

Legal Directorate Annual Report 2016-17



Foreign &
Commonwealth
Office

Overview of the year

This is FCO Legal Directorate's Annual Report, covering June 2016 to July 2017.

The Directorate provides legal services to the FCO, advises on treaties, leads on maritime policy and provides litigation services in UK and international courts. We also have an extensive Outreach programme and run a busy and flourishing Law Faculty in the Diplomatic Academy. This report outlines briefly what we have been doing in these areas, following the broad format of previous reports.

Following the referendum on Brexit, the perspective of our work has shifted fundamentally. The FCO does not formally lead on Brexit, or on international trade, but the nature of the Department's work means that it works closely with the Department for Exiting the EU and Department for International Trade across these Departments' areas of policy. And so, from the seminal *Miller* case last autumn (*R (Miller) v Secretary of State for Exiting the European Union*), through work on the "Great Repeal Bill", to the ongoing negotiations on Brexit, FCO Legal Directorate has been in and around Brexit legal issues in all its areas of work. In some areas the impact is much greater than others, but it impacts everywhere.

This has called for the closest co-operation among all the Whitehall legal teams – not just in consulting on issues, but in collaborating in ways which cut out duplication and deploy expertise in the most efficient and effective way possible. An early example for us was the transfer of five lawyers from the Directorate (including two senior lawyers) to the new DExEU legal team. Currently, we are working to ensure that lawyers in FCO who will work on future trade agreements are integrated into the wider Government Legal Service effort so that there is, so far as possible, a common resource. This kind of collaboration (already reflected in our Directorate objectives) will be essential.

The centrality in Government Legal Work of international law and practice (e.g. on treaties) will also increase as Brexit moves forward. Indeed, that is already happening, especially in the area of trade law. The past year has seen a huge demand for training on international law issues, and a new post has been created in Geneva to handle trade law. The coming years will inevitably require advice on areas of law and international policy which until now have been largely handled by the EU on behalf of the UK (fisheries and air services are obvious examples). So areas of special expertise of the Directorate and FCO legal advisers will become even more part of the mainstream work of Government lawyers than they already are.

All that said, though Brexit is a huge part of our work, it is by no means all of it. Indeed, in purely numerical terms, a small minority of the Directorate work exclusively on EU and Brexit issues. The rest are fully occupied on the other foreign policy preoccupations and problems facing the UK and on their implications for the FCO and the rest of Whitehall. These present massive legal issues in their own right: ICJ and domestic litigation, the International Criminal Court, sanctions, human rights (including before the ECtHR) and maritime law and policy, support to the Overseas Territories, arms exports and issues of immunities before the UK courts. All of these have featured heavily in the Directorate's work last year and will do so in the years to come.

As the report shows, there is no shortage of work for the Directorate to do.

Iain Macleod, The Legal Adviser

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Introduction

The Legal Directorate is led by the Legal Adviser, Iain Macleod, and three Directors (Andy Murdoch, Paul McKell and John Evans). The directorate is made up of five legal teams and three sections (Treaty, Knowledge and Information and Business Support/ECHR). A number of our lawyers are also posted overseas in Brussels, New York, The Hague, Geneva, Strasbourg and Washington.

The team of employed lawyers in FCO has been supplemented during the past year by lawyers on temporary loan from the Bar and solicitors' firms. We were also joined for several months by Sara Birgitte Gottfredsen, from the Danish MFA legal team. These short attachments have proved an excellent way of supplementing our resources flexibly and efficiently.

We have the following six overarching objectives:

 <p>Objective 1: Legal Services and Advice</p>	 <p>Objective 2: Management</p>
 <p>Objective 3: Legal Awareness</p>	 <p>Objective 4: Outreach</p>
 <p>Objective 5: Shared Service to Government</p>	 <p>Objective 6: Knowledge and Information Management</p>



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 re-structured **National Security team** (formerly part of the Counter Terrorism and Human Rights team) advises on some of the Office's key foreign policy priorities, with geographic portfolios covering the Middle East and North Africa, and the Americas; and thematic portfolios covering Counter Terrorism, Intelligence Policy, Cyber and Full Spectrum Effects.

