

# Legal Directorate Annual Report 2015



Foreign &  
Commonwealth  
Office



This is Legal Directorate's Annual Report for 2015. It reviews our achievements for the year from June 2014 to June 2015 and sets out our priorities for the coming year.

The Directorate provides legal services to the Foreign and Commonwealth Office (FCO), advises on legal, treaty and maritime policy and provides litigation services in UK and international courts, including the European Court of Human Rights.

The Report sets out the structure, organization and strategic objectives of the Directorate. It then describes each of our six strategic objectives, highlighting the main areas of work from last year and the challenges for the year ahead.

*Legal Directorate*  
*Foreign and Commonwealth Office*  
**September 2015**

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# *Introduction*

FCO Legal Directorate is headed by the Legal Adviser, Iain Macleod and three Legal Directors (Cathy Adams, Douglas Wilson and John Evans).

Most FCO lawyers are based in London. They are organized into five teams:

- Counter Terrorism and Human Rights
- EU and Wider Europe
- Foreign Relations
- Overseas Territories and Maritime
- International Institutions and Security Policy



The Directorate also includes:

- ECHR Agents Support Unit
- Knowledge and Information Section
- Office Management Section
- Maritime Policy Unit
- Treaty Section

Several FCO lawyers serve as members of FCO posts overseas or on secondment to the Attorney General's Office in London.

## **Legal Directorate has six overarching objectives:**

1. **LEGAL SERVICES AND ADVICE:** 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
2. **MANAGEMENT:** To be a well run, happy and effective team
3. **LEGAL AWARENESS** To improve the level of understanding of legal and related issues across the FCO
4. **OUTREACH:** 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
5. **SHARED SERVICE:** To develop a shared legal resource for HMG as a whole on international, ECHR and EU law, whilst developing stronger links with other GLS legal teams.
6. **KNOWLEDGE & INFORMATION MANAGEMENT:** To enhance our expertise by effectively managing, accessing and sharing our knowledge and information resources.

# Objective 1: Legal Services and Advice

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 Teams

### Counter Terrorism and Human Rights (CT&HR) Team

- The team's work includes the Middle East and North Africa, Eastern Europe, the Americas, Counter-Terrorism, Human Rights.
- The team act as Agents in all cases against the UK in the European Court of Human Rights and works on court reform. The team is supported by the ECHR Agents Support Unit (EASU) who process ECHR cases and deal with Rule 39 provisional measures.



#### Key achievements in 2014/2015:

- **ISIL** - legal advice in support of HMG's policy to counter the threat posed by ISIL.
- **Ukraine** – legal advice on issues arising from Russia's illegal annexation of Crimea, and the continued situation in the East of Ukraine including seeking accountability for MH17.
- **Counter-Terrorism** – Including multilateral initiatives to prevent the travel of foreign fighters to join terrorist groups; supporting the Home Office on aspects of the passage of the Counter-Terrorism and Security Act 2015, as well as national security deportations; assisting the CPS with criminal prosecutions; advice on kidnaps including the UK's policy on ransom payments; and advising on Justice and Human Rights Partnerships with other States
- **Inquests/Inquiries** – FCO/HMG engagement in the Litvinenko, Khalil Dale, and In Amenas (Algeria hostages) inquests and inquiries.
- **Cyber**- in September 2014 we organised and hosted an academic seminar, "Cyber, International Law and National Security". Speakers included Professor Mike Schmitt and Air Commodore Bill Boothby and the seminar was attended by legal colleagues from a number of States, as well as academics and experts in the field. We were also part of a UK delegation to the 2015 UN Group of Government Experts on the use of cyber technologies in International Security.

#### Priorities for 2015-2016

- ISIL, Libya, Yemen, Ukraine, Counter-Terrorism and Cyber are likely to remain high priorities in the coming year.
- In addition, we foresee further work on Human Rights especially supporting the Ministry of Justice on the introduction of a new Bill of Rights and on Reform of the European Court of Human Rights.

## *EU Team*

The work of the team includes legal advice to Europe Directorate and other FCO Directorates which cover issues relating to Europe such as Prosperity, Communications, Migration and Parliamentary Relations. The team also advises certain geographic desks including the Western Balkans and Turkey as well as providing legal support to the Department for Business, Innovation and Skills on international investment law and the Department for International Development on EU and international law.



The focus of the team's **work and key achievements in 2014-15** has been:

- **EU Institutions and the Eurozone** – advising HMG on EU and institutional issues, particularly on HMG priorities for reform of the EU, assisting with the preparation of an EU Referendum Bill, managing the nomination of a new UK judge for appointment to the EU General Court and providing ongoing advice on various legal issues arising from the Eurozone crisis.
- **External competence/representation** – co-ordinating legal advice on EU external relations to ensure that UK interests are not adversely affected, while promoting effective EU policy in priority areas (i.e. advice on Partnership and Association Agreements).
- **Scottish independence referendum** – providing legal advice to HMG on international and European Union law issues in advance of the Scottish independence referendum.
- **Gibraltar** – providing legal advice in relation to a range of constitutional and international law issues including the appointment of a new Attorney General for Gibraltar and the measures necessary to protect UK sovereignty over British Gibraltar Territorial Waters.
- **Justice and Home Affairs** – advice to HMG on the operation of the UK opt-in (especially in the field of external relations) and finalising arrangements resulting from the 2014 block opt-out.
- **Western Balkans** – advice on a wide range of matters, including the signature and conclusion of the Stabilisation and Association Agreements for both Bosnia and Kosovo.
- **EU litigation** – contributing to UK interventions in case before the Court of Justice. Significant cases this year included cases concerning the circumstances in which the European Commission may withdraw legislative proposals and the use by the European Commission of the power to impose fines under article 260(3) TFEU for failure to notify transposition measures.

