



Annual Review 2019-2020

FCDO Legal Directorate



Foreign, Commonwealth
& Development Office

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Legal Adviser's foreword

Welcome to the FCDO Legal Directorate's Annual Review for 2020. This is the first following the merger of the FCO and DFID, which united diplomacy and development in a new Government department. We have been delighted to join with colleagues from ex-DFID and work more closely with ex-DFID policy teams, and we have created a new team in Legal Directorate in part to deal with development work. The period covered by this Review is also longer than normal, as we present an overview of our activities from April 2019 to December 2020. From 2021 we will move to an Annual Review covering the calendar year.

No one could have imagined the extraordinary changes and difficulties 2020 would bring. I am extremely proud of how we have come together as a whole Directorate team to respond to the challenges of COVID-19. This has occurred alongside a very busy period on many work fronts in Legal Directorate.

As well as sharing our strategic objectives and an introduction to our teams, the Review illustrates a selection of work from across the Directorate by providing a snapshot of events over this period. It is by no means exhaustive but I hope it gives a flavour of some of our work and our outreach activities to engage with the wider international law community. We have also included some "feature" sections to give a more detailed look at some of our activity. These include the inaugural London Conference on International Law in October 2019, our support for international justice, developments in Ocean policy, the UK's exit from the EU, and the FCO-DFID merger.

Please do get in touch with any feedback on this Review, and follow us on Twitter @UKintlaw to hear more about our news.

I would like to thank everyone in Legal Directorate for all their hard work and dedication during what has been an extremely tough time.

Iain Macleod



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Legal Directorate: Who we are and what we do

Legal Directorate provides legal services to the Foreign, Commonwealth and Development Office, advising FCDO Ministers and staff on legal issues, representing the Government before international courts and tribunals and handling litigation in the UK affecting the FCDO.

We also lead on UK treaty procedures and Ocean Policy.

Strategic Objectives

Advice: To provide accurate, prompt and policy-friendly legal and treaty services on all aspects of the work of the FCDO, and to lead on Ocean Policy.

Management: To be a well-run, happy and effective team that promotes and respects FCDO values and diversity and inclusion.

Legal awareness: To improve the level of understanding of legal and related issues across the FCDO through the Law Faculty of the International Academy.

Outreach: To maintain and enhance the reputation and impact of the FCDO in the wider international law world, especially among academics and practitioners in the UK, including through convening a regular London Conference on International Law.

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 Profession legal teams.

Knowledge and information management: To enhance our expertise by effectively managing, accessing and sharing our knowledge and information.



Outreach activities and Treaty services



Our teams are made up of lawyers, diplomatic and policy experts and specialists in finance, knowledge and information management, and administration. Most of our staff are based at the FCDO's headquarters in London but we also have lawyers in Brussels, Geneva, New York, Strasbourg, The Hague and Washington.

The Business Support Team ensures efficient administration of the Directorate's work; manages our financial resources, security and information technology services; and processes secondary legislation.

The Development, Corporate and Operations Team advises on development law, information law and on corporate and commercial, human resources, and estate and security matters.

The Europe and Human Rights Team advises FCDO teams dealing with the EU; Gibraltar; European and Central Asian countries; human rights and democracy (including UN and Council of Europe). It also advises on issues concerning the law of treaties, and negotiation and implementation of international agreements and governance issues following the UK's exit from the EU. Members of the team are UK Agents in the European Court of Human Rights.

The Foreign Relations Team advises on issues arising from COVID-19, privileges and immunities, consular, diplomatic and treaty law. It also leads on historic litigation and has a co-ordinating role in domestic litigation, inquests and inquiries in which the FCDO is involved.

The International Institutions and Security Policy Team advises on multilateral policy issues, including sanctions and war crimes, and defence and international security. It also provides advice to the FCDO teams dealing with the South Asia, Afghanistan, Africa and Asia Pacific regions.