Key areas of work from the year include:

- **Syria** - continuing to support delivery of the Conflict Stability and Security Fund Programmes in Syria and working to secure accountability for international crimes in Syria, for example, through the establishment of the international, impartial and independent Mechanism to investigate such crimes by the UN.
- **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 implementation of the Counter-Terrorism and Security Act 2015, as well as national security deportations and deprivations of nationality; advice on kidnaps including the UK's policy on ransom payments; and on Justice and Human Rights Partnerships with other States.
- **Sousse Inquest** - working across Government in relation to HMG's evidence to the Inquests into the deaths of 30 British nationals, killed by a terrorist in Tunisia in June 2015. Working with the Coroner's team to give the bereaved families access to as much information as possible given national security constraints.
- **Investigatory Powers Act 2016** – advising on the implementation of this new legislation which overhauls intelligence oversight in the United Kingdom for the digital age.

The **Foreign Relations team** advises on a range of work that is core to FCO, including advice on privileges and immunities, consular and diplomatic law, treaty law and information law. The team also advises on corporate and commercial, human resources, estates and security matters. Finally, the team handles complex litigation on colonial legacy issues and treatment of detainees, and has an overarching role in relation to all domestic litigation, inquests and inquiries in which the FCO is involved.

Key areas of work have included:

- **EU Exit:** advising on constitutional aspects of leaving the European Union in particular working with colleagues across Government in the case of *R (Miller) v Secretary of State for Exiting the European Union* [2017] UK SC5.
- **Privileges and Immunities:** the High Court upheld the legal basis upon which foreign visiting officials are granted “special mission status” while in the UK, in the case of *R (Freedom and Justice Party) v Secretary of State for Foreign & Commonwealth Affairs & DPP*. <https://high-court-justice.vlex.co.uk/vid/co-6384-2015-646657717>. The court held that customary international law requires a receiving State to secure, for the duration of a special mission, personal inviolability and immunity from criminal jurisdiction for the members of the mission accepted as such by the receiving State and that this customary rule is given effect by the common law. (An appeal is pending).
- **Consular law:** advising in support of British nationals all over the world, and successfully defending judicial review proceedings challenging the Foreign Secretary’s approach to consular assistance in the *Tsege* case. (*R (Andargachew) v Secretary of State for Foreign and Commonwealth Affairs* [2016] EWHC 2881 (Admin)).
- **Commercial:** advising on a number of commercial matters, including in relation to the BBC World Service and BBC Monitoring in the context of the renegotiation of the BBC Charter and Framework Agreement.
- **Colonial litigation:** working with the Government Legal Department to defend colonial legacy claims, including in the Kenya Emergency Group Litigation, one of the most complex pieces of group litigation ever brought against HMG.
- **Detainee litigation:** Assessing the implications of the Supreme Court’s judgments on the doctrines of state immunity, foreign act of state and Crown act of state, in the cases of [Belhaj and another v Straw and others \[2017\] UKSC 3](#) and [Rahmatullah \(No. 2\) and Mohammed v Ministry of Defence and Secretary of State for Foreign and Commonwealth Affairs \[2017\] UKSC 1](#)
- Advising on the FCO’s involvement in a number of inquests and inquiries, including the Independent Inquiry into Child Sexual Abuse.
- Supporting 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.

The restructured **Europe and Human Rights team** (formerly the EU team and part of the Counter Terrorism and Human Rights team) provides advice to Europe Directorate and Human Rights and Democracy Department as well as on matters concerning Turkey, the Western Balkans, Eastern Europe and Central Asia. The team acts as Agents in all cases against the UK in the European Court of Human Rights, assisted by the ECHR Agents' Support Unit.



