has saved or contributed to saving but a very small proportion of this staggering sum, nevertheless, the figure underlines the need for the service and emphasises (if emphasis be needed) the serious implications for developed as well as developing economies if this sort of crime is unchecked. In a good many of the cases already referred to the CFO the political and social implications had the frauds been successfully perpetrated would have been even more dramatic than the loss purely in financial terms. It is perhaps in the area of loss prevention through the strategic use of intelligence, that the service is of most practical use to Commonwealth countries.

Other International Organisations

21. Commonwealth Law Ministers expressed the wish that a closer working relationship be developed between ourselves and the General Secretariat of ICPO-Interpol. The Director of the Legal Division, and latterly the CFO, has made a number of visits to the Headquarters of ICPO-Interpol in France and an effective working relationship has been established in regard to commercial crime matters. We have also been able to maintain liaison with ICPO-Interpol on other criminal matters, not directly connected with commercial crime. The Commonwealth Secretariat has not yet been accorded formal observer status to the General Assembly of ICPO-Interpol, but we have been assured that this will be granted during 1983. The CFO has attended several proceedings organised by the General Secretariat as an ad hoc observer.

22. In addition, we have developed similar relationships with a number of other international and regional organisations. In some instances this relationship has been forged to provide a basis for liaison on matters only indirectly connected to commercial crime, such as attacking the financial assets of international organised crime and in particular traffickers in illicit narcotics. The close relationship between commercial crime and these other forms of serious organised crime, has been clearly shown in a number of sensational cases in recent months in the USA. These agencies include the International Air Transport Association (Fraud and Prevention Division); the International Maritime Bureau; the United Nations Division on Narcotic Drugs; the World Health Organization; the Commission of the European Communities; the Council of Europe; the Association of South East Asian Nations; the CARICOM Secretariat; the United Nations Crime Prevention Office; the SPEC Secretariat and the CHOGRM Working Group on Illicit Drugs.

Direct assistance

23. The most important aspect of our work in this area during the last year in practical terms has been the direct assistance that we have been able to give to Commonwealth law enforcement agencies in preventing or minimising the effects of commercial crime or in the investigation of such cases. The quantity and seriousness of these cases was unexpected, insofar as it was assumed that it would take some time before police agencies had sufficient confidence in the facility to employ it with the regularity it has. There is a present danger that our resources will be stretched to a point where the quality of service and/or the speed of response could be affected. Within the first year of operation fully 41 cases have been referred to us for intervention. In 26 of these cases the request has been made by or on behalf of a Law Minister or Law Officer, the designated official contact point, or a senior police

officer. In eight cases the request was made by or through an international organisation (i.e. ICPO-Interpol, IATA or the IMB). In one case the initial request for assistance came from a non-commonwealth country, and in that case a number of Commonwealth countries proved to have an interest).

24. Considering the nature of the assistance provided in many of these cases, the fact that many related to loss prevention, and to maintain essential confidentiality, the cases cannot either usefully or properly be described in any detail. In most cases, evidence of serious organised crime was present and in at least two cases links between the perpetrators and terrorists were established. In three others a relationship with illegal trafficking in narcotics could safely be assumed. In one instance a clear relationship was established between a Chinese secret society and a Mafia-type organised crime group in the USA. It is perhaps disturbing that so many matters of grave concern should be brought to light by such an office with such limited resources at its disposal.

Commonwealth Panel of Experts

25. A number of experts have agreed provisionally to serve on this Panel and several sub-panels relating to specific areas of commercial crime have been organised informally. We have been able to arrange on at least four occasions for experts to visit Commonwealth countries to provide assistance in the investigation of specific matters, with the cost involved being borne by the government in question. These cases have all involved maritime matters. It is hoped that this important facility may be extended to other areas.

Inter-police Force Co-operation

26. Our experience to date suggests that enhanced co-operation between Commonwealth police forces on a broad basis than we have either a mandate or the resources to foster, holds considerable potential not only in the fight against organised international fraud, but in the development and maintenance of forces with the skills and outlooks essential to the well-being of the societies they serve.

