

FCO Legal Directorate Annual Report 2017-18



Foreign &
Commonwealth
Office



Overview of the year

This is FCO Legal Directorate's Annual Report, covering June 2017 to July 2018.

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.

As will be clear from the report, international legal issues are at the centre of Government Legal work and this is certain to increase in future. FCO lawyers work hand in glove with colleagues in all other Government departments to help deliver informed and co-ordinated advice on these issues. There also continues to be a huge demand for training on international law, and opportunities for engagement outside of Government continue to increase. Brexit of course features prominently in all this; but it is by no means all of our work. 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.

Our Treaty Section is at the heart of the treaty making process, engaged in processing the many treaties and agreements being put in place to manage the UK's future international relations. And the Directorate is leading cross-government work to develop an international ocean strategy to protect the environment and support economic growth.

As the report shows, there has again been no shortage of work for the Directorate to do. I pay tribute to the enthusiasm, professionalism and dedication of all in the Directorate throughout a year of intense and pressured activity.

Iain Macleod, The Legal Adviser

Contents

[Introduction](#)

[Objective 1: Legal Services and Advice](#)

1.1 Legal teams.....	5
1.2 Oceans Policy.....	9
1.3 Overseas Lawyers.....	10
1.4 Treaty Section.....	12
1.5 Litigation.....	13

[Objective 2: Management](#)

2.1 Business Support Team and European Court of Human Rights Agents' Support Unit.....	15
2.2 Staff Survey.....	15
2.3 Staff Engagement Group and Staff Away Afternoon.....	15

[Objective 3: Legal Awareness](#)

3.1 Diplomatic Academy Law Faculty.....	16
3.2 Learning and Development.....	17

[Objective 4: Outreach](#)

4. Outreach Strategy.....	18
---------------------------	----

[Objective 5: Shared Service to Government](#)

5.1 Collaborative Working.....	20
5.2 Government Legal Service International Law Conference.....	20

[Objective 6: Knowledge and Information Management](#)

6. Knowledge and Information Management.....	21
--	----

[7. Directorate Priorities for 2018-19](#)

7. Directorate Priorities for 2018-2019.....	22
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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.

We have 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 **National Security team** advises on some of the Office's key foreign policy priorities. Its geographic portfolios cover the Middle East and North Africa, and the Americas; and its thematic portfolios cover National Security issues, including Counter Terrorism, Intelligence Policy (including investigatory powers), and Cyber.

Key areas of work from the year include:

- Advising **Syria** desk and Whitehall colleagues on identifying ways in which the UK could support the work of the International, Impartial and Independent Mechanism (IIIM) to secure accountability for atrocity crimes committed during the conflict in Syria, and on UNSCR 2379 which mandates the deployment of an investigative team to collect evidence of Daesh atrocities in Iraq;
- Assisting the Attorney General in preparing his speech setting out the UK's position on the application of international law in **cyber space** at Chatham House in May 2018;
- **Counter Terrorism** – advising on domestic and multilateral initiatives around the travel and return of foreign terrorist fighters and extremist travellers; supporting the Home Office in relation to 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.
- **Investigatory Powers Act 2016** – advising on the implementation of this new legislation that overhauls intelligence oversight in the United Kingdom for the digital age. Responding to the consultation on the Consolidated Guidance review conducted by the Investigatory Powers Commissioner.
- Investigatory Powers Tribunal litigation: working with the colleagues in the Government Legal Department and across Whitehall on challenges brought to the use of investigatory powers under the Regulation of Investigatory Powers Act 2000 and the Investigatory Powers Act 2016.
- Advising on questions arising in respect of UK policy in relation to **the Middle East and the Levant** including questions relating to the law of occupation and international humanitarian law, recognition, human rights law, universal jurisdiction, and issues arising in the context of the UN Security Council, Human Rights Council and other international organisations and conferences.

- Intervening in the application to the US Supreme Court for a writ of certiorari in the case of **USA v Microsoft** in which Microsoft challenged whether it could be compelled to comply with a US law enforcement warrant for the disclosure of communications within its control but held in Ireland by engaging arguments relating to extraterritoriality (litigation which was subsequently superseded by the US CLOUD Act).



