

BDOHP Interview Index and Biographical Details

Sir Franklin Berman, KCMG, 1994 (CMG 1986), QC

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The interview also includes a valedictory written by Sir Franklin to Sir John Kerr, Permanent Under Secretary at the FCO, on his departure, on his experience of the Diplomatic Service, modernisation, the attitude of the press and Parliament to the FCO, the way the Service administers itself and the rule of law.

RECOLLECTIONS OF SIR FRANKLIN BERMAN KCMG QC,
RECORDED AND TRANSCRIBED BY SUZANNE RICKETTS

SR: This is Suzanne Ricketts recording Frank Berman on 23 April 2018. Frank, you joined the Office in 1965. But just tell me a little bit about what you were doing at Oxford before that. I think you had several degrees?

FB: Well, it's a complicated story in itself. I was born and grew up abroad, in South Africa, which was still a member of the Commonwealth, expelled from the Commonwealth very shortly after I left and came to Britain to study. I had been to university in Cape Town where I'd done all sorts of general things, including specifically maths and statistics. But the plan had always been that I was going to study law, and coming to Oxford, getting a Rhodes scholarship to Oxford, was the opportunity to make the change of course. So I came up to Oxford and did a further Bachelor's degree which meant a pretty concentrated period of study, two years.

SR: That was jurisprudence?

FB: Exactly. I chose as one of my optional papers in the final year international law. And got gripped by it. So because I'd done the degree in two years and because the idea of international law as my future had somehow imposed itself on me unbidden, I had a further year of the Rhodes scholarship, which then I managed to parlay into a fourth year through getting a studentship at Nuffield College. I had two further years to do doctoral work.

SR: That was in law as well?

FB: Yes, my thesis was on a chapter of the UN Charter, the one dealing with non-self-governing territories which, I suppose, must have been affected by my boyhood experience of living in what had been a colony and then became a Commonwealth country, with lots of colonies round and about us, and the role that the UN had played in producing the kind of transformation that was very present to our eyes at the time. So I was in the process of this doctoral work and wondering what to go on and do afterwards. It wasn't entirely obvious what to do. One thing was obvious – I was not going to go back to South Africa immediately. I had met Christine at Oxford. We got married after she finished her degree. It certainly was not a time at which one would plan to go back to South Africa as a young married couple, to start a life and have children. And I wasn't quite sure what to do with an advanced degree in international law. The Foreign Office had never

even occurred to me, I think for reasons that will be obvious to anybody! I'd been thinking of an international organisation as a possibility which was interesting, but it was never easy to get an interesting post. And I was thinking of academe, of course. And then, out of the blue, I remember it vividly, I came to college one morning and found a note in my pigeonhole from the then Chichele Professor of International Law which said in his wonderfully dry style: "I have been told that there are posts available at the Foreign Office." And then he added, "You would find the work interesting." I remember going round to see him immediately and said "Surely I am not eligible in view of my circumstances?" And he promised to enquire. The message that came back was to put in for the competition and then they would see. Which I took to be an indication – subsequently proved correct – that there was in the Order in Council as it then stood a degree of discretion in the hands of the Foreign Secretary. Which was exercisable in my case because in the course of my family's typical Eastern European, Middle European migration, my father and his siblings were born in Britain before going on to South Africa. So my father was British born, although he left as a young boy. My mother was born in the Cape Colony, as it then was. On the strength of that, I was deemed eligible on nationality grounds and asked to join immediately ... but slightly to my disconcert, because I still had commitments in Oxford and they wanted me to start straight away. So we negotiated. An interesting example of how friendly the Office could be: we negotiated a deal under which I started out working a less than full week - I think I worked four days a week, and had a day left over to fulfil my other obligations

SR: An early example of flexible working!

FB: Absolutely. This was in 1965. That lasted for a year and we moved to London in 1966. So coming to the Foreign Office happened out of the blue ... most exciting. It was like the experience of KoKo in the Mikado, wafted by a favouring gale into somewhere I never thought I would be!

SR: You said in your notes *manna from heaven*.

FB: Yes, it was, for all kinds of reasons. My parents were anxious. My father was anxious. He was a cautious person, absolutely convinced that the Foreign Office was not going to be a place either for somebody who didn't have a solid English social background and, most of all, he was convinced that there'd be a lurking anti-Semitism which would mean that I would not get on. Well, how wrong, how wrong he was on both counts! But it's hard to explain, it's hard to measure. But I remember arriving in the Foreign Office and thinking perhaps my father was right. I arrived – I know the date vividly for a reason I'll explain – on the 1st of October 1965 and it was a fairly formidable place to arrive at.

SR: That was King Charles Street?

FB: That was King Charles Street, but you went across the courtyard as you do now on the Downing Street side. The building was filthy, absolutely filthy!

SR: Did they still have coal fires and things?

FB: Absolutely. But they also had messengers in frock coats. And to get from the reception desk at Downing Street, you had a good long walk to get to the India Office side where the Legal Advisers were. I remember walking down the corridor, behind this terribly impressive figure, the messenger in his wonderful frock coat with the red badges on his lapels, then being asked to wait outside the door. The door opened, I walked into this big room and, on the other side of the room, somebody got up to say hello to me and he was wearing full morning dress ... tails! That was the point at which my heart sank. He came rushing across and said, "Don't worry dear boy, don't worry!" The 1st of October is the opening of the legal year and there is a ceremony called the Lord Chancellor's Breakfast. The Foreign Office Legal Adviser was of course bidden in his tails. Fortunately everything got better from then onwards.

Assistant Legal Adviser, Foreign Office, 1965

SR: And that was the Legal Advisers? You were a small band of how many?

FB: If you bear in mind that this was pre-amalgamation, so it was the Foreign Office and we were a small band. I can't remember exactly how many, but there was the Legal Adviser, the Deputy Legal Adviser, probably three Counsellors and three people abroad. In those days Germany was very important – we'll come to that later - so we had a Legal Adviser in Bonn and in Berlin. And we had somebody at the UN in New York. And then a small bunch of us juniors.

SR: And how did that work? Were you all assigned to a group of different Departments?

FB: Yes, it was a wonderful pattern. The first thing to say is that was both demanding and terribly stimulating because you were given a dose of responsibility from the outset which was really very striking. You were given a bunch of Departments. They were your Departments and you were their Legal Adviser. That was it. That was the one-to-one relationship between the lawyer and the Department. And what you gave was *the* legal advice. The number of occasions on which you

wanted to or were expected to get approval for anything you did were absolutely minimal, and they were only matters of really high political importance or considerable legal difficulty. But the marvellous thing about it – and this continued through pretty much all of my working life – was that the lawyers built up a really strong relationship with the Departments, particularly with the desk officers. Heads of Department were of course semi-godlike figures and you did encounter them occasionally. And I don't remember much in the way of contact with Under Secretaries at all. But you were responsible.

One of my loveliest memories from those early days came from the time when Tom Brimelow was still PUS and I had a summons. The PUS wanted to see me. I'd never met a creature like a PUS before! I couldn't for the life of me imagine what it was all about. I was ushered into his room and Tom was standing, as was his wont, at his standing writing desk. He said to me, "Now look, there's this draft and I've been told it was based upon your legal advice. I want to change it, but of course it would be entirely wrong of me to change it without seeking your concurrence." So he sought my concurrence and I agreed to the changes he wanted to make!

It's amusing, and it was charming, but it was an interesting indication of the way the Office worked, pretty much on a person to person basis. There was a famous phrase that went into all submissions: *X, Y and Z agree and the Legal Adviser concurs*. I think it was the absolutely rigid policy rule that no submission went up, certainly not to the Secretary of State or a Minister or to an Under Secretary which had been based on legal advice, without there being a specific indication that the Legal Adviser concurred. So if you were the junior, you were the Legal Adviser for the purposes of that submission.

SR: So that was a huge amount of responsibility for a young new entrant?

FB: It really was. It was most exciting. On the other hand, we were a small group of people. I shared a room for the first couple of years with a slightly older and more seasoned colleague who taught me the ropes. And we had a lovely custom which was the Legal Advisers' tea. We all met in one of the Legal Counsellor's rooms for tea. Everyone came, unless he or she was away or busy (there were several female Legal Advisers). That was the time at which we talked about things. It was recognised as being a time when you could raise a problem.

SR: So that was instead of a more formal meeting?

FB: Yes. We met every day. But what almost brought the Legal Advisers' afternoon tea to a close was, believe it or not, the trade unions. Because one of the messengers would make our tea and carry in the teapot, at some point in those terrible days of the 70s, when trade unionism in the Office was awful as it was everywhere, the Union put its foot down. So, once again, a compromise was reached under which it was permissible for the messenger to make the tea as long as long as someone else carried the tray with the teapot into whichever room we were having our afternoon tea! But now, I'm sad to say that my successors have told me that everybody is so frantically busy, they don't have time to meet for tea. Therefore, they have to have formal meetings.