Agent to the European Court of Human Rights, left to right: Clair Dobbin, Counsel James Eadie QC (centre) and Rashmin Sagoo at the *Harkins v UK* Hearing

Key areas of work included:

- The **EU Membership Referendum** – including work on the implementation of legislation pursuant to the EU Referendum Act 2015 and litigation concerning the franchise which was fast-tracked to the Supreme Court within a month of being brought.
- Implementation of the UK's **EU Exit** supporting FCO Ministers and Europe Directorate on legal issues arising from the EU Exit, working closely with DeXEU and DIT. This has included advice on *R (Miller) v Secretary of State for Exiting the European Union* before the Supreme Court; on the handling of existing and future international agreements involving the UK; on foreign and security policy; and, with the OTMT team, on the implications of the EU Exit for the Sovereign Base Areas and the Overseas Territories.
- **Cyprus peace talks** – attending as part of the UK delegation to UN-sponsored peace talks in Geneva, and advising on a potential settlement for a unified Cyprus.



- **Cyber** – we were part of the UK delegation to the UN Group of Government Experts on Cyber (UNGGE) in New York and Geneva, along with 25 other states, aiming to progress agreement on how international law (including the UN Charter, principles of state responsibility and international humanitarian law) applies in cyberspace. In February 2017 we held a joint conference with [King's College London](#) on state practice in cyberspace, attended by colleagues from the US, Canada, Germany, The Netherlands, Finland, Japan and Switzerland).

Bottom front left - Anna McLeod at Cyber negotiations

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 also provides legal advice to the South Asia, Afghanistan, Africa and Asia Pacific geographical regions.

Key areas of work from the year include:

- **Sanctions** – advising on the 35 active multi-national sanctions regimes including sanctions measures concerning North Korea, Syria, Libya, Russia and Iran and the Libyan arms embargo on the high seas. Orders in Council were drafted to implement sanctions in the Overseas Territories and to implement aspects of the sanctions regimes in the UK.
- **Post-Brexit Sanctions** - working across Government to identify the new legal powers that Government will need to enable the UK to preserve current sanctions policy and continue to implement UN sanctions. Advising on the White Paper published in April setting out the framework of those powers and on preparation of the relevant legislation.
- **International Court of Justice** – successfully resisting at the preliminary objections stage the ICJ case brought by the Marshall Islands against the UK alleging breach of the Non Proliferation Treaty. In its judgment in October 2016, the [Court agreed](#) with the UK’s submissions that it did not have jurisdiction to hear the claim because there was no “dispute” between the Marshall Islands and the UK.
- **Maritime Security** – leading on the analysis of the legal issues arising in connection competing legal claims in the South China Sea.
- **Arms control** – contributing to the UK’s application of robust and appropriate arms controls and advising on the successful defence to judicial review proceedings relating to arms exports to Saudi Arabia in connection with [military operations](#) in Yemen.



Familiarisation visit to MOD. Left to right: Steve Taylor and Ruth Tomlinson

The **Overseas Territories 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 also includes the Maritime Policy Unit, (the UK 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:

- Participating in the annual meeting of the **Commission for the Conservation of Antarctic Marine Living Resources** (CCAMLR) at which it was agreed to establish the world's largest Marine Protected Area (MPA) of 1.55 million km² in Antarctica's Ross Sea. Also participating in the annual meeting of the **International Seabed Authority** which saw progress on the Deep Sea Mining regulations and the election of the UK candidate, Michael Lodge, as Secretary-General, as well as the election of UK candidates for the Legal & Technical Commission and the Finance Committee.
- Providing advice and coordination for the **Commonwealth Marine Economies** (CME) Programme to provide Commonwealth Small Island Developing States (SIDS) in the Caribbean, Pacific and Indian Ocean regions with accurate data relating to their marine environment, and capacity building, to enable them to develop their marine economies. Attending capacity building training for OT representatives in the area of maritime boundary delimitation.
- Continuing to lead the UK delegation at the Preparatory Committee on developing an agreement under UNCLOS on the conservation and sustainable use of marine **bio-diversity on areas beyond national jurisdiction** (BBNJ).
- Advising on OT-specific considerations arising out of the **Brexit** process, including in preparation for Joint Ministerial Councils between the UK and OT Governments and technical roundtables at official level.
- Ensuring OT compliance with **beneficial ownership information sharing arrangements** concluded last year between the UK and certain OTs ahead of an end of June 2017 implementation deadline, enabling the sharing for law enforcement purposes of beneficial ownership information in relation to companies incorporated in those OTs.
- Drafting constitutional legislation for the Overseas Territories including on **emergency powers and extradition**.
- Advising on bilateral talks with Mauritius relating to the **British Indian Ocean Territory**, which the UK has undertaken to cede to Mauritius when no longer required for defence purposes. In June 2017 the UN General Assembly sought an Advisory Opinion from the International Court of Justice on questions connected with UK sovereignty over the British Indian Ocean Territory.