### **The EU Team's Priorities for 2015/16:**

- **Work on EU Reform and the forthcoming EU Referendum**
- **EU Institutions**– continuing to advise on how to make EU institutions more efficient and on promoting UK interests and preparation for for the **UK Council Presidency**.
- **EU External Relations** – continuing the UK strategy of appropriate challenges to competence creep and unauthorised actions by the European Commission.
- **Bilateral Relations** – advice on legal issues in the Western Balkans and the protection of UK interests in both Gibraltar and the Sovereign Base Areas.

## *Foreign Relations Team*

The team was formed in March 2015, consolidating into a cohesive team issues that had previously been dealt with separately. It is organised into three legal sections and Treaty Section (which has a separate entry in this report).

- **Consular and Diplomatic Law Section** advises on diplomatic law, consular issues, treaty law and air services and provides support to the Legal Adviser for Council of Europe and EU legal advisers' meetings.
- **Litigation Section** leads on national security and colonial legacy litigation. It also has an overarching remit for oversight of all the FCO's UK litigation.
- **Operations Section** provides advice to the FCO Directorates within the Operations Cluster (except Protocol) on issues such as information law, corporate and commercial issues, human resources and estates and security.

### **The team's highlights of 2015 included:**

- Advising on high-profile litigation in the UK courts and tribunals on a range of national security issues (see "Litigation" on page 17); and introducing a new database for managing all FCO litigation in the UK courts.
- Successfully defending in the Supreme Court the FCO's consular policy on provision of legal fees for British nationals abroad.
- Successfully defending the FCO in the Information Tribunal in relation to a Freedom of Information request.
- Carrying out a review of the way the FCO receives legal advice on foreign law through its network of Honorary Legal Advisers.



### **Priorities for 2015-16 include:**

- Defending the FCO in the Supreme Court in a key case regarding alleged UK complicity in US rendition; and in a large number of national security cases in lower courts.
- A Supreme Court appeal relating to claims brought by domestic workers against diplomatic embassies in London.
- Preparing an Order in Council to confer immunities on the Asia Infrastructure Investment Bank, allowing the UK to become a founding member.
- Defending a group action brought by 42,000 Kenyans complaining about their alleged treatment by the former colonial administration in the 1950s and 1960s.
- Working across the FCO to cooperate fully with the Goddard Inquiry into child sexual abuse.

## ***International Institutions and Security Policy (IISP) Team***

The team works on multilateral policy (including sanctions and war crimes), Defence and International Security, South Asia and Afghanistan, Africa and Asia Pacific.

**The team's highlights of 2014-15** have included:

- Managing an increased volume of sanctions litigation at EU and domestic level;
- Academic and industry outreach to ensure awareness of our approach to sanctions listings and litigation;
- Continuing to implement “smarter sanctions” procedures for analysing the impact and robustness of sanctions;
- Drafting 14 Orders in Council implementing sanctions in the Overseas Territories, and a Regulation prescribing an increased fee concerning implementation of the Kimberley Process certification scheme for the international trade in rough diamonds;



**Chloe Cina of the IISP team at a Whitehall and Industry Group event**

- Advising on and supporting the UK's application of arms controls, including in the context of crisis situations;
- Advising on International Humanitarian Law (IHL), including supporting Swiss/ICRC led discussions on the introduction of a system for States on Strengthening Compliance with IHL.

### **The IISP Team's Priorities for 2015-2016**

- Supporting sanctions policy initiatives and defending UN and EU sanctions regimes in domestic and EU courts.
- Advising on Afghanistan related issues including legal challenges to UK detention operations, local staff issues, and other aspects of the draw down of UK military presence there.
- Contributing to the UK's application of robust and appropriate arms controls, including supporting preparations for the first Conference of States Parties in August 2015.
- Advice on issues with regard to the work of the International Criminal Court and on the handling of the preliminary examination of aspects of the UK's military operations in Iraq.
- Support for the Iran nuclear negotiations between the E3+3 and Iran and the implementation of any resulting comprehensive deal.
- Continuing to advise on maritime security, including supporting the delivery of HMG's policy objectives on Mediterranean migration.

## *Overseas Territories and Maritime Team*

**Overseas Territories and Maritime Team** is a new hybrid legal and policy team formed in March 2015, providing legal advice to Overseas Territories Directorate and on law of the sea and carrying on the work of Maritime Policy Unit, an existing policy unit in Legal Directorate, which is the lead Government department on the UN Convention on the Law of the Sea.

**Key achievements for the team in 2014-2015** were:-

- Appearing before the International Tribunal for the Law of the Sea (ITLOS) in Case No 21, on whether ITLOS has jurisdiction to give advisory opinions;
- Organising the Annual Conference of Attorneys General of the British Overseas Territories which was held in Miami in November 2013, focussing on financial transparency, extradition and child protection;
- Leading the UK delegation for the UN working group meetings on conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction, which recommended to the UN General Assembly that a new legally binding international instrument should be negotiated;



**Overseas Territories and Maritime Team's Alice Lacourt and Joanna Bateman attend the Annual Conference of the Attorneys General of the British Overseas Territories**



**Overseas Territories and Maritime Team's Nicky Smith and Sir Michael Wood at ITLOS**

- Launching a guidance note on the GOV.UK website to facilitate and explain the procedure for requesting and granting Marine Science Research (MSR) applications;
- Participating in the ISA progressing work towards securing a regulatory regime to allow the realisation of deep-sea mining and securing approval of UK Seabed Resources Ltd's second application for mineral exploration in the Pacific Ocean;
- Advising on FCO's engagement with the independent Inquiry, established by the Foreign Secretary in November 2014 and chaired by Sasha Wass QC, into allegations that child sexual abuse in St Helena was not being properly investigated or prosecuted, and into the response of the St Helena Government, the FCO and DFID.