FCDO lawyers at the Government Legal Profession Annual Conference



UK-China legal advisers' dialogue on the Law of the Sea

The Knowledge and Learning Team manages the Legal Library and supports the Directorate in managing knowledge and information; raises legal awareness through developing and managing learning resources for FCDO and other government staff; and leads on outreach events to inform and foster links with the broader legal community.

The National Security Team advises on national security issues, including counter-terrorism, intelligence policy and cyber. It also advises the FCDO teams dealing with the Middle East, North Africa and the Americas.

The Ocean Policy Unit leads UK government policy on the UN Convention on the Law of the Sea.

The Ocean and Overseas Territories Team provides legal advice to the Overseas Territories Directorate and on the Law of the Sea.

Treaty Section supervises UK conclusion of bilateral and multilateral treaties; acts as depositary for 51 multilateral treaties; and manages the public UK Treaties Online database and Treaty Information Service.

News

2019-2020 in review

The following pages highlight some examples of Legal Directorate's work and activities between April 2019 and December 2020. These are not exhaustive but we hope they give a flavour of what we have been doing.

Apprenticeship scheme

April 2019: At the start of the review period, we were pleased to be joined in Legal Directorate for the first time by three colleagues who had joined the FCDO as part of a Business Administration apprenticeship scheme. The apprentices filled roles in the Europe and Human Rights team, Knowledge and Learning team, and Ocean Policy Unit, with the aim of spending the following 18 months to two years working towards Level 3 Diplomas in Business Administration.

The London Legal Walk

June 2019: Legal Directorate staff raised over £800 for the London Legal Support Trust by walking with the Lord Chief Justice and thousands of lawyers in this annual charity event.



International and Operational Law Course

September 2019: FCO lawyers participated in this course, hosted by the Royal Navy, along with staff from the Royal Navy, RAF and British Army as well as naval colleagues from the US, France, Italy and Singapore.

Geneva Conventions at 70: Changing Times, Enduring Principles

October 2019: Legal Directorate hosted a conference at Lancaster House in London to mark the 70th anniversary of the Geneva Conventions. Speakers included Lord Ahmad of Wimbledon, Helle Thorning-Schmidt and Judge Theodor Meron.



Legal Diplomacy

November 2019: Legal Directorate hosted the Annual Government Legal Profession International Law Conference. The conference was opened by the Right Honourable Lady Arden DBE, and FCDO lawyers then led a day of discussion about domestic and international litigation and the interplay between law and diplomacy. The day concluded with a keynote address from Ben Emmerson QC on *The Human Dimension of International Law: Untangling the Knots*.



Celebrating Black Lawyers: How Diverse is the Law?

November 2019: The FCO BAME Network organised a panel discussion with Legal Directorate on the diversity of the legal profession and the ways in which black lawyers navigate different forms of discrimination when conducting their work in and outside the UK.

The panel was chaired by Shehzad Charania, Director / Deputy Head of Office at the Attorney General's Office. Panel members were Dapo Akande (Professor of Public International Law, University of Oxford), Engobo Emeseh (Head of School of Law, University of Bradford) and Mel Nebhrajani (Legal Director, Department of Health and Social Care.)



EU-UK Withdrawal Agreement

January 2020: Legal Directorate staff officiated when Foreign Secretary Dominic Raab signed the instrument of ratification of the EU-UK Withdrawal Agreement.

Diplomatic Academy 5th birthday celebrations

February 2020: At the 5th anniversary fair for the Diplomatic Academy (now renamed the International Academy), the Knowledge and Learning team and Directorate colleagues talked to FCDO and other Government staff about ways to raise legal awareness. The Law Faculty stand included a British Red Cross Society exhibition on *The Story of the Geneva Conventions*. Staff who had completed the Law Faculty's Open University *Law, Foreign Policy and You* course also received awards from Minister Heather Wheeler at the Academy graduation ceremony.



