

# Legal Directorate

## Annual Report 2015 - 2016



Foreign &  
Commonwealth  
Office



## Overview of the year

This is the Foreign and Commonwealth Office (FCO) Legal Directorate's Annual Report for the year June 2015 to June 2016. The Directorate provides legal services to the FCO, advises on treaty and maritime policy and provides litigation services in UK and international courts.

This past year has been a busy year for the Directorate, providing legal advice across the Office and at overseas posts on a variety of legal matters. The work of the Directorate continues to be interesting, challenging and rewarding, with our team of lawyers continuing to deliver a high quality legal service.

Areas of work of particular note this year include the Directorate's contribution to matters leading up to, during and immediately following, the referendum on the UK's membership of the European Union. We have also seen a number of successes on the litigation front, including the Supreme Court's seminal judgment in *Youssef v Secretary of State for the Foreign and Commonwealth Office* dismissing the applicant's challenge to his listing under the United Nations Al Qaida regime, and the European Court of Human Rights finding in favour of the UK in respect of seven significant cases brought before the Court.

It has also been an impressive year for the Directorate in terms of our Outreach and Legal Awareness initiatives. Members of the Directorate have participated in a range of talks and seminars, the Legal Directorate Outreach bulletin and FCO twitter feeds are now firmly embedded within the international law community and there is a flourishing Law Faculty of the Office's Diplomatic Academy.

This Report provides an overview of our achievements from the year and summarises our priorities for the coming year.

Iain Macleod, Legal Adviser

9 August 2016



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## Introduction

The Legal Directorate is led by the Legal Adviser, Iain Macleod, and three Directors (Cathy Adams, Doug Wilson and John Evans). It was made up of five legal teams in 2015 – 2016 (Counter-Terrorism and Human Rights, EU, Foreign Relations, International Institutions and Security Policy and Overseas Territories and Maritime) and three sections (Treaty, Knowledge and Information and Office Management). A number of our lawyers are also posted overseas in Brussels, New York, The Hague, Geneva and Strasbourg.

We have the following six overarching objectives:



**Objective 1: Legal Services and Advice**



**Objective 2: Management**



**Objective 3: Legal Awareness**



**Objective 4: Outreach**



**Objective 5: Shared Service to Government**



**Objective 6: Knowledge and Information Management**



*To provide accurate, prompt and policy friendly legal and treaty services on all aspects of the work of the FCO and to lead on maritime policy*

## 1. 1 Legal teams

The **International Institutions and Security Policy (IISP) team** advises on legal issues relating to multilateral policy (including sanctions and war crimes), defence and International security and provides legal advice to the South Asia, Afghanistan, Africa and Asia Pacific geographical regions. Key achievements from the year include:

- **Sanctions** - advising on the 36 active multi-national sanctions regimes. This included advice on sanctions measures concerning North Korea, Syria, Libya and the activities of Daesh, as well as the Iran Nuclear deal and related nuclear sanctions, the Joint Comprehensive Plan of Action, and United Nations Security Council resolutions. Eleven Orders in Council were drafted to implement sanctions in the Overseas Territories.
- **Maritime** - leading on the legal analysis of maritime issues in the South China Sea, in particular maritime reclamation activities and freedom of navigation and over flight.
- **Arms control** - contributing to the UK's application of robust and appropriate arms controls, including supporting the first Conference of States Parties to the Arms Trade Treaty and advising on arms exports to members of the Saudi-led Coalition in respect of their operations in Yemen.
- **ICC** - advising on issues with regard to the work of the International Criminal Court and on the handling of the preliminary examination of aspects of the UK's military operations in Iraq.
- **Migration** - providing advice on the response to maritime migration in the Mediterranean Sea, including on the legal issues concerning the EU's Operation Sophia, the content of relevant United Nations Security Council resolutions and operations in the Aegean Sea.



Sherin Shefik, Michael des Tombe, Nicky Smith and Cathy Adams, with CDR Ian Park RN, on military exercises, HMS DIAMOND, May 2016

The **Counter-Terrorism and Human Rights team** advises on matters arising in the Middle East and North Africa, Eastern Europe, the Americas and on Counter Terrorism and Human Rights. The team acts as Agents in all cases against the UK in the European Court of Human Rights (ECHR) and works on ECHR Court reform. The team is supported by the ECHR Agents Support Unit (EASU). Key achievements from the year include:

- **Daesh** – providing advice in support of HMG’s ongoing counter-Daesh activity in Syria and Iraq, including in relation to the legal basis for extending UK military action to Syria.
- **Counter Terrorism** – advising on domestic and multilateral initiatives around the travel and return of foreign terrorist fighters and extremist travellers; supporting the Home Office on aspects of the passage of the Counter-Terrorism and Security Act 2015, as well as national security deportations and deprivations of nationality; assisting the CPS with criminal prosecutions; advice on kidnaps including the UK’s policy on ransom payments; and on Justice and Human Rights Partnerships with other States.



**Familiarisation visit to Israel and the Occupied Territories by Ann Swampillai and Michelle Valchero, April 2016, in respect of their work on the Middle East**

- **Cyber** - engaging in the development of shared understandings on how international law regulates state use of cyber technologies. In July 2015 Anna Mcleod was part of the UK delegation to the UN Group of Government Experts on the use of cyber technologies and international security (UNGGE), along with 20 other states, which negotiated a consensus report including agreement that the UN Charter, principles of state responsibility and international humanitarian law (IHL) apply in cyberspace. In April 2016, she was invited by UNIDIR to speak at the UN in Geneva as part of a panel with the US, China, Germany and Australia on international law and cyber technologies and the future of the GGE process. The event was attended by over 40 states as well as academic experts in the field.
- **Colombia** – providing legal advice on transitional justice arrangements and various aspects of the Government of Colombia – FARC-EP peace process.