But I go back to what I said, Suzanne. '65 I joined, '64 was the first Wilson Government, second Wilson Government '66 and then the programme of the amalgamations of the external Ministries began. Which didn't affect us at first, I think the first one was the Colonial Office with the Commonwealth Relations Office (CRO), which became the Commonwealth Office. When would that have been? 1968 maybe? Then the two together became the Foreign and Commonwealth Office. And clearly, not only had the CRO some legal advisers of its own, dealing with specifically Commonwealth type issues - one example of which is the Windrush generation being dealt with at the moment, but the Colonial Office had quite a lot of lawyers who were dealing with constitutional matters and questions of government in what we now call our Overseas Territories. So it was quite a big change to the overall format of the Legal Adviser's Office. And in fact for one period of time, immediately after the amalgamation, we had two conjoint Legal Advisers, the Foreign Office person and the CO person (who was actually a Colonial person) had the office jointly until the older of the two retired, and then we had one single FCO Legal Adviser. So the shape changed, but we didn't change the practice of operating informally and being able to meet informally. I do remember vividly how it was expected that you walked into somebody's room without knocking. If the somebody was busy or someone else was there, you just walked quietly out again. And I remember also being terribly struck by the automatic assumption of first names, except with very senior officials. I was a colonial outsider, but I felt part of something, part of an organism which had a strong bond within itself.

SR: And did they send you on any training courses, or were you just supposed to learn on the job?

FB: I don't remember going to a training course. It was learning on the job. Because the joining was different for the Legal Advisers - we didn't have the entry exam, we didn't have the formal entry - entry was simply by application, recommendation, interview. I remember being interviewed at the Civil Service Commission in Savile Row, by a specially composed interview

board. I suppose I must have gone on some kind of induction course. Usually the first thing they told you about was your pension rights! The other thing I remember is that it was a requirement for recruitment to any part of the Government Legal Service that you had to be professionally qualified as a practising lawyer. I'd had to rush to get through my Bar exams in the period between being recruited and starting. I'd done some of them, but not all of them. And then, I made the big mistake of deciding to defer actually being called to the Bar until the best part of a year after I joined, so that my father could be in London for the Call Ceremony.

SR: Why exactly was that a mistake?

FB: It was a mistake because there was a big salary differential between people who weren't qualified and people who were! Really a big difference. So I forwent the salary until I was formally called to the Bar in 1966.

SR: You should have called upon the Bank of Mum and Dad to make up the difference!

FB: It wasn't possible in those days because there was very strict exchange control in South Africa. It couldn't be done.

So that's the story of coming into the Office: it was one of the happiest things that could possibly have happened to a young man, particularly to someone who had become committed to this field of law. I was enormously impressed by the quality of my colleagues who were of course a spectrum of age. But they'd all had interesting experience, and they'd all acquired a lot of real savoir-faire because they'd been doing it from when they had arrived.

SR: And they were quite helpful to you, passing on tips and so on?

FB: Enormously. And as I said earlier, one could always go and ask. You'd get a ready answer. But nobody ever imposed. And I think I said that we did all the work on our own, unless it was very important. There were some things which were sufficiently important that the Legal Adviser himself - I'm sorry to say there has not yet been a female Legal Adviser, but it'll come one of these days soon - should give his personal imprimatur unless the question was sufficiently important that the opinion of the Law Officers was required. In those days, we tended to go not to the Attorney General singly, but to the Attorney General and Solicitor General who advised as a pair. And, interestingly enough, very often on certain matters at least we went to the English and Scottish Law Officers for an external opinion. So we had four Law Officers advising. And then,

of course, if you were involved in something of that sort, the Law Officers would expect the submission to come from the Legal Adviser, in which case you would work with somebody senior. And, again, I have an absolutely wonderful anecdotal memory of that, because one of the things I did in the early years was advising what I think was called Scientific Relations Department and they did all the nuclear co-operation work. One of the things that government policy wanted was to set up a particular arrangement for nuclear collaboration with two of our European allies. But there was a big question as to whether we were at liberty to make use of some of the technology that was going to go into it – it was uranium enrichment we were talking about – because of its provenance and whether that was caught by some of the wartime agreements. Well that was not just very important but immensely secret as it was uranium enrichment technology. I remember then being inducted into one of these special, special clearance programmes and going along with the Legal Adviser on more than one occasion to see the Attorney General. When the time came for the Attorney to deliver the Law Officers' opinion, he wanted the Legal Adviser to come and talk it over with him. The problem was that the then Legal Adviser, Vincent Evans, was abroad and there was no way in which a substitute arrangement could be made. There were two other people in the Foreign Office who had been cleared to see the papers: one was a political Under Secretary (or perhaps it was a Head of Department) and the other one was me! So I had to go off on my own to see the Attorney General. But there's another interesting case, you see. The Attorney General, knowing that he was advising on something of immense importance, was also engaged in a process of checking and consulting with the responsible people in the Foreign Office. But his opinion was his own – he would never have allowed that to be influenced. So we sat and we discussed various aspects of the drafting. He said, "I'll get the opinion typed up at once and sign it and you can take it back to the Foreign Office." The Office was screaming for the opinion by then. It was a very, very sensitive document indeed so he said, "Look, don't worry about it, you can go back in my ministerial car. I'll get the driver to take you back carrying the opinion." The ministerial cars in those days were those Austin Princesses which you probably remember yourself. Great black hearse-like things. Those were the days in which Downing Street was still open and the way the cars went into the Foreign Office was into Downing Street and turn left. It also happened to be the day on which Harold Wilson was having one of his Cabinet massacres, so the place was absolutely thronged with press! Every ministerial car that swung into Downing Street caused a little roar and the press rushed to get as close as they could. They were terribly disappointed when this one turned left and went into the Foreign Office and didn't stop outside Number Ten!

SR: Good job you didn't have to walk up Downing Street with the papers in your hand so that the press could see!

FB: Indeed. But there was no question of carrying papers in your hand. Everything went into a briefcase. Do you remember the official briefcases? The black leather briefcases? They had three security features: they had a good brass lock, the front and the back were metal reinforced inside the leather and then they had those curious flaps inside underneath the lid with a buckle, designed to prevent an intruding hand being inserted to remove something.

SR: So you delivered said opinion safely?

FB: Yes. And it did lead, I'm glad to say, to the collaborative project itself.

SR: Another area of your work, Frank, was consular which you describe as *routine, dull and of no public interest*. How things have changed!

FB: How things have changed! It really was all routine work. We had this huge network of consular posts with a lot of honorary Consuls in those days. We just got on with things and, occasionally, an issue would arise to do with the protection of a dual national, perhaps, or the interpretation of a consular convention. We had a lot of bilateral consular agreements but, on the whole, it was very routine. I suppose the answer is that people travelled far less. It's hard for those nowadays to realise how little travel there was.

SR: And there wasn't the 24/7 media.

FB: Most certainly not. I think the huge expansion of foreign travel came as a curious side result of our tough exchange control. We were allowed £50 a year in foreign currency.

SR: I remember you had to write it in the back of your passport, didn't you?

FB: And hand in your spare currency when you got back. I think it was that which forced the travel industry to create the package holiday. Travel wasn't cheap either, so people did not travel. Most of the work of Consuls was to do, I think, with trade promotion and protecting the interests of resident British nationals. There was one unusual exercise in sorting out our consular trust funds: there were an immense number of charities scattered all over the world which had been founded for particular purposes in the days when there were resident British commercial communities. These funds had got into a terrible mess. So we had fun reviewing all of those,

trying to work out who owned what and then getting the Charity Commission to arrange a scheme in which they could all join together, so far as possible, and put their resources to good use.

The most delightful interlude of those early years was however on a totally different subject, the formation of the International Hydrographic Organization. For those not in the know, hydrography is maritime surveying and, even more important, the production of naval charts, which shipping relies on. Britain is a leader. But there are other big charting nations, too. The first international cooperation between them was in the late 19th Century, and was spontaneous. Then they came together in an old-fashioned International Bureau between the Wars, but by the 1960s that was no longer adequate. The Bureau was set up in Monaco, at the invitation of the then Ruling Prince, who was himself a marine scientist of some distinction, but for administrative purposes Monaco was in effect part of France, including for tax, and the Bureau needed an exemption from tax which it could only get under French law if it was an international organization. So a Conference was called to draw up a treaty. On our side the representation was in the hands of the Royal Navy Hydrographic Office, under the command of a Rear Admiral, which as well as doing the maps ran the fleet - quite a small fleet - of survey ships. He must have caused the MOD to tell the FO that they needed a treaty lawyer; I can't think what side of the FO this might have fallen under, but for whatever reason they chose me. So began a career-long association with our hydrographers, outstanding specialists in their field, lasting through their transformation years later into a civilian non-governmental agency.

But can you imagine? Three weeks, in Monte Carlo, in April, on what was hardly the most fraught or demanding negotiation the world had seen! Apart from our own Admiral, a good number of the other delegations were in the hands of naval officers of the same sort of rank. Each of them made it his business to see that one of his survey ships called into port in Monte Carlo during the Conference, no doubt by prior arrangement so one followed the other. And they competed to entertain the delegates, so that there was one party after another almost every night, on board ship, with the arriving guests piped on board! While our ship was in port, on my early morning swim off the rocks opposite the hotel, I stood on a sea urchin and the spine snapped off under the skin. I knew what that could mean. But with the help of my naval colleagues, I managed to hobble my way into town and presented myself at the gang-plank of HMS Vidal to be whisked off into the sick bay where the experienced orderly firmly pushed the MO aside and patched me up in perfect time to be at the conference when it started work.

