



Annual Review 2021

FCDO Legal Directorate



Foreign, Commonwealth
& Development Office

Legal Adviser's foreword

Welcome to the 2021 Annual Review for the Legal Directorate of the Foreign, Commonwealth and Development Office. In our last review, we shared examples of our work during the extraordinary times of the COVID 19 pandemic. Sadly, we are still dealing with the pandemic and last year we again adapted our working style during further lockdowns and restrictions. I am grateful to all colleagues in the Directorate for their support and dedication in these challenging times.

This review provides an updated introduction to the structure and work of Legal Directorate, advising the FCDO on all legal, treaty and ocean issues. An important highlight for the Directorate this year was welcoming the Central Litigation Unit, the policy team which deals with the process of handling litigation across the Office.

We continued to be as busy as ever across all aspects of our work and the “Year in Legal Directorate” section of the review provides an illustration of some of these events. I hope this provides an interesting update on some topical issues, as well as an indication of the breadth of work in the Directorate. Our Twitter feed [@UKintlaw](#) provides regular updates; do follow us to find out more during the year.

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.

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.



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 Central Litigation Unit became part of Legal Directorate in May 2021. The Unit ensures that the FCDO manages legal proceedings effectively, consistently and professionally, supporting staff in handling all aspects of the litigation process.

The Development, Corporate and Operations Team advises on development-related work and on commercial and corporate matters, including estates and security, knowledge, technology and information law and human resources.



The Europe and Human Rights Team advises FCDO teams dealing with the EU, Gibraltar, European and Central Asian countries, human rights and democracy. It also advises on trade matters and issues concerning the law of treaties, and negotiation and implementation of international agreements and governance issues following the UK's exit from the EU. Team members 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.



Casting the UK vote in a by-election for the International Court of Justice

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.

Representing the UK at the 26th Session of the International Seabed Authority Council

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



Virtual attendance at a maritime boundary treaty signing ceremony

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 Enquiries Service.

2021: The Year in Legal Directorate

The following pages highlight some examples of Legal Directorate's work and activities in 2021. These are not exhaustive but we hope they give a flavour of what we have been doing.

January 2021

Network resilience: Continuing work from 2020, our Development, Corporate and Operations (DCO) team supported colleagues in Human Resources Directorate on the network resilience project, the aim of which was to support colleagues and their families across the international FCDO network through the continued COVID-19 crisis.

In particular, the team supported the distribution of vaccines to staff and families, and advised on numerous questions on the application of local COVID-related restrictions to staff overseas. Many of these questions concerned the application of the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations in an unprecedented public health crisis. At home, the DCO and Foreign Relations teams continually reviewed the application of the exemptions from UK travel regulations to ensure an appropriate balance between public health, the necessary functioning of our diplomatic and consular networks and the health and wellbeing of our staff and their families.

February 2021

The [Headquarters Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Square Kilometre Array Observatory](#) was laid before Parliament.

The Observatory is an inter-governmental organisation at Jodrell Bank (the UK is the [depository](#) for [its establishing treaty](#)) that will oversee the delivery of the world's largest radio telescope. The Agreement was one of the 57 treaties published and laid before Parliament by Legal Directorate's Treaty Section in 2021.

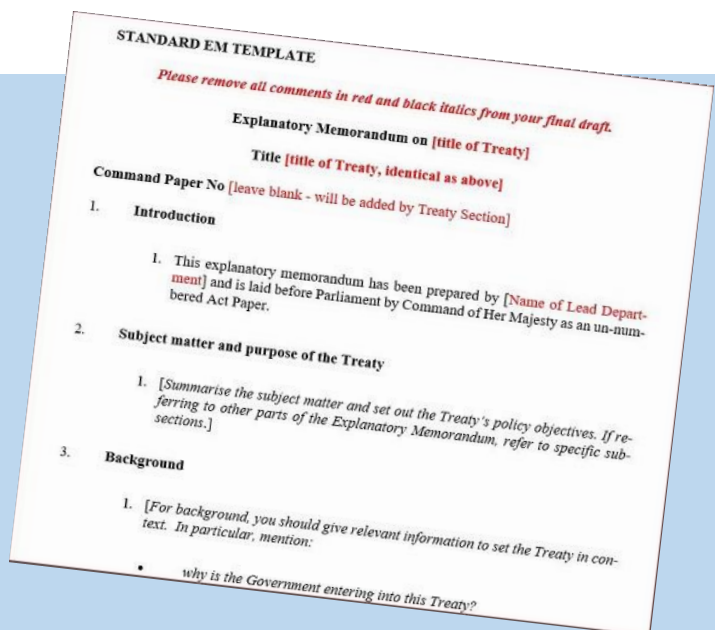


Legal Directorate, including Treaty Section, as well as FCDO treaty policy colleagues, plays a central role in advising Government on all aspects of UK treaty law and policy. Treaty Section is responsible for the procedures relating to the conclusion and publication of all treaties, and preparing their passage through Parliament under the *Constitutional Reform and Governance Act 2010 (CRaG)*.