The **European Union (EU) team** provides advice to the Europe Directorate and other FCO Directorates that cover issues relating to Europe. It also advises the Western Balkans and Turkey geographical regions as well as providing legal support to the Department for Business, Innovation and Skills and the Department for International Development. The team's main areas of work from the year include advice on:

- **EU-third country agreements** – these involve careful analysis of the competences exercised by the EU, to ensure that the boundaries between EU and Member State competence are respected. Key achievements included getting the Kosovo Stabilisation and Association Agreement to signature in a way that delivered a critical regional objective for the UK – greater stabilisation in, and support for, Kosovo.
- **Justice and Home Affairs** – ensuring that the UK's Justice and Home Affairs opt-in is respected, and working closely with colleagues across Whitehall and in UKREP in order to protect our position, whilst making sure that our negotiating capital is used to best effect.
- **Primary and secondary legislation** - notable achievements this year included taking the European Union Referendum Act 2015 through Parliament, as well as advising on related publications and drafting secondary legislation.
- **The relationship between the UK and the EU** - advising on the legal form and drafting of the EU/UK deal in respect of the UK's membership of the EU, as well as the UK's new relationship with the EU, including securing registration of the deal at the UN as a treaty.
- **Adjudicating Climate Change conference** - organising, hosting and chairing the opening session of 'Adjudicating Climate Change', a three-day conference in collaboration with the Supreme Court, King's College Dickson Poon School of Law, and the Journal of Environmental Law. Participants included present and former Supreme Court Justices from several countries and leading academics and practitioners. (Full details are available at <http://www.kcl.ac.uk/law/newsevents/climate-courts/symposium-puts-focus-on-courts.aspx>).



Adjudicating Climate Change conference, September 2015

The **Overseas Territories (OTs) and Maritime team** is a hybrid legal and policy team, which provides legal advice to Overseas Territories Directorate and on the Law of the Sea, and which also includes the work of Maritime Policy Unit, the government lead on the UN Convention on the Law of the Sea (UNCLOS), Deep Sea Mining and Marine Scientific Research applications. Key achievements from the year include:

- **Wass Inquiry** - advising on the FCO's engagement with the Wass Inquiry into allegations of child sexual abuse on St Helena and claims of a cover up by FCO, DFID and St Helena Government. The Inquiry's report<sup>1</sup>, published in December 2015, concluded that there was no evidence of a cover up. The Inquiry did however identify a number of systemic failings and made recommendations as to how they should be addressed. Advice has been given in respect of the ongoing implementation of those recommendations.
- **Mauritius** - participating in talks with Mauritius to implement the arbitral award of March 2015<sup>2</sup> in relation to the Marine Protected Area (MPA) that the UK decided to establish around the British Indian Ocean Territory. The Tribunal, constituted under UNCLOS, found that there had been insufficient consultation with Mauritius in establishing the MPA, although the Tribunal took no view on the substantive quality of the MPA and found there was no improper motive in the creation of the MPA.



(From third from right) Doug Wilson, Andy Murdoch and Stephen Taylor attend the UK/China maritime talks, December 2015

- **Anti-corruption** - in the lead up to the Prime Minister's anti-corruption summit in May 2016, advising on the arrangements that were concluded between the UK and the OTs with developed financial services sectors (Anguilla, Bermuda, Cayman Islands, Turks and Caicos and Virgin Islands)<sup>3</sup>. These will enable the automatic sharing for law enforcement purposes of beneficial ownership information in relation to companies incorporated in those OTs.
- **Extradition** - in order to implement a coherent extradition regime in the OTs, an Order in Council has been drafted extending the provisions of the UK's Extradition Act 2003 to the OTs, and will be laid before Parliament shortly after summer recess in 2016 .

<sup>1</sup> <https://www.gov.uk/government/publications/the-wass-inquiry-report-into-allegations-surrounding-child-safeguarding-issues-on-st-helena-and-ascension-island-redacted-version>

<sup>2</sup> <http://www.pcacases.com/pcadocs/MU-UK%2020150318%20Award.pdf>

<sup>3</sup> <https://www.gov.uk/government/collections/beneficial-ownership-uk-overseas-territories-and-crown-dependencies>

- **Conservation** - leading the UK delegation at the first session of the Preparatory Committee on development of a new implementing agreement under UNCLOS on the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction.
- **Marine resources** - coordinating the proposal for a programme to enable Commonwealth Small Island Developing States to capitalise on their marine resources and develop sustainable “blue economies”, announced by the Prime Minister at the 2015 Commonwealth Heads of Government Meeting.

The **Foreign Relations** team provides legal advice on immunities, consular and diplomatic law, treaty law and air services, manages national security and colonial legacy litigation and provides oversight over all the FCO’s UK litigation. The team also provides advice to the FCO Operations Cone on information law, corporate and commercial issues, human resources and estates and security. Key achievements from the year include:

- **Privileges and Immunities** - preparing an Order in Council to confer privileges and immunities on the Asian Infrastructure Investment Bank (AIIB) and its officers and working with the Scottish Government on a parallel Scottish Order in Council. These were essential pieces of implementing legislation which enabled the UK to become the first G7 country outside Asia to join the Bank.
- **Closed Material Procedures** - continuing to apply closed material procedures under the Justice and Security Act 2013, with a focus on disclosure obligations.
- **Inquests** - assisting the Coroner, including in providing witness evidence, in an inquest into the death of a British International Committee of the Red Cross worker in Pakistan.
- **Guantanamo** - advising on the return to the UK of the final British resident in Guantanamo Bay, Shaker Aamer, and finalising the settlement of his civil damages claim against HMG.
- **COJUR and CAHDI** – providing assistance and briefing to the Legal Adviser on matters discussed at the regular COJUR (EU Council Working Group on Public International Law) and CAHDI (Council of Europe meeting on Public International law) meetings in Brussels and Strasbourg
- **Independent Inquiry into Child Sexual Abuse** – advising on the FCO’s engagement with the Inquiry led by Hon. Lowell Goddard into State institutions’ protection of children from sexual abuse and exploitation.