Middle row: fourth and fifth from right, Gavin Watson and Helen Perkins at the Overseas Territories Attorneys General Conference 2016. Providenciales, Turks and Caicos Islands.

1.2 Overseas lawyers

The FCO maintains a number of legal adviser posts overseas, normally on three year rotation.

The Legal team at the **UK Mission to the United Nations**, New York consisted of Helen Mulvein (until July 2017) and Susan Dickson (from July 2017) as Legal Counsellor and Ahila Sornarajah as First Secretary. 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; Law of the Sea; and treaty procedures. The Section provides legal advice across the full range of the work of the Mission, in particular draft resolutions of the Security Council and General Assembly, as well as on Council/Assembly procedures, and liaises with the UN Office of Legal Affairs on issues of importance to the UK, e.g. efficient functioning of international tribunals, UK 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.

The Legal Counsellor at the **UK Mission to the United Nations**, Geneva (Margaret Purdasy), 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. She leads a Rule of Law core group in the Human Rights Council, and has the policy lead on counter-terrorism, privacy and business and human rights. She works with a wide range of Missions on International Committee of the Red Cross initiatives to strengthen compliance with International Humanitarian Law and detention in non-international armed conflict. She continues to be closely involved in the ICRC-led project to identify currently unidentified Argentine soldiers in the Falkland Islands.

From July 2017, Justine Earl has taken up a new legal adviser post in the UK Mission in Geneva leading on WTO and related issues.

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 First Secretary (legal)) and Christine Reeve (Infractions Policy and Business Support). The UKREP legal team provides on the spot legal advice to the Ambassadors and desk officers; engages with the legal advisers of the EU institutions and Member States; networks with the Brussels legal community; provides expertise and training to Whitehall departments on EU legal issues; and acts 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 works 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.



The Legal Adviser to the Embassy in **The Hague** (Philip Dixon), 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.

Philip Dixon, Legal Adviser to the Embassy in The Hague.

The Deputy Permanent Representative, **UK Delegation to the Council of Europe, Strasbourg** is Eleanor Hourigan. 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; promotes reform of the Court and negotiates for the UK on human rights and justice issues. Eleanor continues to be closely involved in the UK's broader policy and representational activities at the Council of Europe and as DHM is heavily involved 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 including one during the State Visit by the President of Colombia, and supported signature and ratification events with UK posts abroad. These included the **Paris Agreement on Climate Change**, and the Protocol to the North Atlantic Treaty on the Accession of Montenegro and the Amendment to the **1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter**.

Important bilateral treaties included: A Defence Logistics Agreement with Japan; a TV Co-Production Agreement with China; a Mutual Recognition of Qualifications Agreement with Colombia; and an Extradition Treaty with Kuwait.



UK/Colombia Double Tax Convention. Jane Ellison (Financial Secretary to the Treasury) and the Colombian Finance Minister signing, overseen by Dale Harrison, the Lord Mayor of London and the Colombian President.

Treaty Information and UK Depository 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](#). The depositary role includes recording and disseminating information about actions on treaties for which the UK Government is depositary, including UNESCO, the Biological Weapons Convention and even the Agreement on the Conservation of the Populations of European Bats.

1.4 Litigation

The Directorate has been closely involved in a range of litigation involving the FCO and HMG this year, some of which has already been mentioned.