This year we undertook work to ensure consistent practice and policies across Whitehall, thus developing and enhancing the Government's treaty-making capability. We updated the [FCDO Treaties and MOUs Guidance](#), which contains information on procedure and best practice and includes a template Explanatory Memorandum for use in connection with all treaties laid under CRaG.

Through the Law Faculty we ran training sessions on treaty law and procedure for colleagues in the FCDO, wider Government and the Devolved Administrations. We also supported FCDO treaty policy colleagues in their engagements with Parliament, in particular the House of Lords International Agreements Committee, the first select committee dedicated to the scrutiny of treaties subject to CRaG.

The Treaty Enquiries Service also dealt with around 300 enquiries from members of the public and Government departments in 2021.



The UK government announced new sanctions following the military coup in Myanmar.

As part of HMG action responding to the February 2021 coup in Myanmar, Legal Directorate drafted the [Myanmar \(Sanctions\) Regulations 2021](#), and associated Orders in Council. The Regulations, which came into force on 29 April 2021, replaced and updated the Burma sanctions regime, giving broader powers to target individuals or entities for undermining democracy, committing serious human rights violations, or financing the Myanmar Security Forces.

The Regulations also imposed additional trade sanctions; and enabled licensing of activities in connection with humanitarian assistance activity. With advice from Legal Directorate, 24 individuals and nine entities were designated under the Regulations as of 31 December 2021 and made subject to financial sanctions and (for individuals) travel bans. Legal Directorate worked closely with the FCDO Myanmar Unit and Sanctions Unit to advise on a range of other issues, including aid provision, assistance to civil society, and diplomatic relations; and to monitor the legal proceedings brought by the Gambia against Myanmar in the International Court of Justice.

March 2021

The World Health Organisation called for an international Pandemic Treaty.



With Department for Health and Social Care colleagues, the DCO team and legal colleagues at the UK Mission to the UN and other International Organisations in Geneva advised on the negotiation of the modalities Decision for the new international pandemic instrument, adopted at the World Health Assembly Special Session in November 2021. The Decision establishes an intergovernmental negotiating body to draft a new international agreement to strengthen pandemic prevention, preparedness and response by May 2024. The UK delegation was an active player in the negotiation to settle the final compromise text in order to satisfy competing objectives around the proposed instrument's legal status. A legally binding agreement under article 19 of the WHO Constitution is the UK's preferred option.

April 2021

We advised on preparation of a UK national submission to the UN Secretary General in response to a call under UN General Assembly (UNGA) resolution 75/36 adopted on 7 December 2020.

Resolution 75/36 is part of the UK-led initiative referred to in the [Integrated Review of Security, Defence, Development and Foreign Policy](#) as the UK leading “international efforts to develop norms, rules and principles of responsible behaviours in space.”



Legal Directorate then advised on a further resolution, adopted by the UNGA on 24 December 2021 (resolution 76/231). This resolution establishes an Open-Ended Working Group (OEWG) to: (1) take stock of the existing legal and normative frameworks concerning threats arising from State behaviours in outer space; (2) consider current and future threats by States to space systems; and (3) make recommendations on possible norms, rules and principles of responsible behaviours relating to threats by States to space systems, including, as appropriate, how they would contribute to the negotiation of legally binding instruments, including on the prevention of an arms race in outer space. The OEWG is expected to hold its first meeting in February 2022.

The *Global Anti-Corruption Sanctions Regulations 2021* came into force on 26 April 2021, establishing a sanctions regime for the purpose of preventing and combatting serious corruption.

Legal Directorate drafted the [Regulations](#) and associated Orders in Council. We worked with FCDO policy colleagues, the Joint Anti-Corruption Unit, other Government Departments and law enforcement agencies to ensure that this highly complex legislation complements and enhances wider action under the UK Anti-Corruption Strategy. The Regulations enable the Secretary of State to designate persons for involvement in the most harmful types of corruption – bribery and misappropriation of property involving public officials. Designated persons may be excluded from the United Kingdom and made subject to financial sanctions. Legal Directorate also advised on proposals for designations under the Regulations; as of 31 December 2021, 27 designations had been made.