Catherine Holmes, National Security team, with Helen McDermott, Legal Researcher, at the Defence Academy, Shrivenham

The **Foreign Relations team** advises on a range of work which is core to FCO. The team provides legal advice on privileges and immunities, consular and diplomatic law, treaty law and information law. The team also advises on corporate and commercial, human resources and estates and security matters. Finally, the team handles colonial legacy and detainee litigation against the FCO, 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:** close working with colleagues across Government on treaty law issues connected with EU exit, and negotiating on the privileges and immunities of the EU, its institutions and officials under Protocol 7 of the EU treaties, ultimately agreeing Title XII of the draft Withdrawal Agreement in March;
- **Response to Salisbury:** dealing with matters of diplomatic and consular law arising from the Salisbury attacks;
- **Privileges and immunities:** dealing with the Supreme Court judgments in the cases of *Benkharbouche v Sudan and Janah v Secretary of State* ([2017] UKSC 62); *Reyes v Al-Malki* ([2017] UKSC 61); and *Bancoult (No.3)*(on the VCDR aspects)([2018] UKSC 3). The judgment of the Court of Appeal in *R(Freedom and Justice Party) v Secretary of State for Foreign and Commonwealth Affairs & DPP*, dealing the “special mission status” of foreign visiting officials was handed down in July ([2018] EWCA Civ 1719);
- **Consular law:** supporting consular colleagues in their assistance work all over the world, including in the high-profile cases of Andargachew Tsege (now released), Nazanin Zaghari-Ratcliffe, Kris Maharaj and Linda Carty;
- **Detainee litigation:** involvement in bringing the case of *Belhaj and another v Straw* and others to a close through mediation, resulting in an apology from the Government to Mr Belhaj and his wife Mrs Boudchar. Other detainee claims continue;
- **Colonial litigation:** working with colleagues in the Government Legal Department and the Ministry of Defence, defending highly complex group litigation relating to the UK’s colonial legacy in Cyprus and Kenya (claims dismissed November 2018);

- **Commercial and corporate:** advising on a range of matters, including supporting the FCO's work through the Conflict Stability and Security Fund and the Prosperity Fund;
- **Information law:** preparing the FCO for the commencement of the General Data Protection Regulation (GDPR) and defending our position before the ICO and the First-tier Tribunal;
- Advising on the FCO's involvement in a number of **inquests and inquiries**;
- 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 **Europe 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.

The work of the Team has been dominated by Brexit. Whilst the negotiations have been primarily led by others in Government, the team have been heavily involved in advising on a diverse range of legal issues that arise from Brexit for FCO. These notably include arrangements for future cooperation with the EU in the Common Foreign and Security Policy, arrangements for Gibraltar and the Sovereign Base Areas in Cyprus. The Team have also been involved in various aspects of preparation of negotiating positions, legislation and litigation in coordination with partners across Whitehall. In addition, we have supplemented our team with an additional "mini-team" of lawyers led by Jeremy Hill (whom we were delighted to welcome back to the Directorate) to work on the large number of international agreements with Third Countries to which the EU is a party, and which the UK will seek to continue in appropriate form following Exit from the EU.

Members of the Team continue to act as the Agent in cases before European Court of Human Rights. Notable cases this year have been included *Ndidi v UK* (concerning the margin of appreciation under Article 8 in a case concerning the deportation of foreign criminal offender), the very sad cases of Charlie Gard and Isaiah Haastrup concerning the withdrawal of medical treatment to very seriously ill children, and the judgment of the Court dismissing the application for revision of its well-known judgment from 1978 in the case of *Ireland v UK*. In addition members of the Team have been involved in the process of implementation of the prisoner voting rights cases, and the taking of a number of steps that have been accepted in the Committee of Ministers. Members of the Team also contributed to the negotiation of the Copenhagen Declaration, and participated in the Council of Europe's ongoing inter-governmental work on human rights.

The Team also provided advice and support to the Human Rights and Democracy Department in relation to the revision and roll-out of the (revised) Overseas Security and Justice Assistance (OSJA) policy, by which human rights risks relating to assistance to foreign governments can be assessed. In addition the Team supported and participated in the work of the UK delegation to the Human Rights Council.

