

# Legal Directorate Annual Report 2013-14



Foreign &  
Commonwealth  
Office

LAW



***"Justice and international law are central to foreign policy. The rule of law is critical to the preservation of the rights of individuals and the protection of the interests of all States... There is no doubt where Britain stands: we are with those who say that international law is universal and that all nations are accountable to it and we do not shy away from accountability to it ourselves."***

***The Rt Hon William Hague MP  
Secretary of State for Foreign and Commonwealth Affairs***

***Speech in The Hague, July 2012***



# Legal Directorate Annual Report 2013/14

*This is the FCO Legal Directorate's Annual Report for 2013/2014.*

*The Directorate advises the FCO on legal, treaty, maritime, and some parliamentary issues.*

**Part One** describes the structure, organization and objectives of the Directorate.

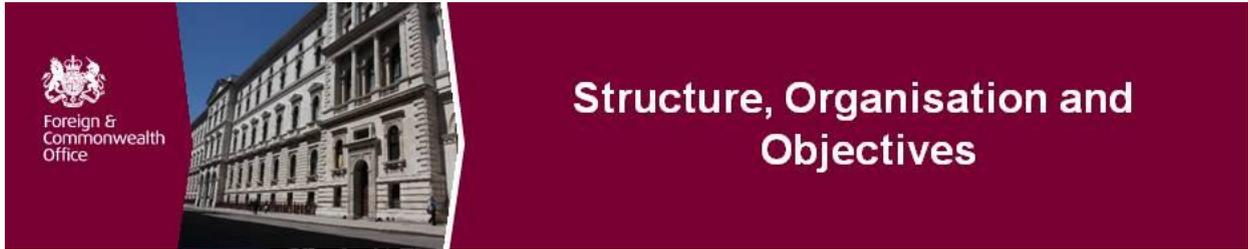
**Part Two** describes what each team does, highlighting the main areas of work from last year and the challenges for the year ahead.

**Part Three** sets out some areas of the Directorate's work which cut across all of the teams.

*Legal Directorate  
Foreign and Commonwealth Office*

**June 2013**

# **Part One: The Directorate**



*There are over 70 staff in the Legal Directorate: lawyers, information, treaty and parliamentary specialists, communications and office managers and executive assistants. They advise on legal, treaty, maritime and some parliamentary aspects of the FCO's work.*

*Most lawyers are based in London. They are organized into four teams:*

- *Counter Terrorism and Human Rights*
- *General Law and Litigation*
- *EU and Wider Europe*
- *International Institutions and Security Policy*

*The Directorate also includes:*

- *Treaty Section*
- *the Legal Library*
- *Maritime Policy Unit*
- *ECHR Case Registry*
- *Office Management*
- *Communications and Parliamentary work.*

*Several lawyers serve as members of FCO posts overseas in:*

- *UK Permanent Representation to the European Union, Brussels*
- *UK Mission to the United Nations, Geneva*
- *The Hague*
- *UK Delegation to the Council of Europe, Strasbourg*
- *UK Mission to the United Nations, New York*

*A number of lawyers are currently seconded to the EU and a senior lawyer is seconded to the Attorney General's Office. In addition, some lawyers are seconded to FCO policy teams both in London and overseas.*

## Organization and Management

Legal Directorate is headed by the Legal Adviser, Iain Macleod; and four Deputies: Chris Whomersley, John Grainger, Cathy Adams and John Evans.

The Directorate Management Committee consists of representatives from each team and meets every two weeks.

There are also cross-Directorate committees dealing with issues such as Training, the Staff Survey, extended leave and the budget.

## Legal Directorate's Objectives

Legal Directorate has five main objectives:

1. Advice
2. Management
3. Legal Awareness
4. Outreach
5. Shared Service to Government

### 1. Advice

***To provide accurate, prompt and policy-friendly legal and treaty advice on all aspects of the work of the FCO***

This is our core objective, shared by all teams. Examples of issues we have been engaged in during the past year appear in Part Two of this Report. We also set out there some of the challenges we expect to face in the coming year.

Highlights this year have included work on:

- the Brighton Declaration (Counter Terrorism and Human Rights team)
- the Lockheed Martin application for a deep seabed mining licence (Maritime Policy Unit)
- the Justice and Security Act (General Law team)
- the Arms Trade Treaty (International Institutions and Security Policy team)
- the Mutual Legal Assistance Agreement with Jordan (Treaty Section)
- the "Balance of Competence" review (European Union Team)

## **2. Management**

### ***To be a well run, effective and happy team***

Developing and enhancing the management of the Directorate remains a high priority. Several important steps were taken in 2012/2013, including

- Revising and reissuing the Directorate’s Induction Programme
- Establishing a systematic programme for training and development
- Publication of better arrangements for supporting those on MATL or extended leave
- Publication of a statement of Values
- Reducing security breaches by over 60% in the course of the year
- Improving budgeting and forecasting in the Directorate’s administrative budget.

The focus next year will be on

- Addressing issues raised by the 2012 Staff Survey
- Providing ADC and GLS Gateway Training
- Building capability, especially in line management
- Developing better client care practices across the Directorate.

## **3. Legal Awareness**

### ***To improve the level of understanding of legal and related issues across the FCO***

Our aim is not just to advise on legal and treaty issues, but to enhance and build the FCO’s capability to handle the many legal questions which permeate its work. This is Legal Directorate’s distinctive contribution to the FCO’s Diplomatic Excellence programme.

Progress on this, and our plans for the coming year, are described in Part Three.

## **4. Outreach**

### ***To maintain and enhance the impact and reputation of the UK in the wider international law world including in particular among academic lawyers and legal practitioners in the UK***

FCO Legal Directorate is one of the principal international law practices in the UK, and there is a long tradition of engagement between the FCO legal advisers and the wider UK international law community. This has involved legal advisers publishing articles and books, contributing at seminars and university courses and at an annual “academic seminar” at which international law academics and FCO legal colleagues could engage directly on topical international law issues.

The past year has seen a significant development of work in this area and we plan to take this forward further in the coming year. This is described in Part Three.

## **5. Shared Service to Government**

### ***To develop a shared resource for HMG as a whole on international law issues by developing strong links with other legal teams in Whitehall***

FCO Legal Directorate is an associate member of the Government Legal Service (GLS), working closely with legal teams across Whitehall, in particular with Treasury Solicitors, and with lawyers in the Ministry of Defence, the Home Office, and the intelligence agencies. Most of the FCO legal team have experience of work in other Government departments and several of the team are currently on loan to the FCO from other Whitehall legal teams.