The Directorate also provides legal advice in support of the **Intelligence Policy Directorate** (IPD), through a team of lawyers drawn from across the Directorate’s teams. Key achievements from the year include working together on legal issues arising in relation to the Investigatory Powers Bill, introduced in Parliament on 1 March 2016. The Bill is designed to strengthen and consolidate the legal framework governing the use and oversight of investigatory powers by the law enforcement and security and intelligence agencies. It is making its way through Parliament after its introduction to the House following post-legislative scrutiny, and has been subject to rigorous debate and amendment. In addition to advice on the Bill, **the IPD legal team** has advised policy clients and worked with colleagues across Government on a number of legal challenges in the Investigatory Powers Tribunal and in the domestic Courts, including on cases determining the meaning and effect of the Wilson Doctrine (regarding the interception of Parliamentarians’ communications) and whether the legislative framework within which computer network exploitation activities take place is ECHR compliant.

## 1.2 Overseas lawyers

The Legal team at the **UK Mission to the United Nations, New York** consists of *Helen Mulvein* and *Jesse Clarke*. *Ahila Sornarajah* replaced *Jesse Clarke* from summer 2015. UKMis Legal Section has lead responsibility in the Mission, and represents the UK in the UN on international justice; the General Assembly's Sixth (Legal) Committee; Rule of Law; and Law of the Sea. The Section provides legal advice across the full range of the work of the Mission and also liaises with the UN Office of Legal Affairs on issues of importance to the UK, e.g. efficient functioning of international tribunals, criminal investigations, and immunities of UN peacekeepers. The Legal Section also promotes UK interests through outreach to the wider diplomatic, legal and academic community in New York/the US.



**Helen Mulvein representing the UK at the United Nations Security Council**



**Ahila Sornarajah representing the UK at the United Nations Security Council**

*Margaret Purdasy*, Legal Adviser at the **UK Mission to the United Nations, Geneva**, has responsibility for legal-policy issues arising in work across the Geneva institutions, as well as giving legal advice to UKMis colleagues on all areas of international law and practice. Key achievements from the year include coordinating negotiations during the Quadrennial Red Cross Red Crescent Conference in December 2015, which delivered two key UK priorities on detention in non-international armed conflicts and strengthening compliance with international humanitarian law. Further, the UK Permanent Representative to the UN in Geneva hosted the now traditional annual reception with the Geneva international law community at the UK residence on the occasion of the 68th meeting of the International Law Commission.

The legal team at the **UK Representation to the EU, Brussels**, consists of *Ivan Smyth* (*Legal Counsellor*), *James Keay-Bright*, *Caroline Ross* and *Alistair Robinson* (*all 1st Secretary legal*) and *Christine Reeve* (*Infractions Policy and Business Support*). The UKREP legal team provide on the spot legal advice to the Ambassadors and desk officers; engage with the legal advisers of the EU institutions and Member States; engage in outreach in the Brussels legal community; provide expertise and training to Whitehall departments on EU legal issues; and act as liaison between Whitehall Departments and the Commission on infractions and the transposition of directives and with the Council Secretariat on transparency enquiries under the Access to Documents regulation. The team is currently engaged in working on the UK's new relationship with the EU, alongside



advising on the full range of day-to-day legal issues that continue to arise in Brussels with regard to the UK's membership of the EU.

*Shehzad Charania*, Legal Adviser to the **Embassy in The Hague**, heads the International Law Section of the Embassy, providing leadership, representation, strategic direction and analysis on the UK's engagement with The Hague-based international legal institutions. The majority of the team's work focuses on the International Criminal Court (ICC), but also includes the International Court of Justice, the International Criminal Tribunal for the Former Yugoslavia, the Mechanism for International Criminal Tribunals, the Residual Court for Sierra Leone, the Special Tribunal for Lebanon, the Permanent Court of Arbitration and The Hague Conference on Private International Law.

*Laura Dauban* is the Deputy Permanent Representative, **UK Delegation to the Council of Europe, Strasbourg**. She will be replaced by *Eleanor Hourigan* in July 2016. She leads on liaison with the Committee of Ministers in their supervision of European Court of Human Rights judgments against the UK; represents the UK in the Committee of Ministers when it oversees the Court's judgments against both the UK and other Member States; promote reform of the Court and negotiating for the UK on human rights and justice issues. Laura continues to be closely involved in the UK's broader policy and activities at the Council of Europe and in the management of the Delegation.

### 1.3 Treaty Section

Treaty Section's 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 more than forty multilateral treaties; to oversee the application of the statutory provisions for the scrutiny of treaties by Parliament; and to arrange for treaties which are in force for the UK to be transferred to the National Archives at Kew for permanent preservation. The Section's two roles cover treaty procedures and publishing, and treaty information and UK depositary work.

**Treaty procedures and publishing** includes the key treaty stages of drawing up Full Powers and instruments of ratification; publishing treaty texts before Parliament as Command Papers; and registering treaty texts with the United Nations Treaty Section. This year members officiated at six treaty signature ceremonies in the UK and supported signature and ratification events at UK posts abroad. These included the Articles of Agreement of the Asian Infrastructure Investment Bank, Convention and Protocol on International Interests in Mobile Equipment and the Paris Agreement on Climate Change. Important bilateral treaties included: a Nuclear Cooperation Agreement with India; Agreements on the Transfer of Sentenced Persons with Ghana and with Iraq; a Defence Cooperation Agreement with Kenya; and a Mutual Legal Assistance Agreement with Kazakhstan.