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:

- **International Criminal Court** – Attending the ICC Assembly of States Parties in New York in December as part of the UK delegation, and contributing to the successful adoption of the resolution activating, and clarifying, the ICC's jurisdiction over the crime of aggression.

- **Novichok nerve agent use in Salisbury** – working with colleagues across Government to provide practical legal advice on the international aspects of the Government’s response to the use of a military-grade nerve agent in Salisbury, including matters related to the Chemical Weapons Convention.
- **Sanctions and Anti-Money Laundering Act 2018** - The FCO and HMT were jointly responsible for taking the Sanctions and Anti-Money Laundering Bill through Parliament and the team had a dedicated lawyer working full-time to support the Office of Parliamentary Counsel in drafting the legislation and associated documents, as well as supporting Ministers in their preparation for the Parliamentary debates.
- **Prohibition of the use of chemical weapons** – contributing to the successful development of initiatives to defend the international norms and standards prohibiting the use of chemical weapons, and to strengthen implementation of the Chemical Weapons Convention. This has included the launch of the Partnership against Impunity for the Use of Chemical Weapons, and the landmark decision to establish technical attribution arrangements within the Organisation for the Prohibition of Chemical Weapons to identify those responsible for the use of chemical weapons in Syria.



Molly Mulready, Assistant Legal Adviser (centre), with FCO policy colleagues in Washington for meetings with US sanctions counterparts

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. Key achievements for this year include:

- Advising on OT-specific considerations arising out of the **Brexit** process, including in preparation for Joint Ministerial Councils between the UK and OT Governments.
- Advising in support of the crisis response to **Hurricanes Irma and Maria**, the post-hurricane recovery effort and ongoing preparedness for the 2018 Caribbean hurricane season.
- Advising on the implications of provisions relating to **OT Beneficial Ownership Registers** enacted in the sanctions And Anti-Money Laundering Act 2018.
- Advising on developments concerning **Same Sex Marriage** in Bermuda.
- Advising in relation 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 with the hearing at the ICJ taking place in The Hague in September 2018.



Greg Reisman (second left), The Right Honourable Jeremy Wright QC MP (fourth from right), Helen Perkins (far right) and Clive Dow (back row far right) attending the February 2018 Conference of the Attorneys General of the Overseas Territories in Bermuda.

1.2 Oceans Policy

The Maritime Policy Unit (MPU) is a policy team embedded within the Legal Directorate. MPU is the UK Government's policy lead on the UN Convention on the Law of the Sea (UNCLOS). MPU works closely with a wide range of Government Departments and Agencies to develop and deliver UK maritime and marine policy that recognises the central role of UNCLOS as the framework within which all activities in the seas and ocean must be conducted, and delivers on the commitments of Sustainable Development Goal 14.

The breadth of the work of MPU reflects the breadth of the ocean and ocean activities. In particular, MPU leads on HMG's International Ocean Strategy, Bio-diversity Beyond National Jurisdiction, the work of the International Seabed Authority, maritime delimitation and Marine Scientific Research applications. In addition to representing the UK at the BBNJ negotiations and at the International Seabed Authority, MPU represents the UK at the meeting of the States Parties to the Law of the Sea Convention and the negotiations of the annual UN General Assembly Resolution on oceans and the law of the sea.

Key achievements from the year include:

- Promoting and starting the work to develop a **HMG International Ocean Strategy**.
- Leading the UK delegation at the final meeting of the Preparatory Committee on developing an agreement under UNCLOS on the conservation and sustainable use of marine bio-diversity of areas beyond national jurisdiction (BBNJ) and at the first meeting of the Inter-governmental conference.
- Participating in the annual meetings of the International Seabed Authority which saw progress on the Deep Sea Mining regulations and the delivery, in partnership with the Royal Society, of a multi-stakeholder workshop on the draft regulations.
- Working on the development and the delivery of the UK government's CHOGM commitments on ocean issues and the **Commonwealth Blue Charter**.
- Providing policy advice to 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 marine economy plans.
- Coordinating the UK's support for the Kenya Sustainable Blue Economy Conference. The UK made a contribution of £250,000 to the conference and the UK delegation was led by Minister of State Lord Ahmad of Wimbledon, Minister for the Commonwealth and the UN. Lord Ahmad also represented the UK at the "Our Ocean" Conference 2018 in Indonesia, supported by MPU.