The Legal Directorate participates in training provided by the GLS (as a provider and "consumer" of courses and seminars). Like Whitehall counterparts in other departments, the FCO legal team also draw on the shared services provided by Treasury Solicitors (in areas such as EU law, litigation, employment and procurement) and Parliamentary Counsel (for advice on and preparation of primary and secondary legislation). They also engage with the Law Officers and with the Attorney General's panels (of barristers selected for Government work).

This engagement and co-operation is set to increase in the coming year:

- There are plans to hold a GLS International Law Conference bringing together legal teams in Whitehall who work on international law issues
- GLS Trainees will be offered "seats" in FCO Legal Directorate
- The GLS "Gateway" (the SCS promotion assessment centre) will be available to FCO lawyers for the first time
- Joint training with GLS legal teams will be expanded
- An international law panel (of counsel) will be established in the autumn.

## **Staff Survey 2013**

The response rate for the 2013 Staff Survey was very high. There were improvements on the 2012 survey scores in several areas: scores for engagement with work were above the FCO average and there were strong scores on access to learning and development, clarity of work objectives and workplace diversity.

In other areas, the Survey showed that work remained to be done. There was strong dissatisfaction with pay and benefits, and a drop in the positive feeling staff had towards the FCO. The Directorate's overall engagement rating fell by 5%.

The 2012 Survey recognised however that efforts had been made in response to the

previous year's Survey; and in the same way, work is in hand to learn from and address concerns addressed in 2012

## **Client Satisfaction Survey 2013**

The Directorate carried out a customer satisfaction survey in February and March 2013, seeking views from FCO colleagues on matters such as clarity of advice, response times, ease of access to legal advice, and absence cover as well as performance overall.

Generally, the results were positive, and the responses helpfully identified areas where arrangements for provision of legal advice can be improved (in particular as regards cover arrangements). These issues will be addressed in the coming year.

## **Learning and Development**

The Legal Training Group (LTG) was established early in 2012 to supervise and organise learning and development for the Directorate. A significant achievement in 2012 was the revision of the Legal Directorate's induction programme, which has been well-received by new colleagues joining the Directorate. The Legal Handbook was revised and a comprehensive training plan was produced.

LTG oversees a programme of monthly lunchtime lectures which feature in-house and external speakers and which are recognised by The Law Society as supporting learning and development for lawyers. Lectures are advertised to all Directorate staff, and to other FCO and external contacts where appropriate.

The LTG arranged learning and development opportunities for all staff (eg, on appraisal and performance management in 2012, and presentation skills in 2013). A priority for 2013 is to draw more consistently on in-house expertise to support structured learning and development for all in the Directorate.

## **Personnel**

Diana Brookes, formerly Legal Counsellor at UKRep Brussels, retired from the Diplomatic Service in March 2013.

Derek Walton, Counsellor in the CTHR Team, was decorated with an OBE in the 2012 New Year's Honours List for his work on human rights, in particular the Brighton Declaration.

## Part Two: The Teams



*This team's work directly contributes to the first of the FCO's Foreign Policy Priorities: Safeguarding Britain's national security*

The CTHR Team's work includes the Middle East and North Africa, Counter-Terrorism, Human Rights and Democracy and European Court of Human Rights litigation. The focus in 2012 was on **the Syria crisis and Reform of the European Court of Human Rights**.



The team act as Agents in all cases against the UK in the European Court of Human Rights and Derek Walton is Chair of the Council of Europe Steering Committee for Human Rights. The team is supported by the ECtHR Agents Support Unit (EASU) who process ECHR cases and deal with Rule 39 communications (interim applications) from the ECtHR.



Grand Chamber of the European Court of Human Rights in session

**In 2012/2013, the team has worked on:**

- **Reform of the European Court of Human Rights** - The team played a key role in securing the Brighton Declaration and in follow-up work on the Declaration.
- **ECHR cases**, including cases that came to judgment on extradition of terrorist suspects to the US, political advertising and the wearing of religious symbols in the workplace.
- **The US Alien Tort Statute** - the team coordinated two HMG amicus curiae briefs, persuading the US Supreme Court to consider the appropriate extent of US extraterritorial jurisdiction.
- **Syria** - the team provided legal advice on a range of issues in support of HMG's policy to achieve a political solution to the conflict.

**Priorities for 2013/14:**

- **Reform of the European Court of Human Rights (ECtHR)** – Implementation of the Brighton Declaration on reform of the Court, including 5 amendments to the European Convention on Human Rights.
- **ECtHR cases:** Judgments expected on state immunity, closed material procedures, whole life sentences and the banning of political advertising.
- **Steering Committee for Human Rights** – Derek Walton has been re-elected as the Chair of the Committee for 2013.
- **Resolution of the Syria crisis and stabilisation in Arab Spring countries.**
- **Human Rights** - Providing legal advice in support of human rights activity in the UN system, in the Human Rights Council and the United Nations General Assembly Third Committee, and in the EU.
- **Counter-Terrorism** - Working on Deportation with Assurances (DWA) cases and possible development of DWA arrangements with additional countries.
- **Inquests** – Participating, as appropriate, in the coronial inquests into the death of Alexander Litvinenko and Khalil Dale.
- **Cyber** – Working towards international agreement on the applicability of international law to the cyber domain, including through supporting negotiators to the UN Governmental Group of Experts on Cyber Security which is due to deliver its report to the UN Secretary General later this year.



First prize in Legal Directorate's 2012/3 photography competition (theme: travel):  
*Camel Man* by Dale Harrison



*This team has the broadest range of work of all the teams and contributes to all three of the FCO's priorities:*

- Our work on overseas territories, as well as litigation and Inquiries (which focuses primarily on counter terrorism), helps to **safeguard Britain's national security**.
- Work on consular issues, the law of the sea and air services contributes to **building Britain's prosperity**.
- Consular work is vital in the **support of British nationals around the world**.
- Our work has a strong corporate element, including human resources, estates and security and information management.



The work of the team includes Litigation (see page 36 for more information), Overseas Territories ("OTs"), Consular, Protocol and Treaty services.

The focus during 2012 was on:

- The Justice and Security Act
- Advising Protocol Directorate on legal issues surrounding the Olympics
- The Antarctic Act
- Participating in multilateral meetings of legal advisers including at the UN, EU and Council of Europe
- Organising the annual conference of Attorneys General of the substantially populated British Overseas Territories in Bermuda chaired by the Attorney General of England and Wales.
- Assisting Protocol Directorate in the establishment of administrative arrangements for handling special missions



**Justice and Security Act:** Lawyers in the General Law Team were heavily involved in all stages of the passage of the Justice and Security Bill, as well as the pre-Parliamentary consultation phase. The Justice and Security Act 2013, which received Royal Assent on 25 April and is expected to come into force in the summer of 2013, will provide for closed material procedures in certain civil proceedings; prevent the making of *Norwich Pharmacal* orders for the disclosure of sensitive information; and provide for strengthened oversight of the security and intelligence agencies.

