

# FCO Legal Directorate

## *Annual Review 2018-2019*



Foreign &  
Commonwealth  
Office

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## Legal Adviser's Foreword

Welcome to this review of 2018-19 from FCO Legal Directorate.

In this review, we aim to provide a brief overview of who we are and what we do, as the Directorate that provides advice on legal issues, treaty procedure and maritime policy to the Foreign and Commonwealth Office. I hope you will find it useful and interesting.

This year we have changed the format of the review slightly, to provide a shorter snapshot of the Directorate's activities. As well as brief introductions to all the teams and a summary of our Directorate business objectives, we have chosen to highlight a few areas of our work to give a flavour of some of the issues we dealt with between April 2018 and March 2019. This is by no means exhaustive and there are many areas on which work has continued. The review covers another very busy period and I'm extremely grateful to all in the Directorate for their hard work.

Finally, we'd welcome any feedback on this review and suggestions on how it can be improved in future. Please do get in touch at [Knowledge.Informationsection@fco.gov.uk](mailto:Knowledge.Informationsection@fco.gov.uk).

**Iain Macleod**  
**The Legal Adviser**



*The flag of the International Criminal Court flying over the Foreign and Commonwealth Office building in London on the Day of International Criminal Justice, 17 July 2018*

## Legal Directorate: who we are and what we do

### Our purpose

Legal Directorate's purpose is to ensure the provision of legal and associated services to the FCO. We advise FCO officials and Ministers on legal issues and lead on treaty procedure and maritime policy. We also play an important role in developing a shared legal resource for the UK government as a whole on international, ECHR and EU law, and in maintaining and enhancing the FCO's reputation and impact in the wider international law world.

FCO lawyers also act as agent for the Government before international tribunals, including the International Court of Justice, the European Court of Human Rights and inter-State arbitrations, as well as dealing with a range of civil litigation before the UK courts.

Most of our staff are based in London, where we have five teams of legal advisers

working alongside the Treaty Section; Maritime Policy Unit; KIM, Law Faculty and Outreach Team; and Business Support Team. We also have legal advisers in Brussels, Geneva, Strasbourg, The Hague, and New York.

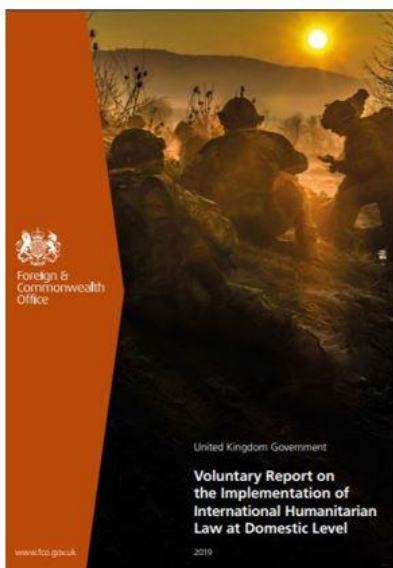
### Our values

We share a set of **values** with the rest of the FCO that guide our decision-making and set standards for our behaviour. These values are: Respect, Expertise, Resilience, Creativity, Courage and Public service.

One of our core objectives is to be a well-run, happy and effective team that promotes and respects diversity, inclusion and the development of all our staff. Our **Staff Engagement Group** leads on addressing points arising from the annual FCO staff survey in order to improve staff wellbeing and build a more inclusive and diverse culture in the Directorate. The Group regularly updates and is guided by our Management Committee, and this year focused on management, teams, and values.

Actions included updating the Directorate's Values document, running a *Confident Leaders' Workshop* for senior managers, reinvigorating regular all-staff meetings and monthly teas hosted by different teams, and encouraging everyone to share our 'bright spots' for the week with each other. The Group also worked to improve links with pro-bono, diversity and social legal networks across government.

We believe in the importance of continuously developing and sharing the talent and expertise of all our staff. Our



Reflecting the UK's commitment to promoting and upholding the rules-based international system, Legal Directorate played a leading role in the publication of the first *Voluntary Report on the Implementation of International Humanitarian Law at Domestic Level* in March 2019.

**Learning and Development Committee**, which is made up of representatives from all our teams, arranged a programme of lunchtime events this year, some led by our own staff and some by visitors from other government departments, universities, research institutions and law firms.