### The Overseas Territories and Maritime Team's Priorities for 2015-2016

- Providing legal support to the newly established Child Safeguarding Unit in Overseas Territories Directorate ;
- Implementing of a coherent extradition regime in the overseas territories;
- Continuing to push for the prompt development of a regulatory regime for deep sea mining and to continue to work closely with the International Seabed Authority, other Member States, contractors, NGOs and Whitehall colleagues to provide inter-sessional progress.
- Working with the Overseas Territories towards more effective governance of their maritime space including identification of further marine protected areas.



Overseas Territories and Maritime Team's Rebecca Cox at the Commissioner's Representative's Office in the British Indian Ocean Territory

## Overseas Lawyers

### New York

*Paul McKell (until summer 2014), Helen Mulvein (from summer 2014) and Jesse Clarke, Legal Advisers at the UK Mission to the United Nations, New York*

The UKMis Legal Section has lead responsibility within the Mission and represents the UK in the UN on International Justice, the Sixth Committee (Legal) of the General Assembly, the Rule of Law and the Law of the Sea. International Justice work covers the International Criminal Court, the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, the Special Tribunal for Lebanon (as Chair of the Management Committee), the Extraordinary Chambers of the Courts in Cambodia and the Residual Special Court for Sierra Leone.

In addition, the Legal Section provides legal advice across the full range of the work of the Mission. There is a particular focus on the work of the Security Council, which often requires legal input on the use of force, international humanitarian law, human rights, accountability, sanctions, peace-keeping mandates; and on procedures and practices in the Council, the General Assembly and other meetings at the UN e.g. negotiating conferences and meetings of states parties.

The Legal Section also promotes UK interests through outreach to the wider diplomatic, legal and academic community in New York and the US, including participating in and organising seminars and panels.

### Geneva

*Margaret Purdasy, Legal Adviser at the UK Mission to the United Nations, Geneva, has responsibility for legal-policy issues arising in work across the Geneva institutions, as well as giving legal advice to UKMis colleagues. This includes issues arising in the World Trade Organisation, World Intellectual Property Organisation, World Health Organisation and International Labour Organisation in addition to the UN Human Rights Council (HRC). In particular this involves:*

- At the HRC, leading negotiations for the UK on resolutions with high legal content and advising colleagues on legal issues;
- Promoting the HMG rule of law agenda with particular focus on International Humanitarian Law issues in the run up to the Red Cross Red Crescent International Conference in December;
- Representing the UK on the Governing Council of the UN Compensation Commission;
- Engaging with the extensive international law community in Geneva and arguing for UK positions on key international law issues.



UKMis Geneva Political and Human Rights team in Magna Carta era costumes for National Dress Day at the UN

## **Brussels**

The legal team of the UK Representation to the EU, Brussels, consists of *Ivan Smyth (Legal Counsellor)*, *Nick Minogue* and *Alistair Robinson (both 1<sup>st</sup> Secretary legal)* and *Christine Reeve (Infractions Policy and Business Support)*.

The UKREP legal team fulfil five core roles:

- providing on the spot legal advice to the Ambassadors and desk officers in the UK Representation across the whole range of UK legal business;
- engaging with the legal advisers of the EU institutions and Member States to advance UK interests on legal issues and liaising with the Court of Justice of the European Union;
- building and maintaining a relationship with the private sector, Law Society and Bar Council representatives in Brussels legal community;
- providing expertise and training to Whitehall departments on EU legal issues and arranging high level visits for lawyers across government to engage with their counterparts in the EU institutions; and
- liaising 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.



**Justis Lipsius Building, Brussels**

2014-2015 has seen the legal team advising on cross-cutting issues such as the UK's opt-in to former so-called Third Pillar Justice and Home Affairs measures under the terms of the Transitional Protocol to the Lisbon Treaty (Protocol 36), the UK's reform agenda, sanctions practice and litigation before the EU courts including the negotiation of new rules on use of classified information by the General Court, the EU's Multi-annual Financial Framework and inter-institutional balance in external relations..

## **The Hague**

*Shehzad Charania, Legal Adviser to the Embassy in The Hague, heads the International Law Section of the Embassy, providing leadership, strategic direction and analysis on the UK's engagement with The Hague-based international legal institutions. The majority of the team's work focuses on the International Criminal Court (ICC), but also includes the International Court of Justice (including as Deputy Agent in the case brought by the Marshall Islands on nuclear disarmament), the International Criminal Tribunal for the Former Yugoslavia, the Special Tribunal for Lebanon, the Permanent Court of Arbitration and The Hague Conference on Private International Law.*

In addition to the conventional legal-policy work, Shehzad and his team also organised and took part in a number of public outreach events this year, including the following:

- Conference on Legal Diplomacy (see section on Outreach).

- The Inaugural British Embassy Annual Lecture on International Law delivered by ICJ Judge Sir Christopher Greenwood. The lecture was entitled “Can International Law Change the World”. A video and written summary of the event can be found at - <http://ilawyerblog.com/can-international-law-change-world/>.
- As Chair of the Group of Friends of the ICC in The Hague, Shehzad interviewed a number of senior ICC figures, including the former ICC President Judge Sang-Hyun Song and the current ICC President Judge Silvia Fernandez de Gurmendi. The ICC Prosecutor Fatou Bensouda and Registrar Herman von Hebel are scheduled to take part in the series later this year.
- Meeting at Chatham House entitled “The ICC at the Crossroads”, which dealt with the challenges facing the ICC in relation to cooperation. A summary can be found at - [http://www.chathamhouse.org/sites/files/chathamhouse/field/field\\_document/ICC%20at%20a%20Crossroads%20Meeting%20Summary%20FINAL%202014%20April%202014.pdf](http://www.chathamhouse.org/sites/files/chathamhouse/field/field_document/ICC%20at%20a%20Crossroads%20Meeting%20Summary%20FINAL%202014%20April%202014.pdf)



Committee of Ministers, Strasbourg

### ***Strasbourg***

*Laura Dauban is the Deputy Permanent Representative, UK Delegation to the Council of Europe, Strasbourg.*

The Deputy Permanent Representative leads on:

- Liaison with the Committee of Ministers on their supervision of European Court of Human Rights judgments against the UK;
- Representing the UK in the Committee of Ministers when it oversees the Court’s judgments against other member States;
- Promoting reform of the European Court of Human Rights and the Convention system;
- Negotiating for the UK on human rights and justice issues.