**Priorities for 2013/14:**

- Working with colleagues in Consular Directorate to make the necessary legislative changes to modernise the provision of their services.
- Attending the meetings of the Commission for the Conservation of Marine Living Resources and advising on issues arising, including MPAs.
- Contributing a UK perspective to the strategic development of international law through the work of the International Law Commission and the UN General Assembly Sixth Committee.
- Working with others to ensure the proper implementation of the provisions in the Justice and Security Act.
- Attending the Antarctic Conference.
- Assisting the OTs to ensure greater transparency in taxation matters in line with the priorities of our G8 Presidency.
- Completion of new Air Services agreements with several key overseas partners.

## Corporate Procurement Group

### Commercial Legal Adviser

The Commercial Legal Adviser provides advice and guidance to the FCO on a wide range of commercial matters which span the department's geographical and thematic directorates. She works closely with Commercial Directorate in the FCO and with Treasury Solicitors.

This includes advice on:

- Strategic and operational public procurement projects relating to Security, Estates and other areas of FCO activity (in the UK and at posts)
- Strategic and operational matters relating to FCO's grant funding programmes
- Representing the FCO in cross-Whitehall negotiation of new public procurement directives in the EU
- Corporate matters (Governance, compliance with various legal obligations)



- Legal risk management (e.g. risks relating to potential litigation, reputation, engagement with business as part of Commercial Diplomacy or generally)

In addition to providing project and case specific advice the Commercial Legal Adviser is directly involved in developing public procurement policy and guidance, delivering training and other briefing within the Corporate Procurement Group and to other departmental colleagues such as FCO Corporate Services Managers and Senior Budget Holders. She also attends the Procurement Working Group, which is a specialist group of commercial lawyers in Government.



Second prize in Legal Directorate's 2012/3 photography competition (theme: travel):  
*Polar Ships in Hobart* by Jonathan Drakeford



Third prize in Legal Directorate's 2012/3 photography competition (theme: travel):  
*The Richmond Migration* by Steve Hunt



## EU and Wider Europe Team

*This team's work directly contributes to the second of the FCO's Foreign Policy Priorities: Building Britain's Prosperity*

- *Work on EU issues helps advance the British national interest through an **effective EU policy in priority areas**, engaging constructively while protecting our national sovereignty*

The work of the team includes legal advice to Europe Directorate and other FCO Directorates which cover geographic and cross cutting issues relating to Europe, Prosperity, Communications, Migration and Parliamentary Relations. It also advises certain geographic desks beyond the EU e.g. Iceland and Turkey, and provides legal support to the Department for Business, Innovation and Skills on international investment law and the Department for International Development on EU and international law.



The focus of the team's **work and key achievements in 2012** has been:

- Advising in conjunction with COELA, HM Treasury and UKRep Legal colleagues on legal issues related to the on-going Eurozone crisis, in particular protecting the UK's position during the negotiations on the Treaty on Stability, Coordination and Governance, the proposals on Banking Union and the UK's intervention in Case C-370/12 *Pringle v. Ireland* which raised some fundamental EU constitutional issues;
- The passage of the European Union (Approval of Treaty Amendment Decision) Act 2012 on the European Stability Mechanism;
- Securing the UK's judicial nomination to the European Court of Justice; and the timely re-nomination of the UK's General Court judge;
- Successfully concluding negotiations on key aspects of the package of efficiency reforms to the Court of Justice of the European Union - which together constitute the biggest shake up in the working of the Court in twenty years - whilst fully observing the new parliamentary approval processes under section 10 of the European Union Act 2011;
- Providing continuing advice and support to policy clients and other Government Departments on external competence and representation issues with a view to protecting the UK's own foreign policy objectives and its ability to act in a national capacity where appropriate.

### **Priorities for 2013/14:**

- **Legislation** - ensuring the successful passage through Parliament of the following Bills:
  - The European Union (Croatian Accession and Irish Protocol) Bill – a Bill to approve the Croatian Accession Treaty and the Protocol on the concerns of the Irish people on the Treaty of Lisbon
  - The EU (Approvals) Bill – a joint FCO/MOJ Bill to approve EU measures including the draft decision allowing for the retention of one Commissioner per Member State.
- **External competence/representation** - ensuring that the review of the General Arrangements for EU Statements in multilateral organisations does not result in any adverse changes to existing EU practices, that the review of the EEAS Decision is consistent with UK objectives, and that the Commission’s litigation strategy and strategy on the enhancement of EU status in international organizations/agreements do not undermine UK requirements on external competence and representation.
- **Justice and Home Affairs**- preparation for the UK’s decision on whether or not to exercise the block opt-out of EU policing and criminal justice measures adopted before the Treaty of Lisbon.
- **EU accession to European Convention of Human Rights**- preparatory work on the accession of the EU to the ECHR, in particular, by providing advice on the Accession Agreement.
- **Eurozone/Financial Crisis** – continuing to work closely with HM Treasury, Cabinet Office and other Government colleagues on EU legal and institutional issues arising from the financial crisis
- **Parliamentary Scrutiny of EU matters** - negotiation of new terms of reference and scrutiny reserve resolution for the House of Commons European Scrutiny Committee.
- **Balance of Competences** – Foreign Policy Report – assist with the drafting and production of the first semester Balance of Competence report on Foreign Policy.
- **Gibraltar** – assist Western Mediterranean Team in finding a solution to the problems arising around British Gibraltar Territorial Waters including the difficulties surrounding the Spanish Estrecho Oriental listing under the Habitats Directive.
- **Scottish independence Referendum** - providing continuing advice to internal and external clients on international law issues relating to this issue, in particular by contributing to the publication of HMG’s “Benefits of the Union” work-stream.
- To contribute to the **Government Legal Service’s EU Law Training Programme** through participation in the GLS EU Law Training Steering Group and providing training on the GLS External EU Competence Training Course.



## International Institutions and Security Policy

*This team's work contributes primarily to the first of the FCO's Foreign Policy Priorities: Safeguarding Britain's national security*

The team works on multilateral policy (including sanctions and war crimes), Defence and International Security, South Asia and Afghanistan, Africa and Asia Pacific.