Technical Assistance Group

27. The Secretariat has been able to respond to requests from many Commonwealth governments for specialised consultancy services through the Technical Assistance Group (TAG), a specialist consultancy team of legal, economic and financial consultants, maintained by CFTC on its headquarters staff. The Group provides advisory services particularly on natural resource development in response to requests from governments. It assists governments, to devise legal and fiscal regimes and arrangements which seek to provide adequate protection for national interests. If required, the Group supports governments by actively participating in their negotiations with multinational oil and mining companies and other foreign investors. The Group has developed particular expertise in the legal as well as the economic and fiscal aspects of petroleum and hard mineral development. It also provides similar advice in the area of forestry. TAG has over the past few years, been building up expertise in the area of fisheries agreements and related issues in the context of the declaration of 200-mile Exclusive Economic Zones off the shores of islands and coastal States. It provides advice and assistance to Commonwealth Governments in these matters. The Group also continues to provide other more general legal and constitutional advice.

28. Over the past few years, TAG has responded to requests from many Commonwealth Governments principally in Africa, the Caribbean and the Pacific, on various aspects of petroleum development. The assistance provided has varied according to the stage a particular country may have reached in the development of its petroleum sector. In the wake of the general level of international interest in petroleum exploration worldwide, there has been recognition by many governments that their existing pre-independence legislation relating to petroleum operations is inconsistent with the modern requirements of both the governments and the international petroleum industry. Such recognition has sometimes been prompted by an approach to the government by an oil company but has on occasions reflected a government's view that fresh policies and legislation were required to stimulate serious interest in the country's petroleum sector. TAG has responded to requests to review, revise or replace existing petroleum legislation from a number of Member Governments including The Bahamas, Bangladesh, Cyprus, Fiji, Guyana, Malawi and Western Samoa. TAG has also advised the Government of

Belize and Kenya on licensing regimes for petroleum development and has assisted the Government of Barbados and Belize in the review of their petroleum income tax legislation.

29. Closely related to legislation is advice on policy and strategy, tailored to the particular requirements and needs of the requesting government. TAG has advised a number of governments on speculative seismic survey arrangements designed to provide data to the government and companies as regards the petroleum potential of the country, and to assist in attracting oil companies to undertake serious petroleum exploration programmes in the prospective areas identified by the geophysical surveys. TAG's advice on the designing and negotiation of these geophysical survey agreements has involved specialised legal inputs as well as technical and policy considerations. The instances of such advice were TAG's assistance to the Government of Seychelles and recently to the Government of St. Kitts on speculative seismic survey arrangements.

30. Following its assistance to the Government of Botswana in the preparation of its new petroleum legislation, TAG provided legal as well as economic support to the Government in its negotiations with an oil company for petroleum exploration agreement and following the withdrawal of the company is currently assisting the Government in its efforts to stimulate exploration by oil companies in Botswana. A senior legal adviser led a TAG team which provided the Government of Seychelles advice on petroleum development options and strategies and assisted the Government in its negotiations with an American oil company which resulted in a petroleum exploration agreement being signed by the Government. In Tanzania, following on earlier assistance provided by TAG in the preparation of modern petroleum legislation and in the negotiations for the conclusion of a petroleum exploration agreement with a Dutch oil company, TAG has assisted the Government in concluding arrangements for the participation by way of a farm-in by two other oil companies in the petroleum production sharing agreement. The legal issues which arose in the course of these negotiations proved complex and required specialised treatment by TAG's legal advisers.

31. TAG has sought increasingly to involve itself in collaborative projects in the petroleum sector with other international agencies active in the area including the World Bank, UNCTCD, and UNCTC and Commonwealth regional organisations. A recent example of regional collaboration involving TAG's lawyers is the provision of a senior legal adviser (himself from the Caribbean) to chair a Caribbean Community Secretariat Working Group set up recently to study and formulate the necessary measures for the harmonisation of petroleum policies and regimes in the CARICOM member countries.

32. As regard the hard mineral sector, in the current state of the world economy requests for assistance, particularly with non-fuel minerals, have been considerably reduced. This trend reflects the international economic climate in which both mineral corporations and developing country governments are now giving clear priority to fuel minerals over non-fuel minerals. Nevertheless, in the period under review, TAG has assisted a number of governments on various aspects of hard minerals development policy and on specific coal and uranium projects. The Group has responded to requests from a number of governments including Guyana, Swaziland and Western Samoa for new mineral legislation as a framework to assist them in their negotiations for mining agreements with transnational mining companies. TAG has also assisted the Government of Fiji in the review of its existing mining legislation. More substantial involvement in the hard mineral activities must probably await the recovery of the world industrial economy which when it comes is expected to stimulate an exploration boom in the hard minerals sector.