**Treaty Information and UK Depositary** provides assistance to Whitehall departments, foreign governments and the public with enquiries about the UK's treaty commitments. The Section makes its database and texts of treaties, which have been published in the UK Treaty Series since 1892, available through the UK Treaties Online service (<https://www.gov.uk/uk-treaties>). The depositary role includes recording and disseminating information about actions on treaties for which the UK Government is depositary, including UNESCO and the Biological Weapons Convention.



UK/Indonesia ministerial signing at No.10 Downing Street



Treaty Sections' Laura Robinson and Carlene Robinson attending a treaty signing near the FCO

## 1.4 Litigation

The Directorate has been closely involved in a range of litigation involving the FCO and HMG this year.

### *Domestic litigation*

- ***Kamoka & Others litigation*** – utilising a Closed Material Procedure to successfully strike out a number of claims of alleged suppression of evidence by HMG in historic Deportation with Assurances and Control Order legal proceedings. The decision is being appealed by the claimants.
- ***Handling of preliminary international law arguments in the lead civil damages case of Belhaj v FCO & Ors*** – heard by the Supreme Court in 2015 (judgment awaited), HMG is arguing that state immunity and/or Foreign Act of State doctrine mean that most of the cases cannot be heard in the UK Courts as it would require the Courts to adjudicate on the actions of sovereign foreign States.
- ***R (Shindler & MacLennan) v Chancellor of the Duchy of Lancaster and SoS for Foreign & Commonwealth Affairs*** - alongside Cabinet Office colleagues, successfully defended an expedited EU law challenge to the adoption in the EU referendum franchise of the 15 year rule – which deprives ex-pats of the vote 15 years after they were last registered. This case went through the Divisional Court, Court of Appeal and ultimately the Supreme Court in a permission hearing all in under 5 weeks.
- ***Colonial Legacy Litigation*** – effectively managing colonial legacy claims including group litigation brought by over 40,000 Kenyan claimants in connection with the 1952-1960 State of Emergency.
- ***Youssef v Secretary of State for Foreign and Commonwealth Affairs*** - a seminal Supreme Court judgment was handed down in March concerning the UN Security Council's Al Qaida sanctions regime. Mr Youssef, an Egyptian national residing in the UK challenged the legality of Foreign Secretary's decision to lift a 'hold' in the UN Security Council Sanctions Committee, thereby allowing him to be listed. The Court dismissed all grounds of appeal and, notably, clarified that the standard of proof of 'reasonable grounds to suspect' was the correct test to apply when deciding whether the listing criteria of 'association with Al Qaida' was met.

### *EU litigation*

- ***Commission v Council ("Australia/ETS" case)*** – the UK intervened in this case which concerned the extent of the Council's ability to control how the Commission conducts international negotiations. The CJEU found that the Council has the power to follow the negotiations, guide the negotiator and designate a special committee. However, the CJEU held that the special committee could not specify detailed negotiating positions which sought to bind the negotiator (i.e. the Commission) in a manner which went beyond the special committee's consultative function.
- ***Council v Commission ("the ITLOS case")*** – the UK supported the Council in seeking the annulment of a Commission Decision to submit a written statement on behalf of the EU before the International Tribunal for the Law of the Sea in a case before that Tribunal without first obtaining the requisite authorization from the Council. The CJEU found that such legal submissions by the Commission did not amount to strategic or political choices for the Council to

exercise pursuant to its policy-making prerogatives under the treaties, and so the Commission did not require prior authorisation.

- **Schrems v Data Protection Commissioner** – the UK intervened in this case, which was referred to the CJEU by the Irish High Court following a complaint from a Facebook user in Austria. In an important judgment the CJEU held that when a complaint is lodged with a national data protection authority in an EU Member State that authority is entitled - indeed required - to carry out its own examination of whether a data transfer to a non-EU third country complies with the requirements of EU law. The CJEU went on to find the Commission's 'Safe Harbour' Decision, which was applicable here, to be invalid.
- **Council v Commission (the "Swiss MoU" case)** - the UK intervened supporting the Council's bid to annul a Decision of the European Commission to sign a Memorandum of Understanding with Switzerland, without prior authorisation by the Council. The UK argued that the Commission Decision violated both the distribution of powers provided for in the EU treaties and the principle of sincere cooperation. Advocate General Sharpston delivered an Opinion in the case last year in favour of the Council's (and UK's) position. Judgment is now awaited.
- **Sanctions litigation** - the UK intervened in 11 sanctions cases brought in the General Court and European Court of Justice against the European Council (Tomana, Rosneft, Safu Nica, OPIC, KNIC, Gazprom Neft, LTTE, Al Ghabra, Bank Saderat, Bank Mellat) relating to the Zimbabwe, Iran, North Korea, Russia and AQ sanctions regimes.



Ruth Tomlinson and policy colleagues from the Iran and sanctions team attending the hearing of Safu Nica v Council of the European Union before the Court of Justice of the European Union, May 2016. Others joined them later.

### **Litigation before the European Court of Human Rights**

In 2015, the European Court of Human Rights communicated 95 applications to the UK for observations (of which 22 were "clone cases" on prisoner voting rights) and decided 1561 applications against the UK. It delivered 13 judgments relating to the UK, 4 of which found a violation of the Convention. Significant decisions in favour of the UK in 2015-16 included:

- **Armani da Silva** - no violation of Article 2 in respect of the actions taken to ensure accountability following the fatal shooting of Jean Charles de Menezes.
- **Fazia Ali** – no violation of Article 6 in respect of the legislative scheme in the UK under which local authorities have a duty to provide housing to the homeless.
- **SS, FA and Others** – application complaining that denying social security benefits to prisoners serving sentences in psychiatric hospitals was a violation of Article 14 (declared inadmissible).