During 2012/13 the team has:

- Advised on developments in the EU **Syria** sanctions regime, including tough EU negotiations to modify the arms embargo to enable the UK to provide greater support to the opposition.
- Advised on the development and implementation of **UN and EU sanctions** regimes and managed an increased volume of **litigation** on sanctions at EU and domestic level, including chairing the Cross-Whitehall Sanctions Legal Group and engaging in academic outreach to ensure awareness of our approach to sanctions listings and litigation.
- Assisted the International Organisations Department in developing new **smarter sanctions** procedures for analysing the impact of sanctions and the robustness of sanctions designations across all regimes; organised and chaired a cross-Whitehall sanctions training event to launch the new procedures; and worked with policy colleagues to ensure that new listings proposals, including those involving non-disclosable information, gain full support at UN and EU level.
- Drafted **20 Orders in Council** implementing sanctions in the overseas territories.
- Ensured international law considerations were taken into account in developing UK policy on the **Mali** crisis.
- Contributed to the "Copenhagen Principles" on **Detention in Armed Conflict** and defending challenges to UK Detentions policy in Afghanistan.
- Played a part in negotiating the **Arms Trade Treaty**, establishing standards for the regulation of the export/trade in arms between States.
- Successfully managed sensitive disclosure issues relating to the **Karadzic** trial at the International Criminal Tribunal for the former Yugoslavia.
- Assisted **Somalia** unit in reviewing and significantly amending the arms embargo in Somalia.
- Contributed to policy on **Preventing Sexual Violence in Armed Conflict** which led to the G8 statement made on 11 April 2013 recalling that serious sexual violence in conflict is a war crime and a Grave Breach of the Geneva Conventions.



### Priorities for 2013/14:

- Achieving further modifications to the **EU Syria arms embargo** to ensure UK has flexibility to take appropriate action as situation develops.
- Defending **UN and EU sanctions regimes** in the domestic and EU courts.
- Advising on the targeting of **piracy kingpins** through establishment of the Regional Anti-Piracy Prosecutions and Intelligence Coordination Centre in the Seychelles.
- Advising on **Somalia** including AMISOM renewal and 2013 Somali conference.
- Continuing to ensure, in liaison with the Ministry of Defence, that our **detention policy in Afghanistan** is legally robust; Supporting the development of a **locally engaged staff policy** to ensure that Afghans who have worked with the UK are protected and rewarded in the context of ISAF draw down; and ensuring legal arguments taken into account in arrangements to **draw down UK military presence in Afghanistan**.
- Supporting work concerning an oversight mechanism for **Private Security Companies** and adoption of national standards.
- Contributing to the UK's application of **robust and appropriate arms controls** including policy revision in line with the Arms Trade Treaty.
- Continuing to advise on legal aspects of challenges facing the **International Criminal Court**.



Fourth prize in Legal Directorate's 2012/3 photography competition (theme: travel):  
*Mumbai Station* by Shehzad Charania



*The FCO is the lead government department on the UN Convention on the Law of the Seas (UNCLOS). The Maritime Policy Unit, a team of three supervised by one of the Deputy Legal Advisers, is responsible for policy on maritime issues, in accordance with UNCLOS.*

**Deep Seabed Mining:** *At the meeting of the International Seabed Authority in July 2012, the UK-sponsored application by UK Seabed Resources Limited, a subsidiary of Lockheed Martin, to undertake exploration for polymetallic nodules on the deep sea bed was approved. The UK delegation was able to broker the key compromise which unlocked negotiations across a number of issues and enabled the award of an exploration licence to UK Seabed Resources Limited. This is one of the first such applications by a commercial enterprise, and is an important step towards commercial mining of the resources of the deep sea bed. It is estimated that harvesting polymetallic nodules will provide the UK supply chain with opportunities to build on its North Sea oil and gas expertise and has the potential to contribute as much as £40 billion to the UK national economy, over a 30 year period*



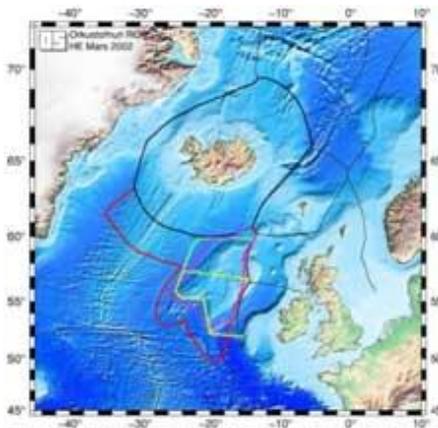
The Maritime Policy Unit works closely with other Government Departments with an interest in the oceans and maritime issues such as the Department for Transport, the Ministry of Defence, Department for the Environment, Food and Rural Affairs and the Department for Culture Media and Sport (DCMS), covering a range of issues that includes:



- Maritime delimitation
- Shipping
- The marine environment
- Scientific research
- Whaling
- Underwater cultural heritage (submerged wrecks)
- Deep seabed mining

In 2012/13, the Maritime Policy Unit has:

- Concluded two agreements, with the Danes and Faroese and with the Irish, on the delimitation of an Exclusive Economic Zone between the UK and the Faroes and between the UK and Ireland.
- Continued discussions with Ireland on bilateral maritime issues and with other maritime states, including EU member States, on matters of mutual interest.
- Consulted with Overseas Territories on issues concerning their ship registries.
- Secured approval in the International Seabed Authority for an UK-sponsored application to explore for polymetallic nodules.
- Secured approval in the International Seabed Authority for an environmental management plan in the zone in the Pacific.
- Participated actively in the discussions in the United Nations on renewable energy and on the General Assembly resolution, and in the meetings of State Parties to the Law of the Sea Convention.
- Updated the new digital application system into a database for process marine scientific research applications, and processed 206 applications in 2012.



#### Priorities for 2013/14:

- Progress discussions with Ireland on bilateral maritime issues.
- Secure agreements with the Netherlands on maritime zones and a cross-boundary gas field.
- Secure an agreement with Belgium on an Exclusive Economic Zone boundary, and complete necessary processes for a declaration of a UK Exclusive Economic Zone.
- Lobby for international agreement on an improved mechanism for the scrutiny of the budget of the International Tribunal for the Law of the Sea.
- Participate actively in the discussions in the United Nations on ocean acidification, biodiversity and the General Assembly resolution.