I could go on. Subsistence for example; in those days, you got it in cash, and only one week at a time. And of course we had no DS post in Monaco, though there was an honorary consul, a

gentleman of ample size and rubicund countenance, and he *leapt* at the chance to motor off to Nice on HMG's business every Thursday and deliver my subsistence to me by hand - over several drinks - the following day! Pure Graham Greene. But the best in a way came when we'd successfully negotiated our treaty and there was a general wish to catch the moment and have a signature ceremony on the spot before everyone disbanded. Of course that couldn't be done without seeking His Serene Highness's permission, and an audience could only be arranged through the *chef de gouvernement*, who was a French *Préfet* on secondment. When we waited on him we said that, even if we got the Prince's formal permission, we weren't quite sure how we were going to manage the formalities because, though we had a promise of a consignment of official treaty paper from the Quai d'Orsay, how were we going to get our text typed up in sufficiently fine form? He waved the problem aside, summoned a subordinate, told us to wait, and within quarter of an hour the message came back that the downtown premises of the Olivetti typewriter company had been requisitioned and Olivetti's newest electric typewriter was at our disposal - but only on condition that we cleared ourselves out of the way before opening hour the next morning. So the three lawyers turned up at closing time, were given the keys and shown where the lights were, and then sat through most of the night in the middle of the Olivetti plate glass show window until we'd hammered out our text in perfect form. God knows what any passer-by might have thought. But the treaty was signed and is still in force, and was last amended in 2016 (I hope more efficiently).

SR: And your other areas of work? You talked about nuclear safeguards.

FB: Nuclear safeguards was terribly interesting too, because that was the stage at which we saw ourselves, in the UK, as being a potential big industrial player in nuclear power generation. Specifically, one type of nuclear reactor (Magnox) of which we had built one example, down in Essex at Bradwell (and I think maybe one other) we thought we could sell to the rest of the world. So there were two things that we did at the time. One was, as a way of boosting the nuclear safeguards system of the International Atomic Energy Agency, to make a voluntary offer to submit this power station to safeguards. The safeguards programme was designed for non-nuclear weapon states, of course. But we, and maybe the Americans too, made a voluntary offer to submit a particular power station to the safeguards régime. So we had to do a lot of negotiation with the IAEA. It wanted to preserve a universal standard, we wanted to have special arrangements which would protect the central core of information particular to a nuclear weapon state. That was an interesting negotiation which took us to Vienna a lot, to the IAEA which was then quite a small organisation. And it led on to the IAEA itself, in the light of the experience it had previously had, gaining the right to inspect our power stations to confirm its stated use. This was part of what led,

later on, to the negotiation of an enhanced safeguards regime. A long and very complex negotiation indeed.

The other thing we did was more interesting still, in a way. One of the countries where we thought we had good prospects of selling a power station was Finland. In order to do that, we had to negotiate a bilateral agreement for cooperation with Finland which incorporated of course the safeguards obligation. So we trooped off in a big and quite a complex delegation - of which there wasn't a lot of Foreign Office component. We had an Energy Department then. I can't remember what the power utility in the UK was ... the Central Electricity Generating Board? I was the lawyer, I was the Foreign Office component. It was eerie, because those were the days when Finland was still very much under the thumb of the Soviet Union, if not directly then indirectly, to the extent that the beginning of our negotiations was postponed. It was to be led by the Minister of Energy on the Finnish side, but the Minister was said not to be available. Then we read in the press that the Minister had made an unscheduled visit to Moscow. We sat down and we negotiated and I can't remember what my colleagues were doing, but I was working off a sort of a model agreement and, my God, we had to sweat for absolutely every tiny, tiny little bit of this agreement. Which we eventually concluded after a tough, pounding negotiation. I can remember being sat in the back room: I, the junior FCO official, was the United Kingdom and the head Legal Adviser in the Finnish Foreign Ministry was Finland. It was Jack and the Beanstalk. But we got through it. We didn't sell the power station, but we got the agreement. Then, many years later, I ran into the man who had been my Finnish counterpart because I was at a negotiation in Geneva and he happened to be the Finnish Permanent Representative to the Geneva office of the UN. Very pleased to see me as I was to see him, and he asked me to come and have a drink. He sat me down and said, "We gave you a rough time in 1967!" "Yes, you certainly did," I replied. "There was a reason, you know, there was an explanation", he said. "But I'm not going to give you the explanation, I'm going to give you a reference." So he got out a piece of paper and he wrote down a reference. He said, "When you get back to London, follow up that reference and you'll know what I'm talking about." So I did. The reference turned out to be a reference to a volume of the UN Treaty Series and, when you followed up the particular reference, you came to the Fenno-Soviet Agreement for Cooperation in the Peaceful Uses of Nuclear Energy which I instantaneously recognised, because it was an almost exact replica of the Fenno-United Kingdom Agreement. So it was clear that what they had been doing was using us as their wargame exercise and then had won the game with the Russians. Unfortunately, we never sold them a power station! That was interesting at the time and another example of how one was given an immense amount of personal responsibility, but in a framework which made it possible to carry that because you knew you had the support you needed.

The other thing that was happening at the time was that we were in a big phase of trying to sort out our maritime boundaries, round the British islands. That was the stage at which oil and gas were being discovered in the North Sea and we reckoned that it might be found elsewhere off our coasts as well. It was all up-to-the-minute stuff. We were talking about the continental shelf. Well, the continental shelf was a very new concept in international law. The International Convention on the Continental Shelf dated only from 1958. We hadn't ratified it or enacted our legislation until 1964. So it was very shortly before I joined. There was a big programme afoot to negotiate our continental shelf boundaries with all of our neighbours: in the North Sea originally, then into the Channel and then into the Irish Sea and the Western approaches too, in order to provide a solid legal base for the issue of licences, in the hope that resources were going to be discovered, as indeed they were. The first agreement we'd done was with Norway, I think, and that had become highly controversial because of where it placed the boundary; on the Norwegian side, quite close to their coast, there is a deep trench in the sea bed. Had it been agreed that the trench should represent the continental shelf boundary, rather than the geographical median line, the massive deposits of natural gas beyond the trench would have fallen to us not to Norway.

So it was all very controversial and very important because we were talking national boundaries. We'd done the Netherlands, Denmark and Norway and then it was a question of out to the West: Ireland and ultimately Denmark, in respect of the Faroes. And then the Channel and France. It was interesting and one of the things that we did then was to decide that we needed to establish absolutely our territorial title to all of these funny little rocks and islands, including Rockall, formal possession of which had been taken by a naval survey ship in 1955. To make absolutely clear UK sovereignty over Rockall, rather than rely on a mere proclamation we decided to enact an Act of Parliament which would incorporate Rockall into the United Kingdom, which we did. So there's a wonderful little statute, consisting of one sentence, called The Island of Rockall Act.

The fascinating thing about all of that was not just the way the Foreign Office operated, but the nature of interdepartmental collaboration. It's a vivid memory in my mind; government was well organised. There was the usual recognised number of Cabinet Committees which didn't change very much from one administration to another. Every Cabinet Committee had an Official Committee preparing the papers for it and very often the Cabinet Committees would have sub-committees for particular subjects. So there was a really intense network of interdepartmental discussion under either the coordination or the chairmanship of people in the Cabinet Office, who were seconded to the Cabinet Office from their own Departments in order to look after the work. So I remember that one very vividly indeed. We had battles, there were enormous battles. But

you knew perfectly well that anything which needed to be thrashed out was thrashed out, and in the open on the whole. It went through Cabinet Committees and the papers were properly organised and Ministers actually discussed things. The Attorney General, as you can imagine, was often called upon to advise on these territorial issues. That's where the English and Scottish Law Officers came in, because if we were talking about the island of Rockall, or negotiating with Scotland on areas where the continental shelf appertained to Scotland, the Scots always had their say. The grit in the oyster was Harold Wilson's decision first to incorporate Tommy Balogh into Number 10 as his personal economic and everything else adviser and then to create the Central Policy Review Staff, the infamous CPRS. The CPRS made our life hell, not only like a constant insurrectional movement sitting at the heart of government, but they also tried to unpick things that had been done in the past. The continental shelf agreement with Norway was a particular sore point. I can't remember when they did their study of the Diplomatic Service abroad. That was all part of what came later.

SR: I think it was 1976, wasn't it?

FB: At the beginning, it was all policy. And it was the time too when we were founding the British National Oil Company, supposedly for the purpose of securing national benefit, lasting national benefit, from our undersea petroleum resources. So all of that was going on – there was an awful lot there for what was still quite a small legal operation to manage. It was terribly busy. And, in addition to all of that (this must have come under my Scientific Relations Department hat) the UN was beginning to talk about two things in a serious way: outer space, and - what turned ultimately into the Third UN Law of the Sea Convention - the deep seabed, beyond the continental shelf. So there was a UN Outer Space Committee which led to a move, firstly, for a treaty on outer space designed to ban territorial claims in outer space and to preserve outer space for peaceful purposes, and then there were two more technical treaties which followed from that. The Committee was quite a heavy-weight and important organism. I can remember going to Geneva for the negotiation of the Outer Space Treaty – I think I was really just a bag carrier. That was an intriguing negotiation. The Committee was under the chairmanship of no less a person than Kurt Waldheim: for some reason Austria always had the chairmanship of that Committee. God knows why. Weird UN arrangements. But the Chairman of the legal sub-committee was a very interesting Pole who subsequently became a Judge, and then President, of the International Court of Justice. He had strong British connections, like so many Poles of his generation had had because of the war. In New York, there was a committee which drew up a Declaration on the Peaceful Uses of Outer Space. I represented us on the legal sub-committee. There was also a newly formed Seabed Committee which drew up a Declaration on the Use of the Deep Seabed,

and I was on its legal sub-committee. So I was travelling a lot. One of the vivid and not so pleasant memories of that period of time was that our second child was born shortly after I joined the Service and Christine and I calculated that, during his first two years of life, I had spent twelve months on negotiations or committee sessions abroad. UN committees then had a terrible habit of meeting endlessly, a month at a time. That was a badge of virility: if that committee met for a month, so this committee had to meet for a month.