Many of these were on legal issues, including handling litigation and judicial review; taking a Bill through Parliament; trade law essentials; and the draft Convention on the Prevention and Punishment of Crime against Humanity. We also ran sessions on operational and policy topics, such as resilience at work and the experience of working at an FCO overseas post.



*"Is International Law International?"* – Anthea Roberts of the Australian National University, pictured here with Iain Macleod, spoke at the FCO about her recent book in September 2018.

The Directorate has full access to the Law Faculty programme and other Diplomatic Academy learning. Some of our staff are working through the FCO Diplomatic Academy's Foundation Level curriculum, which leads to a City & Guilds qualification in *UK Foreign Policy and Diplomacy*. Throughout the year we had staff with us from the FCO Graduate Intern and Summer Diversity Internship Programmes, and in February we were joined by our first three Directorate apprentices, who are all on a

Business Administration apprenticeship programme whilst working in a range of roles across our teams and following a varied learning and development programme.

## Our teams

**The Europe and Human Rights Team** provides advice to Europe Directorate and Human Rights and Democracy Department and on matters concerning Turkey, the Western Balkans, Eastern Europe and Central Asia. We also work on the many international agreements with Third Countries to which the EU is a party. In addition, we act as UK Agents in the European Court of Human Rights, assisted by the ECHR Agents' Support Unit.

**The Foreign Relations Team** provides legal advice on privileges and immunities, consular and diplomatic law, treaty law and information law. We also advise on corporate and commercial, human resources and estates and security matters. We handle colonial legacy and detainee litigation against the FCO, and have an overarching role in relation to all domestic litigation, inquests and inquiries in which the FCO is involved.

**The International Institutions and Security Policy 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.

**The National Security Team** advises on some of the FCO's key foreign policy priorities. Our geographic portfolios cover the Middle East and North Africa, and the

Americas; and our thematic portfolios cover National Security issues, including Counter Terrorism, Intelligence Policy and Cyber.



Legal Directorate lawyers (top row: Helen Perkins 3<sup>rd</sup> from left, Paul Scullion 4<sup>th</sup> from right, and Greg Reisman 2<sup>nd</sup> from right) with the Governor and Premier of the Cayman Islands and other attendees at the annual conference of the Attorneys General of the Overseas Territories in the Cayman Islands, February 2019.

**The Overseas Territories and Maritime Team** is a hybrid legal and policy team. We provide legal advice to the Overseas Territories Directorate and on the Law of the Sea. We also include the **Maritime Policy Unit (MPU)**, 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.

**The Business Support Team** is responsible for the efficient administration of the Directorate. We lead on a range of business-critical services including managing the Directorate's financial resources, security, processing secondary legislation and information technology services.

**Treaty Section** supervises the conclusion of bilateral and multilateral treaties by the UK; advises and assists with the form and content of draft treaties and MOUs; acts as a depositary for 51 multilateral treaties; and oversees the application of the statutory provisions for the scrutiny of treaties by Parliament. The Section also arranges for treaties in force for the UK to be transferred to the National Archives, Kew. In addition, we manage the UK Treaties Online public database and run a treaty information service, which answers enquiries from government colleagues and members of the public on those treaties to which the UK is or has been a party.

**The KIM, Law Faculty and Outreach Team** joins up the different aspects of managing and sharing Legal Directorate's knowledge and learning resources. The Knowledge and Information Management (KIM) team manages the Legal Library and supports the Directorate in using knowledge and information resources. The Law Faculty develops and manages learning resources to raise legal awareness amongst FCO and other government staff. Through Outreach, we engage with the broader legal community, fostering links with stakeholders across academia, private practice and government.



## Progress against Strategic Goals

Legal Directorate's Strategic Goals support our purpose of ensuring the provision of legal and associated services, including treaties, to the FCO; and leading FCO work on maritime policy.