## Treaty Section

*“Considering the fundamental role of treaties in the history of international relations, recognising the ever-increasing importance of treaties as a source of international law and as a means of developing peaceful co-operation among nations, whatever their constitutional and social systems”*

*Vienna Convention on the Law of Treaties, 1969*

*Treaty Section is organized into two teams covering **treaty procedures and publishing** and **Treaty information and depositary work**. Its role is:*

- to supervise the conclusion of bilateral and multilateral treaties by the UK
- to advise and assist with the form and content of draft treaties and MoUs
- to maintain an information and enquiry service
- to act as a depositary for 40 multilateral treaties
- to oversee the application of statutory provision of the Constitutional Reform and Governance Act 2010 (CRaG) for parliamentary scrutiny of treaties
- to arrange for treaties which are in force for the UK to be transferred to the National Archives at Kew

### **Treaty procedures and publishing**

This includes the key treaty stages of drawing up:

- ✓ Full Powers (authority to enable signature of treaties for the UK)
- ✓ Instruments of ratification and equivalent documents
- ✓ Publishing treaty texts before parliament as Command papers
- ✓ Registering treaty texts with the United Nations Secretariat and the International Civil Aviation Organization (ICAO) for Air Services Agreements



At any given time Treaty Section deals with multiple treaties at different stages of implementation. In 2012 members officiated at 12 treaty signature ceremonies in London, and supported signature and ratification events at UK posts abroad.

Some of these signatures included important multilateral agreements such as:



- The Convention on Preventing and Combating Violence against Women and Domestic Violence in June
- Agreements on the Establishment of the Global Green Growth Institute in June
- Treaty of Amity and Cooperation in Southeast Asia in July
- The Convention of Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operations in Respect of Parental Responsibility and Measures for the Protection of Children in July
- Multiple signings of MoUs during the inaugural UK-China People to People Dialogue at the Victoria and Albert Museum in April.
- Important bilateral treaties such as:
  - the Prisoner Transfer Agreement with Saudi Arabia in January
  - the Agreement on the implementation of the Cyclamen device in the French terminal of the Channel Tunnel situated at Coquelles with France in May
  - The cooperation agreement to provide international tax compliance and to implement FFATCA with the US in September
  - Three Transit Agreements in relation to UK withdrawal from Afghanistan with Uzbekistan in October.

In the same period Treaty Section prepared ad-hoc Full Powers for the Foreign Secretary to authorise 36 individuals to sign treaties on behalf of the UK. It prepared a further 14 ratification or accession instruments to treaties and ensured that they were deposited with the respective treaty authorities.

### ***Outreach***

As part of promoting the sharing of experience and expertise on treaty practice with foreign governments, Treaty Section in 2012 met with Chinese officials from the Ministry of Foreign Affairs in Beijing and from the Embassy in London.

An FCO/MOJ-Crown Dependencies 'teach-in-event' for officials of the Crown Dependencies was held in December 2012.

In May 2013, the Section hosted a three-day working visit for two officials from the Attorney-General's Chambers in Singapore, who wish to incorporate best practice into the organisation of their own Treaty Section.

### ***Information and depositary work***

The Section has a publications budget of £35,000, and in 2012 published 62 treaties, the majority of which are in force for the UK.

## “UK Treaties Online”

“UK Treaties Online” is a database of treaty records (including many published texts) which is currently hosted on the FCO website. These records illustrate the UK’s treaty commitments dating back to the 1830s and form the cornerstone of the section’s enquiry and information service to the FCO, wider Whitehall, Foreign Embassies and the Public.

This is supplemented by an archive of published reference works. The website also contains lists of treaties applicable to the UK’s Overseas Territories and guidance documents relating to UK treaty practice and procedure.



*Treaty Section’s extensive records are a key source of information, and were used for requests from the governments of India, Iraq, Nigeria and Kosovo for details of bilateral treaties that are applicable between themselves and the UK.*

Treaty Section staff were presented to HM The Queen during her visit to the FCO in December 2012.

### Priorities for 2013/2014

- To improve the effectiveness of the Section’s information systems, and make a positive contribution to the conduct of business in the Directorate.
- To identify opportunities to promote treaty awareness through individual and Directorate-wide legal awareness and outreach activities.



Nevil Hagon (far right), Head of Treaty Section, looks on as the Rt Hon William Hague MP, Foreign Secretary, and M Charki Draiss, Interior Minister of the Kingdom of Morocco, sign the UK-Morocco Mutual legal assistance treaty and Memorandum of Understanding (London, April 2013)



*The FCO's Legal Library is staffed by qualified and experienced information professionals who are part of the FCO's network of Knowledge and Information Management specialists.*

It provides a legal information and enquiry service to Legal Directorate and the wider FCO and shares information and resources with legal information services in other government departments.

### **Legal Information**

The Legal Library maintains and develops collections of legal information resources for use by staff in Legal Directorate and others, including:



- Desktop access for legal advisers to UK, European Union and international legal resources through databases such as Westlaw, Lexis Library, Justis and PLC;
- A comprehensive collection of print materials - legal textbooks, journals, yearbooks and legislation of the UK and the Overseas Territories.



In addition the team develops in-house online information resources, including guides to finding legal information on SharePoint and International Law pages for use by Government Legal Service colleagues on the LION website.

### **Enquiries and research**

The Legal Library's information and research work includes the compilation of weekly international law current awareness alerts and an enquiry service answering queries ranging from requests for journal articles, cases or legislation to substantial pieces of research.

Information requests dealt with by the Legal Library over the past year included research into:

- when someone is considered to be a permanent resident in respect of their diplomatic status;
- the withholding of information under Public Interest Immunity rules;
- UK legislation on the deprivation of nationality;
- the principles of universal civil jurisdiction;
- the obligations of non-state actors under international law;
- the amalgamation of southern and northern Nigeria in 1913.

The Library also supplied copies of legislation, law reports, journal articles and other material on topics including:

- the Geneva Convention obligations to respect and ensure respect for international law
- the principle of non-intervention
- Cyberspace and territorial jurisdiction
- State succession
- the EU's Common Foreign and Security Policy
- European Union enlargement



## Knowledge Management

The Legal Library team leads on knowledge management in the Directorate and maintains the Legal Advice Database. This is a searchable collection of significant advice given by the legal advisers, covering topics ranging from Arms Control to Universal Jurisdiction. The Database also includes background briefing notes and research, with new resources being added every week to create a collection of in-house knowledge and expertise for future use.

### Priorities for 2013/14:

Improving access to electronic information:

- A Legal Information site on SharePoint as a single point of access for online databases and resources.
- Training for staff in searching for legal information.
- Evaluation of new online services and eBook collections.

Knowledge Management:

- Further development of the Legal Advice Database.
- The addition of a second tier of information.



