Hardly any information on the Secretariat of the United Nations has yet been published. This fact should not be allowed, however, to lead to the complacent assumption that all is well with the internal workings of the Organization, for such is not the case. In the hope that the failings revealed may be corrected this paper has been written. The criticisms it advances may seem premature since the United Nations has been in existence only for a period of some three years, but changes are made so reluctantly in the functioning of any corporate body not subject to the spur of open competition that it is more important than ever that defects should be speedily publicized.

The Establishment of the Legal Department

The Legal Department of the United Nations is one of the eight principal divisions into which the Secretariat, that is, the staff of the Organization, is partitioned. It is the smallest of the departments, having an establishment at present of fifty-two members out of a total staff of 3,908. It is headed by an Assistant Secretary-General in charge of Legal Affairs and a top-ranking director who also has the post of General Counsel. The function of the latter post may be described as that of personal adviser to the Secretary-General on legal matters and on the legal aspects of policy questions.

Readers may gain an impression from this article that the criticism contained in it is directed solely against the officials who head the Department of Legal Affairs. It is not intended to convey such an impression. It would be extremely difficult to attribute the blame for the state of affairs that exists. It belongs primarily to the states-members of the United Nations which prescribed the establishment of the Secretariat and review it annually with little interest, and which insist upon observance of the principle of geographical representation. In broad measure, the top officials of the Department are powerless to remedy what exists.

Excluding the office of the Secretary-General, which is sui generis.

Figures are those given in the budget for 1950 as presented to the Fourth Session of the General Assembly.
The rôle of the Legal Department in the Organization has never been defined, apart from vague formulae such as "the conduct of legal affairs". Formulae of this sort have some meaning when used of departments like the Department of Trusteeship, trusteeship being the subject of a chapter of the Charter of the United Nations, but they mean little when applied to the Legal Department. There are only two provisions of the Charter that distinctly require the Secretariat to perform legal tasks, the provisions on the codification of international law and the registration of treaties. These two functions apart, the absence of provisions in the Charter makes it clear that the Legal Department does not possess any what may be called "original jurisdiction", unlike such departments as Economic Affairs, which do. The functions performed by the Legal Department may generally be said to be subsidiary to initiative entrusted to other departments.

The Functions of the Legal Department

The two provisions of the Charter just mentioned have led to the organization of the staff of the Legal Department into three divisions: a Division for the Development and Codification of International Law, a Division on Privileges and Immunities and Registration of Treaties, and a General Legal Division. Each division is headed by a director. The division first mentioned is the largest, the division mentioned second the smallest. The work of each division is implicit in its title. The Division for the Development and Codification of International Law prepares material for and "services" the International Law Commission, a body of legal experts charged by the General Assembly with codifying and improving international law. The Division on Privileges and Immunities and Registration of Treaties deals with any problems arising over the privileges and immunities accorded to the Organization, to the members of delegations to it and its conferences, and to the staff. In addition, the Division registers treaties to which, generally speaking, a member of the United Nations is a party. The General Legal Division is the "omnibus" section of the Legal Department, performing any other legal tasks that may arise, such as handling local legal questions in which the Organization is involved and supplying legal advice to conferences and to other departments. Once a year, at the regular

4 That is, makes all administrative arrangements for the Commission, including background papers, and supplies it with a secretary who is its administrative officer.
session of the General Assembly, the Legal Department as a whole “services” the Sixth (that is, the Legal) Committee and supplies it with such material as it may require.

**Criticism of the Establishment of the Department**

What has been said gives a summary picture of the establishment and functioning of the Legal Department. It is logical to criticise the establishment first and take up the functioning later. The first criticism to be made of the establishment is that it does not make sense. Obviously a division on codification and development of international law is necessary, together with a division to deal with general legal questions, but a third division to handle registration of treaties and privileges and immunities is unwarranted.

Privileges and immunities were of some importance during the first two years of the Organization’s life when many problems relating to the establishment of the Organization in the site country required solution. But they must necessarily lose much of the importance they once had as soon as the Organization settles down to routine existence. This stage was reached some time ago, yet there is no sign that any change in the establishment of the Legal Department is contemplated. Even so, privileges and immunities could always have been treated as a function of the General Legal Division. It is incomprehensible why this subject was singled out for special attention. As for the registration of treaties, it is mostly a mechanical task. The clerical staff required to handle it could have been attached to the office of the Assistant Secretary-General, and any questions requiring the attention of a professional officer could have been handled by the General Legal Division. It seems clear that a separate division on Privileges and Immunities and Registration of Treaties has no reason for existence.