All of that came to an end when I was asked to go to New York for the UN General Assembly in 1970 as a Delegation reinforcement. Each UN main committee had a support officer sent out from London and there were others who were sent out to do general support work. This really did beef up the Delegation enormously for that 3 or 3 ½ month period. I was asked to do that for the General Assembly's Legal Committee (Sixth Committee), and it was an interesting opportunity. But I'd really had being away from home by then, so I was determined that Christine and the boys would come. We could just about work out a way to do this, if she went to stay with my brother, who was then living in the Midwest, while I found an apartment, which I managed to do. But that was the moment at which the system produced the most absurd result you've ever heard of. Because I would no longer be staying downtown in the hotel where visiting delegates were put up, I could no longer get 'conference rates' for my subsistence. Because everybody who travelled to New York for meetings got conference rates, nobody had bothered to look at what the ordinary subsistence rate was. Ergo, at the time that I got the apartment and moved the family in, we were chopped from a conference rate to a subsistence rate - of less than \$20 a day! It was completely inflexible. When I read Nicholas Baynes's comment in this series about when he went out, newly married, and the amazing Betty Wallace organised an apartment for them and what a wonderful life they had, I thought, "Ha! Didn't happen in my day."

SR: Yes, there was a lack of empathy in the Office. Those were the rules and there wasn't any kind of flexibility.

FB: I don't know whether people felt themselves under the lash of the Treasury or whether it wasn't an unfortunate divide between the administrative side of the office, in the lower grades in particular, and the diplomatic side. There was even some hostility, I think. I was cheeky enough - I tended to have bursts of *méchantisme* - to put in a claim when I got back based on the assumption that it had been a posting to New York. I did that to draw attention to what the difference would have been ... astronomical. That caused some fluttering in the dovecotes! But it was a really interesting time. By God we worked hard! To begin with, the General Assembly began in the second week of September and then ran full steam until just before Christmas. Every single main

committee began after the opening week, even while the big figures were coming in and out for the formal Plenary meetings. We worked and we worked; early mornings, late evenings! There was compulsory Saturday working in the Mission and we were hard at it. I still find it quite difficult to see why, because although there was a lot of activity, there wasn't a huge amount being done. Maybe a lot of it was to do with defending our position as it then was, as a colonial power.

SR: And just to talk about the mechanics for a moment. There were presumably still carbon copies?

FB: Yes, it was all terribly slow. One did feel the victim of the time difference. You had to sit down at the end of a long day's committee meetings, which never finished before six, and write the telegrams reporting on the day; and then get instructions back the following morning. The Mission was enormous; maybe we were making work for ourselves. Those were the days when Hugh Caradon, as a Minister of State, was the Permanent Representative. So there was an extra layer on top. And there was, as it were, an official-level Permanent Representative in the person of Tony Parsons. It was massive, at least three ambassadorial-ranking people under Tony, lots of Counsellors and First Secretaries.

SR: It's not like that any more!

FB: I think it all made me rather glad that I had not decided to try and work for an international organisation. And again, I was enormously impressed by the quality of what was done within our delegation. It was probably my first big multilateral experience of how you got things done and avoided bad things being done in a global environment. There were one or two significant decisions taken or at least formalised in that session of the General Assembly.

British Military Government, Berlin and British Embassy, Bonn 1971 – 1974

When we came back, I was faced – to my surprise – with the request that we turn around almost immediately and go abroad on our first posting. There had been an almost predictable arrangement: we had these two legal posts in Germany and, in the course of a career, you could have one of them at First Secretary level and then, if you were lucky, you would get UKMis New York at Counsellor level later on. You could more or less tell who was going to go where when. The person who had been earmarked for Berlin had been offered a really interesting opening in a newly independent Commonwealth country. As he'd come from the Colonial side, he was ideally

suiting to this. So they needed someone quickly to turn around and go to Berlin. They asked us to go in the spring just after we came back but we negotiated a little bit of delay.

SR: Did you have children of school age then?

FB: They were just coming up to school age.

SR: So what did you do about school? Was there a reasonable British school in Berlin?

FB: There was, and the older boy went to a British school. Berlin was utterly fascinating. The situation was something which is quite hard to describe to people because it was still an occupation régime. That, in itself, led to the most interesting series of arrangements and problems. And again, huge responsibility, because it was an occupation régime, though it tried to be a benevolent and friendly régime. But in those areas in which Allied powers existed, we did rule, and that meant all kinds of things. We legislated, either for the British sector or jointly with our allies for the whole of West Berlin. We issued formal instructions to the Berlin City Government. We supervised the process under which West German laws were taken over and applied in Berlin. This meant we had to approve, and sometimes we modified their operation in Berlin. We did the same for West German treaties which were to be extended to Berlin and we exercised, as individual sector Legal Advisers, an absolute control over the jurisdiction of the local courts and police where their powers or activities touched on either Allied responsibilities or Allied individual persons. So if there was a simple thing, like a traffic accident on the road in which a German car ran into a British Forces car or the other way round, the German courts could not exercise any control and the police could not investigate without the written approval of the sector Legal Adviser. This was all absolutely fascinating. It had its problems, one of which was that we had been asked to go to Berlin in a rush and there really hadn't been any time for training, including in the German language. I can remember having some classes – I think I was given an individual teacher from the Language Centre. But that had to be fitted in with everything else. There was no question of being detached for language training, nothing in the way of immersion. I was thrown in. You didn't necessarily have to be able to deal in German yourself, but you had to absorb material that was in German, including in technical, lawyers' German. So that was another great whoosh into the deep end.

I had two secretaries, fortunately. I had a British secretary who was the wife of a member of the military garrison, and a German secretary who was the German born wife of an Englishman. Because one of them was local and one was Military Government, they sat, if not in different

buildings, then in different parts of the same building with a solid wall in between. My German secretary was not allowed to come to the other office. I did have the assistance of a German legal practitioner, though in reality what he did was only certain specific things. So that was utterly intriguing. As was the fact that the British Military Government was housed in a very Hitler-ite building, part of the Olympic Stadium complex built for the 1936 Games.

The positive side was that you became part of the administration of the city of Berlin for many purposes. And you had the sort of access that you would never have in an ordinary diplomatic post. This was important because two very significant things were happening at the time.

One was that, some while before I arrived, a local German with a serious grudge attempted to assassinate the guard on the Soviet war memorial in the Tiergarten from behind the bushes, and damned nearly succeeded. Had the bullet passed a couple of inches to one side, the Soviet guard would have been assassinated. In the end it was an injury which was not severe, but clearly there had to be a prosecution. Normally speaking, a German committing a criminal offence would have been handed over to be prosecuted by the German courts. But that was inconceivable, and the Russians very quickly made it plain that it was unthinkable that an attempt on Russia at its most sensitive core should be dealt with by a German court. Because it was an attack on an Ally, it would normally have fallen to an Allied court. Criminal law was a matter for the individual sectors, not for West Berlin as a whole. That meant that we, the Brits, had to organise the trial. We had had, of course, in the early days a system of Military Government courts, but they had been allowed to wither away because there was no need for them. Under these curious circumstances, we had to reinstate the whole panoply of British Military Government courts, from the investigating magistrate controlling the police investigations, to the senior magistrate who would issue the warrants, to the court itself and the court proceedings, and to make arrangements for how and where an eventual sentence would be served: all of that had been done and was finished by the time I arrived, but in a civilised legal system we had, of course, to provide for an appeal. That meant that we had to crank back into existence a Court of Appeal, and the appellate process happened during the time that I was there. It had its enormous interest and advantage in that I worked very closely with people inside the Berlin police and the Berlin Prosecutor's office and made some good connections and friendships there, learning like mad all the way.