- Processing 217 applications to conduct MSR in UK waters or for UK vessels to conduct MSR in overseas waters.
- In light of the growth in work across ocean issues, MPU recruited three new members of staff – an International Ocean Strategy Manager, an International Maritime Policy Manager and an International Marine Policy Manager.



Lowri Griffiths (Head of Maritime Policy Unit) and Gavin Watson (Legal Counsellor and Head of Overseas Territories & Maritime Team) attending the Council of the International Seabed Authority (photograph © IISD Reporting Services)

1.3 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, consists of Susan Dickson 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.

From left to right: Iraqi colleague, Ahila Sornarajah, Amal Clooney, Matthew Rycroft and Nadia Murad at the UN Security Council Resolution 2379 establishing the Daesh Investigation team in 2017.



The Legal Counsellor at the **UK Mission to the United Nations in Geneva** is Verity Robson. She is responsible for the UK's engagement with the UN and other international organisations in Geneva on matters of international law. She leads the UK's involvement in the legal initiatives of the International Committee of the Red Cross, including the intergovernmental process to strengthen respect for international humanitarian law. In the Human Rights Council, she leads negotiations involving the application of international human rights law to new contexts, including with respect to businesses and the digital realm, and chairs a cross-regional group which promotes the rule of law. From July 2017, Justine Earl has taken up a 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), Ruth Tomlinson, 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. Much of the team's work this year has been working with various Whitehall departments on the legal issues relating to the UK's exit from the EU including contributing to ongoing negotiations with the Commission.

The Legal Adviser to the **British Embassy The Hague**, Philip Dixon, heads its International Law Team, providing leadership, representation, strategic direction and analysis on the UK's engagement with The Hague-based international legal institutions, including the International Criminal Court, International Court of Justice, the ad-hoc criminal tribunals, the Permanent Court of Arbitration and The Hague Conference on Private International Law.



From left to right: Ruth Tomlinson, Ahila Sornarajah and Philip Dixon at the ICC Assembly of States Parties in New York.

Philip chairs a working group on improving the effectiveness and efficiency of the criminal process. He also leads the Embassy's legal diplomacy initiative, building important links with the international justice community in The Hague and beyond. This year the Embassy has hosted a number of lectures and seminars, including on women, peace and security, and victims participation in international criminal proceedings.

The Deputy Permanent Representative, UK Delegation to the Council of Europe, Strasbourg was **Eleanor Hourigan**. The DPR 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 was closely involved in the UK's broader policy and representational activities at the Council of Europe and as DHM was heavily involved in the management of the Delegation.

1.4 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 45 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 Visit by the President of Turkey and supported signature and ratification events at UK posts abroad. These included the Framework Agreement of the International Solar Alliance, the Protocol to the Convention concerning the Construction and Operation of a European X-Ray Free-Electron Laser facility on the Accession of the UK, Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, Minamata Convention on Mercury, the Geneva Act of the Hague Agreement concerning the International Registration of Industrial Designs, Doha Amendment to the Kyoto Protocol, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (aka Lanzarote Convention), the Convention on Road Traffic (1968) and the Kigali Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer. Important bilateral treaties included: A Defence Security Cooperation Treaty with Poland; A Treaty to Reinforce Border Cooperation with France, the UK/Pakistan Amending Protocol to the Agreement on the Transfer of Prisoners and a Mutual Legal Assistance Treaty in Criminal Matters with Kuwait.

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 new 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, the Biological Weapons Convention and the Agreement on the Conservation of the Populations of European Bats.



Deposit ceremony by the UK of instrument of ratification to the Protocol to Eliminate Illicit Trade in Tobacco Products IX-4-a.