- ***Sher and Others*** – no violation of Article 5 in respect of the arrest and detention of three Pakistani nationals in the context of a counter-terrorism operation.
- ***I.A.A.*** – application by 5 Somali nationals about the refusal to grant them entry to the UK to be reunited with their mother (inadmissible as manifestly ill-founded).
- ***Dallas*** – no violation of Article 7 in relation to a conviction for contempt of court as a result of a juror conducting internet research.
- ***Seton*** – no violation of Article 6 in respect of a complaint about the admission of evidence from a witness absent at trial.

There were 308 applications for interim measures (preliminary protective orders) against the UK in 2015, all of which were refused.

Significant cases on which work is ongoing include:

- ***Big Brother Watch, 10 Human Rights Organisations and Bureau of Investigative Journalism*** - three applications relating to both the legal regime under which the UK authorises and conducts “bulk” interception operations, and the legal basis under which it receives intelligence acquired through interception by its overseas partners, currently governed by the Regulation of Investigatory Powers Act (RIPA).
- ***Amin and Ahmed*** - extent of UK's responsibility in respect of alleged complicity by British agents in ill treatment of applicants whilst in detention in Pakistan.
- ***Ireland v UK*** – a request to review the 1972 judgment of the Court on the use of deep interrogation techniques in Northern Ireland.

As of 12 April 2016 there were 256 applications against the UK i.e. 0.4% of the total applications pending before the Court.

Judgments anticipated in 2016-2017 include:

- ***Hutchinson*** – referred to the Grand Chamber. The Chamber found no violation of Article 3 following the clarification of the operation of UK law on whole life orders by the Court of Appeal.
- ***Ibrahim*** – referred to the Grand Chamber. The Chamber found no violation of Article 6 in respect of safety interviews carried out following the failed attempt to detonate bombs on the London transport system on 21 July 2005.
- ***McKevitt and Campbell*** - whether the hearing of the civil claims against the applicants for their alleged role in the Omagh bombing was fair in light of the admission of hearsay evidence and the application of the civil rather than criminal standard of proof.

### *Litigation before the International Court of Justice*

In May 2014, the Marshall Islands began proceedings against the UK in the International Court of Justice (ICJ) in relation to nuclear disarmament. This was the first contentious case brought against the UK in the ICJ brought against the UK since 1999. Public hearings on the UK's preliminary objections to jurisdiction and admissibility in this case took place in The Hague in March 2016. A judgment from the ICJ on these preliminary objections is now awaited. These proceedings remain ongoing.



**UK delegation, Chris Stephen, Guglielmo Verdirame, Jessica Wells, Iain Macleod, Melanie Horn, Shehzad Charania and Sir Daniel Bethlehem, before the Marshall Islands preliminary objections hearing at The Hague, March 2016**



### *To be a well run, happy, and effective team with a work/life balance*

The Directorate's Management objective is delivered through various initiatives, from efficient overall office management of the Directorate to staff engagement and diversity initiatives.

#### **2.1 Office Management Section**

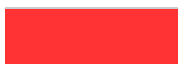


The Directorate **Office Management Section (OMS)** is responsible for the efficient administration of the Directorate. It leads on information services, managing financial resources and provides an efficient service for the administration of the Directorate. This year OMS responded to 240 Mutual Legal Assistance requests, managed the processing of 25 Statutory Instruments and answered Parliamentary questions, MPs' letters and letters from members of the public. OMS also managed departmental security, arranged introductory talks on IT and security with new members of staff and continued to manage the office environment and premises, including facilities and equipment. This year OMS has also taken on a greater role in respect of outreach including events management within the Directorate as well as giving logistical assistance to several different teams.

#### **2.2 Staff survey**

The staff survey is carried out every year across the FCO. The response rate within the Legal Directorate for the 2015 Staff Survey was again very high, with 94% submitting a response. The Directorate's scores continued to be very strong in relation to "satisfaction with the work that we do" and "organisational objectives and purpose". There were also some improvements in the "My manager" and "My team" and "Leadership and change management", which were the headline issues we tried to work on from last year, although all remain below the FCO average. Discrimination results remain the same, but there has been a positive trajectory for bullying and harassment this year. There has been a drop in satisfaction on "Resources and workload", the main issue appearing to be "workload", and to a lesser extent "work/life balance" and "having the tools to do the job", with pay satisfaction continuing to be one of lowest areas of satisfaction. Following a successful Staff engagement away afternoon last year, and bearing in mind the results of the 2015 Staff survey, the **Staff Survey and Engagement Group**, which is drawn from all areas of the Directorate, continues to work on improving staff satisfaction and engagement.

#### **2.3 Client satisfaction**

Each year the Directorate carries out a client satisfaction survey, to gather input from all of our clients across the FCO on the legal service that the Directorate provides and any suggestions for improvements. This year's client satisfaction scores were very positive, with 97% of clients rating overall performance as excellent or good.

1. How do you rate our performance overall?			
			Response %
1	Excellent		57.14%
2	Good		40.48%
3	Acceptable		2.38%
4	Poor		0.00%
5	Unacceptable		0.00%

We have nearly doubled the response rate from last year, and improved most, but not all, our scores. There is still more to do to ensure effective cover arrangements and keeping clients informed of progress, both of which will form the focus of our client care efforts for the year ahead.

## 2.4 Diversity

Work continues to focus on improving the way we address diversity within the Directorate. This year, a number of our lawyers attended the annual Civil Service Women into Leadership Conference and then ran a session for the Directorate feeding back their impressions and thoughts. Other initiatives have included training from the Government Equalities Office on the public sector equality duty and an all-women challenge session to better understand the reasons for the gender disparity in the staff survey scores. Some members of the Directorate also attended a leadership event for LGBT role models facilitated by Stonewall and are now Stonewall alumni.