The other thing that was happening at the time was that we had got back into Four Power negotiation over Berlin, i.e. Berlin as a whole. That had stalled after the breakup of the four power machinery and then had gone seriously into reverse with the blockade and later the building of the Berlin Wall, and remained in stasis, but then another crisis happened, a crisis – I think – which

faced us shortly before I arrived. There had been a joint sitting of the Bundestag in West Berlin, to which the Russians took serious objection. What that ultimately eventuated in, after the immediate crisis had subsided, was a formal Four Power negotiation for the first time in a very long period of time. When I arrived in Berlin, it had begun but hadn't really got going. The meetings were happening in a rather stately, hostile atmosphere and hadn't got to the point of a proper negotiation. They were being run largely from Bonn, on the Western side, from our Embassies in Bonn, but we, of course, in Berlin were there, on the spot, to advise on particular Berlin questions, because Berlin was the subject of the negotiation. It was one of the most fascinating things you could imagine. I think I'm right in saying that the negotiations hadn't got formally under way, because I can remember sitting in on a meeting of the four Foreign Ministers, meetings which were taking place in the building that had been the headquarters of the Allied Control Council, right in the centre of Berlin. This was eerie too because that building had previously been the seat of one of the superior German courts and was then turned into that vile court that dealt with the conspirators against Hitler. Other political opponents had been dealt with in the cellars of the same building so, like everything in Berlin, it had the most eerie, historical echo to it. I can remember that meeting for a number of things, including that all of the Ministers had brought their own personal interpreters. How interesting. We had the wonderful Tony Bishop on our side from the Research Department whose Russian was superb. Who was the French Foreign Minister? Probably Maurice Schumann. He had as his interpreter an aristocratic Russian emigré who was far superior to everyone else in the room. I remember him holding up his hand and silencing the Foreign Minister as if to say, "Be quiet. I need to finish my interpretation." When the Ministers had gone, the baton went back to the Ambassadors, which was hard going too, because the Russians had an arch apparatchik called Abrassimov who had immense German experience and knew East German affairs backwards. He would always have a grouse. He could turn a tirade on and off at will, something which I'd seen originally done at that outer space negotiation in Geneva. I'm jumping back, but I must tell you another anecdote about the outer space negotiation. There was an appalling Russian, who looked as if he'd been made in a factory, who would sit making these tirades of speeches but with the earphone on his ear. He would stop in the middle of a speech and berate the conference interpreters for mistranslating what he had said. I would have thought it was psychologically impossible to pour out a tirade at the same time as listening to what somebody else was making out of your tirade. Abrassimov was a bit of the same. He didn't listen to the interpretation, but he could turn on the indignation and make long speeches.

Eventually, not long after I arrived, the Ambassadors agreed that they could pass on the baton to their Counsellors. That was the moment at which we approached towards a breakthrough and began to talk. Others will have given an account of this in the oral history programme. But one

interesting thing they won't have told you, I don't think, about the day and the moment on which I'm convinced the actual breakthrough happened. Scurrilous circumstances. The Counsellors were: Christopher Audland on our side, highly intelligent, very earnest, not very well schooled on Germany; Jock Dean on the American side, a really tough operator with lots of German experience; Kvitsinsky on the Soviet side, a very, very able operator who subsequently did important things in the disarmament field (later immortalized in the play *A Walk in the Woods*), who spoke perfect German and also very good English; and on the French side, a wonderful man called René Lustig, who was not from Alsace but Lorraine, so he had grown up as a German Frenchman or a French German, linguistically able, with a great sparkle to him. He arrived one morning at the meeting and said, "I have a present for each of my colleagues." And he handed out the presents. I can no longer remember to whom. One of the presents was a book of limericks. To whom did he give it? Maybe he thought it was time that he loosened up the Americans ... I don't know. The book of limericks was the way limericks were in those days: scurrilous, scatological and worse. And I can remember, during the coffee break, everybody else had gone into the anteroom for coffee. I was doing something at the desk and I noticed Kvitsinsky wandering down the table and stopping to open this book of limericks. As he looked at it, he began to laugh. Then he began to laugh out loud. And then he began to roar with laughter. He didn't notice I was there, so he closed the book and went and had his coffee. But from that moment onwards, the atmosphere changed.

SR: How interesting!

FB: It was. It may have been spurious but I don't think it was. One of those things. The ice had been broken. Then they got down to what was really very tough negotiating. What struck me at the time, as a lawyer negotiator, was of course the drafting process, which I think has almost certainly been described before, perhaps by Nicholas Bayne who was around at that time or Nigel Broomfield if you have spoken to him. It was a fairly laborious process of trying out texts on a blackboard and then eventually having a text put aside as something that might possibly be considered in future. And then eventually all of those texts were put into a framework by the British side, so we crawled towards the shape of an agreement. But there were two interesting things. One was that at the moment real talking began they'd had to find a lingua franca, as the negotiators couldn't operate through interpreters any more. So what did the Four Powers disposing of supreme authority over Germany find as the only language they could use? German. Which I'm sure the Russians agreed to because they thought it would give them an advantage. Their people were superb German linguists. So they all negotiated in German, with greater degrees of ease or difficulty. But all the texts were in English, against the background of a treaty –

if we got one – which would clearly be in English, French and Russian. But we didn't get to the question of alternative language versions until later on. The French, well-organised people, were doing translation as they went along. I can't remember if they shared their text – they probably did. The people who showed themselves strangely reluctant were the Russians, surprise, surprise! So it wasn't until after we'd completed this very complex negotiation that the finger was pointed firmly at the Russians that we'd need to see what the Russian authentic text was going to be. And there was then a myriad of reasons and excuses why the Russian language texts, were not ready, hadn't been approved.

SR: Dog-eats-homework excuses!

FB: If only. Well, the Russian text did finally arrive. I think it was two days before the formal signature ceremony had been arranged in Berlin with the four Foreign Ministers arriving to sign under great international fanfare. And of course the Russian text, once we'd had it looked at, was fraught with problems, some of which were obviously not accidental problems but attempts to capture back points that had been given up in negotiation. It was chaotic, disastrous. We sat through the night, trying to sort these things out. In the end, a lot of them were sorted out. They were trivial or were throwaway points for the Russians. But there was just a smallish handful that weren't and, in the end, we couldn't sort them out. The device that was resorted to was to agree that, as the agreement was going to have to be applied in Berlin by the German authorities on both sides, we would delegate our respective sets of Germans to arrive at a German version of the agreement to be used for administrative purposes. This would obviously have to be done afterwards as there was no time to do it before. On that basis, we could tolerate the discrepancies in the official texts.

But all this happened at the very last minute. I do actually remember sitting in the British Military Government offices which, to add the extra spice of Berlin resonance, were at the Olympic Stadium in what had been an officers' physical training school. It was Fascist architecture, high quality Fascist architecture. We were sitting there, on the morning, not knowing whether the signature ceremony was on or not. And then the message came through that it was on and that the others were already on their way to the Control Council building. I can't remember where Alec Douglas-Home was, but presumably he was somewhere nearby. But how the blazes were we going to get there through the traffic? That problem was solved by the fact that an extremely able Military Government driver saw or heard that the American convoy taking the US Secretary of State was on its way, and was going to come close to us. So out we charged and we tailed onto the back of the American convoy. Just in time.

The other thing I remember about the extraordinary negotiation of that Four Power Berlin was that of course we wanted to and needed to keep in close contact with our German Ally. But this was a Four Power negotiation, and the German couldn't be in on the negotiations, couldn't even be seen to be there. Because the Control Council building was in our Sector and was a massive building full of corridors and backrooms and things, we used to hide the Germans away somewhere in the building and then go and fetch them out again when the Russians had gone. Strange. Berlin was an extraordinary cloak and dagger place.

SR: I think you said you had another anecdote to tell me about Berlin.

FB: Yes. While I was in Berlin, there was a businessman in the West Country – agriculture, food, something of that sort – who was an amateur pilot and he had invited his local MP, a Tory backbencher of course, to go with him to a football match in Copenhagen, flown by the amateur pilot in his own plane. They'd been to the match in Copenhagen and must have enjoyed it. I suspect they had enjoyed the post-match hospitality quite a lot. Rather than have the sense to stay overnight, they had set off to fly back home and, having got out of Copenhagen, instead of turning right turned left. The next thing they knew, they was surrounded by MIG fighters and forced down on an airbase somewhere in the GDR. I don't remember where. So, panic, you can imagine the kind of panic. The men were safe, the aircraft was safe. But there you had a British citizen and an MP detained on an air base in the GDR. Well, it took a few days before the men were released and there was a huge sigh of relief. They got back home again and then immediately the clamour started, "I want my aeroplane back!" So the little euphoria of getting the men back quickly and safely faded away. At which point the Russians, when approached, refused to talk to us, "The aeroplane is in GDR custody. Talk to them", which was a complete no-no as far as we were concerned. We didn't recognize the GDR, nor did our Western partners, and the West Germans, who were in the midst of their Ostpolitik, would have been justifiably upset if we'd done anything that the East Germans could have trumpeted as a weakening of the Allied position. One of these typical John Le Carré situations built up in which feelers were eventually put out and feelers lead to meetings which had to be held clandestinely. I remember there being a German travel agency which was used as a front by the GDR abroad. There were meetings after dark in a room there. They eventually led to agreement that the aircraft would be handed over, but it had to be collected by an official British delegation. It was going to be handed over on the other side of the inner-German border, close to Lübeck. So all of that was fine, except that we were really anxious that the GDR might use this as a ruse to inveigle us into doing something, or more likely signing something, which they could present as a form of recognition. So I was asked to go from