33. In support of its project activities in the minerals sector, TAG continues to undertake research on the legislative and fiscal regimes and agreements affecting mining in developing Commonwealth countries. Following the earlier publication of a similar study covering Commonwealth Africa, a comparative survey of legal and fiscal regimes governing the mining industry in the Pacific Commonwealth was published and circulated to Governments in November 1981.

34. A new area in which TAG now provides advice and assistance to Member governments is the delimitation of Exclusive Economic zones, and it helps governments in their negotiations on questions of maritime jurisdiction. This is, of course, relevant not only to offshore petroleum development but also to fisheries and, in the long term, to sea-bed mining. The CFTC had previously assisted the Government of Dominica in the delimitation of its maritime boundaries. A TAG senior legal adviser is currently assisting the Government in the negotiations on this matter.

35. In addition to the specialised priority areas described above, TAG continues to make its legal advisory services available to governments on a wide range of issues. TAG has assisted the Government of Papua New Guinea in the review of its foreign investment legislation. TAG provided one of its legal advisers as a resource person for a seminar held in Sweden in 1981 on legal issues relating to borrowing by governments and their agencies in the Eurodollar capital markets jointly arranged by the Dag Hammarskjöld Foundation and the Commonwealth Secretariat. The seminar was designed to assist Commonwealth developing countries in securing better legal terms in their negotiation of Eurodollar loans in the capital markets. On constitutional matters TAG has continued to advise and assist the governments of emerging independent countries of the Commonwealth. TAG is currently assisting the Government of St. Kitts in its preparations for independence. Legal assistance given since 1980 is scheduled in Annex 11.

36. A large part of TAG's work involves speedy preparation of draft legislative instruments and this has been facilitated immensely by TAG's ready access to the prompt and efficient services of a highly experienced and competent British legislative draftsman provided as part of the General Technical Assistance Programme of the CFTC who, in addition to his other work, works closely with TAG's lawyers on the individual projects requiring preparation of minerals and petroleum legislation on a regular basis. With the assistance of the legislative draftsman, TAG has also been able to respond to requests from small island countries in the Pacific for preparation of new or revised legislation in certain financial and commercial areas.

International Legal Activities

37. The main thrust of the Secretariat's legal activities has been in the domestic area, and this emphasis continues. However our work in the field of the recognition and enforcement of judgments has led us into a close relationship with The Hague Conference on Private International Law, and the production of a series of "accession kits" designed to assist governments in acceding to and implementing relevant conventions in the area of private international law. The warm reception these "kits" have received, our close liaison with ICPO-Interpol and our new capacity for involvement in combatting international "white collar" crime have also resulted in the production of several "kits" concerned with public international law. The conventions covered to date include:

- (i) The Hague Conventions on the Service of Process, the Taking of Evidence and Legislation
- (ii) International Conventions in the Field of Succession
- (iii) The Hague Convention on the Civil Aspects of International Child Abduction
- (iv) International Conventions concerning Applications for and Awards of Maintenance
- (v) The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards
- (vi) Three International Conventions on Hijacking and Offences on Board Aircraft:-
 - (a) Convention on Offences and certain other Acts committed on board Aircraft, Tokyo, 14 September 1963
 - (b) Convention for Suppression of Unlawful Seizure of Aircraft, The Hague, 16 September 1970
 - (c) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal, 23 September 1971

This is an area which we have approached with care, mindful of the fact that our resources are miniscule by comparison with any other international organisation, and conscious of the need to augment rather than to duplicate the work of others. It is however, a development which has been welcomed by international bodies and by Commonwealth Governments. We have also in keeping with our interests maintained contact with the Council of Europe in its work relating to the Transfer of Convicted Offenders.

38. Our activities in the field of private international law are discussed in greater detail in Paper LMM(83)15 which looks forward to our participation in the preparation at The Hague of a Convention on Trusts. Work has continued, in partnership with Professors Keith Patchett and David McClean (who have made notable contributions to the development of private international law in the Commonwealth, in the area of judicial assistance). Their work was significantly advanced when it was adopted as the foundation for a law reform report on the topic prepared by the Law Reform Commission of Western Australia at the request of the Standing Committee of Australasian Attorneys-General.