She is closely involved in the UK’s broader policy and activities at the Council of Europe, including on its response to the Ukraine/Russia crisis, and in the management of the Delegation.

## 1.2 Policy Work

### Treaty Section

*Treaty Section's role is:*

- To supervise the conclusion of bilateral and multilateral treaties by the UK
- To advise and assist with the form and content of draft treaties and MOUs
- To maintain an information and enquiry service
- To act as a depositary for more than thirty multilateral treaties
- To oversee the application of statutory provision of the Constitutional Reform and Governance Act 2010 for parliamentary scrutiny of treaties
- To arrange for treaties which are in force for the UK to be transferred to the National Archives at Kew

*The Section is organised into two teams covering **treaty procedures and publishing** and **treaty information and depositary work**.*

#### Treaty procedures and publishing

This 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 Secretariat and the International Civil Aviation Organization (ICAO).

In 2014/2015 members officiated at six treaty signature ceremonies in the UK and supported signature and ratification events at UK posts abroad. These included the Protocol to the Treaty on a Nuclear-Weapons-Free- Zone in Central Asia, 3<sup>rd</sup> and 4<sup>th</sup> Additional Protocols to the Convention on Extradition, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism and the Agreement on the Status and Functions of the International Commission on Missing Persons.



**Signing ceremony during the visit of the President of Mexico , Enrique Peña Nieto, 2 March 2015. The President presided over the signing of a Treaty and a number of Memoranda of Understanding**

Important bilateral treaties included:

- Double Taxation Agreements with Algeria, Belgium, Canada, Germany, Macao, Tajikistan and Zambia,
- Agreement on Tax Information Exchange with Monaco
- Agreement on the Transfer of Sentenced Persons with Nigeria
- Agreement on the Protection of Classified Information with Bulgaria
- Film Co-Production Agreement with China

- Agreement on the Mutual Recognition of Higher Education Awards, Titles, Diplomas and Academic Degree with Mexico

### **Treaty Information and depositary work**

Treaty Section 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 published in the UK Treaty Series since 1892 available through the UK Treaties Online service (<https://www.gov.uk/uk-treaties>).

The Section manages the UK's role as depositary to more than thirty multilateral treaties. This includes recording and disseminating information about actions on treaties for which the UK Government is depositary, including UNESCO and the Biological Weapons Convention.

### **Priorities for 2015/2016:**

- To continue improvements to the Section's online information service, including the development of a successor to the UK Treaties Online database.
- To promote greater awareness of treaty practice and procedures throughout the FCO through the new Working with Treaties e-learning module.

## 1.3 Litigation

Legal Directorate is closely engaged in a range of litigation involving the FCO and HMG.

### Domestic

#### Key points in 2014-2015:

- Civil damages cases alleging UK complicity in detention, torture and mistreatment overseas. Important judgments were handed down by the Court of Appeal in *Belhaj v FCO & Ors* (regarding preliminary international law arguments and applicable law) and *Amin v FCO & Ors*. *Belhaj* is being appealed to the Supreme Court.
- Developing and launching a new Litigation Management Database to provide up-to-date information on all FCO litigation in UK courts and tribunals, improving the way we handle litigation and helping us to manage litigation risk more effectively.
- We have continued to handle a steady stream of challenges to the domestic implementation of EU/UN sanctions.
- Following the Snowden leaks we have seen a sharp increase in cases being brought before the Investigatory Powers Tribunal (IPT), including allegations of HMG involvement in bulk data programmes; unlawful interception of legally privileged material; and breach of the ban on the tapping of MPs.
- The Justice and Security Act 2013 completed its first full year in force and a number of applications for closed material procedures (CMPs) have been made in civil proceedings, enabling sensitive material to be taken into account by the Court without damaging national security by open disclosure.
- We have assisted coroners in a number of inquests into the deaths of British citizens overseas, notably an inquest into the death of a British national in Syria and the In Amenas inquests in which FCO witnesses gave evidence.
- We intervened in two cases brought by domestic employees of embassies in London concerning the application of diplomatic immunity and state immunity respectively. We were successful in the former; the latter is being appealed to the Supreme Court.
- A judicial review challenge to the decision to create the world's largest "no-take" Marine Protected Area in the British Indian Ocean Territory (BIOT) was successfully defended in the Court of Appeal. The claimant is seeking permission to appeal to the Supreme Court.



UK Supreme Court

### **Priorities for 2015-2016**

- Effective management of domestic litigation, particularly civil damages cases following judgment in *Belhaj*, utilising the Litigation Management Database.
- Handling the Kenya Emergency Group Litigation, a claim brought by over 40,000 claimants who all allege that they suffered mistreatment at the hands of the Colonial Government in the 1950s. The case is being managed by a Group Litigation Order in the High Court, with a number of test cases going to trial commencing May 2016, at the earliest.
- Continuing to advise on the ongoing proceedings brought by the Marshall Islands against the UK in the International Court of Justice in relation to nuclear disarmament. On 15 June 2015, the UK raised certain preliminary objections regarding jurisdiction and admissibility.
- Important Supreme Court Judgments are anticipated in the following cases:
  - *Belhaj v FCO & Ors* – consideration of Act of State and State Immunity matters.
  - *Youseff v FCO* – sanctions case against where the Secretary of State lifted the hold on the Claimant's listing under the UNSC.
  - *Keyu v FCO* – considering the extent and scope of the European Convention on Human Rights and the need for Article 2 inquires in respect of events occurring in 1948.