*Office Management Section's objective is to deliver high quality financial, information and administrative management for the Legal Directorate. Its main priorities are:*

**Financial services**

- ✓ manage financial resources in accordance with the FCO's Foreign Policy Priorities
- ✓ procure goods or services
- ✓ process and pay invoices

**Information services**

- ✓ receiving and transmitting agency for the United Kingdom under the European Convention for Information on Foreign Law (ECIFL)
- ✓ co-ordinate the Directorate's Business Continuity Plan
- ✓ assist with the processing of Statutory Instruments

**Administrative services**

- ✓ manage office space, furniture and equipment
- ✓ maintain departmental security
- ✓ provide annual administrative returns
- ✓ assist with the induction of new staff who join the department

During 2012/2013, OMS:

- ✓ helped reduce security breaches by 64% on the previous year
- ✓ reduced invoice payment times to 2 weeks
- ✓ implemented effective budget and forecasting processes
- ✓ completed the move to open-plan
- ✓ organized a photo competition: prize-winning examples are displayed in the Directorate and appear in this Annual Report.

**Priorities for 2013/14:**

- Implement tighter control on financial management
- Improve Departmental Security
- Streamline and develop administrative processes
- Integrate more with the Directorate's Outreach program



Several FCO lawyers work in UK missions overseas.

**Kate Jones, Legal Adviser at the UK Delegation to the Council of Europe, Strasbourg**

As Deputy Head of the Delegation, Kate is closely involved in all its work, particularly in:

- ✓ achieving priorities on reform of the European Court of Human Rights
- ✓ combating discrimination on the grounds of sexual orientation and gender identity
- ✓ strengthening the rule of law and promoting the role of NGOs at the Council of Europe



Kate Jones represents the UK at the Committee of Ministers when it oversees the execution of judgments of the European Court of Human Rights, and negotiates for the UK on human rights and justice issues.

**Shehzad Charania, Legal Adviser at the British Embassy, The Hague**



As legal adviser to the Embassy in The Hague, Shehzad leads the international law team there. He provides strategic direction and leadership with respect to the UK's engagement with Hague-based international organisations, including:

- ✓ the International Criminal Court
- ✓ the International Criminal Tribunal for the Former Yugoslavia
- ✓ the International Court of Justice
- ✓ the Special Tribunal for Lebanon
- ✓ the Permanent Court of Arbitration and
- ✓ the Hague Conference on Private International Law

Shehzad also provides legal advice to the Team working on the Prevention of Sexual Violence, in particular, in relation to the International Protocol on Documentation and Investigation of Sexual Violence.

You can follow Shehzad on Twitter@UKintlaw for the latest news and developments on international law issues.

***Ivan Smyth, Indira Rao, Vina Shukla, Nick Minogue, Legal Advisers at the UK Representation to the EU, Brussels***



The UKRep legal team of four – Ivan Smyth, Indira Rao, Vina Shukla and Nick Minogue - provide legal advice to the UK Permanent Representative to the EU and his policy team. In particular advice covers:

- legal issues arising in the Committee of Permanent Representatives, the Committee of Deputy Permanent Representatives and the Policy and Security Committee;
- EU legislative procedures, voting rules and the Rules of Procedure of the EU institutions.

In 2013 there will continue to be a focus on advice on further aspects of the EU response to the Eurozone crisis, as well as work towards the UK's potential en masse opt out of third Pillar JHA measures in 2014. The legal team also advise and help bring together thinking across UKRep sections on cross-cutting/horizontal issues that raise legal questions such as Treaty change and EU external relations.

The team maintains close contacts with legal advisers in the other Permanent Representations and also the legal services of the institutions in order to obtain views from and influence thinking by those legal services on dossiers of importance to the UK.

***Theo Rycroft, Legal Adviser at the UK Mission to the UN, Geneva***

The UKMIs Legal Adviser, Theo Rycroft, has responsibility for legal-policy issues arising in UKMIs's work across Geneva, as well as giving legal advice to UKMIs colleagues in their areas of responsibility. In particular:

- At the UN Human Rights Council (HRC), leading negotiations for the UK on resolutions with high legal content and advising colleagues on legal issues arising in the HRC
- Representing the UK on the Governing Council of the UN Compensation Commission
- Implementation, in all Geneva based International Organisations, of agreed and effective post-Lisbon EU working arrangements



- Engaging with ICRC legal advisers on International Humanitarian Law issues which are of concern to the UK
- Engaging with the extensive international law community in Geneva and arguing for UK positions on key international law issues.

Theo played a key role in developing the legal aspects of the Preventing Sexual Violence Initiative.

### **Paul McKell and Jesse Clarke, Legal Advisers to the UK Mission to the UN, New York**

The UKMIs New York Legal Section provides legal advice to the Permanent Representative and his team on all the work of the Mission. They are responsible for a range of legal policy areas, including:

- the international criminal tribunals
- the law of the sea
- the work of the Sixth Committee

They also support and advise on issues arising in the Security Council.



Fifth prize in Legal Directorate's 2012/13 photography competition (theme: travel)  
*Monument Valley* by Ruth Green

## ***Part Three: Cross Cutting Themes***

### **Legal Awareness**

Legal Directorate's "legal awareness" programme will be formally launched in Summer 2013 and will consist of several elements. The programme has been designed to respond to needs and demands identified in a survey of FCO staff in 2012.

#### **Training modules (introduction from May 2013)**

The core element of the programme will be a series of modular legal awareness training sessions to be delivered by external legal academics and practitioners and FCO lawyers. These will deliver high quality training in a range of legal topics of core interest to policy staff in the field of international, EU and domestic law.

In the first year, we have developed a programme of modules covering the following subjects:

- Understanding international law (what international law is and where it comes from, treaties, international organisations and diplomatic and state immunity)
- The use of force in international law
- International humanitarian law
- Sanctions
- Law of the sea
- An ABC of EU law
- EU external competence
- Dealing with litigation
- Avoiding judicial review (ie the basic principles of good decision-making)
- Working with Legal Directorate (understanding the role of lawyers; getting the best out of your departmental legal adviser)

We envisage running each module once or twice per year. Depending on feedback and demand, we will expand the range of modules in subsequent years. In the longer term this could develop into more formal, structured training in international law.

#### **Induction courses (implemented from November 2012)**

There has been a patchy approach to the inclusion of a legal element in FCO induction courses in recent years. We are working with the HR Learning and Development team to ensure that all relevant induction courses include a session to explain the role of departmental legal advisers. This should ensure that policy officers have a basic understanding of the importance of legal issues to the FCO's work from the outset.