39. Following discussions at the Barbados Meeting concerning the transfer of convicted offenders, we have participated actively in the proceedings of a Committee of Experts established by the Council of Europe to formulate a convention on this topic. The Council of Ministers (i.e. of Foreign Ministers) has now approved the draft and the Convention will formally be opened for signature on 21 March 1983. A paper by Canada brings Ministers up-to-date with bilateral developments subsequent to the Barbados Meeting.

Publications

40. Since April 1980 the Legal Division has produced the following publications:

- (i) Commonwealth Law Bulletin (published quarterly in January, April, July and October);
- (ii) Three International Conventions on Hijacking and Offences on Board Aircraft: Explanatory Documentation prepared for Commonwealth Jurisdictions (prepared by Professor David Lloyd Jones in association with the Commonwealth Secretariat);
- (iii) Bibliography of Materials on Legislative and other Legal Drafting and the Interpretation of Statutes: Second revised edition 1982;
- (iv) The Hague Convention on International Access to Justice: Explanatory Documentation for Commonwealth Jurisdictions (prepared by Professor J.D. McClean in association with the Commonwealth Secretariat);
- (v) Decentralisation: Options and Issues: A Manual for Policy Makers (prepared by Edward P. Wolfers, Peter Larmour, and Yash P. Ghai);
- (vi) Legislative Draftsmen: A short list of some legislative draftsmen available for short ad hoc assignments (Commonwealth Secretariat, May 1982);
- (vii) Commonwealth Developments in Health Law (Commonwealth Secretariat);
- (viii) The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards: Explanatory Documentation prepared for Commonwealth Jurisdictions (prepared by Professor K.W. Patchett in association with the Commonwealth Secretariat);
- (ix) Law Reform in the Commonwealth: Law Reform Proposals and their Implementation, Issue No. 1: January 1981;
- (x) International Conventions concerning Applications for and Awards of Maintenance: Explanatory Documentation for Commonwealth Jurisdictions (prepared by Professor J.D. McClean in association with the Commonwealth Secretariat);
- (xi) Delay in the Administration of Criminal Justice: Commonwealth Developments and Experience (prepared by Judith A. Osborne in association with the Commonwealth Secretariat);
- (xii) International Conventions in the Field of Succession: Explanatory Documentation for Commonwealth Jurisdictions (prepared by Professor K.W. Patchett in association with the Commonwealth Secretariat);
- (xiii) The Hague Convention on the Civil Aspects of International Child Abduction: Explanatory Documentation for Commonwealth Jurisdictions (prepared by J.M. Eekelaar in association with the Commonwealth Secretariat);
- (xiv) Selected Memoranda prepared for the 1980 Meeting of Commonwealth Law Ministers in Barbados;
- (xv) Legal Literature in Small Jurisdictions: A selection of papers edited by W. Twining and J. Uglow (prepared by the Canadian Law Information Council for the Commonwealth Legal Education Association (CLEA));
- (xvi) Ombudsmen in the Commonwealth (A survey prepared for the Commonwealth Secretariat by the International Ombudsman Institute);
- (xvii) Report of the 1981 Meeting of Pacific Islands Law Officers (held at Port Vila, Vanuatu, 20-22 July 1981);
- (xviii) The Practice Relating to the Appointment of Queen's Counsel and Senior Counsel in some Commonwealth Jurisdictions (Commonwealth Secretariat);
- (xix) Newsletters of the Commonwealth Legal Education Association (CLEA);
- (xx) Medical-Legal Issues: A Report of a combined Medical-Legal Workshop held in Malawi, October 1979;

41. An addition to the above is a study of comparative legal measures taken to assist the disabled, undertaken to supplement activity at the United Nations in connection with 1981 being designated International Year for the Disabled. We plan a similar study concerning legal measures to assist the Aged relating to the 1982 International Year for the Aging.

42. Further, we have had discussions with Butterworths (UK) and have interested them in publishing three books (wholly at their own risk). One is the Modern Legal Commonwealth by Sir William Dale (by way of a successor to Sir Kenneth Roberts-Wray) and the other two, by Professors David McClean and Keith Patchett, are on the enforcement of judgments and orders in the Commonwealth.

Small States

43. The legal needs of the small State continue to receive special consideration. As Ministers will know, lack of size in no way diminishes the range of skills required of a legal establishment, and the demands of a modern legal system are unremitting. Thus, perhaps as nowhere else in government, the calls made upon its legal resources can be wholly disproportionate to what, from a realistic viewpoint, it can be expected to provide.