## ***International***

### **The Mauritius Arbitration**

On 19 March 2015 an Arbitral Tribunal constituted under the UN Convention on the Law of the Sea ("UNCLOS") handed down an award in the proceedings brought by Mauritius against the UK.

The proceedings resulted from a claim by Mauritius that the decision by the United Kingdom to establish a Marine Protected Area ("MPA") around the British Indian Ocean Territory ("BIOT") was in breach of various provisions of UNCLOS. Mauritius also contended that the UK was not the "coastal State" within the meaning of UNCLOS and was therefore not entitled to declare an MPA.

The Tribunal found for the UK on most significant points. The Tribunal agreed it lacked jurisdiction to consider whether Mauritius rather than the UK was the coastal State, a matter which was essentially about sovereignty over the territory. The Tribunal also found that there was no improper motive in the creation of the MPA. However, it did conclude that because of certain understandings between the two countries, the process of establishing the MPA was not in accordance with UNCLOS because there had been insufficient consultation with Mauritius.

The Tribunal was clear that in reaching its conclusion it was taking no view on the substantive quality or nature of the MPA or on the importance of environmental protection. The Tribunal's concern had only been confined to the manner in which the MPA was established. Work will continue to engage with Mauritius over the implementation of the MPA.

### **The Nuclear Disarmament Case**

In May 2014, the Marshall Islands began proceedings against the UK in the International Court of Justice in relation to nuclear disarmament. This was the first contentious case in the ICJ brought against the UK since 1999. These proceedings remain ongoing.

## ITLOS: Case No. 21 (Request for an Advisory Opinion)

In September 2014, Sir Michael Wood (Counsel) and Nicky Smith (Assistant Legal Adviser in our Overseas Territories and Maritime Team) appeared before the International Tribunal for the Law of the Sea (ITLOS) in Case No 21 to make submissions on behalf of the UK. This was the first request to ITLOS to give an advisory opinion and the UK, together with a number of other States, made submissions on the question of whether ITLOS had jurisdiction to do so. ITLOS handed down its advisory opinion in April 2015, finding it did have jurisdiction.

## *Litigation in the European Court of Human Rights*

In 2014, the Court communicated 1073 applications to the UK for observations (of which 1025 were “clone cases” on prisoner voting rights) and decided 1,997 applications against the UK. It delivered 14 judgments in cases brought against the UK (1.57% of the total of 891 judgments against Council of Europe states) with a finding of a violation in 4 of those (0.45% of the total judgments delivered). This compares well with the number of judgments finding a violation against, for example, France (17) and Italy (39). Of similar sized states, only Germany (with 3 judgments finding a violation) did better. The states with the largest number of judgments finding a violation were the Russian Federation (122), Turkey (94) and Romania (74).

Significant UK cases in 2014-15 included:

- *Hutchinson* - no violation of Article 3 following the clarification of the operation of UK law on whole life orders by the Court of Appeal.
- *Ibrahim and Others* – no violation of Article 6 in respect of safety interviews carried out following the failed attempt to detonate bombs on the London transport system on 21 July 2005.
- *Gough* – no violation of Article 8 or Article 10 in respect of the arrest, prosecution and conviction of the “Naked Rambler”.
- *Hassan* – no violation in respect of the capture and detention in Iraq of Mr Hassan.
- *Ali* – no violation of Article 6 in respect of a retrial and conviction, following extensive media coverage, in relation to a plot to detonate explosive devices mid-flight.



European Court of Human Rights

There were 741 applications for interim measures (preliminary protective orders) against the UK in 2014, of which 4 (0.5% of those applied for) were granted.

### **Priorities for 2015-2016**

At the start of 2015 there were 1,905 applications (2.7% of the total before the Court) pending against the UK.

Judgments anticipated in 2015-2016 include:

- *Armani da Silva* – shooting of Jean Charles de Menezes at Stockwell underground station;
- *McKevitt and Campbell* - whether the hearing of the civil claims against the applicants for their alleged role in the Omagh bombing was fair in light of the admission of hearsay evidence and the application of the civil rather than criminal standard of proof.
- *Big Brother Watch and Bureau of Investigative Journalists* - alleged absence of legal protections in UK law relating to the use, storage, dissemination and disposal of personal data by the UK intelligence services, including confidential information and journalist sources.

## ***Objective 2: Management***

*To be a well run, happy and effective team.*

### ***2.1 Office Management Section (OMS)***

During the last 12 months OMS has taken on a greater role in respect of outreach and training events within the Directorate. In addition OMS continue to lead on:

#### **Information Services**

- Lead on requests made under the Freedom of Information (FOI) Act, the European Convention on Information on Foreign Law (ECIFL) and for Mutual Legal Assistance (MLA).
- Co-ordinate the processing of Statutory Instruments and liaison with Parliament and the Privy Council.
- Processing Parliamentary questions, MPs' letters and letters from members of the public.

#### **Budget/Finance Services**

- Manage financial resources, in accordance with Directorate objectives and FCO Foreign Policy Priorities.
- Procure goods and services.
- Process and pay invoices.

#### **Administrative Services**

- Manage and maintain departmental security.
- Provide an induction for new staff joining the Directorate.
- Oversee the management of the office premises and facilities.

#### **Priorities for 2015-2016**

- Providing a high quality and efficient service in support of Legal Directorate
- With the support of the Legal Adviser, ensuring security procedures within the Directorate are followed.
- Effectively managing finance and parliamentary processes.
- Developing and continuing to test the Business Continuity Plan.

## ***2.2 Staff Survey***

The response rate for the 2014 Staff Survey was again very high. Overall the Directorate's engagement rating increased by a further 5% to 66%, on top of a 4% rise the year before.