Berlin and join the group to collect the aircraft. I was to advise on the spot, if necessary, on what document could or could not be signed. It really was like something out of a Le Carré novel. We were asked to present ourselves at the border crossing point, just east of Lübeck, early in the morning; it felt like dawn. We had a wonderful corps of people still in existence then called the British Frontier Service. They looked like station masters, old-fashioned gentlemen. They weren't part of an armed service, but they knew the border, they had patrolled the border since the days when the zones of occupation were first set up. They knew every inch of the border. They obviously had been useful; they were the ones who would have seen had there been any attempt at an incursion. We were taken to the border and there we set off through the British gate into no man's land. Massive barbed wire fences and manned machine-gun emplacements on top of the barbed wire fences. We were told to hand in our documents and then set off down a road, a long straight road, deserted, with pine trees on each side. Mist and fog. Walking down the road, conscious as you were, always, of what was behind you, you could hardly see a thing. We walked and we walked and then after about five minutes walking, you could begin to discern a shape on the side of the road which looked as if it could have been a lorry plus a trailer. Then, after we'd gone a bit further, a little hutment to the right. That was it, that was the collection point. There was a delegation, a GDR group, who ushered us inside and the talking began. It was odd, because there was nothing really serious to do. Even the terms had already been settled carefully in advance. We talked and we talked and there was a piece of paper and there was nothing particularly wrong with the piece of paper, nothing that we had to raise difficulty about, nothing that they wanted to talk about. And then we had to have a break. There were refreshments. More talking. Then another break and more refreshments at the end of which the East German took Christopher Audland to one side (Christopher was the Head of Chancery at Bonn) and said, "Look, I hope you don't mind this becoming quite a long process. The thing is, we never have the opportunity to try this wonderful Bulgarian brandy." Well you should have tasted the wonderful Bulgarian brandy! After enough wonderful Bulgarian brandy had been consumed, we were allowed to inspect the aircraft which had been dis-assembled into pieces and put on a long-loader trailer. Off the trailer went with us at the side like a funeral cortège. But that's the kind of thing Berlin produced.

Another thing about Berlin...I go back to the Four Power negotiations. After Kvitsinsky and the limericks, I started writing limericks for the delegation. I would occasionally put them on the board and I would also do limericks for circulation inside the Bonn Group (the main forum for close consultation between the three Western Allies and the German Government over all-German issues and Berlin). It became a sort of habit. I was stuck, having done them on one occasion, and

was then expected to produce another one on every occasion. I'm sure I must have them somewhere. We could add the Four Power limericks as an appendage!

SR: Naughty ones? Scurrilous ones?

FB: Well they were quite pointed, some of them. One of the pointed ones was about another very Berlin thing, that was Rudolf Hess and Spandau. Of course the prison still existed. Hess was the sole prisoner. He had been the sole prisoner for quite some time. The prison ran under a strange combination of Three and Four Power control. It was a massive great building, it must have been horrible in earlier days as a prison. One small wing of it was used. The prison had a military garrison which rotated from month to month between the Four Occupying Powers and there was a team of warders under the control of four Prison Governors, one from each Power. The chairmanship rotated between the Governors from month to month in step with the rotation of the military garrison. Then there was a Higher Executive Authority for the prison which was supposed to have been composed of the Legal Advisers to the four sector Commandants. The Russians had stepped out of that one. I don't quite know why because you'd have thought it would be useful. But we still had a Higher Executive Authority which was a rump body composed of the three Western members, in which capacity we might go and visit from time to time, during our national month, to see our prisoner. What a weird character! All that propaganda stuff about solitary confinement was laughable because he had a suite of rooms at his disposal. He was a very strong character and you could tell there were times when the prisoner had the moral whip hand over his captors. And he wasn't in great discomfort. The only thing he wasn't allowed was television. He was not allowed newspapers, they had been censored. What an obstinate, pig-headed man! Quite impressive, tall with big beetling brows. But he was surly too, insolent. He accepted authority, but only in the most insolent fashion. So I didn't go to see him more than I absolutely had to.

SR: Did you speak to him in German?

FB: No, absolutely not. I wouldn't speak to him in German. I can't remember how he responded, he probably answered in German. Strange. That was Spandau.

What else? Well, the most notable thing about Berlin for the Berman family was that, not long after we arrived, Christine discovered she was expecting our third child. There was a nice British Military Hospital, although its equipment was not exactly up to the minute. The British Military Hospital decided after some time that it was not one but two. Then they decided it was not two but

three. So we acquired triplet daughters in the February after we had arrived, with all of this going on on the professional front. In a way, it was rather nice too, because the Military Hospital had really put itself out. We were perfectly well treated there. One of the children was big and strong enough to be taken straight home, but the other two went into care at a specialised maternity hospital, a German hospital. They were very well looked after. All the German people we were involved with were absolutely sweet during the whole process. But it was, shall we say, a slight complication in the middle of a really hard Berlin winter. We eventually got all three of our daughters back. I was asked to call on the Matron at the hospital - reminiscent of calling on Tom Brimelow – and asked if I would mind taking the last of our three daughters home before the weekend. Of course I didn't mind, but they had this absolutely rigid idea that the baby had to achieve a certain threshold weight before she could come out. Then the Matron explained that Easter was coming up, "You see it's the festival of the year at which all German mothers go to stay with their sons and all the German daughters-in-law are very, very anxious about this. They'll be on their hands and knees, spring cleaning the house, even those who are pregnant. So I know that after the weekend I will have a very considerable demand on my facilities, and I hope you won't mind clearing a space for me!" The girls were tiny by the time we left Berlin for Bonn, which led on to something else, and I think that's my last Berlin reminiscence. When they got to their teens, we felt they really ought to see Berlin with their own eyes because the whole setup was so unusual and extraordinary, including the access arrangements. The Office, bless them, said they would document all of us as if we were going to join the British Military Government, including our children. They said we could take them through the whole rigmarole, down the access autobahn by car from Helmstedt, but through the Soviet checkpoints; and, when we were there, across into East Berlin at Friedrichstrasse on the S-Bahn to see it all in operation. Which is what we did. The girls, despite having been born in Berlin, would otherwise have had no inkling at all what it was like. Very soon after this visit - during which we saw everything, including Spandau - Hess died, and the day after that bulldozers moved in and demolished the prison. The first bit of that curious Four Power carry-over began to disappear.

Berlin was utterly fascinating. The work was quite different from anywhere else. It's left a residue of affection for the place.

SR: However did you cope, with three tiny babies and a huge workload?

FB: We sort of managed. The Office was good. The Army was rigid – they didn't make many adaptations. But the mission tried hard. We managed. And there were sleepless nights in any case, with the pace of work. I can't remember falling asleep in a meeting ...

The reason we stayed for a short time only in Berlin was that we had filled in – as I described earlier – for somebody who wasn't available. Then the succession arrangement clicked in. So when the then legal Adviser in Bonn came to the end of his posting, we were due to move down to Bonn. In the result, we stayed in Berlin for probably less than eighteen months.

SR: Frank, that's probably a very good place at which to stop. Thank you.

SR: Good morning. This is Suzanne Ricketts recording Frank Berman on 11 May 2018. Frank, last time we finished with your time in Berlin. You talked about taking the girls back and the death of Hess. You were only there about eighteen months and then you got a transfer to Bonn. Was it like John Le Carré's *'Small Town in Germany'*?

FB: The transfer was not a great surprise. I mentioned to you last time that we were asked to go to Berlin at very short notice, having been under the expectation that we would go to Bonn a little later. So what we did was to fill in that time in Berlin – thank goodness we did! We moved on to Bonn to complete what in the end, if you put the two segments together, slightly longer than would have been the anticipated posting.

And you say *'Small Town in Germany'*. Absolutely to the point, because the house that had been occupied over the years by the Legal Adviser to the Embassy was exactly the house in which John Le Carré had lived himself and which features in the book. There's a wonderful scene in the book in which – I've forgotten the name of the protagonist – he's in the house at night and he hears the house shudder because of the heavily laden barges which are being towed upstream towards Switzerland. That is the very house. We couldn't have the house, however, because our family was then too big. We had five children by then, three of them were tiny. That was quite interesting in itself because we'd come from being under the army in Berlin, where everything operated according to strict rules, including housing entitlements. We had the strange experience of seeing Majors with no family housed in quarters with lots of bedrooms for which they had no need whatsoever and slightly more junior officers with families sometimes being crammed into two houses because each house fitted the rank of the occupant and you somehow managed to distribute the family.

Bonn was interesting and awkward because we had this vast great family and there wasn't anywhere, there wasn't a single First Secretary house that could have accommodated a family of our size. So eventually, after much huffing and puffing, we were allowed to live in a Counsellor's house which really rattled the window frames at the time! It was a nice house and it had lots and lots of family vibrations to it because Jock Taylor had lived there when he was posted to Bonn and the Taylors had a huge family. I can't remember how many children, but they certainly had more than us. And you felt that there were childish reverberations in the house. So we lived in this lovely little street called Im Etzental, above Bad Godesburg, the old town of Bad Godesburg, the Redoute (which is on that lovely engraving on the wall) and then if you went down a little further there was the English church. And you went up the hill from the English church to this quiet little street which was simply Embassy houses. It had been constructed by the newly moved Federal Government when things moved from Berlin to Bonn for the use of embassy personnel. It was almost exclusively British. There were two French houses at the very beginning. One of them was a small school and the other may even have been the head teacher of the school. All the rest was British. It was a tiny little slice of Surrey suburbia. The houses must have been built to a Ministry of Works standard because they looked like the Surrey suburbs, they really did. Comfortable, nice houses. Not distinguished at all. It was this British enclave in the most beautiful position, below the hills. You could walk out, be out in the hills and the valley in ten minutes. The area was quiet then, too. There hadn't been much building round about. With the Embassy itself on that really unpleasant main highway into the town of Bonn. And if I say that the residences were undistinguished, my goodness the Embassy building was post-war utilitarian, right on the main road. It wasn't a totally unfamiliar move to us, because there'd been a lot of contact between the Military Government in Berlin and our colleagues in the Embassy, particularly over these Four Power questions that I mentioned. So the people weren't totally strange. On the other hand, the Embassy in Bonn was huge. Indescribably large.