### **Key legal developments – newsletter (target date July 2013)**

Legal Directorate will be launching a series of quarterly newsletters to raise awareness of important legal developments among senior FCO readers.

### **FCOnet/Guide to legal services in the FCO (target date June 2013)**

We are updating the Legal Directorate pages of FCOnet to provide more accessible and user-friendly information about legal services in the FCO and the role of Legal Directorate. The pages will also provide a signpost to staff to where they can find other useful legal information.

### **Virtual networks: target date from June 2013**

In tandem with the roll-out of the legal awareness training modules, and in order to reinforce their learning goals, we aim to develop knowledge networks of interested staff to whom we would be able to provide periodic updates on key legal issues on particular topics of interest, eg IHL, war crimes and sanctions.

### **Legal e-learning: target roll-out early 2014**

The 2012 Legal Awareness staff survey conducted by Legal Directorate showed a healthy appetite among non-lawyers for e-learning on legal topics. As a first step we are conducting a survey into the legal e-learning already available to other parts of Government on which we might draw. In light of the results, we will develop e-learning modules where there is a gap in the market, likely to be focused on core international law topics (eg treaties) with the aim of launching in early 2014.

## **Outreach Programme**

Our Outreach Programme has several strands.

### **“Academic Seminar” Series**

There has been a long tradition of dialogue and discussion between FCO lawyers and the wider community of lawyers and academics with an interest in international law. We have revived this and put in place a programme of Seminars, to be held roughly quarterly, which will help us analyse and discuss developing areas of international and European law. The format is flexible: typically 20-30 external participants from academia, the legal professions, think-tanks, NGOs and other government departments.

We have chosen topics where the law and policy are developing fast and which present contemporary challenges. Last year, Seminars covered:

- (a) Recent developments in the international law of jurisdictional immunities (May 2012)

(b) Towards a more effective and efficient International Criminal Court – Improvements to Legal Procedures (October 2012)

(c) Strengthening Compliance with International Humanitarian Law (February 2013 – Joint Seminar with Chatham House)

(d) Non-State Actors in International Law (May 2013)

We are planning the following seminars for the coming year:

(a) The legal protection of international investment post-Lisbon (October 2013) – joint meeting with the International Law Association (British Branch)

(b) Sanctions and the Rule of Law (November 2013)

(c) Developments in the Law of the Sea (including the development of the deep seabed mining regime) (January/February 2014)

### **Engagement with the international law community**

As part of our Outreach and in particular to enhance links between Government lawyers and the practising bar, the Directorate hosted a reception in early 2012 for barristers practising in the area of public international law or related fields of interest to the FCO. The Attorney General spoke at this reception. In addition, a similar reception was held with international law practitioners in early 2013, which also served as an opportunity to host the two university moot teams who were representing the UK in the global Jessup moot competition in Washington DC.

#### *The Annual FCO lecture in International Law*

The Directorate has instituted an annual lecture in international law as a regular feature of our outreach work. The inaugural lecture took place in May 2013 and was delivered by Professor Harold Koh, the Sterling Professor of International Law and Yale Law School and, from 2009 to 2013, Legal Adviser to the Department of State. The topic of the lecture was “International Law in the US Government: Reflections on the first Obama Administration” and was attended by an audience of approximately 150, including the Solicitor-General, representatives of foreign governments, judges, practitioners, academics, government lawyers, as well as FCO policy officials.

### **Engagements with universities and think-tanks**

Members of the Directorate are regularly asked to give talks to universities, sometimes on substantive international law, sometimes on the work of the FCO Legal Advisers and careers in Government legal work. In the past 12 months, members of the Legal Directorate have participated in some 15-20 different events of this sort.

Many of these opportunities have arisen on an ad hoc basis based on relationships with particular institutions and individuals. However we are now seeking to develop a more

strategic approach to this work, proactively contacting all law schools with specialism in international law on a programmatic basis.

Members of the Directorate also regularly address conferences and other meetings of think-tanks and research institutions on significant topics of interest. Colleagues have recently spoken at meetings held at the British Institute of International and Comparative Law, Chatham House and the International Law Association (British Branch), on a diverse range of topics, including the Brighton Declaration on the ECHR, Sanctions, the Arms Trade Treaty, Reservations to Treaties, the privileges and immunities of international organisations.

### **International law conferences**

A number of high profile conferences of international lawyers take place every year, in the UK and abroad. Participation in these conferences is an invaluable opportunity for Government lawyers to engage with influential and varied audiences of other international lawyers. These include the Annual Conference of the British Branch of the International Law Association, and the Annual General Meeting of the British Institute of International and Comparative Law. The Annual Meeting of the American Society of International Law is the most prestigious international conference, attracting some 2000 lawyers and thinkers from around the world. The European Society of International Law and International Law Association hold major meetings on a biennial basis.

The Directorate does not have the resources or personnel to attend every such conference in numbers, but we aim to ensure that we are represented at the most significant events.

### **Sponsorship and support**

We have a small programme budget which we have deployed in support of our Outreach and engagement work. In particular, we have committed (future resources permitting) to support:

- (a) the Annual Meeting of the British Branch of the International Law Association;
- (b) the attendance of lawyers from developing countries at the UN's International Law Seminar in Geneva;

We have also made a contribution to the costs of producing "UK Materials in International Law" published in the British Yearbook of International Law (an annual digest of the British Government's practice in international law compiled by independent academic editors).

## Litigation

The Government appears before a variety of domestic and international courts and tribunals.

The Legal Directorate is closely engaged in a range of litigation:

- We defend civil cases brought against the FCO in our domestic courts and tribunals and assist other Government departments to defend civil claims against them which involve international law issues.
- We act as Agent for the Government before the European Court of Human Rights, the International Court of Justice and international tribunals.
- We contribute to the presentation of the Government's position before the European Court of Justice as well as leading policy in relation to the Court.

Our litigation work involves very close cooperation with other Government departments and agencies, particularly with the Treasury Solicitor's Department, and with First Treasury Counsel and the Attorney General's Panel Counsel.