1.5 Litigation

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

Domestic Litigation

- The Supreme Court handed down the case of *Reyes v Al-Malki and another* [2017] UKSC 61 (FCO intervening), which concerned a claim that Mr and Mrs Al-Malki had mistreated Ms Reyes during her time as a member of the domestic staff in the Saudi Arabian embassy in London. The court held that Mr and Mrs Al-Malki had reached the end of their posting and could not rely on any residual official act immunity under the Vienna Convention on Diplomatic Relations 1961 (VCDR) in relation to proceedings in the Employment Tribunal. The court was split on the (obiter) question of whether the alleged activity of trafficking would, if the Al-Malkis had benefited from immunity, have fallen within the exception of “professional or commercial activity” under the VCDR. The court also held that the claim form had been validly served by post without violating Article 29 or 30 of the VCDR.
- On the same day, the Supreme Court also gave judgment in the cases of *Benkharbouche and Janah* [2017] UKSC 62, concerning the rights of embassy workers in London to bring employment claims against their former employers in the UK courts. In these cases the court considered the compatibility of certain provisions of the State Immunity Act 1978 with EU law and the European Convention on Human Rights (ECHR). The Supreme Court upheld the decisions of the Employment Appeal Tribunal and the Court of Appeal in holding that provisions of the 1978 Act barring employment claims were incompatible with EU law and Article 6 of the ECHR because there was no consistent rule of customary international law concerning state immunity requiring the claims to be barred in the terms of the State Immunity Act 1978. The relevant provisions would therefore be disapplied in relation to the EU law claims and a declaration of incompatibility upheld in relation to the remaining claims.
- The Foreign and Commonwealth Office was successful in defending its legal position and practice on special missions before the Court of Appeal in the case of *R (The Freedom and Justice Party and others) v the Secretary of State for Foreign and Commonwealth Affairs* [2018] EWCA Civ 1719. The court held that the evidence considered by the Divisional Court and further evidence which had since become available demonstrated the existence of a rule of customary international law requiring a receiving state to secure, for the duration of their visit, the core immunities to members of a special mission accepted as such by that state. The court went on to hold that the rule of customary international law is recognised and accepted as part of the common law.
- The Investigatory Powers Tribunal (IPT) handed down its judgment in the Privacy International (bulk personal data case) in July 2018. The IPT found that the Bulk Personal Datasets and Bulk Communications Data (BCD) regimes were proportionate, that independent Commissioners have provided adequate oversight and that the regimes for sharing bulk data comply with the ECHR. However, the IPT also found that historic BCD directions to Communication Service Providers permitted unlawful delegation of power of the Foreign Secretary’s powers to GCHQ officials.
- In April 2018 the High court handed down its judgement in a judicial review brought by Liberty against the compatibility of Part 4 of the Investigatory Powers Act 2016 with EU law. The Court found that the data retention regime was not general and indiscriminate and that entity data was outside of the scope of the judgment. The court has stayed a number of issues, namely the question of whether national security applications are in scope of the judgment, whether data needs to be retained and whether individuals should be notified, behind an ongoing reference to the CJEU from the IPT which is considering these questions in the context of HMG’s bulk communications data regime. HMG conceded that its communications data retention regime did not meet the requirements of EU law in two areas: in relation to

independent authorisation and a restriction to serious crime. These issues are currently being addressed and will include the creation of an independent authorisation body.

- In September 2018, the European Court of Human Rights gave judgment in the case of Big Brother Watch & others v United Kingdom, which concerned the UK's powers under the Regulation of Investigatory Powers Act 2000 (RIPA) for bulk interception of communications, intelligence sharing and the obtaining of communications data from communications service providers. The judgment identified a number of violations of the Convention in relation to safeguards and oversight of the UK's bulk interception powers and powers to obtain communications data. However, the Court found that the operation of a bulk interception regime did not in and of itself violate the Convention and that the intelligence sharing regime did not violate the Convention.
- In the Kenya Emergency Group Litigation, Stewart J gave a number of judgments in the FCO's favour over the course of 2018. This culminated in judgments in two of the test claims regarding whether the judge should exercise his discretion in the Claimant's favour to extend limitation. The judge decided that with the passage of time the claims could no longer be tried fairly and declined to extend the limitation period. All the remaining claims were then dismissed, bringing the litigation to an end after 228 days at trial.