Maritime boundaries

March 2020: A UK delegation successfully reached technical agreement with Antigua & Barbuda on the maritime boundary with Anguilla. This was the first agreement reached on UK boundaries in the Caribbean region since the early 2000s.

COVID-19

March 2020: In response to the COVID-19 crisis, many FCDO staff began working remotely for much of the time, quickly adapting to new ways of working to ensure continuity. Some lawyers were involved in advising on the many legal issues arising from the crisis. Other Directorate staff temporarily moved into different roles supporting the government's crisis response. The Directorate team found new ways to keep in touch and support each other, including "virtual coffees," a book club, and a regular quiz.





Remote learning

July 2020: Responding to new working methods, the Law Faculty held its first virtual seminar, presented by Directorate lawyers and dealing with EU Exit. Following the success of this event, other seminars in the Faculty’s planned programme for 2020 were also adapted for remote delivery, covering topics including space law and international humanitarian law (run jointly with the British Red Cross Society.)

Global Human Rights

July 2020: The UK’s first autonomous sanctions regime was launched when we laid the Global Human Rights Sanctions Regulations 2020. 49 persons, principally those involved in the mistreatment and death of Sergei Magnitsky and the killing of journalist Jamal Khashoggi, were designated under the Regulations, which enable imposition of asset freezes and travel bans on State and non-State actors responsible for or involved in certain serious human rights violations or abuses.

The Foreign, Commonwealth and Development Office

2 September 2020: The Foreign and Commonwealth Office merged with the Department for International Development to form the new Foreign, Commonwealth and Development Office (FCDO). To reflect this and other changes in our work, Legal Directorate formed a new team to advise on Development, Corporate and Operations issues. At the same time, the Diplomatic Academy was transformed into the International Academy, the focal point of learning and development for the new organisation.



Virtual collaboration

29 October 2020: In one of many responses to changed circumstances, the FCDO co-hosted a virtual global workshop with 140 attendees ahead of the next round of Biodiversity of Areas Beyond National Jurisdiction (BBNJ) negotiations. These have been a key element of our Ocean Policy work.

Feature

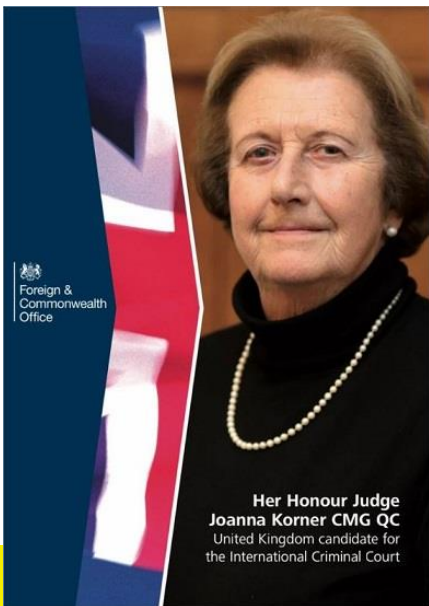
Supporting international justice



In January 2020 we were delighted to see Judge Theodor Meron made an Honorary Companion of the Most Distinguished Order of St. Michael and St. George. The award honoured his service to criminal justice and international humanitarian law.

In a long and distinguished career, Judge Meron has been a Judge since 2001 of the Appeals Chambers of the International Criminal Tribunal for the Former Yugoslavia – serving four terms as President – and of the International Criminal Tribunal for Rwanda. He has also served three terms as President of the International Mechanism for Criminal Tribunals.

Presenting the award in a ceremony at the Foreign and Commonwealth Office, Secretary of State Dominic Raab described Judge Meron as “a giant of international law”. Recalling his own time as a legal adviser in The Hague, the Secretary of State described how Judge Meron’s visionary leadership had contributed to international justice and “inspired a generation of young international lawyers, including me.”