### Key Points 2012/13:

- there were 29 judgments in cases against the United Kingdom before the European Court of Human Rights (10 adverse to the UK)
- a number of important judgments and decisions were delivered by the European Court of Human Rights including: *Chagos Islanders v United Kingdom* concerning the expulsion of Islanders from their homes (which was declared inadmissible); *Othman (Abu Qatada) v United Kingdom* concerning deportation to Jordan in which the Court found against us on the point that there was a real risk of admission of evidence obtained by torture at his retrial in Jordan; *Eweida and others v United Kingdom* concerning the wearing of religious symbols in the workplace; and *Babar Ahmad and Others v. the United Kingdom* concerning extradition to the USA where the Court found in our favour that detention conditions and length of sentence would not amount to ill-treatment
- a range of highly sensitive cases were brought by individuals detained abroad for counter terrorism purposes, including civil claims for damages and the seeking of disclosure of sensitive material under Norwich Pharmacal principles

- the United Kingdom is defending an arbitration brought by Mauritius under UNCLOS challenging the establishment of the Marine Protection Area around British Indian Ocean Territory
- claims were brought alleging the involvement of the UK Government in mistreatment of detainees during the Mau Mau Emergency in Kenya in the 1950s. These were settled in June 2013
- a judicial review claim was brought by Lindsay Sandiford on the issue of whether the FCO had a legal obligation to provide a lawyer for the purposes of an appeal against a death penalty sentence imposed in Indonesia.

## Overseas Territories

The General Law Team provides advice on a range of issues relating to the Overseas Territories. The UK Government has extensive responsibilities for its 14 Overseas Territories (OTs):

- Anguilla
- Bermuda
- British Antarctic Territory
- British Indian Ocean Territory
- Cayman Islands
- Falkland Islands
- Gibraltar
- Montserrat
- Pitcairn Islands
- Sovereign Base Areas in Cyprus
- St Helena, Ascension and Tristan da Cunha
- South Georgia and the South Sandwich Islands
- Turks and Caicos Islands
- Virgin Islands



Recent work on OT issues has included:

- The conclusion and drafting of new constitutions for Montserrat and the Turks and Caicos Islands.
- Advising on all legal aspects of the partial suspension of the 2006 Turks and Caicos Islands Constitution following a Commission of Inquiry which found a high probability of systemic corruption in government and the legislature and among public officers in Turks and Caicos Islands in recent years.
- Extension on a permanent basis of the right of individual petition to the European Court of Human Rights in all the Overseas Territories to which the ECHR applies.
- British Indian Ocean Territory judicial review.

**Priorities for 2013/14:**

- Contributing to the smooth return to elected democracy and financial stability in the Turks and Caicos Islands
- Advising on legal aspects of the Government's White Paper on the Overseas Territories
- Assisting with preparation for outstanding extension of the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) to all permanently populated OTs
- Providing legal advice in respect of the UK's sovereignty over the Overseas Territories
- Defending legal challenges brought against the UK Government in relation to the Overseas Territories
- Training for FCO officials on the law of the Overseas Territories



*Trooping the Colour* by Paul Scullion

## Parliamentary Work

Legal Directorate is heavily involved in the FCO's engagement with Parliament, from preparing legislation to clearing and advising on statements and Parliamentary Questions (PQs). Important areas of work in 2012/2013 included the following:

### Primary legislation

Although the FCO is responsible for less primary legislation than some other Government departments, in 2012 the General Law Team played a leading role in the Antarctic Act 2013 and worked closely with the Ministry of Justice on the Justice and Security Act. And the EU team ensured the successful passage through Parliament of the European Union (Croatian Accession and Irish Protocol) Act and the EU (Approvals) Act (to approve EU measures including the draft decision allowing for the retention of one Commissioner per Member State).



### Statutory Instruments

The Parliamentary Manager submitted 29 Statutory Instruments to Parliament in 2012/13, all in the form of Orders in Council. The majority of these covered:

### Freedom of Information (FOI)

Legal Directorate's Office Management Section is the central point of contact for FOI requests regarding legal issues. In 2012 the Directorate directly received 18 FOI requests for information on various subjects. All FOI requests were processed according to the guidelines under the Act and responded to within the time permitted.

Sanctions regimes relating to Iran, Syria, Al-Qaida, Afghanistan, Burma, Congo, Eritrea, Liberia, Zimbabwe, Guinea Bissau, North Korea, Somalia, Cote d'Ivoire and Guinea.

Others dealt with:

- Changes to Consular Fees
- Disbanding the Foreign Compensation Commission
- The validation of appointments and acts of three judges of the Pitcairn Court of Appeal
- Changes to Terminology in the Treaty of Lisbon Bill

## **Parliamentary Questions**

Lawyers work closely with their Departments to deal with the numerous Parliamentary Questions (PQs) the FCO receives.

In 2012, Legal Directorate directly received seven PQs. These requested information on:

- The FCO's core "statutory obligations"
- The numbers of Statutory Instruments introduced and revoked
- British sovereignty over Rockall
- The cost of UK's international treaty obligations.

## **Command Papers**

Treaty Section arrange for all Treaties signed by the United Kingdom that are subject to ratification or its equivalent to be published as Command Papers and laid before Parliament for 21 sitting days. These are days on which both Houses sit, and are counted from the first sitting day after a treaty is laid.

Command Papers are accompanied by an Explanatory Memorandum (EM) which brings to the attention of Parliament the main features of the treaty concerned. Explanatory Memorandums are prepared by the Whitehall Department which has the main policy interest and are signed off by their Ministers.

The amount of detail provided may vary from case to case depending on the length and complexity of the treaty. Treaty Section will check that the format of the EM is correct and ensure that it is laid at the same time as the Command paper to which it refers. The Foreign Affairs Committee routinely receive individual copies of treaties and EMs as do other Parliamentary Select Committees where these are relevant to their subject-interests.

Treaties that are subject to ratification or its equivalent must first be laid before Parliament in one of the following series of Command Papers:

- Country Series (for bilateral treaties)
- Miscellaneous Series (for multilateral treaties)
- European Union Series (this series is reserved for the text of EU treaties requiring ratification approval or acceptance by the member state that are not yet in force)

Following entry into force for the UK (either as a result of signature, or following ratification or accession), Treaties are published in the Treaties Series.



*Legal Directorate occupies the Ansell Library (the former Colonial Office and FCO Library overlooking Whitehall) and a suite of adjoining rooms. The Library has been restored for Legal Directorate's use and its 18,500 feet of shelf space are now filled with the Legal Library's holdings, Treaty Section's records and Parliamentary materials.*

*For many years the Library has been home to Albert, the FCO's famous stuffed anaconda, some twenty feet long, said to have been presented to the Colonial Secretary by a Bishop in the country now known as Guyana, towards the end of the nineteenth century. During 2010, Albert was taken to the Natural History Museum to be restuffed and renovated. In 2012 he was restored to his former position, and now hangs beneath the balcony at the Downing Street end of the Library surveying the Directorate with an unemotional eye. He has a steady stream of admiring visitors and is easily the most popular member of the Directorate.*



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