European Litigation:

Before the European Court of Human Rights, we acted as agent in the cases of *Ndidi v UK* (concerning the margin of appreciation under Article 8 in a case concerning the deportation of foreign criminal offender), the cases of Charlie Gard and Isaiah Haastrup concerning the withdrawal of medical treatment to very seriously ill children, and the judgment of the Court dismissing the application for revision of its well-known judgment from 1978 in the case of *Ireland v UK*



To be a well-run, happy and effective team

2.1 Business Support Team 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 350 Mutual Legal Assistance requests, managed the processing of 21 Statutory Instruments, 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.

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 2018. The Directorate's scores were very strong in relation to satisfaction with "My team" and "Organisational objectives and purpose". Scores relating to "Leadership and managing change" improved significantly and "My Work", "Resources and Workload" and "Inclusion and fair treatment" also improved. Scores relating to "Pay and benefits" remain significantly below an already very low FCO average, despite increasing from last year. "Wellbeing", "Bullying and harassment" and "discrimination" scores have improved over the year. All of these issues continue to be monitored by the Directorate's active Staff Engagement Group.

2.3 Staff Engagement Group and Staff Away Afternoon

The Staff Engagement Group organised a very successful Away Afternoon in February 2018 themed around wellbeing, resilience and how to remain healthy and happy at work. The Group has decided to make wellbeing and resilience the theme for work this year and has formulated a plan to build upon the work undertaken at the session.



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

3.1 Diplomatic Academy Law Faculty

The Law Faculty is one of 12 Faculties within the FCO's Diplomatic Academy, which is the centre of learning and development for the FCO. The Diplomatic Academy is "by staff, for staff and is for everyone: all grades; UK based; Local Staff; anyone supporting the UK's international work". It aims to capture the wealth of expertise and knowledge from around the FCO network and make it accessible to all.

There are three levels of Diplomatic Academy learning:

- *Foundation Level* - covers the core knowledge and skills relevant for everyone working on international issues on behalf of the UK.
- *Practitioner Level* - provides deeper skills development and knowledge for working internationally
- *Expert Level* - develops specialist skills and knowledge

We have a small Law Faculty team, which develops and manages the Faculty's learning offer and engages with colleagues in the Diplomatic Academy and other Faculties.

At Foundation level, the curriculum covers 40 modules across the subject areas of all 12 Faculties. Successful completion of all modules leads to a City and Guilds Level 3 Diploma in Foreign Policy and Diplomacy. Within the curriculum, there are three units from the Law Faculty, covering International Law and your job, understanding international commitments and working with Legal Directorate.

At Practitioner Level, the Law Faculty's programme consists of a combination of online learning and classroom based seminars. Our online content includes our online course "Law Foreign Policy and You" developed with the Open University and three further online courses on International Humanitarian Law, International Trade Law and on Treaties. Our programme of classroom-based seminars runs throughout the year and covers 10 topics, including Law and Foreign Policy, Sanctions, the Laws of War, Brexit, Law of the Sea, Overseas Territories, International Criminal Justice, Military Intervention and the Judge Over Your Shoulder.

We launched our Faculty Expert level in January 2018 with a series of expert level lectures on International Humanitarian Law (see more detail on our Outreach Strategy below).



From left to right: Legal Director Iain Macleod speaking at the Diplomatic Academy Seminar, with Assistant Legal Adviser James Gaughan and Legal Counsellor Chanaka Wickremasinghe.

Successes this year included:

- Completion of our Open University online course: “Law, Foreign Policy and You”. This is one of six online Diplomatic Academy courses developed with the Open University spanning 3 Faculties. The content was written by FCO Legal Directorate and is very interactive, with videos, case studies, quizzes and podcasts. On completion, the FCO awards a digital “badge” which can be used on CVs and LinkedIn profiles. There are eight units in the course, which cover the Faculty’s core curriculum, with topics such as the rule of law, the rules based international system, international law, principles of good decision making, judicial review and civil claims.
- Launch of our first Expert level events through our expert lecture series on International Humanitarian Law
- Development and launch in January 2018 of an online course on International Trade Law, created jointly with Department of Trade Legal Directorate.
- Development and launch in September 2018 of an online course on International Humanitarian Law, developed jointly with the British Red Cross Society.