GOAL	PROGRESS
<p><b>ADVICE:</b> 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.</p>	<p>Our annual client survey showed continued strong satisfaction levels with our legal advice services. We met deadlines for delivering essential EU exit no-deal Statutory Instruments, a significant achievement across the Directorate in drafting, checking and processing. We co-ordinated signature procedures for 52 new treaties, many related to EU exit. On maritime issues, we made good progress in negotiations at the Intergovernmental Conference to develop a new Implementing Agreement under UNCLOS on the Conservation and Sustainable Use of Marine Biodiversity of areas beyond national jurisdiction, and in negotiations at the International Seabed Authority of regulations to govern exploitation of the mineral resources of the Area.</p>
<p><b>MANAGEMENT:</b> To be a well-run, happy and effective team.</p>	<p>The annual staff survey showed improvements in several areas from last year. These included a jump in recognition of good performance by management, a significant increase in career opportunities being viewed positively, and a marked improvement in the scores on information technology and staff having the tools to do their job. The Staff Engagement Group led on implementing an annual plan to address points raised by the survey results, including staff wellbeing and building on our good management scores by running a series of leadership and management learning sets. We made significant efforts to ensure the Directorate met the FCO's financial compliance indicators, and as a result these saw steady improvement over the year.</p>
<p><b>OUTREACH:</b> 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.</p>	<p>We made good progress on our Outreach strategy, successfully delivering the Annual Law Seminar and the Fifth Annual Law Lecture, given by the Rt Hon the Lord Neuberger of Abbotsbury on <i>Adjudication in a Global Legal context</i>. We developed plans for the first London Conference on International Law, of which the FCO is a co-convenor. Visiting speakers during the year included Professor Harold Hongju Koh, former US Department of State Legal Adviser; Shaheed Fatima QC, Blackstone Chambers; and Professor Anthea Roberts of the Australian University.</p>



Professor Harold Hongju Koh gave a talk on *The Trump Administration and International Law* in June 2018.

**LEGAL AWARENESS:**

To improve the level of understanding of legal and related issues across the FCO through the Law Faculty of the Diplomatic Academy.

**SHARED SERVICE:** To develop a shared legal resource for HMG as a whole on international, ECHR, EU and related areas of law, whilst developing stronger links with other Government Legal Service (GLS) legal teams.

**KNOWLEDGE AND INFORMATION MANAGEMENT:**

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

The Law Faculty continued our ongoing Practitioner level programme of seminars and masterclasses, while also increasing our provision of online learning materials. We launched an International Humanitarian Law (IHL) online module in September 2018 and completed work on a module on the Law of the Sea and Oceans Policy in March 2019. The completion of our lecture series in IHL marked the successful launch of our Expert level. We also worked with the central Diplomatic Academy team to produce '10 Minute Academy' and 'Learning Pathway' tools to demonstrate the variety of legal learning available.

The GLS international law network continues to develop, and we hosted the Government Legal Profession's fourth annual International Law Conference in Lancaster House in October 2018, where speakers included the Attorney General, the Rt Hon Geoffrey Cox QC MP; and David Anderson QC. Most of our internal learning and all our Law Faculty learning is open to colleagues from other government departments, allowing us to share our expertise and learn from others.



At the Government Legal Profession International Law Conference, FCO legal advisers spoke on topics including treaty negotiations, foreign and security policy post-Brexit and sanctions (L-R: Chanaka Wickremasinghe, Indira Rao, Jeremy Hill, Nicola Smith, Luke Barfoot)

Our legal teams continued to develop and use our in-house Knowledge Base, which covers the main legal topics we work on. We reviewed best practice in other legal information services, which will inform future plans for our provision of library and current awareness services. These include increased access to online information resources, especially useful as more staff work remotely. We also continued to support staff in using the new IT being introduced across the FCO.



## ***In focus:*** **International agreements**

In preparation for the UK's exit from the EU, the FCO Third Country Agreements Unit (TCAU) has been working closely with the Department for Exiting the European Union (DExEU) and other Whitehall departments to agree transition measures with third countries for agreements concluded by the EU.

This exercise has to date been preparing for both a 'Deal' scenario (where a Withdrawal Agreement is concluded) and a 'No Deal' scenario. In the case of the latter, EU agreements would cease to apply to the United Kingdom immediately upon exit. The UK Government has therefore been negotiating replacement agreements with third countries, where necessary, to facilitate continuity of treaty relations in this scenario.