Domestic Litigation

- The Supreme Court case of *R (Miller) v Secretary of State for Exiting the European Union*. The court held that in the particular context of leaving the EU the Prime Minister required Parliamentary authority to trigger Article 50 of the Treaty on European Union, rather than relying on prerogative powers.
- In January 2017, the Supreme Court gave judgment in two linked cases involving the FCO (*Belhaj/Rahmatullah* and *Rahmatullah/Mohammed* (see above)), concerning preliminary points of Public International Law in the context of detainee litigation. Although HMG lost its arguments on state immunity and foreign act of state, HMG won on the doctrine of Crown act of State.
- The Supreme Court heard the appeal in the joined cases of *Benkharbouche v. Sudan* and *Janah v. Secretary of State for Foreign & Commonwealth Affairs* from 6-8 June 2017. These cases concern the compatibility of the UK's State Immunity Act 1978 with the European Convention on Human Rights (ECHR) and the EU Charter of Fundamental Rights. Judgment is awaited.
- The Supreme Court heard the appeal in *Reyes v Al-Malki* from 15 to 18 May 2017. The Secretary of State intervened, focussing principally on the issue of whether legal documents could be served on the private residence of a diplomatic agent. Judgment is awaited.

European Litigation:



European Court of Justice: In December 2016, the Court of Justice of the European Union handed down judgment in Joined Cases C-203/15 *Tele2* and C-698/15 *Watson*, concerning the scope of certain aspects of EU data protection law. We were heavily involved in the proceedings before the court in Luxembourg and continue to advise on the implications of the judgment domestically, including in the *Watson* proceedings which returned to the Court of Appeal, and related litigation before the Investigatory Powers Tribunal.

European Court of Justice, Luxembourg

Litigation before the European Court of Human Rights – we represented the UK in a series of high profile human rights cases before the Strasbourg court, including at the Grand Chamber hearings for *Hutchinson v UK* where the Court ruled in favour of

the UK that the review of whole life sentences in the UK is compatible with Article 3 ECHR; and *Harkins v UK* concerning whether the applicant should be extradited to the USA for trial for first-degree murder where, if convicted, he would face life without parole. In the period covered by the Annual Report, the UK received 8 new cases, completed 33 cases and continued to advise in relation to 23 ongoing cases.

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 since 1999. Public hearings on the UK's objections to jurisdiction and admissibility took place in the Hague in March 2016. The [ICJ gave judgment](#) on 5 October 2016, upholding the UK's submissions that the ICJ did not have jurisdiction to hear the claim because there was no "dispute" between the Marshall Islands and the UK.



To be a well-run, happy and effective team

2.1 Office Management Section and European Court of Human Rights Agents' Support Unit

The Directorate Business Support team is responsible for the efficient administration of the Directorate. It leads on a range of business-critical services including managing the Directorate's financial resources, security, processing of secondary legislation and information services. This year the Section responded to 200 Mutual Legal Assistance requests, managed the processing of 14 Statutory Instruments as listed below, answered Parliamentary questions, MPs' letters, letters from members of the public and managed the flow of Legal enquires to the Directorate. The Section also managed departmental security, arranged IT briefings, continued to manage the office environment and premises (including the installation of a ventilation system in the Ansell Library) and played a key role in support of a number of Legal Directorate events and conferences.

Statutory Instruments processed:

- The Iran (Sanctions) (Overseas Territories)(Amendment) (No.2) Order 2016 No. 1120
- The Turks and Caicos Islands (Finance) Order 2017
- The Democratic Republic of the Congo (Sanctions) (Overseas Territories) (Amendment) Order 2017
- The Democratic People's Republic of Korea (Sanctions)(Overseas Territories) Amendment) Order 2017
- The Emergency Powers (Overseas Territories) Order 2017
- The North Korea (United Nations Sanctions) (Amendment) order 2017
- The Iran (Sanctions) (Overseas Territories) (Amendment) (No.2) Order 2016
- The Antarctic (Amendment) Regulations 2017
- The European Organization for Astronomical Research in the Southern Hemisphere (Immunities and Privileges) (Amendment) Order 2017
- The Unified Patent Court (Immunities and Privileges) Order 2017
- The Antarctic Act 1994 (Overseas Territories) (Amendment) Order No 2017
- The Falkland Islands Courts (Overseas Jurisdiction) (Amendment) Order 2017
- The Democratic People's Republic of Korea (Sanctions)(Overseas Territories) Amendment) (No.2) Order 2017
- The Child Abduction and Custody (Parties to Conventions) (Amendments) Order 2017