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 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 that provide space for creative thinking on timely and challenging topics. Highlights from this year's outreach activities include:

- The Fifth FCO Annual Law Lecture, 'Adjudication in a Global Legal Context' delivered by The Rt Hon the Lord Neuberger of Abbotsbury, President of the Supreme Court, 2012-2017. Watch the lecture here: <https://www.youtube.com/watch?v=Bp9pnsayeF0&feature=youtu.be>
- Launch of *'Oppenheim's International Law: United Nations'* with panel discussion by Dame Rosalyn Higgins DBE QC, Dr Philippa Webb, Professor Dapo Akande and Professor Sandesh Sivakumaran.
- A joint FCO and University of Glasgow workshop on the subject of International Law and the conflict in Syria. This interdisciplinary event brought together the regional academic community and the FCO to examine together lessons and implications of the Syrian conflict for international law, policy and practice.
- The International Humanitarian Law (IHL) Expert Lecture Series. Topics covered include: distinction between jus ad bellum and jus in bello; interplay between IHL and International Human Rights Law; and cyber warfare. Each lecture offers both academic (including academics from Oxford, Essex, Harvard, LSE and NYU) and HMG practitioner perspectives (including lawyers from FCO, MOD, the Royal Navy and GCHQ). We designed the course as a mini-LLM in IHL for HMG lawyers. The aim of the series is to deepen the legal knowledge of HMG lawyers to assist us in interpreting and applying the law of armed conflict in contemporary situations.



From left to right: Assistant Legal Adviser Sherin Shefik, Legal Director Andy Murdoch and Professor Noam Lubell (University of Essex) at the first IHL lecture in January 2018

Our **Outreach Bulletin** issues twice a year to a wide network of diplomatic, academic, private practice and non-governmental contacts. (Contact Knowledge.InformationSection@fco.gov.uk to subscribe.) Our lawyers 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*. This year, Elaine Kellman presented at the first International Treaty Law conference held at the Israeli Ministry of Foreign Affairs.



From left to right: Greg Reisman, Helen Perkins, Gavin Watson, Paul Scullion and Clive Dow, all members of the Overseas Territories and Maritime team.

Joanne Neenan launched a report at the United Nations on the **International Day for the Elimination of sexual Violence in Conflict**, which was dedicated to the plights and rights of children born of sexual violence. Lord Ahmad, Minister of State for the Commonwealth and the UN, also released a statement, available at [on the gov.uk website](#). The full report is published on the [LSE Women Peace and Security website](#).



Joanne Neenan (far left) and Lord Ahmed of Wimbledon (third from left.)

This year, the Legal Directorate entered a team in the 2018 [London Legal Walk](#). We joined thousands of lawyers to raise funds for the London Legal Support Trust. Our team raised over £1000, which will go towards funding Law Centres and pro bono agencies in and around London.



Left to right (front): Michael O'Shea, Nicky Smith, Indira Rao, George Howe. (Back): Claire Mortimer, Jessica Walsh and Legal Director Paul McKell.



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:

- The team collaborated closely with Whitehall colleagues and provided advice both to internal and external stakeholders on the implementation of the Investigatory Powers Act 2016.
- The team worked closely with colleagues across Whitehall on the Sanctions Bill.

5.2 Government Legal Service International Law Conference

The fourth **GLS International Law Conference** was held on 18 October 2017. The **Attorney General**, Jeremy Wright, answered questions on a number of key international law issues at a Question and Answer Session, hosted by the Legal Adviser, **Sir Iain Macleod**. There were a number of fascinating panel discussions on international environmental law, international criminal law (focusing on the part women played in the Daesh network), international trade and investment, along with a keynote address from Steven Hill, legal advisor and director of the office of legal affairs at NATO.



To enhance our expertise by effectively managing, accessing and sharing our knowledge and information resources

6. Knowledge and Information Management

Managing and using our knowledge and information effectively is a critical aspect of the Directorate's work.

We have a small KIM team which manages our Legal Library and works with colleagues across the Directorate to ensure that we make the best possible use of our knowledge and information resources. Each team also has a KIM Champion who plays an essential role in co-ordinating and supporting their team's KIM work.