SR: Who was the Ambassador?

FB: Roger Jackling, who was just about to leave. He was replaced by Nico Henderson. But the Embassy, as I recollect it, was massive. It had a grade 1 Ambassador, of course, it was Germany after all. But there were three grade 2 Ministers, a Minister Political, a Minister Economic and a Minister for Trade. I think there must have been fifteen or sixteen Counsellors, including a Counsellor from the MoD who dealt with military cooperation and equipment. And huge Attaché staff. All of that is perfectly understandable. But a massive great Embassy itself. If there were fifteen Counsellors, God knows how many First and Second Secretaries there were. So it was a vast and sprawling sort of place which, of course, didn't have the same close cohesion that we'd

had in our very small group in Berlin. And for us, for Christine and me, it was our first exposure to the real diplomatic life. Berlin was different. You moved in much more closed circles. Although you had contact with counterparts, you were really involved with the administration of the city. This was different: this was the diplomatic life.

It was quite extraordinary, too, because it was a period of really severe turmoil within German internal affairs: it was the time of the Ostpolitik. I can't remember whether Willy Brandt had formed his first government before we arrived or just after ... I think before, in coalition with the Free Democrats. The nature of Germany's reconciliation with its former enemies in the East and then reconciliation with the German Democratic Republic and relations with the Soviet Union were really contentious questions. One of the consequences of which was that, although we had regular and friendly contact with our German counterparts, nothing that you said or did was sacrosanct. So I encountered, for the first time in my life, a culture of leaking. You wouldn't have thought this amongst the German public servants who were so rigid and proper and strict. But it was so. And I also encountered, for the first time, a situation in which everybody knew - all of my colleagues knew exactly - whichever German official they were dealing with, was he SPD or was he CDU. Or was he occasionally FDP, somewhere in the middle. So everyone knew everybody's political affiliation all the way down into the ranks. It was curious. You had these confidential contacts and yet the knowledge that, in most cases, what you said was not going to have its confidence respected. With the exception of our very close knit group, in this famous institution, the Bonn Group. The Bonn Group was the mechanism through which the Allies kept in close contact with the Federal Republic over anything to do with Germany as a whole, or with Berlin. It was an extraordinary institution. Somebody ought one day to write a proper work about the Bonn Group itself and its operations. The close contact included me, because I was part of it as the Embassy Legal Adviser, on account of the amount of negotiation going on. That meant contact with my counterparts on the legal side in the German Foreign Ministry of an extraordinarily close and friendly character, really collaborative. There what we said and did was always in close confidence and that was respected. You didn't have to fear the leaks in quite the same way. And very close contact too, more generally, with the lawyers in the Foreign Ministry. Their Legal Department was different from ours because they did all kinds of legal work, including lots of things that wouldn't have been regarded as FCO work at home, but would have been done by some other Ministry. But they had an international law section which was headed then by an extraordinary able and admirable man, who subsequently went on to be the Legal Counsel to the UN years later and then a judge on the International Court. So with him and his colleagues, one established a rapport which was exceptional and which served, in a way, as a pattern for other

things that we found ourselves able to do with legal counterparts in years to come, in other contexts. So that was good.

There was a lot of work in Bonn, too, connected with the status of our forces in Germany. We had, after all, a very substantial military presence, we and our Allies. Rheindahlen was the central point for our land forces, and Wegberg for the RAF. But Bonn was the place for dealings with the central German Ministries, and there was a Joint Services Liaison Office in Bonn. There were all sorts of questions arising under those immensely complex NATO status of forces agreements, which had been supplemented by special arrangements for the Allied forces in Germany. Some problems we had in common with our French and American colleagues and we met regularly with the Germans and with others. (I remember the Belgians being significant in that field and there must have been other Allies too.) And then there were particular questions arising out of the operation of the British forces. But one of the curious themes that I remember in our time was how one sorted out the relationship between that Embassy lot of softie civilians down in Bonn and the Army people up in Rheindahlen and the Air Force at Wegberg. Something that Reg Hibbert was very keen on. Reg was the number two, the Minister Political. He had an extremely militaristic bearing and barked out his speech in a rather military way. He was insistent that we shouldn't regard ourselves as being two different species, which led to a number of attempts being made to improve the nature of friendly relations between the two. They were slightly comical, I have to say. They were a little bit like the occasion on which you organise a dance for the local lads with the village girls. The village girls sit round the edge, giggling to one another and the lads don't quite know what to do with themselves either. But I can remember being asked to host a Colonel and his wife from Rheindahlen. They'd come down on a fraternal visit with others and they were being farmed out to different residences. There was my poor wife with her brood of tiny children, trying to look after this very nice couple. The logistic problems of organising the two were quite extreme.

Another element of interest in Bonn was that there were still, in the Federal Republic itself, one or two carry-over institutions from the Four Power days. There was a Supreme Restitution Court which didn't sit in Bonn, but sat somewhere in Westphalia ... yes, Herford. There was a British judge on that Court, under our general responsibility. There were other people involved. So there were all kinds of interesting odds and ends of that kind. I remember that that Court was wound up during the time that I was in Bonn: it had come to the end of its life and finished what it had been there to do. There were absolutely fascinating questions about what would happen to its records, to its archives. The Germans were terribly keen to take them over. Their keenness was matched only by the un-keenness of people in London to work out what to do with these things. They

could have all gone to Kew, I suppose. There were real problems: what do you do with the records of a judicial institution? You can't hand them over to the public records in the normal way. We eventually agreed that they would go, as the Germans wanted, to the Federal Archive in Koblenz, but only after quite a tricky negotiation which entailed abstracting the records of the Court and what it had done, which could be made public, from anything to do with the internal deliberations of the judges on the Court itself. They are all, I think, in Koblenz but under a strict agreement that nobody is to have access to them without the consent, I suppose, of all the four governments, which I'm sure has never ever been sought or given.

But the background to it all ... I come back to the Four Power thing. This was the time when, under the Brandt Ostpolitik, the Germans were negotiating the Moscow Treaty and the Warsaw Treaty, to resolve outstanding questions with the Soviet Union and Poland, and also trying to find an agreed formula with Czechoslovakia which recognised the illegality of the Munich Agreement, without actually accepting that the Munich Agreement was invalid from the outset. Not because of any political resistance to doing so, but because of the legal consequences which could have flowed if it had been formally accepted that this treaty, and everything which had flowed from the treaty, was illegal. That could have led, for example, to monumental claims from the Sudeten Germans who'd been dispossessed and moved from their homes into West Germany. There were skilled lawyers negotiating on the German side whose work one admired. All of that was eventually brought to fruition at the same time under a delicate political package deal between the large number of States concerned, which enabled, during the time that I was in Bonn, the Four Powers to sign the Final Quadripartite Protocol which brought the Four Power Berlin Agreement into effect.

At the same time, and as part of the same political package, the 'Basic Relations' treaty that had been negotiated between the FRG and the GDR was brought into force. By establishing for the first time formal inter-Governmental relations between West and East Germany, that agreement - which either was a full-blown international treaty (East German view) or was something less (West German view) - opened the way to formal recognition of the GDR by Western States. And we moved on to talking about the admission the two German states to the UN: they had previously only been there as observers.

All of these agreements - including the Quadripartite Agreement on Berlin and its Final Protocol - were of great interest from a lawyer's point of view in the way they employed an imaginative use of flexible legal forms to reach a series of *modus vivendi* which overcame difficult legal and political problems, where outright and direct agreement would have been politically impossible.

The Basic Relations Treaty between FRG and GDR was then taken to the German Constitutional Court - in a challenge brought from Bavaria, surprise, surprise. It led to the very first occasion on which the Bundesverfassungsgericht held an oral hearing on a case. Normally, they would deal with a case on the papers. I can remember going down to Karlsruhe, where the Court was situated, with a colleague on the policy side, to sit in on the hearing. I think the Court staff were slightly bemused and alarmed to have a couple of diplomats turn up, but they were very polite about it. We sat through this hearing and then, in due course, the Court pronounced the judgement of Solomon you would have expected. We resumed Four Power discussions, in order again to arrive at a formula which was adopted as a Quadripartite Declaration, about the entry of the two German states into the United Nations. I can't remember its text any more, but it was a single paragraph, densely packed with meaning. Every word, phrase and comma had meaning. It was designed to say that this didn't really change anything so far as the residual Four Power responsibilities were concerned and had no implications, but wasn't expressly stated as such, for the ultimate question of the unification of Germany. And then the Germans moved into the UN. Which led to another wonderfully ... I was going to say comic, but it wasn't comic ... wonderfully intricate, Byzantine piece of diplomacy because, at some point, our Germans – the West Germans – realised that, desirable as this movement would be, the alphabetical order that prevailed in the General Assembly meant that the Federal Republic of Germany would be over there in the General Assembly Hall and the German Democratic Republic would be over there. It was felt that it would be political dynamite, against this hugely charged internal political background, for the two states not to be side by side. So they cooked up a wonderful deal. It must have been done behind the scenes with the UN Secretariat. It was brilliant in its simplicity: you would have the German Democratic Republic seated under its name, but West Germany would be seated as Germany, Federal Republic. By the wonders of the English alphabet, the two delegations would then be sitting side by side in the General Assembly! That's diplomacy, isn't it? One of the characteristics of diplomacy of this sort in Berlin was how one was still dealing, so many years on, with the residue of the war. We were dealing with issues that were intractable. The art of finding formulae which could be accepted by both sides, even if they – at the time or subsequently – tried to put a different meaning on it, was a real art which enabled one to move beyond a situation of stalemate, into something for the future.