In December 2020 the UK’s candidate, Her Honour Judge Joanna Korner CMG QC, was elected to serve as a judge of the International Criminal Court for the term 2021-2030.

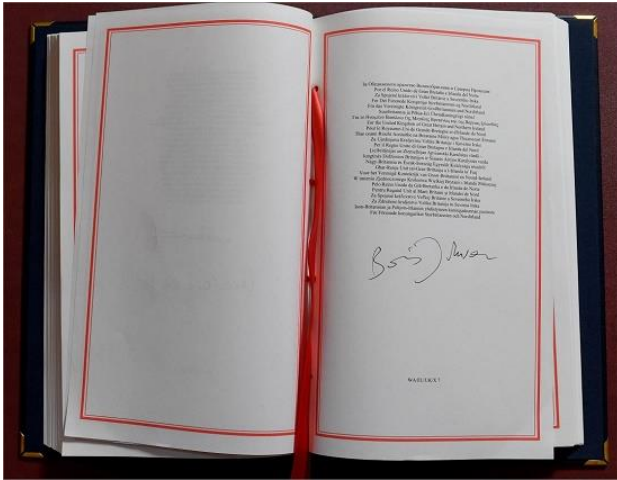
Judge Korner’s extensive prosecutorial and judicial experience have made her a leader in the field of international criminal law. She regularly provides training to judges and lawyers, and was a Senior Prosecuting Trial Attorney at the International Criminal Tribunal for the former Yugoslavia for eight years.

In November 2020 we announced Professor Dapo Akande as the UK’s candidate for the UN International Law Commission 2021 elections. He is an exceptional candidate who would bring substantial expertise and make a significant contribution to the ILC’s work.

We believe that electing excellent candidates on merit will strengthen international organisations and have been pleased to be supporting these candidates.

Feature

The UK's exit from the EU



Much of Legal Directorate's work over the period of this Review was shaped by preparations for the UK's departure from the EU on 31 January 2020 and the subsequent transition period. Our staff played a key role in supporting renegotiation of the Withdrawal Agreement with the EU and enabling the UK to implement the international agreements and domestic legislation needed for continuity in relations with other states.

One requirement was to ensure the UK's readiness to implement new sanctions regimes once EU sanctions ceased to apply. The

International Institutions and Security Policy team led our work on this, liaising with policy officials to draft new secondary legislation for a smooth transfer of UN and EU sanctions into UK law. Between April 2019 and December 2020, lawyers and their colleagues from the Business Support team delivered 68 sets of sanctions regulations and Orders in Council establishing UK sanctions regimes, extending them to the Overseas Territories (except Bermuda and Gibraltar which make their own legislation) and the Isle of Man, and revoking unnecessary legislation.

At the same time, lawyers from the Europe and Human Rights team continued the work of negotiating agreements with third countries to replace those that would no longer apply to the UK and ensure continuity in treaty relations. This included supporting negotiations on the Northern Ireland Protocol.

As agreements were finalised, Treaty Section led the procedural work to conclude new bilateral and multilateral international agreements. These included agreements on defence and security co-operation, trade matters, border arrangements and finance; and involved close liaison with the lead government departments for different policy areas.

The Treaty Section team saw 33 bilateral and 23 multilateral agreements through to conclusion during this period, including the Withdrawal Agreement signed by the Prime Minister on 24 January 2020. This involved officiating at treaty signings in the UK, ensuring that documents were translated into all parties' languages, printed and bound; and that UK signatories were authorised to sign. A total of 145 agreements, both binding and non-binding, were brought into effect at the end of the transition period, on 31 December 2020.



Our EU Exit work has continued throughout the 2020 transition period, including work to implement sanctions in the British Overseas Territories and to support further negotiations on our future relationship.

Feature Ocean Policy

In June 2020 the Maritime Policy Unit was renamed the Ocean Policy Unit, reflecting the increased importance the UK places on ocean issues such as conservation and sustainable use.