44. Proposed future activity in this field is the subject of a paper LMM(83)9, but Ministers may wish to know that, in the light of their endorsement at Barbados of the concept of a "small States' legal unit", we have been promoting the idea with governments and with agencies in both the Pacific and the Caribbean regions. If the necessary resources can be found to augment those which the CFTC is able to provide, the smallest of the States in these regions may be served collectively by units in St. Lucia and, possibly, Fiji with an initial emphasis on assistance with legislative drafting.

45. In this context we were able to encourage and attend a Meeting of Pacific Islands' Law Officers in Vanuatu in mid-1981, at which the proposal was discussed, refined and endorsed. The Meeting proved such a worthwhile forum and held such promise for the promotion of legal co-operation within the region that it has become an annual fixture. Its second Meeting was held in Apia in October 1982.

46. We were also able to take advantage of wide-ranging review of aid to the Caribbean region undertaken by the UK House of Commons' Select Committee on Foreign Affairs by arranging for Professor Patchett to prepare a submission stressing the importance of assistance in the legal area. The Committee has not reported to date, but we have been informed that the Chairman found the submission most useful and that it will be incorporated in the Report.

47. We have also had discussions with the Attorney-General of the Isle of Man, who, of his own initiative, has secured his Government's agreement to host a meeting from 4-8 July 1983, to which law officers from selected small jurisdictions are to be invited. The Government of the Isle of Man is generously offering to meet all costs of accommodation on the Island, and it is likely that the Agenda will embrace such topical matters of concern as the problems of publishing legal materials in the small jurisdictions; internal constitutional development (e.g. what is the role for an Ombudsman and what degree of control should be exercised over the police by the executive; the application of international conventions to small jurisdictions; the legal problems associated with tax havens; the Law of the Sea and the small State).

48. We also plan to have ready for the Isle of Man meeting a paper which examines the parliamentary procedures of some of the Channel Islands jurisdictions which are designed to minimise the waste of legislative drafting resources and to give maximum policy guidance. Under the procedures, in effect the drafting instructions are tabled and debated before substantive drafting is begun.

Relationships with NGOs

49. The Director of the Legal Division continues to act as Honorary Secretary to the Commonwealth Legal Education Association (the CLEA), which is run from within the Division with support from the Commonwealth Foundation. The CLEA produces a regular newsletter and in addition to its special projects it organised a useful exchange between law teachers from various parts of the Commonwealth at Cumberland Lodge in December 1981. A similar seminar is planned for March 1983. It is also assisting with the organisation of a Commonwealth-wide moot competition for Commonwealth law students, to be held in Hong Kong in September 1983 at the time of the Commonwealth Law Conference.

50. A major current concern of the CLEA relates to students from other Commonwealth countries studying law for call to the Bar in London. Ministers of countries which still send students to the UK for this purpose will be aware of the effect of a decision by the Bar's Council of Legal Education by which law students graduating from 1983 will have to have reached at least second class passes in their degree examinations if they are to go to complete the vocational education stage at the Inns of Court Law School, take the Bar Final and be "called". This seems certain to cause problems for the considerable numbers of law students from those other Commonwealth countries which still use U.K. facilities, and some Ministers may wish to pursue the matter with the admission authorities and with law schools in their home countries.

51. The Commonwealth Legal Education Association has given a great deal of anxious attention to this development and has provided this assessment of the position:-

- (a) Although the number of law students from other Commonwealth countries called to the Bar has fallen drastically from the fifty per cent proportion of 1969 to under twenty per cent in 1981, there are still probably 1,000 to 1,200 such students reading law at universities, polytechnics and private colleges in the UK.
- (b) It is impossible to say how many will not achieve seconds and be able to go through to call as in the past but it could well be 250 to 300. Most will have aimed at being barristers. Not many wish to become solicitors.
- (c) The bulk of the 1,000 to 1,200 law students, possibly even a half, come from Malaysia, Singapore and Hong Kong. The rest are drawn from Nigeria, other West African States, East Africa, part of the Caribbean and certain other countries without law schools or training facilities. (Mauritius, Sierra Leone, The Gambia and Cyprus).
- (d) The Commonwealth Legal Education Association and the organisations of British Law Teachers have made known that they consider the action of the Bar Council to be arbitrary and hard on the law students from abroad. The decision of the Bar Council has been defended as made necessary by shortage of training places and likely to be changed later. This cannot however come soon and the Bar Council will probably hold to second class degrees as a minimum qualification as indefinite policy.
- (e) Countries like Nigeria, Malaysia, Singapore, Hong Kong and Kenya can probably cope with graduates with British law degrees coming straight home after graduation to take vocational stage courses and examinations in those subjects, necessary to working as a lawyer, which will not have been covered by their degree course. Such a practice is desirable in any event but the special colleges or centres for practical training in these countries are usually heavily pressed to cope with local graduates and Malaysia is believed to be contemplating setting up Malaysian law courses and its own Bar Final Examinations in London as a temporary measure.
- (f) The hard rub will be students getting thirds from countries without local law schools or facilities for training and testing (Mauritius, Cyprus, Bermuda, etc.). They should not in total number more than perhaps 40 or 50 people but Ministers from the countries affected will want to reflect on what special measures may be necessary to deal with their predicament.
- (g) It seems unlikely that special courses can be arranged in the UK except possibly at a private law college.