The **European Court of Human Rights Agents' Support Unit** form part of the Europe and Human Rights team within Legal Directorate, assisting the Agents to the Court with the efficient administration of a number of high profile human rights cases. They play a key role in maintaining contacts with the European Court of Human Rights, collating and distributing legal papers from the Court on a large number of human rights cases, monitoring the progression of cases and ensuring that court deadlines are met.

2.2 Staff Survey

A staff survey is carried out every year across FCO. Legal Directorate had a 100% response rate for 2016. The Directorate's scores were very strong in relation to satisfaction with "My work". "Resources and workload" has shown particular improvement over last year and scores relating to "My manager", "My team" and "Inclusion and fair treatment" all improved, though there is still work to do. Scores relating to "Leadership and change management" fell and scores for "Pay and benefits" remain significantly below an already very low FCO average. "Wellbeing" has improved overall and "bullying and harassment" has reduced, though the "discrimination" score increased (i.e. deteriorated) slightly over the year. All of these issues are being monitored and addressed in the Directorate's active Staff Engagement Group.

2.3 Staff Engagement Group and Staff Away Afternoon

The Staff Engagement Group organised a successful Away Afternoon in March 2017 where staff were invited to visit "market stalls" to discuss a range of issues, including Learning and Development; Culture and Resilience; Professional and Career Development; Inclusion and Fair Treatment; and Communication. The Group has formulated an Action Plan to take forward suggestions under each of those categories.



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

3.1 Diplomatic Academy Law Faculty

The Law Faculty of the Foreign and Commonwealth’s Diplomatic Academy was established in 2014. It is one of 12 Faculties of the Diplomatic Academy, which acts as a centre of excellence and a learning hub, to share knowledge, expertise and experience of working internationally for the UK. The Law Faculty’s objective is to improve the understanding across the FCO of the legal context of the FCO’s work, the legal powers which underpin the FCO’s activities, and to increase understanding of the rule of law and how it can be used to further foreign policy goals. The Law Faculty’s learning is also increasingly available to other government departments, who have attended some of the Faculty’s courses (see below) and who can obtain access to materials on FCO [GLO](#) (“Global Learning Opportunities”). GLO is the FCO’s learning resources management system, which enables FCO staff to access all the FCO’s learning and development activities quickly and easily. **Follow the Diplomatic Academy on Twitter [@UKDipAcademy Diplomatic Academy Faculties](#).**



**Left to right: Back row: Director of Diplomatic Academy Jon Davies; Caroline Mack, Head of Knowledge and Information Section, Legal Directorate; Attorney General, The Right Honourable Jeremy Wright QC MP; Director of Legal Directorate Iain Macleod. Front row: Fiona Bearcroft; Cindy Asokan, Practitioner Level Launch team; Gemma Ralph, Deputy Head of Diplomatic Academy Law Faculty; Karen Irish, Legal Directorate; the (then) Head of Diplomatic Academy Law Faculty, Abda Sharif.
Law Faculty launch, Tuesday 21 March 2017.**

The Diplomatic Academy has a three tiered structure of skills and knowledge: Foundation, Practitioner and Expert. At Foundation Level, the Law Faculty is a core element of the new FCO - City & Guilds Diploma in Diplomatic Practice. The Law Faculty launched its Practitioner Level in March 2017, at which the Attorney General, the Rt Hon Jeremy Wright QC MP, gave an opening address.

The Law Faculty Practitioner Level consists of an online course on Treaties and a programme of classroom based courses for policy officers. These courses 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, run by the British Red Cross Society
- Treaties: an unconventional truth
- EU law
- Law of the Sea: Ruling the Waves
- Smarter Sanctions: Policy and Legal Considerations
- Overseas Territories: Notes on (mostly) small islands
- International Criminal Justice

The Law Faculty is also currently developing an online course with the Open University (“Law, Foreign Policy and You”) and working with DIT lawyers to produce a joint DIT/Law Faculty online course on “Introduction to trade law”. Both of these online courses will be available at Practitioner Level during 2017. In addition, the Law Faculty is working with the Directorate’s Learning and Development Committee on the delivery of an “International Law for Lawyers” online course. This course will provide an introduction to international law for lawyers within FCO Legal Directorate and across the Government Legal Department.