Our annual KIM Strategy sets out our priorities for each year with the aim of ensuring that we are always developing our services to meet new requirements and keeping up with best practice.

Successes this year included:

- We continued to provide a timely, relevant Legal Library service to FCO lawyers in the UK and overseas and to lawyers in other government departments working on related issues. As well as increasing circulation of our International Law Current Awareness Bulletin, we launched a monthly Forward Look newsletter for FCO legal staff and those in other government departments working on related issues. The newsletter highlights forthcoming training courses, seminars, events run by the FCO Diplomatic Academy Law Faculty (and other Faculties), and other learning and development events;
- As part of wider IT upgrades in the FCO, we supported the Directorate in the rollout of new laptops and other technology;
- We added new guidance and resources to our online Knowledge Base;
- To improve knowledge-sharing between staff, we developed a Handover Pack for capturing and sharing key information and knowledge when people move on to new jobs. We also introduced Moving On Discussions, giving staff the opportunity to share with colleagues the key things they have learned while working in a particular role;
- We developed and shared our professional expertise and experience through visits to (amongst others) the Bodleian Law Library at Oxford and Squire Law Library at Cambridge and through work-shadowing arrangements with other FCO specialists.



7. Directorate Priorities for 2018-19

Legal Directorate's priorities for the coming year (1 April 2018 to 31 March 2019) will include:

- **EU Exit**, including planning for different scenarios in secondary legislation.
- Continuing to defend the Government in the **Kenya and Cyprus colonial legacy group litigation** and in cases relating to the treatment of detainees.
- Considering the Government's response to the judgment of the Supreme Court in the **Benkarbouche** and **Janah** cases.
- Implementation of the **Sanctions and Anti-Money Laundering Act 2018** – work is ongoing to ensure that the UK can fully implement sanctions regimes after it leaves the EU. The team is also supporting policy colleagues working on sanctions related issues regarding the proposed Implementation Period.
- Strengthening implementation of the **Chemical Weapons Convention** – advising on the work required to take forward the Decision of the Fourth Special Session of the Conference of States Parties in June 2018 and deliver real progress in bolstering the capacity and capability of the Technical Secretariat, and establishing arrangements for utilising its expertise to identify those responsible for chemical weapons use at a global level.
- Implementation of the **Investigatory Powers Act 2016**.
- Advising in relation to the Office's work to reduce threats from Daesh, extremism and terrorism and to defend.
- To develop and publish a cross-government international ocean strategy before the end of 2018.
- Managing and further developing a high-quality legal library and information service, planning their future development to ensure that staff continue to have efficient access to timely, relevant information.
- Using the Knowledge Base, handovers and inductions, and other initiatives to become an environment where knowledge and experience are consistently valued and shared, both within Legal Directorate and more widely.
- Preparing for the next upgrade in the FCO's IT systems and implementing new, improved ways of working.
- Enhancing the role of the Legal Directorate KIM Champions in supporting the management and sharing of knowledge and information.

Brexit will increase demands hugely on **Treaty Section**. Transitioning the most important international agreements, covering trade, cross cutting political and technical issues is fundamental to the success of Brexit. Treaty Section's other priority will be to continue improvements to the online information service.

Our **Maritime Policy Unit** will (i) 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, (ii) lead cross-government work to develop an international ocean strategy before the end of 2018, (iii) push for an new legally binding agreement on the conservation and sustainable use of biodiversity in Areas Beyond National Jurisdiction

Improving governance standards and the rule of law in the Overseas Territories will remain a priority for the Overseas Territories and Maritime team.

The Law Faculty's priorities will be:

- Enhance and increase accessibility of the Faculty's Practitioner Level learning offer by:
 - launching an online module in September 2019 on International Humanitarian Law produced jointly with the British Red Cross Society
 - developing further online modules on sanctions and the Law of the Sea and Oceans Policy by April 2018
 - reviewing accessibility of the Practitioner level programme to meet diversity best practice
 - establishing a programme of one-off masterclasses to supplement our existing Practitioner Level learning.
- Evaluating feedback from a selection of the learning offers to ensure the intended impact of raising legal awareness amongst FCO staff.
- Assess feedback from the IHL expert lecture series and further develop our Expert level in 2019.