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

### 3.1 Law Faculty

The Law Faculty of the Foreign and Commonwealth's Diplomatic Academy, established in 2014, is flourishing. The Faculty's aim is to improve the understanding among policy and operational staff in the FCO of the legal context of the FCO's work, the legal powers which underpin the FCO's activities (and the legal constraints that may affect its ability to act) and core legal topics that are central to the work of the FCO.

FCO Lawyers deliver training direct to our diplomatic and operational staff in London and overseas. At "Foundation Level", the Law Faculty is a core element of the new FCO - City & Guilds Diploma in Diplomatic Practice. The Law Faculty continues to run "Practitioner Level" half-day training modules for policy officers, building on its former legal awareness programme. The modules include:

- Law and Foreign Policy
- The Judge over your shoulder (taking good decisions – and what to do if things go wrong)
- Military intervention: is it legal?
- The Laws of War: an introduction to international humanitarian law
- Treaties: a conventional truth
- EU law
- Law of the Sea: Ruling the Waves
- Smarter Sanctions: Policy and Legal Considerations
- Overseas Territories: Notes on (mostly) small islands

### 3.2 Learning and Development

This year the Directorate **Learning and Development Group** has been promoting and encouraging use of the comprehensive Learning and Development Plan that was introduced last year. In addition, the Group organised a series of lunchtime seminars delivered by in-house speakers and guest speakers from outside the FCO. Subjects included Iraq, Syria, EU Negotiations and The Extraordinary Chambers in the Courts of Cambodia. We also continued our "Advising on..." seminars (designed to provide slightly more detailed training on key areas on which members of the Directorate are required to advise) with Advising on Litigation/Public Interest Immunity/Disclosure, Advising on Treaties, Advising on EU Third Country Agreements and Advising on Inquiries. Lawyers working in posts also continue to share their experiences with their London colleagues.



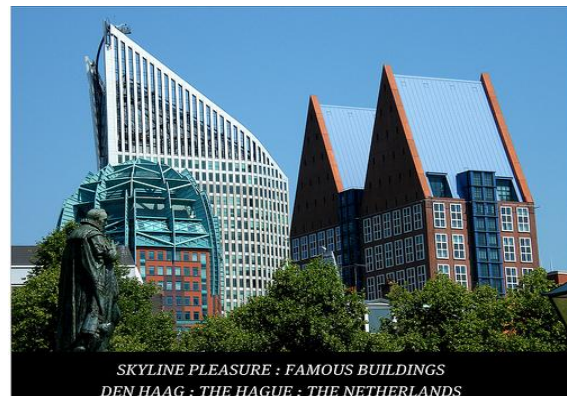
***To maintain and enhance the reputation and impact of the FCO in the wider International law world, especially among academics and practitioners in the UK***

#### **4. Outreach initiatives**

Outreach is at the core of the Directorate's activities. During this year the Directorate has engaged in a wide variety of outreach events, ranging from round table discussions on 'Government liability for aid and assistance to others' and 'The ICC and its approach to Complementarity' (Matrix Chambers, April 2016) to hosting a conference on law and diplomacy. Highlights from the year include:



**In May 2016, Judge Christopher Greenwood delivered the Fourth FCO Annual Law Lecture: "Law and Justice in International Life".**



**In July 2015, British Embassy, The Hague hosted the International Legal Diplomacy Conference, on the connection between law and diplomacy in a rules-based international order, in partnership with The Hague Institute for Global Justice**



**In April 2016, FCO Legal Advisers participated in the 110th Annual Meeting of the American Society of International Law. Doug Wilson, second from left.**

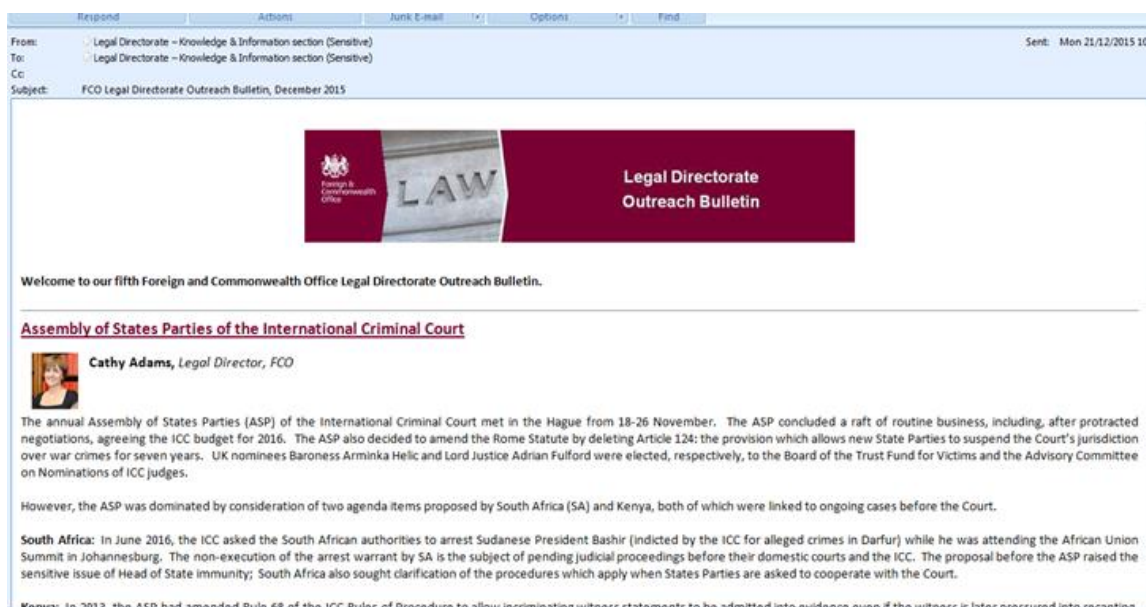


**In February 2016, Dominic Grieve QC delivered a speech at the British Embassy, The Hague: "Why International Law Matters", in collaboration with Temple Garden Chambers**