52. We have also worked closely with the Commonwealth Legal Bureau, whose membership comprises Commonwealth Bar Associations and Law Societies. The Bureau, established to foster co-operation between the Commonwealth professional legal bodies, has not been as successful as had been hoped. To an extent this may be due to a lack of resources and to problems inherent in an organisation whose membership is wholly institutional. The potential for mutual assistance, especially for jurisdictions whose legal professional organisations are small or established relatively recently is widely recognised. Consultations are continuing and it is hoped that the Bureau will be formally reconstituted at the Commonwealth Law

Conference in Hong Kong in September 1983, so as to add categories of individual membership and to give a more dynamic role both in enhancing Commonwealth co-operation, regional as well as Commonwealth-wide, and in overseeing the Commonwealth Law Conference themselves.

53. We have also continued to assist other Commonwealth organisations as and when this has been appropriate. In the period under review we have been particularly concerned with the Commonwealth Games Federation, the Commonwealth Foundation (most conspicuously in its change of status from charity to international organisation), the Organisers of the Hong Kong Commonwealth Law Conference, the Commonwealth Association of Tax Administrators (with whom we are pursuing a joint project on tax avoidance provisions), the Commonwealth Magistrates' Association (with whom we are preparing a handbook for lay magistrates) and the Commonwealth Human Ecology Council (on legal measures controlling fresh-water and sea-water pollution). Organisations with whom we liaise and not mentioned elsewhere include the Institute of Criminology (Toronto), the Australian Institute of Criminology (Canberra), the International Ombudsman Institute (Alberta), the International Planned Parenthood Federation (London), the British Council (London) and the British Institute of International and Comparative Law (London). In addition our officers serve on a number of Editorial Boards as well as Advisory Committees for the UK Government Legal Officers' Course and the British Council in respect of its activities in the legal field.

Internal Secretariat Work

54. The day-to-day affairs of the Secretariat including the CFTC continue to generate a significant volume of legal work, all of which is attended to by the Legal Division.

Relationships with Other Secretariat Divisions

55. Our involvement with the activities of other functional Divisions within the Secretariat has also developed over the period under review. Most noteworthy is a multi-disciplinary approach to the implementation of the WHO Breast-Milk Substitutes Marketing Code, which is of considerable significance to a large number of Commonwealth countries and which poses a special challenge to legal establishments. Together with the Secretary-General's Adviser on Women and Development and his Medical Adviser, and with financial support from the CFTC, the World Health Organisation and UNICEF, we have been assisting in the preparation of country-by-country reports on strategies for implementation which formed the basis for a selected workshop held in Harare, Zimbabwe in January 1983. We were also called upon in November/December 1980 to assist the Commonwealth team which observed the elections in Uganda.

Staff

56. The size of the Legal Division has remained unchanged for the last eight years, the addition of a Commonwealth Fraud Liaison Officer being balanced by a vacancy which has just been filled. Our staff comprises five professionals (Britain, India, New Zealand, Nigeria and Western Samoa).

Future Activities

57. The basic pattern of our activities is now firmly established and we do not anticipate that Law Ministers will wish to alter it substantially. We remain, as ever, keen to serve and to tackle within the limits of available resources whatever additional responsibilities we may be given.