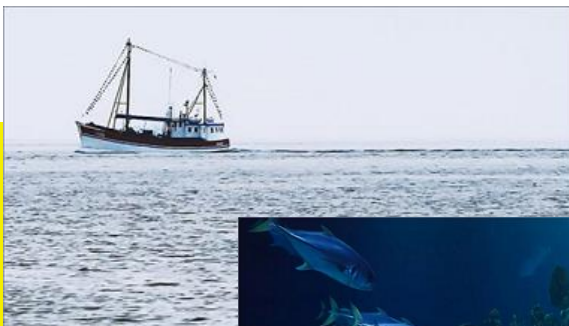
A key part of our strategy will involve working with DEFRA under a single Minister, Lord Zac Goldsmith, on the establishment of the Blue Planet Fund. This will support developing nations to manage their waters sustainably while reducing poverty. An early example of the value of the merger between the FCO and DFID, this represents our first Official Development Assistance funding dedicated to tackling marine issues and conservation. It will also strengthen the UK's global leadership on marine issues, such as our call to protect at least 30% of the global ocean by 2030 ("30by30") and our existing commitments to tackle plastic pollution entering the ocean.

In March 2020, we brought long-running negotiations to a successful conclusion on a maritime boundaries agreement between the UK on behalf of Anguilla, and Antigua.

Members of the Law of the Sea team and the Ocean Policy Unit took a leading role in this with technical support provided by the UK Hydrographic Office. The agreement is underpinned by the UN Convention on the Law of the Sea (UNCLOS) regime on supporting good order in the maritime space. It will enable all the parties to work together on the management and conservation of marine resources in the areas where their boundaries meet.



Further reflecting the importance of upholding the rules of UNCLOS and securing the implementation of its rights and obligations, in September 2020 we publicly set out our full legal position on the South China Sea for the first time. This emphasised our commitment to international law and called on all States in the region to comply with their obligations to protect and preserve the marine environment. Nigel Adams MP, Minister for Asia, made a statement on this in the House of Commons on 3 September 2020 and the full text of our legal position was deposited in Parliament (paper reference DEP2020-0516.)



The COVID-19 crisis impacted on a number of our key international negotiations, including on Biodiversity in areas Beyond National Jurisdiction (BBNJ) and the International Seabed Authority, but we anticipate progressing these in 2021. We are looking forward to the opportunities that the COP26 UN Climate Change Conference and the Convention for Biological Diversity COP 15 will bring in making the case for ocean conservation, and to ensuring that 2021 becomes the Ocean Super Year.

Feature

Engaging with international law

London's role as an important centre for international law was demonstrated in October 2019 with a major conference convened by FCDO Legal Directorate as part of a Steering Committee of UK universities, City law firms, barristers' chambers, the British Institute of International and Comparative Law and other international law-focused institutions.

Attended by 300 people, the two-day event was the first conference of this scale focused on public international law to be held in London. It attracted international law practitioners and stakeholders from around the world and showcased the international law talent based in the UK. The conference theme, 'Engaging with International Law', sparked debate on increasing examples of disengagement and dissatisfaction in the field of international law.



At the welcome reception in the FCDO's Locarno Suite, opening remarks were provided by The Rt Hon the Lord Burnett of Maldon, Lord Chief Justice for England and Wales; and The Rt Hon Robert Buckland, Lord Chancellor and Secretary of State for Justice. Conference speakers included His Excellency Judge Abdulqawi Ahmed Yusuf, President of the International Court of Justice; The Rt Hon the Baroness Hale of Richmond DBE, President of the UK Supreme Court; Judge Silvia Fernández de Gurmendi, former President of the International Criminal Court; and Tim Eicke QC, judge at the European Court of Human Rights.

Panels considered a diverse range of subjects, from international law and cyber and the prohibition on the use of force, to international criminal justice, modern slavery, trade and investment, maritime security and climate change. The closing plenary session, chaired by Professor Philippe Sands QC, considered global governance challenges raised by withdrawal from multilateralism.