The British Embassy in The Hague also organised a number of public outreach events this year, including the following:

- The Second Annual British Embassy Lecture on International Law delivered by Sir Daniel Bethlehem QC (“The Supremacy of International Law?”)<sup>4</sup>.
- As Chair of the Group of Friends of the International Criminal Court (ICC) in The Hague, Shehzad Charania conducted (subsequently published) interviews with a number of senior ICC figures, including the current ICC [President](#)<sup>5</sup> Judge Silvia Fernandez de Gurmendi, the ICC [Prosecutor](#)<sup>6</sup> Fatou Bensouda, and the ICC [Registrar](#)<sup>7</sup> Herman von Hebel and the [first two](#)<sup>8</sup> staff members.
- A seminar to launch the second edition of “The Law and Practice of the International Criminal Court”, edited by Professor Carsten Stahn. Videos of the presentations can be found [here](#)<sup>9</sup>, as well as a [post](#)<sup>10</sup> co-written by *Shehzad Charania* and *Iain Macleod* on the challenges facing the International Criminal Court.

We also continue to deliver our outreach bulletin throughout the year, which covers a range of legal topics.



Sign up to receive Legal Directorate’s Outreach Bulletin at [legaldirectorateEnquiries@fco.gov.uk](mailto:legaldirectorateEnquiries@fco.gov.uk).  
You can also follow the FCO international lawyers in London and abroad on twitter at [@UKintlaw](https://twitter.com/UKintlaw).

<sup>4</sup> <http://www.ejiltalk.org/the-supremacy-of-international-law-part-one/>

<sup>5</sup> <https://justiceinconflict.org/2016/01/06/an-institution-within-an-institution-an-interview-with-the-icc-president/>

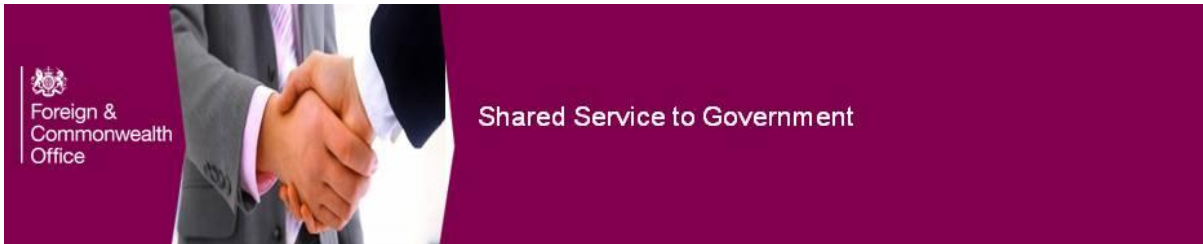
<sup>6</sup> <https://justiceinconflict.org/2015/10/15/without-fear-or-favour-an-interview-with-the-icc-prosecutor-fatou-bensouda/>

<sup>7</sup> <https://justiceinconflict.org/2015/11/12/administering-justice-an-interview-with-the-icc-registrar/>

<sup>8</sup> <https://justiceinconflict.org/2015/12/15/open-for-business-an-interview-with-the-iccs-first-ever-staff-members-sam-muller-and-phakiso-mochochoko/>

<sup>9</sup> <https://m.youtube.com/watch?v=Z550UXe4cx>

<sup>10</sup> <http://blog.oup.com/2015/11/three-challenges-international-criminal-court/>



***To develop a shared legal resource for HMG as a whole on international, ECHR and EU law, whilst developing stronger links with other Government Legal Services (GLS) legal teams***

### **5.1 Collaborative working**

The Directorate works closely with lawyers across Government in all of its work and aims to provide a “shared service” in several distinct areas: international law; international litigation; and treaty services. Examples of areas of collaboration over the year include:

- **The EU referendum** - providing advice on the Referendum Bill -

*“This has been work of a very high quality in support of (obviously) one of the government’s most important priorities. It has also been a really excellent example of seamless team working between the Cabinet Office and FCO legal teams.”* **Jonathan Jones, Treasury Solicitor**

- **Maritime policy** - our Maritime policy team worked closely with the Maritime and Coastguard Agency and the Department for Transport on a number of issues related to the Red Ensign Group (the group of shipping registers operated by the UK, Overseas Territories and Crown Dependencies). This included REG-flagged vessels entering Crimean waters and issues arising from the annual REG Conference.
- **Red Cross and Red Crescent Movement** - we worked closely with colleagues from the Ministry of Defence and the Department for International Development on issues relating to the 32nd International Conference of the Red Cross and Red Crescent Movement. The Conference in December 2015 adopted 10 resolutions on the following themes: strengthening compliance with International Humanitarian Law (IHL), detention in Non-International Armed Conflict (NIAC), Sexual and Gender-Based Violence (SGBV), health care in danger, disaster risk reduction and the safety of volunteers.
- **Cultural property** – we provided support to colleagues in the Department for Culture, Media and Sport in matters relating to the Cultural Property (Armed Conflicts) Bill, which will enable the United Kingdom to implement the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 and the Protocols to that Convention of 1954 and 1999.

### **5.2 Government Legal Service International Law Group**

The GLS International Law Group is chaired by FCO Legal Counsellor Adrian Roberts, with working group representatives from 16 departments/public bodies across Government.