There were clear improvements on the previous survey scores in several areas, in particular on "Leadership and Managing Change", although some individual scores on this head recorded a drop. The Directorate's scores continued to be very strong in relation to "satisfaction with the work that we do" and "organisational objectives and purpose". In other areas, the Survey pointed to very strong dissatisfaction with "pay and benefits", and scores on "My manager" and "My team" continued to be below the FCO average. There was a positive trajectory for the scores in relation to "Discrimination, harassment and bullying" reduced by 6% from the previous year, and 9% below the FCO average. As a result the collective focus of the Directorate for the year ahead will be on improving the way we manage and lead each other.

## ***2.3 Learning and Development Group***

The Legal Directorate Learning and Development Group has developed a comprehensive Learning and Development Plan. This sets out the Directorate's approach to learning and development and sets out the opportunities on offer enabling individuals to plan their own learning and development. It provides guidance on core training and essential skills, professional skills and development and competences.

The Group organised a series of lunchtime presentations throughout 2014 and 2015 given by in-house speakers and some from outside FCO. Subjects included international climate change negotiations, treaties, litigation, diplomatic immunity, analysing legal risk, OSJA assessments, the ICC and international criminal tribunal and working with Parliament. It also launched new series of 'Advising on...' seminars designed to provide slightly more detailed training on key areas on which members of the Directorate are required to advise. The series was launched with a well-attended seminar on 'Advising on EU third party agreements'.

Lawyers working in posts overseas are encouraged to share their experiences to their London colleagues, and a "Working in The UKRep Brussels" talk was held in 2014.

## ***2.4 Client Satisfaction***

This year's Client Satisfaction scores rated our overall performance at an average of 96%, an increase of 9 points on the year before, and a 15 point rise over two years. We were also marked highly in terms of understanding client objectives, providing accessible advice, and managing relationships effectively. There is more to do on ensuring effective cover arrangements, responding quickly and informing clients of progress, so they will form the focus of our client care efforts for the year ahead.

## ***2.5 Diversity***

Work continues to focus on improving the way we address diversity within Legal Directorate. Work this year has included sessions targeted on the subject of women into leadership; all-women

challenge sessions to better understand the reasons for the gender disparity in the staff-survey scores; and a feedback session from those within the Directorate who were part of the leadership programme for high performing Black and Minority Ethnic (BME) staff to prepare them for senior management.

Forthcoming sessions will include training from the Government Equalities Office on the public sector equality duty and a further all-women challenge session to consolidate the work last year.



### *The Access Project*

The Directorate works with the Access Project, a London-based charity that seeks to combat inequalities in educational achievement by using volunteer tutors to help students from disadvantaged backgrounds to fulfil their potential and access universities. A number of us have been tutoring local school pupils in GCSE subjects.

## Objective 3: Legal Awareness

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

The Law Faculty of the Diplomatic Academy, established in 2014, is thriving. It incorporates and builds upon the Directorate's legal awareness programme. The Faculty's aim is to improve the understanding among policy and operational staff in the FCO of:

- the legal context of the FCO's work
- the legal powers which underpin the FCO's activities and the legal constraints that may affect its ability to act
- the core legal topics which are central to the work of the FCO.



The Law Faculty has established a new **“foundation level” course in Law** for all FCO staff.

The course comprises three e-learning courses and a range of group exercises. The aims of the course are to introduce all FCO staff to the basics of international law and treaty practice; to explore how international law is relevant to FCO jobs, including how to make robust decisions, assess legal risk and use international law to best effect in diplomacy; and to ensure all staff can make best use of the expertise available in Legal Directorate.

The Faculty is working with City & Guilds on assessment of the course as part of a new FCO/C&G Diploma in Diplomatic Practice. The course is now being rolled out to staff in London and overseas, including via our overseas lawyers.

The Law Faculty also runs **ten “practitioner level” half-day training modules** for policy officers, building on its former legal awareness programme. Many members of the Directorate take part in delivering this training, as improving our policy colleagues' legal awareness is central to our role as a Directorate. The modules are:

- Law and Foreign Policy
- The Judge over your shoulder (taking good decisions – and what to do if things go wrong)
- Military intervention: is it legal?

- The Laws of War: an introduction to international humanitarian law
- Treaties: a conventional truth
- A bluffer's guide to EU law (FCO Edition)
- Managing creeping competence: a desk officer's guide to EU external relations
- Law of the Sea: Ruling the Waves
- Making Sanctions Smart
- Overseas Territories: Notes on (mostly) small islands

In addition, the Faculty has developed an **e-learning course on Treaties**

In 2015-6, the Law Faculty will continue to develop its practitioner level courses, and plans to run **"expert level" events** tailored to policy officers who already have significant knowledge and experience of legal issues, or whose posts require an unusual level of specialised knowledge. This builds upon the tailored briefing it already gives to senior staff moving into particular roles.

## Objective 4: Outreach

*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*

Outreach is at the core of the Directorate's activities. During this year, the Directorate has refined its Outreach Strategy, which describes the purposes of our outreach work as follows:

- a) **Influence:** to influence the law and its interpretation, including where possible through explaining our positions or actions.
- b) **Challenge:** to consider other expert views and test our thinking, to ensure that we are providing the best advice to Ministers and policy clients.
- c) **People:** to recruit and retain top quality staff and make the most of any available opportunities for them in the wider international law community. To demonstrate our professionalism, integrity and expertise as leaders in the international law field, and our accessibility.

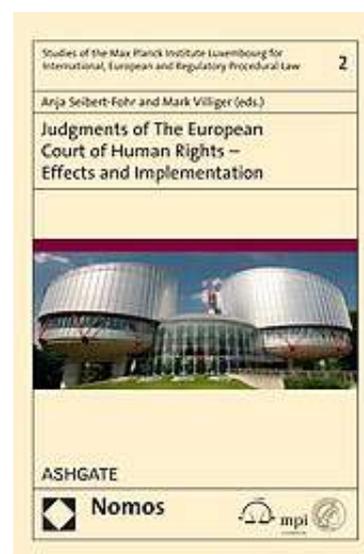
While continuing to support outreach activities across the entire range of our work, the Directorate has also set some goals for its outreach activities in 2015 and 2016, including on the use of force and armed conflict, promotion of the International Law Commission and its work, and commemoration of the 70<sup>th</sup> anniversaries of the UN Charter and the International Court of Justice.