The Law Faculty will be developing its strategy for Expert Level courses during 2017.

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 Strategy

Outreach helps us keep in touch with stakeholders in academia, private practice and government, intergovernmental and non-governmental organisations; to better inform and explain our thinking; and, thereby, to maintain and improve our influence and reputation in the international law world. That, in turn, enables Legal Directorate to meet the FCO's Strategic Objectives, namely: Protect our People, Project our Global Influence and Promote our Prosperity. The Directorate's work relates to all of these objectives, especially global influence: *"Protect and promote the values and influence of Global Britain, strengthening our partnerships and the rules-based international system. Support good governance, democracy, rule of law and human rights; prevent and resolve conflict; and build stability overseas"*.

We convene events providing a framework for creative thinking on challenging topics. Examples include:

- discussions with invited experts on the principle of humanitarian intervention and on the regulation of Cyber, both part of the **FCO/King's College London Conversations in Law and War series**;
- an interdisciplinary conference on international criminal accountability, using Syria as a case study and featuring a lecture by International Criminal Court President Judge Silvia Fernández de Gurmendi on the ICC's 15th anniversary.

Our **Outreach Bulletin** issues about three times per year to a wide network of diplomatic, academic, private practice and non-governmental contacts. (Contact Knowledge.InformationSection@fco.gov.uk to subscribe.) This year, Legal Counsellor Chanaka Wickremasinghe recorded a lecture for the UN Audio Visual Library on [*The Function of Immunities and the Immunities of Governmental Functions in International Law*](#). We participate regularly as panellists in external conferences and contribute annually to United Kingdom Materials on International Law published in The British Yearbook of International Law.

The **Fifth FCO Annual Law Lecture**, postponed because of the General Election, will be delivered by Lord Neuberger on 9 May 2018.

In 2017, for first time the Legal Directorate entered a team in the **London Legal Walk**, raising over £500 for the London Legal Support Trust, which helps fund Law Centres and pro bono agencies in and around London.

Legal Directorate London Legal Walk Team





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. This is an increasing priority as a consequence of Brexit. Examples of areas of collaboration over the year include:

- **Post-Brexit sanctions** - We worked closely with partners across Government to identify the new legal powers that would need to be introduced into primary legislation to enable the UK to preserve current sanctions policy and continue to implement UN sanctions.
- **Maritime Policy** – Maritime Policy Team worked closely with geographical desk officers, posts and Ministry of Defence colleagues on a number of sensitive issues relating to sovereign immune wrecks. They also participated in the Government Office for Science’s Foresight Future of the Sea project which will make recommendations on a global ocean strategy for the UK. They worked closely with the Department for Transport, Maritime & Coastguard Agency and the Department for Environment, Food and Rural Affairs on a range of shipping, maritime security and marine issues.

5.2 Government Legal Service International Law Conference

The third **GLS International Law Conference** was held on 5 October 2016. The **Attorney General**, Rt Hon Jeremy Wright, answered questions on humanitarian intervention, imminence, Brexit and a number of other key international law issues at a Question and Answer Session, hosted by the Director General of the AGO, **Rowena Collins Rice**. FCO Legal Advisers, accompanied by barristers from the Attorney General’s Public International Law Panel gave an update on key international law cases. **Oliver Robbins**, Permanent Secretary at DExEU spoke about the challenges and opportunities of Brexit and the contribution that government lawyers can make. **DIT and BEIS** hosted an in depth session on international trade law and its impact on policy making. In a challenge session, **Sue Hemming**, Head of Special Crime and Counter Terrorism Division at the CPS, chaired a session on addressing the threat of foreign terrorist fighters in which she was joined by Nick Toogood from the Office of Security and Counter Terrorism, and **David Anderson QC** and **Jonathan Hall QC**. The day ended with a session chaired by **Stephen Braviner Roman**, Director General of GLD on UK Prosecutions under the Torture Convention and the question of immunities.