The second criticism of the establishment of the Legal Department is that the scheme of entrusting the top-ranking director of the Department with the additional role of General Counsel is illogical from the point of view of administration and impossible from the point of view of efficiency. The General Counsel has direct access to the Secretary-General and works under him. His functions obviously must clash with those of the Assistant Secretary-General and have done in the past. An uneasy working arrangement seems to have been evolved — generally speaking, the Assistant Secretary-General devotes himself to matters of administration and publicizing the work of the United Nations
in the field of international law, while the General Counsel handles legal advice. This arrangement, which can be observed in practice although no written or oral agreement covering it was ever made, works irregularly, and on at least one occasion the Assistant Secretary-General has intervened in the tendering of legal advice to reverse the General Counsel, with a most unhappy effect upon the relations of the Legal Department with other branches of the Secretariat.

It is difficult to understand why a decision was made that a General Counsel was required in the Secretariat when the creation of a separate department for legal affairs had already been approved. There can be little justification for such an evidently illogical situation. The post of General Counsel was not included in the framework of the Secretariat prepared by the Preparatory Commission in London in 1945. It is said that the post was established at the instance of the Government of the United States of America. This is probably true, since only in the United States is the office of General Counsel an established institution. If it is true, the establishment of the post may possibly be attributed to political reasons — the fact that a national of an Eastern European country was being considered for Assistant Secretary-General required the appointment of a national of a Western country with equal authority in legal matters. Speculation of this type, however, is not a very profitable pursuit. Whatever the reasons behind the scenes, a patent duplication of functions exists and the Secretary-General apparently is content to let it remain.

Criticisms of the Functioning of the Legal Department

The duplication of functions at the head of the Legal Department probably accounts for its most notable defect — a lack of policy in the Department. Sound, consistent policy can hardly be expected when the policy-making functions are split between two authorities living side by side in a makeshift alliance. The existing lack of policy may also be inherent in the functions of the Legal Department which, as has been explained, are subsidiary. Irrespective of the reasons, the Department from its inception has “muddled through” with little policy and with little idea of what it should do. Its attitude to its tasks has been essentially negative, with the result that its personnel live in an atmosphere of lassitude. This has brought the Department into disrespect among the other divisions of the Secretariat. It is a state of affairs that begs a remedy, but while the establish-
Admittedly, the conception of policy for the Legal Department, with its subsidiary rôle in the Organization, is difficult. It is easier to see the results of a lack of policy than the tenets of what a policy should be. These results are evident. They can be seen in the fact that the most important work in the field of international law in the United Nations Secretariat was not entrusted to the Legal Department—the implementation of the Charter with respect to the observance of human rights. This work is being done by a division of the Department of Social Affairs, a division staffed by lawyers. Such a state of affairs speaks volumes. Another illustration is the fact that an International Law Commission has been established to carry out the function of codifying international law, a task requiring such continuity and study that unless a great amount of money is to be expended only the Secretariat can perform it effectively.

It may be a little unjust to deduce a reflection upon the capacity of the Legal Department from the fact that the International Law Commission was established. Probably the Commission would have been established in any case, since its establishment provides a good opportunity for legal authorities having influence with their governments to take regular vacations abroad at the expense of the international community. It seems clear however that, had the Legal Department more positively displayed its value to the representatives of the members of the United Nations, the opponents of the establishment of the Commission would have had a stronger case to present. Had the Secretariat been asked to perform the functions of the Commission, the necessary supervision of its work could have been done by the Sixth Committee of the Assembly, upon which many lawyers sit.

A final illustration is the attitude of the Legal Department to the solution of the problems that are presented to it. Questions are generally answered strictly in accordance with bare legal principles, by stating the law applicable irrespective of the circumstances, as a part of a general negative attitude. Rarely is an attempt made to apply the law flexibly, to temper law with policy where it could be done without transgressing the law. Any other practice would be regarded as risky, and the guiding motive of the Department is to avoid risky opinions, particularly politically risky opinions. The result is that the officers of

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5 Such comments may seem frivolous but it is strange how often motives of this kind lie behind action taken in the United Nations.
the Legal Department are remote from the life of the Organization, in general they detach themselves from it, guide it along legal channels, then watch it flow past them; they are in the staff but not of it. No sound lawyer who wishes to inspire confidence and respect from his clients can coldly tell them the law on a problem, and then let them fight their own way past the difficulties which that very law places in their path. The lawyer’s task is to assist, not as a text-book, as a work of reference, but as an instrument through which legal ways can be found to put politically desirable plans into effect.