May 2021

The FCDO's Central Litigation Unit formally became part of Legal Directorate.

The Central Litigation Unit (CLU) was set up in 2016 to assist the FCDO with handling litigation, and in particular to help geographical and policy departments manage the challenges of litigation. The Unit's work includes disclosure exercises; managing litigation strategy and case timeframes; providing guidance on disclosure and the practicalities of handling litigation; and assisting with internal coordination and updating Ministers and seniors.

Disclosure has become a particular focus of the Unit's work given the importance the FCDO places on fulfilling its disclosure and duty of candour obligations to the courts. CLU makes use of new technology to source information, including eDisclosure platforms, and coordinates with archivists, historians and information management specialists to ensure the FCDO engages in reasonable and proportionate searching for relevant material.

The Unit takes a leading role in certain cases, in particular personal injury claims against the FCDO, assisting in complex prosecutions, and handling cases concerning historic events. More recently, CLU has taken a lead role in identifying and reporting on litigation risk in the FCDO.

CLU is a close-knit team with extensive legal and policy experience. The move to Legal Directorate has allowed closer working between the Unit and FCDO lawyers who work as a team to handle the FCDO's overall litigation caseload, and a greater oversight of the legal, policy and operational aspects of handling litigation.



The CLU team in the FCDO Legal Library.

June 2021

The UK published its national contribution on the application of international law in cyberspace as part of the UNGGE on advancing state responsibility in cyberspace.



With the FCDO cyber policy department, Legal Directorate's National Security team participated in negotiations at the First Committee of the UN General Assembly to conclude a consensus final report of the UN Group of Governmental Experts (UNGGE) on Advancing Responsible State Behaviour in Cyberspace in the Context of International Security.

As part of this process, the UK published a [paper which sets out its view of the application of international law to State conduct in cyberspace](#), including the application of the UN Charter, the right of self-defence and use of force, non-intervention and sovereignty, state responsibility and countermeasures, international human rights law and international humanitarian law.

The FCDO intervened in the appeal before the Supreme Court in the case concerning the right to control approximately £900 million of gold reserves owned by the Central Bank of Venezuela.

In February 2019 the FCDO had issued a statement recognising Juan Guaidó as the interim constitutional President of Venezuela. This case raised issues of principle regarding firstly, recognition by HMG of Heads of State or governments; and secondly, the scope of the Foreign Act of State doctrine. The Supreme Court handed down judgment on 20 December.

On the first point, the Court agreed with the submissions made on behalf of the FCDO and confirmed the established principle that in issues of recognition the Executive and the courts must speak with one voice. This requires English courts to accept as conclusive a statement by HMG recognising a Head of State or government.

On the second point, the Court held that an Act by a foreign Head of State must usually be accepted by the English courts as valid. However, where the domestic courts of the foreign Head of State have ruled the Act is unlawful under its domestic laws, English courts will not recognise the validity of the Act, provided that the domestic legal system has sufficient standards of due process and/or the reason for the finding of illegality does not conflict with the one voice principle on recognition.



July 2021

The Host Country Agreement for the 2021 United Nations Climate Change Conference (COP26) was presented to the UK Parliament.

The Agreement is a legally binding international agreement between the United Nations Framework Convention on Climate Change Secretariat and the UK government as host of the Conference. It puts in place the legal infrastructure for the conference organisation and provides the basis for most organisational and logistical issues, such as premises, sustainability, hygiene and medical protocols, information technology, utilities and other services. As a sign of the times, and unusually for an agreement of this type, it also covered the possible effect of the COVID pandemic and contingency plans if the conference could not take place as originally intended.



Legal Directorate's Foreign Relations Team lawyers advised on the negotiations of the privileges and immunities provisions of the Agreement, including direct negotiations with the UN Office of Legal Affairs on the applicability of the Convention on the Privileges and Immunities of the United Nations. They also worked with colleagues across the UK government to draft and put through

Parliament the secondary legislation necessary to implement the privilege and immunity provisions of the Agreement: [The Conference of the Parties to the United Nations Framework Convention on Climate Change \(Immunities and Privileges\) Order 2021](#) and [The Conference of the Parties to the United Nations Framework Convention on Climate Change \(Immunities and Privileges\) \(Scotland\) Order 2021](#).

The UK announced a delivery of nine million COVID-19 vaccines around the world as its first step in helping to tackle the pandemic.