58. An informal meeting of Commonwealth Law Reform Agencies was held in Lagos, Nigeria in 1980 at the time of the Commonwealth Law Conference there. Together with the Attorney-General of Hong Kong we have now determined that there is considerable support amongst the Agencies for a full-scale meeting to coincide with the Commonwealth Law Conference in Hong Kong later this year, to capitalise on the likely presence there of a large number of those active in the field. This has been agreed with the Conference organisers and is tentatively scheduled for Wednesday, 21 September 1983.

59. Another proposed meeting, and one which holds promise for new areas of mutual assistance and co-operation, has been suggested by the Government of Victoria, and supported by the Government of Australia and endorsed by a number of Commonwealth Governments in the Asia/Pacific Regions. The Meeting tentatively planned for 1984,

would be of Commonwealth administrators responsible for correctional institutions, and be organised by the Australian Institute of Criminology with assistance, should Ministers concur, from the Secretariat. Items suggested for the Agenda include the treatment of foreign prisoners; problems in enforced medication of violent prisoners; complaint procedures; the treatment of young; well-educated prisoners imprisoned for drug-related offences; and the handling of prisoners on "hunger-strike".

60. Paper LMM(83)4, prepared by the Asian-African Legal Consultative Committee (the AALCC) highlights an area into which our work on the recognition and enforcement of judgments and orders might usefully be extended. It may prove possible for us to assist in the formulation of improved arrangements with the Middle Eastern States by developing an appropriate form of liaison through the AALCC, and this we intend to explore.

Appreciation

61. Our role is essentially that of the catalyst, and without the wholehearted co-operation of our colleagues-in-law in all parts of the Commonwealth little, if anything, could be achieved. We are deeply conscious of our indebtedness to so many individuals and organisations who cannot all be listed here. We have endeavoured to keep our demands on the time of busy officials to the very minimum, and if on occasions we have seemed to have imposed unduly, we can only plead in mitigation the volume of requests to which we have been asked to respond. Our most sincere thanks go also to Commonwealth Law Ministers, from whom we receive support and encouragement in such full and generous measure, to whom we look for guidance, and with whom we look forward to working with in the future.

DETAILS OF THE SECRETARIAT'S LEGISLATIVE DRAFTING COURSES ANNEX I

1980

African Region

4th East African Legislative Drafting Course (Nairobi, Kenya) 6 July to 16 December 1980

Bangladesh	1
Belize	1
Fiji	1
India	1
Kenya	1
Kiribati	1
Malawi	1
Nigeria	2
Sri Lanka	1
Zambia	1

11 countries

12 trainees

1981

African Region

5th East African Legislative Drafting Course (Nairobi, Kenya) 12 May to 31 October 1981

Bangladesh	1
Ghana	1
India	2
Kenya	2
Sri Lanka	2
Swaziland	1
Tanzania	1
Uganda	2

8 countries	12 trainees
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1982

African Region

6th East African Legislative Drafting Course (Nairobi, Kenya) 14 June to 16 December 1982

Bangladesh	1
The Gambia	1
Ghana	1
Guyana	1
Kenya	2
Malawi	1
St. Vincent	1
Seychelles	1
Sri Lanka	1
Tanzania	1

10 countries	11 trainees
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GRAND TOTAL: 19 Different Countries
35 Trainees

**LEGAL TECHNICAL ASSISTANCE ASSIGNMENTS PERFORMED FOR
COMMONWEALTH DEVELOPING COUNTRIES UNDER THE COMMONWEALTH FUND
FOR TECHNICAL CO-OPERATION**

- Notes:
- (1) A number of the projects listed below have been completed but many are still in operation, or under consideration or awaiting recruitment to enable them to proceed. The list does not include the legislative drafting training courses described in Annex 1, but does include other assistance provided under the Education and Training Programme of the CFTC.
 - (2) The reference to TAG means that the project was undertaken by the Technical Assistance Group of the CFTC (in association with other countries, on occasions)

COUNTRY ASSISTED, DESCRIPTION AND DURATION (if relevant) OF PROJECT

African Region

Regional Seminar on legal training and courts of first instance, Zambia (9 days)

Asia and South Pacific Region

Advice on financial legislation (October 1981 continuing) (TAG)

Comparative study on mineral resource development in the Pacific (15 months) (TAG)

Caribbean Region

Caribbean Community Secretariat

Legal Consultant on the harmonisation of laws (2 years)

Commonwealth Generally

Legal Draftsman (3 years)

Resource person for Commonwealth programme on Capital Markets - Seminar on legal issues Sweden (November 1981 - 5 days) (TAG)