Over 100 delegates from 21 departments/public bodies attended the second annual GLS International Law Conference at the BIS Conference Centre on 15 October July 2015, chaired by FCO



Legal Adviser, Iain Macleod. The Rt Hon Lady Justice Arden, DBE, PC gave a keynote speech entitled 'International and European Law: the view from the bench'. The Attorney General, Rt Hon Jeremy Right QC MP spoke on "The importance of international law for Government lawyers: the Attorney General's perspective". Barristers from the Attorney General's Public International Law Panel gave an update on key international law cases in the UK courts, and negotiators from HMRC, BIS, DECC and DEFRA shared their experiences of negotiating technical treaties in practice. In a challenge session, Professor Guglielmo Verdirame, Maya Lester QC, and FCO's Chanaka Wickremasinghe discussed 'The problem of ISIL: use of force and other measures'. The day concluded with reflections on 70 years of the United Nations by diplomats from the Australian High Commission, Embassy of the Netherlands and the FCO. The next conference will be held in October 2016.

Following the launch of the group's structured programme in Public International Law for Government Lawyers last year, we delivered another introductory course on international law on 9 June 2016 with speakers including Professor Dapo Akande, Counsel Jessica Wells and Amy Sander and a number of FCO lawyers. We also delivered detailed sessions on immunity under international law (FCO lawyers) and on international criminal law (Judge Howard Morrison QC and Andrew Cayley QC).



*Enhance our expertise by effectively managing, accessing and sharing our knowledge and information resources*

## 6. Knowledge and Information Management

**Knowledge and Information Management (KIM)** is a critical aspect of the Directorate's work. Led by the Knowledge and Information Section, our objectives for the year were to: embed good management of knowledge and information in our working practices; maintain well-structured shared files and folders; develop a Knowledge Base to improve the storage and retrieval of Directorate knowledge; develop our skills in using IT to manage knowledge and information; and set up a staff Know-How Directory. Over the past year we have made significant progress in these areas.



Highlights from the year on **sharing knowledge** include:

- **KIM champions** – for each team and section KIM champions are in place to help their teams build a culture of managing knowledge and information well and to support them in meeting KIM objectives.
- **The Knowhow Directory** – we have developed our database of Legal Directorate staff skills and knowledge, enabling us to learn about and share each others' skills.
- **The Knowledge Base** – we have set up an accessible gateway to key advice, guidance and related legal materials on our internal Sharepoint site. About 20 legal topics so far with more being prepared.

On **managing and organising information**, we have introduced new guidance and policy on managing shared files and folders; undertaken an ongoing programme of checking and weeding paper files; and introduced an 'Email Catch-Up' – a new resource to help staff find important messages and organise their personal mailboxes. On **finding and using information**, we have conducted in-house refresher training courses on topics such as using Legal Library and FCO Library resources, searching the FCO's filing systems, and managing mailboxes. We also produce regular current awareness bulletins to help lawyers in the FCO and other government departments keep up to date with developments in international law. Individual teams have also made improvements to knowledge and information management, including consolidating the Litigation Management Database to ensure that up-to-date information is held on domestic litigation involving the FCO and developing our comprehensive Sanctions database as a focal point for all key sanctions legislation and case law developments.



## 7. Priorities for 2016/2017

Our priorities for the coming year will include: contributing to legal advice on the implications of the EU Referendum result to leave the EU; advising on issues regarding the International Criminal Court (ICC) and the Assembly of State Parties in November 2016, including on the crime of aggression; handling cooperation on the ICC's preliminary examination of aspects of the UK's military operations in Iraq; providing legal support on the reunification process for Cyprus, in particular impacts on the existing constitutional treaties and EU law; ongoing engagement in the Sousse inquest; and advising on migration in the Mediterranean Sea and the EU's Operation Sophia, as well as activities in the South China Sea. We also anticipate that developments in ISIL, Libya, Syria, Russia, Counter-terrorism and Cyber are likely to be high priorities for our legal teams for the coming year. Although litigation priorities are somewhat difficult to predict, our focus will likely be on the effective management of detainee civil litigation following the handing down of the judgment by the Supreme Court in the lead case of *Belhaj v FCO & Ors* and ongoing management of colonial legacy claims.

Our Maritime Policy Unit will continue to push for the prompt development of a regulatory regime for deep sea mining, working closely with the International Seabed Authority, other Member States, contractors, NGOs and Whitehall colleagues to provide inter-sessional progress. Improving governance standards and the rule of law in the Overseas Territories will also remain a priority for the Overseas Territories and Maritime team.

Treaty Section will continue improvements to the Section's online information service, including finding a permanent home for the UK Treaties Online service and will maximise wider FCO/Whitehall awareness of Treaty Section's role and services through the Working with Treaties e-learning module, quarterly worldwide Diptel on UK Treaty events/actions and targeted presentations to selected audiences.

The Staff Survey and Engagement Group will continue to develop a feedback culture within the Directorate with a view to making improvements on work/life balance, inclusion and fair treatment, communication, resources and workload, management and culture. We will also continue to engage with various client departments on the role of Legal Advisers with a view to maintaining good relations with clients and identifying any areas where we might work better together.

The Law Faculty will continue to develop its Practitioner Level courses this coming year, with a particular focus on enhancing access for colleagues overseas. The Law Faculty plans to run "expert level" events tailored for policy officers who already have significant knowledge and experience of legal issues, or whose posts require an unusual level of specialised knowledge.

We will pursue further outreach initiatives, including hosting the fifth annual law lecture and continuing the UK-Kings College London seminar series on Law and War.

Our Knowledge and Information Section will continue to develop the Knowledge Base as a key point of access for shared knowledge and organisational memory, redesign the Directorate Sharepoint site to improve access to key guidance and improve Directorate skills in finding and using knowledge and information, especially during staff inductions.

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**Albert the Snake and Gary Hellen, Legal Directorate, June 2016**