The Development, Corporate and Operations team advised the Vaccines Task Force on its international supply of vaccines. This included supply to Overseas Territories to enable them to vaccinate their populations; roll-out to overseas staff and their dependants; bilateral vaccine donations and resale of the UK's surplus vaccines; and vaccination of delegates to COP26 from developing countries who could not be vaccinated via their own country programmes.



August 2021

Legal Directorate teams advised on a range of issues as part of the government's response to the situation in Afghanistan.

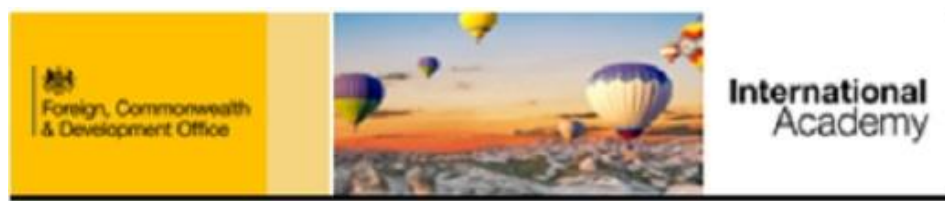
Members of the Foreign Relations Team worked closely with FCDO Consular staff on the evacuation of British nationals and their non-British national dependants. This was a challenging set of circumstances, involving travel arrangements for people without documents and via third countries with varying entry requirements.

The International Institutions and Security Policy team advised on negotiations leading to the adoption of [United Nations Security Council Resolution 2615 \(2021\)](#), enabling provision of humanitarian assistance by creating an exception to the UN asset freeze on individuals and entities associated with the Taliban. Work then started on sanctions regulations amending the *Afghanistan (Sanctions) (EU Exit) Regulations 2020* to implement this.

We have continued to advise on related issues throughout the year.

September 2021

The Law Faculty held the third in its three-part series of Expert level sessions on Space Law for an audience of lawyers and policy experts across the UK government and military staff.



The sessions were delivered virtually and drew on high-level UK and US legal expertise, both academic and military, to explore how international law is applied in outer space.

The Law Faculty is one of 12 Faculties across the International Academy, which is the centre of learning and development for the FCDO. The Law Faculty is run by Legal Directorate and offers training (both online courses and seminars - currently run virtually) at all three International Academy levels, Foundation, Practitioner and Expert. In addition to FCDO staff, it is available to other UK government staff to support their own learning and development.

October 2021

Colleagues from Legal Directorate were pleased to raise money for a good cause by taking part again in the London Legal Walk.

The walk is organised by the [London Legal Support Trust](#), an independent charity that raises funds for free legal advice services in London and the South East. Earlier in the year, members of Legal Directorate had also joined the [Globalmile challenge](#) to support mental health charities.

FCDO lawyers attended the 76th Session of the 6th Committee of the UN General Assembly in New York.



The session included the International Law Week which ran from 25 October to 29 October. During the week we took part in meetings with our counterparts from a range of other countries, as well as with the UN Legal Counsel, the ICRC and Human Rights Watch. Iain Macleod also chaired a virtual presentation by Professor Dapo Akande for international

legal advisers and international law experts on the immunities of State officials before international criminal courts and tribunals.



Delivering the UK statement in 6th Committee on the report of the International Law Commission

The Steering Committee of the London Conference on International Law held its first in-person meeting since the start of the pandemic.



The first London Conference on International Law took place in October 2019 and the Committee hopes to build on its success to hold the next Conference in October 2022, after plans in 2021 had to be put on hold. The next Conference will be on a larger scale than the first one but will be in the same format, addressing key issues across a wide range of international law topics.

The UK and the EU formally commenced negotiations in respect of Gibraltar in October 2021.

Gibraltar was not included in the scope of the 2020 EU-UK Trade and Cooperation Agreement but the Commission has since agreed to negotiate a treaty in respect of



Gibraltar. The framework for this treaty was agreed with the Kingdom of Spain on 31 December 2020. At the core of this negotiation is a shared aim to secure the future prosperity of Gibraltar and the surrounding region and a desire to bring confidence, legal certainty and stability to the lives and livelihoods of the people of Gibraltar and neighbouring communities, without prejudice to the UK's position on sovereignty over Gibraltar. Legal Directorate

has been working closely with colleagues across Whitehall and in Gibraltar on the UK's approach to these negotiations and lawyers continue to play an active role in negotiations.

The 26th UN Climate Change Conference of the Parties (COP26) took place in Glasgow.