The Bahamas

Adviser on petroleum legislation and policy (1 week) (TAG)

Barbados

International Law and Treaty Adviser (2 years)

Consultant, Criminal, Judicial and Penal Statistics (3 months)

Expert in training of para-legal personnel (1 year)

Adviser on Law Reform (18 months)

Adviser on petroleum legislation and taxation (April 1981 continuing) (TAG)

Belize

Consultant to assist with negotiations (2 weeks)

Advice on draft petroleum legislation and taxation (July 1981 continuing) (TAG)

Expert, Law Revision Project (2½ years)

Adviser, Land Law (4½ months)

Adviser, Administrative Law (6 months)

Botswana

Legal Draftsman (1 year)

Advice on petroleum legislation, exploration strategy and negotiations (July 1980 continuing)

Legislative draftsman (2 years)

British Virgin Islands

Advice on Insurance Legislation (6 weeks) (TAG)

Cook Islands

Advice on Draft Superannuation Bill (1 week) (TAG)

Cyprus

Advice on petroleum legislation (November 1980 continuing) (TAG)

Dominica

Advice on maritime boundary negotiations (April 1982 continuing) (TAG)

Solicitor General (2 years)

Fiji

Crown Solicitor (International) (2 years)

Principal Legal Draftsman (31 months)

Attendance at Seminar on energy law (1 week)

Review of mining and petroleum legislation and agreements (March 1982 continuing) (TAG)

The Gambia

Legal Draftsman (2 years)

Grenada

Legal Draftsman (1 year)

Guyana

Legal Draftsman (Chief Parliamentary Counsel) (3 years)

Bachelor's Degree Course in Law (2 years)

Advice on mineral and petroleum policy and legislation (March 1982 continuing)

Kenya

Advice on revision of petroleum legislation (4 weeks) (TAG)

Malawi

Advice on petroleum legislation (February 1981 continuing) (TAG)

Mauritius

Adviser on Law Revision (4 months)

Land Bank Expert to advise on the establishment and operations of a Mauritian Land Bank (3 months)

St. Christopher-Nevis

Legal Draftsman (3 years)

Advice on Independence Constitution (June 1982 continuing) (TAG)

Advice on Geophysical survey agreements (February 1982 continuing) (TAG)

St Lucia

Legal Draftsman (2 years)

St Vincent and the Grenadines

Legal Draftsman (4½ years)

Consultant on Law Revision (4 months)

Seychelles

Advice on petroleum strategies and negotiations (11 months) (TAG)

Training attachment with the High Court Kenya (6 months)

Training attachment with the High Court Kenya (6 months)

Chief Justice (2 years)

Adviser Supreme Court Registry (5 months)

Solomon Islands

Advice on petroleum legislation (July 1981 continuing) (TAG)

Treaties and Conventions Adviser (6 months)

Legal Draftsman (2 years)

Sri Lanka

Attendance at Asian-African Legal Consultative Committee Seminar on International Law (1 week)

Swaziland

Advice on mining legislation (July 1981 continuing) (TAG)

Tanzania

Assistance with negotiations with oil company (7 weeks) (TAG)

Advice on extension of petroleum exploration agreement (1 month) (TAG)

Advice on amendments to petroleum exploration agreement (4 months) (TAG)

Advice on legislative measures to give effect to recommendations for changes on capital structure of State Petroleum Corporation (1 week) (TAG)

Tonga

Adviser on Exchange control legislation and banks trust legislation (2 months)

Tuvalu

Legal Adviser on Constitutional Issue (1 week)

Review of Customs Legislation (1 week)

Vanuatu

Advice on mineral and petroleum legislation (October 1982 continuing) (TAG)

Legal Draftsman (2 years)

Western Samoa

Advice on petroleum legislation (September 1981 continuing) (TAG)

Senior Legal Officer (2 years)

Advice on mining legislation (September 1981 continuing) (TAG)

Parliamentary Counsel (2 years)

Zimbabwe

Legal consultant (10 days)

Adviser, training of judicial officers and primary courts (3 weeks)

Legal Consultant for training of magistrates (2 years)

Supreme Court Judge (2½ years)

Parliamentary Draftsman (6 months)

Parliamentary Draftsman (18 months)

Legal Consultant and Senior Inspector for Primary Courts (extended for further two years with effect, from 31 March 1983)

Parliamentary Draftsman (2 years)

Parliamentary Draftsman (2 years)