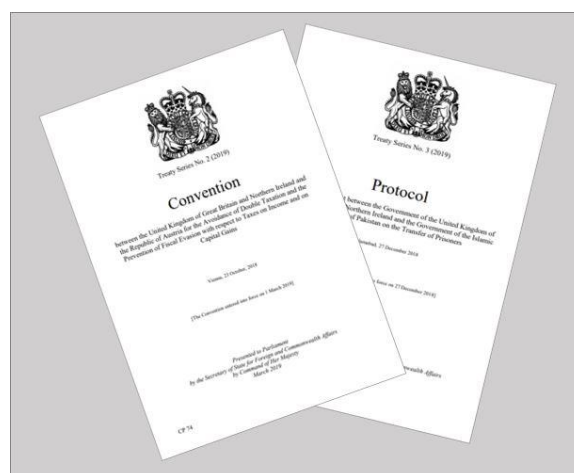
Since 2017 a team of FCO legal advisers has been working with TCAU, and other legal teams in government on this exercise, with a focus on concluding new bilateral agreements between the UK and third countries, primarily for a No Deal scenario; and on securing third country acceptance of continued application to the UK of all the EU's international agreements into the transition period in a Deal scenario.

TCAU also works closely with Legal Directorate's Treaty Section to support the Parliamentary scrutiny process for the new agreements, so that they can be ratified by the time of EU exit or as soon as possible thereafter.



Treaty seal and papers including a Queen's Full Powers instrument, used to convey treaty-signing powers to FCO Ministers and Permanent Representatives.

DExEU's International Agreements Transition Programme assessed that the UK needed a significant number of treaties to be ratified ahead of exit to mitigate the effects of a potential 'No Deal'. Treaty Section has played a vital role this year in preparing for this.



In addition to business-as-usual work, Treaty staff were required to advise other government departments on, and to facilitate, all the procedural requirements to pave the way for signature, laying before Parliament and ratification of over 40 Brexit-related treaties over a five month period.

The programme involved partnering and collaborating with TCAU and staff from other government departments, as well as the Government Printer, on the production of Command papers for presentation before Parliament and large pagination of treaty texts for signature. It also

involved advising and assisting with enquiries concerning Treaty procedures from TCAU, policy leads and their lawyers as well as significant engagement with the Parliamentary Journal Office, where papers must be laid, and the Lords EU Scrutiny Committee. This was all set against a backdrop of tight deadlines, multiple scenarios, short notice requests and working late hours.

The peak period from November 2018 to March 2019 saw the UK conclude 46 treaties (25 bilaterals and 21 multilaterals) - a four-fold increase on normal levels. This required Treaty Section to draft full powers instruments for signature, format the texts of treaties, prepare UK signature binders, officiate at signing ceremonies in the UK, prepare Command

The scale of the work involved can be measured in many ways, but the following facts will help to illustrate it:

- It required a nearly three-fold increase in Treaty Section staff, from six to 16.
- The UK entered into treaties with 25 states in this period (the US, Switzerland, Australia, New Zealand, Chile and Spain each signed more than one).
- We also entered into treaties with the context of a number of International Organisations or multilateral frameworks, including the World Trade Organisation, the International Atomic Energy Agency, various fisheries bodies, HCCH Hague Conventions, and Interbus/Common Transit Convention/SAD Convention.



Dale Harrison, Head of Treaty Section, with some of the red signature binders in which all UK treaties are bound.

- We prepared over 300 full powers instruments (all signed by the Foreign Secretary) for signees and alternates.

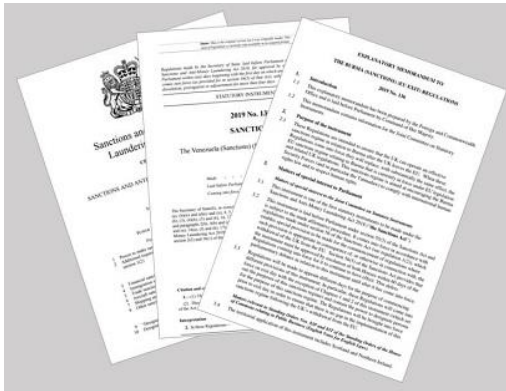
- The treaties varied in length from the shortest at 10 pages to the longest at 1345 pages (or 5380 once published in four language versions.) This required 155 reams (at 500 sheets per ream) of specialised treaty paper.

papers for publication, lay these before Parliament, prepare and upload web accessible versions to the government website, and prepare and despatch instruments of ratification.