Where any policy has been laid down for officers of the Legal Department to follow, it has generally been wrong. Thus, at an early stage in the existence of the Organization a rule was adopted that a legal officer should follow closely the work of the Security Council, and always be at hand for consultation by the Council if required. Officers passed many hours sitting futilely in meetings of the Council, listening to debates of a purely political character in which any law invoked was invoked subjectively, having brought home to them the lesson most of them already knew — that law has little place in a political arena. Another rule of policy that has still some blessing is that legal officers are an essential part of any mission sent abroad, the Palestine Commission for example. Such a rule, based upon a desire to build up the prestige of the Legal Department, has been proved wrong. Almost all the missions that have been despatched have been political and, as has been suggested, lawyers venture into them at their own risk. Any strictly legal issues that come up on missions can be answered speedily and more effectively by telegraph. Legal officers despatched on missions have generally passed their time on administrative duties.

It would not be fair to advance the criticism that has just been made without offering some suggestions on what the policy of the Legal Department should be. Before doing so, however, there still remain other defects in the functioning of the Department to survey. Probably attributable to all that has been said so far is the next criticism. This is that the Legal Department is overstaffed for the amount of work it has to do. It may fairly be said that five competent lawyers working as hard as they would normally do in private practice, with an equal number of secretaries, could perform the functions now being carried on by twenty-six lawyers. Most of the personnel of the Department have little work. The author can vouch for the fact that one highly regarded officer of the Department did one week’s work
in five months, although he complained frequently of having nothing to do. Those members of the staff who appear fully occupied may normally be found to pass their time performing as slowly as possible work requiring little effort, or sitting in meetings where they have no business or where once in twenty sessions they may be asked to venture a two-minute opinion.

A further criticism follows from what has just been said. It is evident that lawyers of ability will not remain long in a department that functions in the way described. The calibre of the lawyers in the Department is, therefore, mediocre to poor. There are exceptions to this statement but it is in general true. Another reason is the necessity of having the Department geographically representative of the members of the Organization, a criterion in the selection of the staff that the Secretary-General, under pressure of the Latin-American delegations in the General Assembly, has carried to extremes. The Legal Department prides itself on its geographical representativeness, but this virtue is hardly an excuse for inefficiency.

Yet another reason for the low calibre of the staff of the Department is a general one applicable to the staff of the Organization as a whole. It is a fact that able persons all over the world are not so interested in the work of the United Nations that they will give up their countries, and all that such a step entails, to work as an international civil servant. A glance at the staff of the United Nations startlingly reveals either a world-lack of an international spirit among the intelligent, or a lack of faith in a world organization based on the principle of the sovereignty of its member states. The latter is probably the more fundamental cause, and it is not unjustified in the eyes of anyone who has followed the work of the United Nations since its inception.

**Conclusion**

Criticism is useful only in so far as it can serve to remedy. It remains to state what should be done with the Legal Department to remedy its defects. The most necessary change is to liquidate the duplication of responsibility between the Assistant Secretary-General and the General Counsel. The dissolution of this uneasy alliance is of paramount importance. It may be done in either of two ways—abolish the post of General Counsel, entrusting the functions of the post to the Assistant Secretary-General, or abolish the Legal Department and make the General Counsel the head of a legal division in the office of the Secretary-
General. On the merits, the latter course, though the more drastic, seems preferable.

The abolition of the Legal Department is advocated for reasons that should now be obvious. The Department has little original jurisdiction, particularly since the International Law Commission was established to perform a function eminently that of the Department. Its work does not entitle it to departmental status. An office of the General Counsel as part of the office of the Secretary-General, consisting of a small number of highly skilled lawyers, can adequately handle all the work there is to be done.

The question of the policy to be followed in legal matters then becomes of less importance, since the urge for policy-making in the Legal Department in the past can be attributed to the need for justifying a large staff, which will then have disappeared. Generally speaking, however, the General Counsel and his assistants should follow the rule that what is required of them is not so much a knowledge of law, although this is of course essential, but a knowledge of how to apply a legally trained mind to questions of policy, of how to assist the life and progress of the Organization by the application of their specialized knowledge. This is the pre-eminent requirement of the lawyer in the international organization, for in most cases the occasions upon which he is required to solve pure questions of law, as distinct from those of policy and common sense, are rare.

The remedy advocated is heroic and there is little hope that it will be applied. Governments have too little interest in the Secretariat of the United Nations, and only display an interest in it when it threatens to cost them too much money. The vested interests, both political and personal, that would have to be overcome if such a step were to be taken successfully are likely also to be too strong. Doubts of success cannot excuse, however, a failure to throw the light of publicity upon the defects of a part of an organization of such importance as the United Nations.