Below are some examples of the Directorate's outreach activities in 2014/5. In addition, Directorate members have delivered lectures, spoken on panels, and delivered seminars both overseas and at home, including at universities right across the UK. The Directorate also hosted a seminar organised by the British Institute of International and Comparative Law on the role of Legal Advisers in International Law, in which several Directorate members participated.

### 4.1 Publications

Chanaka Wickremasinghe's paper on the Immunities of International Organisations in UK law was published in the International Organisations Law Review (and will be published in a separate volume shortly); and he has also written two entries for a casebook on the law of international organisations (to be published by OUP under the editorship of Profs. Wouters and Ryngaert).

Derek Walton contributed a chapter to the Max Planck Institute's book on Judgments of the European Court of Human Rights – Effects and Implementation. The chapter, entitled Subsidiarity and the Brighton Declaration, explored the prominent place that the principle of subsidiarity played in recent efforts to reform the European Court.



In November 2014 the Directorate launched its quarterly Outreach Bulletin. Its aim is to tell readers about what the Directorate has been doing, offer up our views on topical issues where possible, and share some of the latest academic literature that we've found interesting. The Bulletin has received positive feedback and now has over 700 subscribers. If you would like to subscribe, please email [knowledge.informationsection@fco.gov.uk](mailto:knowledge.informationsection@fco.gov.uk)

## ***4.2 FCO/Oxford seminars on the work of the International Law Commission***

Together with the Law Faculty of Oxford University, the Directorate has organised a series of seminars on aspects of the current work of the International Law Commission, led by the ILC's Special Rapporteurs on the relevant topics. This included a seminar on the "Identification of Customary International Law" led by Sir Michael Wood; a seminar on current and recent ILC work on the "Law of Treaties" led by Sir Franklin Berman, Professor Georg Nolte, Ambassador Gomez Robledo, and Professor Alain Pellet; and a seminar on the "Immunity of State officials from Foreign Criminal Jurisdiction" led By Professor Concepcion Escobar Hernandez. All the seminars have had excellent attendance including leading academics, practitioners and commentators from the UK and abroad, and all have led to wide-ranging and thought provoking discussions.

## ***4.3 "Conversations on Law and War"***

On 4 November 2014, FCO Legal Directorate and King's College London held a seminar on the role of the UN Security Council in conflict prevention and resolution, which was the second seminar in our "Conversations on Law and War" seminar series. The "Conversations" seek to address some of the current areas of legal interest in the field of international law in the context of armed conflict. Each seminar has a panel consisting of a speaker from HMG, as well as an academic and practitioner in the field. The audience are experts in the relevant area from across government, academia, private practice, the judiciary, NGOs and foreign embassies. November's panellists were H.E. Hans Corell, former legal adviser to the UN Secretary General; Douglas Wilson from FCO Legal Directorate; Scott Sheeran from the University of Essex; and in the Chair, Christine Chinkin from the LSE. There was a lively debate amongst the panel and audience on the efficacy of the Security Council in the context of recent and ongoing conflicts, and in particular the use of the veto by the permanent members and the need for Security Council Reform. The series will continue in 2015.

## ***4.4 The Third Annual International Law Lecture***



Dame Rosalyn Higgins QC delivering the 3<sup>rd</sup> Annual FCO International Law Lecture

The Third Annual International Law Lecture took place on 30 June 2015 in the FCO's Locarno Suite. Four days after the 70<sup>th</sup> anniversary of adoption of the UN Charter, Dame Rosalyn Higgins CBE spoke on "70 years of the United Nations: the impact on International Law". Watch the video on Youtube ([https://youtu.be/ZwC\\_1iCss4k](https://youtu.be/ZwC_1iCss4k)); read the transcript at: <https://www.dropbox.com/l/KcejVqIE8DiG6QgK4BXZLr>

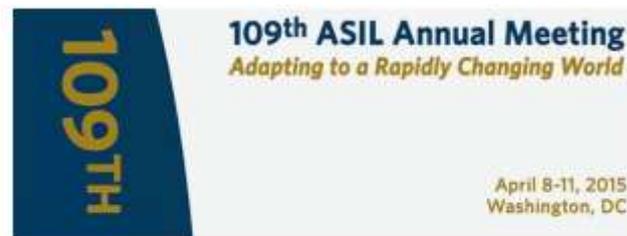
## ***4.5 The Hague Conference on International Law and Diplomacy***

On 23 April the British Embassy in The Hague, in partnership with The Hague Institute for Global Justice, held a conference on International Legal Diplomacy; specifically, on the connection between law and diplomacy in a rules-based international order. Panel members included: International Court of Justice Judge Sir Christopher Greenwood; President of the International Tribunal for the Former Yugoslavia, former Ambassador and Legal Adviser Judge Ted Meron; former Legal Adviser to the UN Hans Corell; FCO Legal Adviser Iain Macleod; as well as a number of Ambassador-lawyers, members of civil society, and others.

A summary and audio recording of the event can be found at - [http://thehagueinstituteforglobaljustice.org/index.php?page=News-News\\_Articles-Recent\\_News-The\\_Hague\\_Conference\\_on\\_International\\_Legal\\_Diplomacy&pid=138&id=390](http://thehagueinstituteforglobaljustice.org/index.php?page=News-News_Articles-Recent_News-The_Hague_Conference_on_International_Legal_Diplomacy&pid=138&id=390)

## ***4.6 ASIL Annual Meeting 2015***

Legal Director Douglas Wilson and Assistant Legal Advisers Joanne Neenan and Jesse Clarke (UKMIS New York) participated in the 2015 Annual Meeting of the American Society of International Law: “Adapting to a Rapidly Changing World,” held in Washington



DC from 8-11 April. Jesse served as a member of the Programme Committee and worked with international lawyers from academia, private practice, governments, international organisations and NGOs to develop a [programme](#) of over 50 panels covering some of the most controversial and cutting-edge issues in international law and foreign policy today.