Treaty Section ensured that every one of the EU Exit treaties it received before the initial scheduled exit date of 29 March 2019 was laid before Parliament in accordance with statutory requirements, so making a significant contribution to the UK's preparedness for exit.

## In focus: Sanctions legislation

The Sanctions and Anti-Money Laundering Act 2018 established a new legal framework for post-Brexit sanctions in the UK, enabling the government to continue implementing UN sanctions obligations and to use sanctions to meet national security and foreign policy objectives. These sanctions regimes, for example, stop terrorists travelling freely, deny access to UK banking facilities to those responsible for atrocities in Syria, and prevent North Korea obtaining goods and technology from the UK to progress its nuclear weapons programme.



Once the Act – the first significant piece of primary legislation about post-Brexit policy to pass through Parliament – entered into force, it was an FCO priority to implement the new regime, starting by preparing for a possible No Deal Brexit at the end of March 2019. This meant drafting domestic legislation under the Act in the form of a statutory instrument (SI) for each existing geographic or thematic sanctions regime.

A team of six FCO legal advisers worked on this for over a year, supported by the Legal Directorate Business Support Team and with input from policy colleagues and external checkers. A drafting task of this size, establishing a whole new way of implementing sanctions, was unprecedented for the FCO.

Drafting legislation takes considerable expertise and is a special skill that demands

attention to detail over sustained periods, precision and conciseness. It requires disciplined project management to meet deadlines at each stage of the process. It is also technically complex, and requires understanding of a wide range of policy areas including banking, trade, transport and customs.

Given the complexity and size of the task, planning began for the first SI some months before the Act came into force. The team engaged the Office of Parliamentary Counsel to help draft the initial SI, used as a template for the rest. The work was still far from simple, though, as each sanctions regime has its own unique provisions. Even with the template, the SI for Syria, for example, took around 30 working days to draft. Each SI also had to be accompanied by two statutory reports, an Explanatory Memorandum and statutory guidance.

Once each SI had been signed by a Minister, the Business Support Team took the lead in registering it with the National Archives and laying the SI and associated documents before both Houses of Parliament. This involved producing up to 140 copies of each SI and all supporting documents for use in Parliament – a total of 122,430 pages. Legal advisers then briefed and supported policy teams and Ministers as each piece of legislation made its way through Parliament.

By April 2019, 725 pages of legislation had been successfully



drafted and 15 new SIs were on the statute book. This outcome reflected the expertise, energy and resilience of everyone involved and was a notable example of collaborative working.

***In focus:***

## **British Indian Ocean Territory: Advisory Opinion of the International Court of Justice**



FCO lawyers in London and across the network have remained busy working on issues related to the British Indian Ocean Territory (BIOT)

throughout the last year. On 25 February 2019, the International Court of Justice (ICJ) issued an Advisory Opinion that held that the process of decolonisation of Mauritius was not lawfully completed on its independence in 1968, following the separation of the Chagos Archipelago.

The Opinion followed a request from the UN General Assembly in June 2017. While many states shared our concerns about the precedent that would be set for bilateral disputes being referred by the UN General Assembly to the ICJ, contrary to the principle that the Court does not rule on bilateral disputes without the consent of both States concerned, Mauritius successfully secured sufficient support for a referral by UNGA.

Nevertheless, and despite the UK disagreeing with the referral, the UK participated fully in the ICJ process. This included FCO lawyers in London leading on two rounds of written submissions involving twenty-nine States and the African Union. It then involved FCO lawyers from London and The Hague, participating in an oral hearing before the ICJ in September 2018 where the Mauritius, twenty other States and the African Union were likewise engaged.

Throughout this process FCO lawyers in London, The Hague and New York, worked seamlessly together to ensure the

UK's position was represented in the best way possible before the ICJ. This involved working with Counsel and ensuring that policy colleagues were involved at all important decision points.