5.3 International Justice Day

On 17 July - **International Justice Day** and the occasion of the 15th anniversary of the International Criminal Court - the British Institute of International and Comparative Law and the FCO Legal Directorate co-hosted a compelling and powerful interdisciplinary event on the topic: *International Criminal Justice, Achievements and Challenges, for Syria and Beyond*. The event was generously supported by Temple Garden Chambers and Debevoise & Plimpton LLP.

The on the record speech by the Attorney General and the closing lecture by the ICC President, Judge Silvia Fernandez de Gurmendi are available on the [BIICL website](#) along with a record of discussion and other materials from the day.



International Justice Day event - Monday 17th July 2017.

The day developed our thinking, generated new ideas and networks, and produced conference materials including video clips which will be used for Diplomatic Academy Law Faculty training.



To 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. Our KIM Strategy aims to enable all staff to find and make use of relevant, up-to-date information; ensure efficient systems for storing, finding and sharing knowledge resources; involve ongoing learning from good practice elsewhere; and embed good management of knowledge and information in the everyday behaviour and working practices of all our staff.



Led by the **Knowledge and Information Section**, with support from a KIM Champion in each team, our objectives this year were to: put in place and maintain a well-structured S drive; improve knowledge-sharing by expanding the Knowledge Base and staff Knowhow Directory; and improve staff skills in using IT to manage knowledge and information effectively.

Successes include:

- A restructured **Sharepoint** site, making it easier for staff to find and organise up-to-date information about the Directorate and our work, and including an updated staff Induction Pack and IT Toolkit.
- Further development of the **Knowledge Base**, which now has over 50 topics and which we will continue to add to during 2017-18.
- A Directorate-wide **KIM Focus Week** when all teams concentrated on improving organisation of their files and records, brushing up their IT skills and returning library books.
- More time allocated to KIM during staff inductions, and ad hoc KIM and IT training organised according to staff requirements.
- Ongoing provision of a legal library, enquiries and research service to support the legal advisers' work. We also produce a regular international law current awareness bulletin which is circulated to all our legal advisers and shared with over 100 legal specialists in other UK government departments.



7. Priorities for 2017- 2018

Our priorities for the coming year will include:

- **Brexit:**
 - Contributing to the delivery of HMG's objectives in the negotiations will form a core part of the team's work over the coming year.
 - Dealing with treaty law questions in that context, and considering the privileges and immunities of EU-related organizations on exit.
 - It will also be a priority to advise on the future legal framework for imposing and implementing sanctions to ensure that the UK can preserve the ability to impose sanctions on leaving the European Union.
- Seeking clarification from the **ICC Assembly of State Parties** that the Court does not have jurisdiction over nationals of a State or on the territory of a State that has not ratified the crime of aggression amendments.
- Working with the **ICC Office of the Prosecutor** in relation to the Court's preliminary examination into alleged war crimes committed by UK troops in Iraq.
- Defending the **Kenya and Cyprus colonial litigation** cases, which are expected to run well into 2018.
- Continuing to engage in the development of shared understandings on how international law regulates state's use of **cyber** technologies.

Treaty Section's priorities are to continue improvements to the online information service and the development of a successor to the UKTO search facility and to promote greater awareness of treaty practice and procedures across Whitehall. Brexit is likely to increase hugely the demands on Treaty Section as the UK enters into negotiations with other parties for the post Brexit era.

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.

The **Law Faculty of the FCO Diplomatic Academy** will develop an enhanced Practitioner Level offer, including:

- an online course on "Law, Foreign Policy and You" in conjunction with the Open University;
- an online course on trade law developed with the Department for International Trade Legal Advisers;
- an online course on international humanitarian law, in partnership with the British Red Cross Society. The Law Faculty will also develop the design and strategy of its Expert Level courses.



Palmerston – Chief Mouser to the Foreign and Commonwealth Office