The Steering Committee is now exploring the options in the current circumstances for the next London Conference, currently scheduled for 2021.



A selection of videos from the conference is available on the Conference website at <http://thelondonconference.org/2019-videos/>.

Feature

The new Foreign, Commonwealth and Development Office

On 16 June 2020 the Prime Minister announced that the Department for International Development would merge with the Foreign and Commonwealth Office, bringing together Britain's international effort in the new Foreign, Commonwealth and Development Office (FCDO.)



Foreign, Commonwealth & Development Office

The transformation of the two departments into one organisation would require planning and work across many areas, including our organisational culture and values, financial and corporate issues, and technology. To deal with the legal issues arising from the new department's creation, a temporary Legal Transformation Team was created consisting of lawyers from the former FCO Legal Directorate and DFID, plus the Government Legal Department. Their role included advising on commercial and employment issues arising from the merger, and on its implications for our legal obligations overseas.

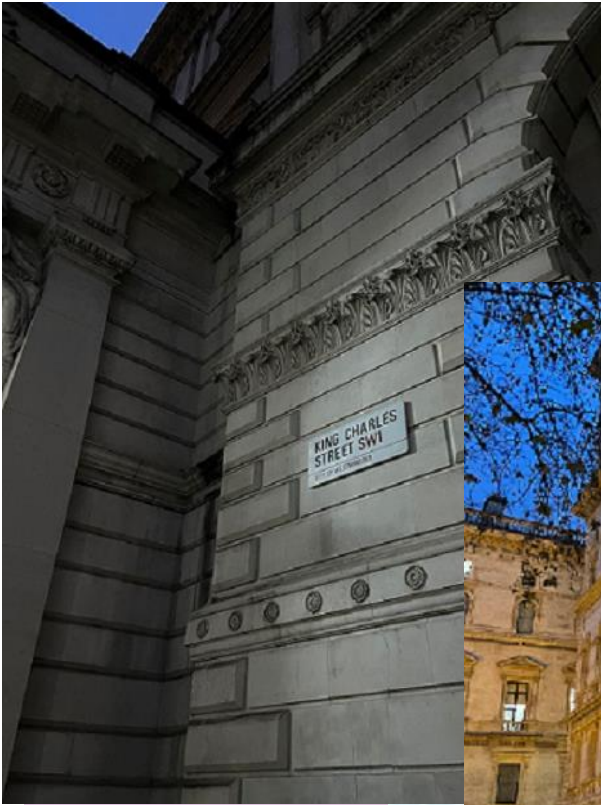
A key task for the team was to ensure the transfer of all the rights and liabilities of the FCO and DFID Secretaries of State to the new Secretary of State for Foreign, Commonwealth and Development Affairs. This was achieved through the [Transfer of Functions \(Secretary of State for Foreign, Commonwealth and Development Affairs\) Order 2020](#), which gave legal personality to the new organisation and to its Secretary of State as a corporation sole. It allowed contracts signed in the name of either previous Secretary of State to automatically continue, and any legal proceedings to continue uninterrupted.

The Order also allowed for the amendment of existing legislation to refer to the FCDO rather than the FCO. It is uncommon for legislation to refer to Government departments by name but the FCO was an exception to this, with legislative references to the serving of UK court documents on foreign States, for example, all needing to be changed.

Once the new legislation had been drafted, an extraordinary Privy Council meeting (held remotely due to the coronavirus crisis) was organised at the beginning of September to make the Order and swear in Dominic Raab as the new Secretary of State. The Order was laid before Parliament a week later and entered into force on 30 September.



To reflect the FCDO's new responsibilities and priorities, Legal Directorate has also reorganised our teams and created a new Development, Corporate and Operations team, enabling us to fully contribute to the continuing process of transforming the FCDO.



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