The ICJ's Advisory Opinion has led to further action in the UN General Assembly. On 22 May 2019, the UN General Assembly passed a Resolution endorsing the Advisory Opinion and calling for the UK to withdraw from BIOT within six months; for UN Member States and UN bodies to cooperate in completing the decolonisation of Mauritius; and for the UN Secretary-General to report back on implementation. FCO lawyers in New York, in co-ordination with those in London and The Hague, advised on the negotiation of the Resolution, and the implications of its adoption. One thing that is certain is that FCO lawyers will remain busy working on BIOT issues over the weeks and months ahead.



Legal advisers in New York, London and The Hague worked closely together throughout the ICJ Advisory Opinion process.

## ***In focus:*** **International human rights**

The Europe and Human Rights team provides advice on human rights, EU Exit and on foreign relations matters concerning Europe, the Western Balkans, Turkey, 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. It also provides legal support on the human rights campaigns of the Foreign and Commonwealth Office, including the Prevention of Sexual Violence Initiative ("PSVI"), the Media Freedom Campaign and the Government's international work on Modern Slavery.

Within the team is a "mini-team" of lawyers led by Jeremy Hill, which has



been advising in the context of Brexit on the future of international agreements with third countries to which the EU is a party.

The team supported the UK's PSVI team in their preparations for the UK's Wilton Park event in February 2019, a precursor to the PSVI Conference. The team has advised on work to support survivors of conflict-related sexual violence, including through the Mukwege Foundation and in relation to a proposal put forward by Lord Hague, Baroness Helic, Angelina Jolie and Chloe Dalton. That work presents opportunities to consult with a range of stakeholders on how to strengthen justice for survivors of conflict-related sexual violence.

The Europe and Human Rights team supports the work of the Modern Slavery

Unit. This year, the UK has continued to champion the prevention of modern slavery at international fora. For example, at the UN General Assembly 2018, the UK launched, alongside Australia, Canada, New Zealand and the US, the Principles to Guide Government Action to Combat Human Trafficking in Global Supply Chains. The team has also assisted with modern slavery initiatives at the Human Rights Council, including the UK's consideration of a draft legally-binding instrument on business and human rights.

The team is also supporting the Media Freedom Campaign in preparation for the Global Conference for Media Freedom 2019 and the work of the Freedom of Religion and Belief team. This included providing legal advice on aspects of the FCO response to the Bishop of Truro's *Independent Review of Foreign and Commonwealth Office Support for Persecuted Christians*, which the Foreign Secretary commissioned in December 2018.



## Looking to the Future: Priorities for 2019-2020

In 2019-2020 our work will continue to focus on our **six Strategic Goals**:

**Advice** *We will:* Deliver accurate, prompt and policy-friendly legal advice and treaties; ensure that all statutory instruments and treaties are managed in accordance with Whitehall standards, and delivered on time and to a high standard; continue to build on progress in improving client satisfaction with the availability of legal advisers and speed of response; deliver the outcomes identified in Maritime Policy Unit's annual Business Plan.

**BManagement** *We will:* Continue to make Legal Directorate a well-run, happy and effective place to work by supporting the Staff Engagement Group in responding to the results of the staff survey, and delivering a series of leadership and management learning sets; maintain high standards in financial management, health and safety and staff welfare.



**Outreach** *We will:* organise the FCO Annual Law Lecture, Seminar in International Law, and strategic outreach programme of events as set out in the annual Outreach Strategy; work with external partners to deliver the first London

Conference on International Law; circulate an Outreach Bulletin three times a year; and promote diversity across all outreach activities.



**Legal awareness** *We will:* Deliver the Law Faculty Strategy, including delivery of Law Faculty content for new DA Foundation level and further development of the Law Faculty expert-level learning offer; further develop our internal training programme to provide learning and development opportunities to all staff in Legal Directorate.

**Shared service** *We will:* Improve awareness of and access to the Law Faculty's learning resources by UK government staff worldwide, including by increasing the availability of online materials; put in place arrangements for management of work shadows and exchanges of staff between the FCO, other departments, and the private sector; host the annual Government Legal Profession's international law conference.

**Knowledge and information management** *We will:* continue to ensure consistent provision of an effective legal library, enquiries and current awareness service, reflecting best practice and ensuring that information resources are easily accessible; ensure that the Directorate is able to make best use of new information technology resources as they are made available throughout the FCO.

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