Jesse organised ASIL panels on [Controlling Weapons of Mass Destruction](#) and [Social Media and International Law](#). Joanne moderated the ASIL panel on Social Media and International Law and was joined in conversation by Philippe Boloignon, the United Nations Director at Human Rights Watch (HRW), Professor Sarah Joseph, Director for the Castan Centre for Human Rights Law at Monash University, and Scott Nolan Smith of Portland Communications, an expert on the use of digital diplomacy tools. This interdisciplinary panel explored the ways in which social media has generated risks and opportunities for promoting or undermining international law and those operating in its space.

## ***4.7 Cyber seminar***

On 29th September 2014 the Directorate convened a seminar on “Cyber, National Security and International Law: challenges for Practitioners”, designed to provide the opportunity for a frank and open discussion and exchange of views on how the longstanding framework of international law can adapt to meet the particular challenges presented by cyberspace and cyber operations, both during and outside of armed conflict. Participants included government lawyers and policy advisers from a range of States; international organisations such as the ICRC; and academic experts. Discussions

ranged from regulating cyber operations under the law of armed conflict; lawful responses by States facing cyber operations below the threshold of armed conflict; technical and political challenges in attributing cyber attacks; and cyber technologies as part of “ambiguous warfare.”

## ***4.8 Mooting***

Several assistant legal advisers sat as judges in the national rounds of the Jessup international law moot competition held at Grays Inn this year, as well as the North East Regional rounds in New York, and the International Rounds in Washington DC. The FCO hosted a dry run for this year’s UK finalists from LSE.



**Jonathan Hall QC, Iain Macleod and Richard O’Brien,  
judges at the FCO hosted dry run for UK finalists in  
the Jessup Moot**

## *Objective 5: Shared Service to Government*

*To develop a shared legal resource for HMG as a whole on international, ECHR and EU law, whilst developing stronger links with other GLS legal teams.*

FCO Legal 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:** The Directorate works closely with other Government departments on many aspects of public international law and acts as a centre for excellence for international legal issues generally.
- **International Litigation:** The Directorate acts as agent for the Government as a whole in International Courts, including the International Court of Justice and the European Court of Human Rights.
- **Treaty Services:** Treaty Section provides treaty services to Government generally, including in respect of information, procedures and publication by acting as a depository for numerous treaties (see pages 15 and 16).



International Court of Justice

### *5.1 Government Legal Service International Law Group*



The GLS International Law Group is chaired by FCO Legal Counsellor Adrian Roberts, with working group representatives from 16 departments/public bodies across Government.

Over 100 delegates from 27 departments/public bodies attended the inaugural annual Conference, titled “International Law: Real Law or the Lore of International Relations?” on 14 July 2014, chaired by the Treasury Solicitor Jonathan Jones and Iain Macleod. Speakers included the then Attorney General Dominic Grieve QC MP; Professors Dapo Akande, Malcolm Shaw QC and Guglielmo Verdirame; and government experts from BIS, DECC, MOD, the Directorate (Treaty Section and London and Geneva lawyers). Topics included “day in the life” presentations, treaty practice, litigating international law in domestic courts and the interface between international humanitarian law and human rights. The next conference will be held in October 2015.

2015-16 sees the launch of the group’s structured programme in Public International Law for Government Lawyers. The first introductory course, attended by more than a hundred lawyers from across the GLS, took place on 9th June 2015, with speakers including Professor Akande, Counsel Amy Sander and Sean Aughey and a number of FCO lawyers.

## ***Objective 6: Knowledge and Information Management***

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

Legal Directorate's **Knowledge and Information Management (KIM) strategy** sets out how we will improve the way we use, share and keep knowledge and information; and how we will ensure that all staff are able to access relevant, up-to-date information resources.

The Knowledge and Information Section leads on implementation of the strategy and is responsible for the provision of information and research services and management of the Directorate's online presence. Each team in the Directorate also has a KIM Champion. Their role is to help foster a culture of professional knowledge and information management and to co-ordinate and support their team's work on our KIM priorities.

**In 2014-15 the Directorate strategic priorities were:** valuing and encouraging good management of knowledge and information; finding and using the right information; managing our own information well; and sharing our knowledge.

### **Progress during the year included:**

- Agreement of the Directorate strategic objective for knowledge and information management, which fed into team and personal objectives.
- A *Building Research Skills* programme which saw the launch of the online Legal Information Toolkit and a series of refresher training sessions and quizzes in using legal databases and finding books and e-books.
- An increased focus on managing information and knowledge in inductions for new staff.
- An improved international law current awareness bulletin, which by the end of the year was being circulated to over 70 lawyers across Whitehall in addition to FCO staff.
- Development of a Directorate-specific document retention schedule.
- Creation of new databases for managing Litigation and Sanctions information.



**Our priorities in 2015/2016 will be:**

- To improve the organisation of our shared electronic folders by improving their structure, implementing naming conventions, and ensuring compliance with FCO policies on how and where documents should be stored.
- To develop new tools for sharing and accessing legal and other knowledge.
- To ensure that all staff are able to make best use of the FCO's IT systems and of the internal and external information resources available to them.
- To evaluate and report on progress through a new quarterly benchmarking process.



## *Contact Us*

Legal Directorate can be contacted via an email to [LegalDirectorateEnquiries@fco.gsi.gov.uk](mailto:LegalDirectorateEnquiries@fco.gsi.gov.uk)



Albert the Anaconda, a gift to the Secretary of State for the Colonies from a Bishop in British Guiana in the 19<sup>th</sup> Century, has been watching over the Library's inhabitants with a keen eye since 1900.