The Development, Corporate and Operations Team supported the FCDO's Events Management experts by advising on a substantial suite of contracts covering everything from hiring the Scottish Exhibition Centre venue in Glasgow to ground transport for VIPs and Heads of State. Foreign Relations Team also supported the Conference with real-time legal advice on both the Host Country Agreement and our domestic legislation with policy and operational colleagues across Whitehall.



Members of Legal Directorate were also amongst the FCDO staff who volunteered as Delegation Liaison Officers, supporting the representatives of states attending the conference.

Conclusion of the 48th session of the UN Human Rights Council.

The session saw the UK co-sponsoring resolution L.27, which creates a mandate for a new Special Rapporteur to focus on the interaction between human rights and climate change, and voting in favour of resolution L.23, which recognised politically a human right to a safe, clean, healthy and sustainable environment.



November 2021

Following an oral permission hearing, the High Court refused permission to proceed with a judicial review of the government's decision to cut the Official Development Assistance budget from 0.7% to 0.5% of the UK's Gross National Income.

The International Planned Parenthood Federation (IPPF) had argued that the decision was unlawful on the basis that the government had unlawfully altered the 0.7% target to which the Secretary of State is subject under the *International Development (Official Development Assistance Target) Act 2015*. It was also argued that the Secretary of State had frustrated the purpose of that Act and the department's termination of an IPPF grant was procedurally flawed. The court refused permission on all grounds, finding that the government had not altered the 0.7% target and was acting within the framework of the 2015 Act. The court also held that the department had an unqualified right to terminate the grant in question and that the department had complied with the gender equality duty under the *International Development Act 2002*. This decision brought the proceedings to an end. The government remains committed to a return to 0.7% when the fiscal situation allows.

Preventing Sexual Violence in Conflict Initiative (PSVI).

The Foreign Secretary, who is also the UK's Minister for Women and Equalities, launched a major global campaign to stop sexual violence against women and girls in conflict around the world. This campaign is to kickstart a major new push by the UK to shatter the culture of impunity around the use of rape and sexual violence as methods of warfare and to prevent and punish its use. Legal Directorate advised the policy team leading this effort and continues to contribute to multilateral and stakeholder engagement on initiatives to combat conflict-related sexual violence.

UK candidate Professor Dapo Akande was elected to the International Law Commission.

We were delighted to support the nomination and successful election to the International Law Commission of Professor Akande, a world-renowned expert with extensive experience at the domestic and international levels. He was co-nominated by Nigeria, Kenya, Japan and Slovenia, the first time a candidate has been nominated by countries from four UN regional groups.

He is an exceptional academic and practitioner with an international law focus, and his legal acumen, ability and experience will be a great asset to the International Law Commission and its work.



Professor Dapo Akande
United Kingdom Candidate for the
International Law Commission 2021

Also nominated by Japan, Kenya, Nigeria and Slovenia



December 2021

Inquiry into the UN Convention on the Law of the Sea.

FCDO Legal Director Andrew Murdoch gave evidence to the ongoing [Inquiry by the House of Lords International Relations and Defence Committee](#) into whether the United Nations Convention on the Law of the Sea (UNCLOS) is still fit for purpose. The questions covered a wide range of topics including autonomous ships, dispute resolution, international partnerships, climate change, biodiversity, deep sea mining and human rights. A transcript of the evidence is available on the [Committee website](#).



The Sixth Review Conference of the Convention on Certain Conventional Weapons.



Our Legal Counsellor to the UK Mission to the UN and other International Organisations in Geneva supported the Disarmament Ambassador at this conference on negotiations around the use of incendiary weapons and lethal autonomous weapons systems.





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the most common and most serious side effect of the use of these drugs is the development of resistance to the drug.

The development of resistance to the drug is a result of the fact that the drug is not able to kill all of the bacteria that are present in the body.

The bacteria that are not killed by the drug are able to reproduce and pass on their resistance to the drug to their offspring.

This process of resistance is a natural part of the evolution of bacteria and is not a result of the use of the drug.

The use of these drugs can lead to the development of resistance to the drug and this can make it difficult to treat the infection in the future.

It is important to use these drugs correctly and to complete the course of treatment in order to avoid the development of resistance to the drug.

It is also important to avoid the use of these drugs when they are not needed, as this can also lead to the development of resistance to the drug.

The use of these drugs should be limited to the treatment of bacterial infections and should not be used for the treatment of viral infections.

The use of these drugs should also be limited to the treatment of acute infections and should not be used for the treatment of chronic infections.

The use of these drugs should also be limited to the treatment of infections that are caused by bacteria that are sensitive to the drug.

The use of these drugs should also be limited to the treatment of infections that are caused by bacteria that are not resistant to the drug.

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