



March 2006

www.coe.int/cahdi

UNITED KINGDOM

1. Title of the Legal Adviser and the Legal Office

The office of the Legal Adviser to the Foreign Office (now called the Foreign and Commonwealth Office - FCO) was first created in the second half of the Nineteenth Century. The Legal Adviser, who holds the rank of Director General within the FCO, is the head of "Legal Advisers". The Legal Advisers are members of the Diplomatic Service; most remain legal advisers throughout their FCO careers.

2. Principal functions

The principal function of FCO Legal Advisers is to provide legal advice to Ministers and officials within the FCO. This involves advice on matters of public international law, European Union law, human rights law, constitutional law, the law relating to the British overseas territories, and domestic law (including for example freedom of information, data protection, employment, property, contractual matters). The Legal Advisers act as agent for the Government before international tribunals (including the International Court of Justice, the European Court of Human Rights and inter-State arbitrations), and frequently attend conferences and meetings both in the UK and abroad as head or members of the UK delegation.

The FCO's Treaty Section now (since April 2005) comes under the Legal Adviser, as does the Legal Library. The Treaty Section is responsible for treaty practice and procedure (including official publication), and provides information on those treaties to which the United Kingdom is, or has been, a party. In addition, the Treaty Section performs depositary functions in respect of the 35 multilateral treaties for which the UK is the depositary.

3. Number of lawyers (including those overseas)

There are currently about 30 lawyers working in FCO Legal Advisers in London. All are qualified as barristers or solicitors in some part of the UK, and some have post-qualification experience in private practice, in other Government Departments or in international institutions.

There are also a number of FCO legal advisers posted overseas, namely:

UK Mission to the UN in New York	2 lawyers
UK Mission to the UN in Geneva	1 lawyer
UK Permanent Representation to the EU (Brussels)	3 lawyers
British Embassy in The Hague	1 lawyer
British Embassy in Baghdad	1 lawyer

In addition, a legal adviser from the FCO is seconded to the Legal Secretariat to the Law Officers (i.e. the Attorney General and the Solicitor General, who are the principal legal advisers to the Government). Other secondments take place from time to time e.g. to the International Criminal Court. Postings are for three or four years and legal advisers typically serve two postings in the course of their careers.

4. Organisation of the Legal Office

Legal advisers in the FCO tend to work with a high degree of autonomy. Each legal adviser is assigned a number of “client” departments within the FCO, and those departments can request his or her advice whenever the need arises. Whilst there are some areas in which certain legal advisers may specialise, for example in EU law or international human rights law, all legal advisers are expected to be able to take on a variety of work spanning the breadth of the areas of law outlined in paragraph 2 above.

7. There are four grades within Legal Advisers: the Legal Adviser; three Deputy Legal Advisers; Legal Counsellors; and Assistant Legal Advisers.

8. The legal advisers may be supplemented by the employment of consultants, and in litigation and arbitration outside are usually retained. Support to the legal advisers is available from one or two legal researchers, and from the secretarial, registry and Legal Library staff.

9. Management of the office is formally for the FCO administration, and in practice is largely the responsibility of the Legal Adviser and the Deputy Legal Advisers, with support also from Legal Counsellors.

5. Place within the Ministry of Foreign Affairs

The head of the Legal Advisers ranks as a Director General (i.e. reports directly to the Permanent Under-Secretary). The Legal Advisers are members of the Diplomatic Service. Assistant Legal Advisers are appointed at close to the top of the Delegated Grade structure of the FCO, equating to the rank of First Secretary. Legal Counsellors and Deputy Legal Advisers form part of the Senior Management Structure.

As has been said the principal function of Legal Advisers is to provide legal advice to the FCO, and they will be consulted or will offer advice on all issues in which legal points arise.

FCO Legal Advisers also help in organising a week-long course on international law each year, for non-lawyer colleagues in the Diplomatic Service, as well as lecturing on other courses with a legal content within the FCO, e.g. legal awareness courses, human rights courses.

6. Main contacts within Government

As well as providing legal advice within the FCO, Legal Advisers are the main centre of expertise on public international law within Government, and are often consulted by other Government Departments when international law issues arise. Thus, for example, all treaties which the UK enters into (with a few exceptions, such as double taxation agreements) have to be cleared by the FCO.

FCO Legal Advisers act as agent on behalf of the Government in most international judicial proceedings (though not before the European Courts in Luxembourg). Thus, the FCO Legal Advisers act as agent in cases before the International Court of Justice and the European Court of Human Rights, as well as in international arbitration (for example, the arbitration proceedings brought by Ireland in respect of the *MOX Plant*).

The Government’s principal legal adviser is the Attorney General. Departmental lawyers seek his advice on matters of general importance for the Government as a whole. As noted above a member of FCO Legal Advisers is seconded to the Law Officers.

FCO Legal Advisers are not part of the Government Legal Service, to which legal advisers to other Government Departments belong. Nevertheless FCO Legal Advisers have close links with the Government Legal Service, and, for example, organise training courses on issues of cross-Departmental interest such as the European Convention on Human Rights and international humanitarian law.

7. Relations with lawyers in private practice, academics and legal institutions

The FCO retains lawyers from private practice where the need arises. In litigation and arbitration it is usual to instruct outside counsel for their advice and advocacy.

FCO Legal Advisers have traditionally been a part of what is an active “public international law community” in the UK, comprising lawyers from the public service and private practice as well as academic lawyers. FCO Legal Advisers hold an annual academic seminar at the FCO to discuss topical issues in international law and to which all those teaching international law at UK universities are invited. Legal Advisers are also encouraged to participate in conferences, meetings of learned societies (such as the International Law Association and the British Institute of International and Comparative Law) and to write articles or books for publication.

8. Other considerations

There is a considerable literature on the role of FCO Legal Advisers, including:

Sir Franklin Berman, “The Role of the International Lawyer in the Making of Foreign Policy”, (in C.Wickremasinghe (ed.), *The International Lawyer as Practitioner*, BIICL 2000)

Michael C. Wood, “The Role of Legal Advisers at Permanent Mission to the United Nations”, (in C.Wickremasinghe (ed.), *The International Lawyer as Practitioner*, BIICL 2000)

F.D. Berman, “The International Lawyer Inside and Outside Foreign Ministries” (in C.Hill and P. Beschoff (ed.s) *Two Worlds of International Relations – Academics, Practitioners and the Trade in Ideas*, Routledge, 1994)

Sir Arthur Watts, “International Law and International Relations: UK Practice” (1991) 2 EJIL 157-164

Sir Ian Sinclair, “The Practice of International Law: the Foreign and Commonwealth Office” (in Bin Cheng (ed.) *International Law Teaching and Practice*, Stevens, 1982).

Sir Gerald Fitzmaurice and Sir Francis Vallat; “Sir (William) Eric Beckett, KCMG, QC (1896-1966) – An Appreciation” (1968) 17 ICLQ 267-326

Dr. Clive Parry “Background paper on National Organization and Procedures - United Kingdom” (in HCL Merrilat (ed.) *Legal Advisers and Foreign Affairs*, Oceana, 1964)

Brian Simpson “The Rule of Law in International Affairs” (2003) Vol.125 *Proceedings of the British Academy*, pp. 211-263