We also had on the go, at the time, a lengthy legal dispute which was also a consequence of the war and was in a way actually a consequence of the First War and the Treaty of Versailles: the Agreement on German External Debts. The dispute was about what was known as the Young Loan, after the US industrialist who was the author of a plan for the settlement of German

reparations after the First World War. The legal issues were complicated but they had to do with what happened to debt repayments when we moved from the era of fixed exchange rates, under which the agreements had been negotiated, into floating exchange rates which came in in the 1970s. Was what happened to currencies after floating equivalent or not to formal devaluation for treaty purposes, which had a very big effect on debt repayments due. That eventually went to arbitration, a rather heavy handed arbitration: the five joint claimants, all close Western allies, against the Federal Republic of Germany, another close ally, under an institution which had been set up in the Dawes Plan, after the Treaty of Versailles, and then redone after the Second World War. That one I remember vividly too, because it was a massive operation with lots of coordination needed on the ground in Bonn which I helped to do, and then the subsequent completion of the case which happened after my posting.

Interesting times, but I go back to the sheer size of the Embassy. Inevitably, when you have an Embassy of that size, it was a place of cliques.

SR: You had two big egos as well, with Reg and Nico.

FB: Oh, absolutely.

SR: Did they get on?

FB: No! People say a lot about Reg. Reg had severe faults, but he had lots of virtues too. The trouble with him was that he sorted people into sheep and goats and if you were one of the sheep – for some reason I was one of the sheep – he was always kind to me. Those weren't the only two big egos. There were a few big egos in London, too. Percy Cradock, in particular. The real hostility was between the Reg Hibbert view of Germany and the GDR and the Percy Cradock view, which led to a famous dénouement in a famous meeting in London. That's another story for later on. Reg and Nico were such totally different personalities. Nico is another person about whom there are two views. I never had the feeling Nico understood Germany or really deeply wanted to understand Germany. He wasn't a Germanist. Poland was the centre of his life: he would have loved that Norman Davies history of Europe from the viewpoint of Poland. He certainly wasn't a German speaker. I don't think he even noticed among his staff those who could do the language and those who couldn't. I shouldn't say this kind of thing but, for example, I can remember – because my German had come on rather well - doing the Higher exam in German and, to my surprise, passing it. And never having a word from anybody in the upper reaches of the Embassy! So it was slightly odd.

SR: But also odd of the Office to send somebody whose German wasn't up to it.

FB: Yes, one would have thought that an out and out Germanist ... Well, it was odd. It was odd. Roger Jackling, his predecessor, spoke no German at all. What he did that I recollect was embarrassing schoolboy German. Roger had a different way of dealing with things and Roger, being originally a lawyer by training, understood the legalistic approach of the Germans. Nico just brushed all this aside: broad historical movements were his thing. Yes, relations with him were rather distant. What I do remember about Bonn was the terrific esprit de corps amongst the group of First Secretaries. There weren't too many Second Secretaries. But amongst that sort of group, we thought of ourselves as the engine room. It was a really outstandingly able collection of people who were there at the time: Nicholas Bayne, Nigel Broomfield, people of that quality and others who have since died ... Desmond Cecil was there too. So it was an extraordinarily good experience. I tried to use my position as Legal Adviser to make other German contacts. There was a Ministry of Inner German Affairs, for example, which I think had not been the subject of a great deal of attention from the Embassy, so I made contact with them. There were lawyers in the German Ministry of Defence with whom one had a chance to deal, although there was a sort of an MoD outhouse (UK MoD, that is) in Bonn itself. There were lawyers in the courts and there were international lawyers too. And Bonn University is a fine university which has always had a very strong tradition in international law. So there were opportunities there too to make worthwhile contacts. And we enjoyed life in Bonn a lot. The climate is not terribly good, but the area is so beautiful. It was such an interesting contrast with Berlin. Berlin you couldn't get out of, but Berlin had the most wonderful open spaces within its own borders. Bonn was the easiest place in the world to get out of and there were such wonderful things available – down the river, down the Rhine, off to the Mosel, up into the Eifel – it was a really nice place to live which we greatly enjoyed. It was a two-year period and some of it was finishing off work that had been begun and partially completed while I was in Berlin.

Foreign Office, 1975 – 1982

SR: So then you went back to the Office in 1975, promoted to Counsellor.

FB: Yes, weren't the lawyers lucky! How old was I then? 35.

SR: That's pretty good.

FB: It was an interesting example of different career structures. It was possible, within the legal cadre, to get promotion to Grade 5 equivalent at a very early age and then to Counsellor too early on, because there was a sufficient number of Counsellor posts available. The problem was that early promotion always leads to later blockage. One certainly felt the effect of that within the FCO Legal Advisers. But it was a pure question of rank, it had no effect on responsibility as such. I think I've already described to you how very autonomous and independent the individual Legal Adviser function was. So you continued doing much the same thing and you were given Departments to advise, depending upon your ability, not on rank. It was rather curious, in a way, having the same formal rank as a Head of Department, not vis-à-vis the Head of Department, but because you didn't want the junior desk officers to feel there was any distance between you and them. But the atmosphere in the FCO really facilitated that to a large extent. I hope I've spoken about this before, but it was a remarkable feature of the Office then which I hope hasn't got lost: how easy personal working relations could be. If you had, as I think I've always had throughout my career, Departments who grasped the value that the legal function could bring to their own work, it was sheer pleasure to work with them. So I think when I got back to London, I was dealing with a lot of things that were not dissimilar from what I had had in the past. Certainly big projects for scientific collaboration. I remember, in particular, one big project to set up a combined European facility for uranium enrichment, than which there can be no more sensitive subject. This was a really intriguing negotiation: it was us, the Germans and the Dutch, pooling not just our technological know-how but also our industrial resources in this area to set up a joint facility in the Netherlands. The negotiation was full of both the international law side, the security side and the industrial side because of the amount of industrial property that was being brought into it. That was an excellent negotiation amongst allies. What else was on the go? In the scientific field, there were lots of big collaborative European projects in space and in nuclear physics, too. CERN, the famous institution which proved the existence of the Higgs-Boson particle, that was under our Scientific Relations Department or Science and Technology Department. So I dealt with a lot of people from the Science Research Council which was then a separate body dealing with these big projects. We had an enormously interesting time. CERN was a fascinating institution. We had a lot of negotiating to do again, because CERN had a project on the go. What you do in these nuclear accelerators is you send highly charged particles round underground tunnels at speeds approaching the speed of light and bent by magnets – terrific magnets – in the walls, so that the particles collide with one another. And in order to delve more deeply than they had done, CERN needed to have a bigger circuit around which the sub-atomic particles could be accelerated. But CERN was in that part of Geneva, right up against the border. So the only way to expand CERN was to tunnel further under France. And that's exactly what they did. I think they were called the intersecting storage rings, but they pushed way out into

France. There was an absolutely wonderful negotiation ... I wonder how the Home Office would have catered with sub atomic particles entering the United Kingdom without resident visas? That was extremely interesting. There were lots of senior British scientists and scientific administrators in CERN.

The UK/French arbitration over the continental shelf was different once again. I mentioned last time that we were in a big phase of settling boundaries. After the first flush of delimitation agreements in the 1960s, we couldn't reach further agreement with any of our neighbours because the wishes of the two sides were always irreconcilable. I think that we had set up a strategy for dealing with our neighbours in sequence. Sensibly, too, because each agreement set a sort of precedent for the next one. And the other reason why it wasn't easy to reach agreement was not just the value of the potential resource but because the world of maritime law was undergoing great change. There was a big push towards extending fishery limits, for example, and the law of the continental shelf was developing. So France was number one on our list for the next maritime boundary and we couldn't reach agreement with France, complicated by the existence of the Channel Islands hard up against the coast of France, complicated by the fact that it was fish as well as other things. So in the end we agreed – this was by mutual agreement – to set up a court of arbitration to settle the maritime boundary between the UK and France, starting from a little north of the Straits of Dover, through the Dover Strait and all the way up as far as we could reasonably go into the Western approaches, passing the Channel Islands on the way. Ian Sinclair was the Legal Adviser then and he was the Agent. I was his Assistant Agent. The Legal Adviser to the Quai d'Orsay was the Agent for France.

I'll tell you about the Arbitration Agreement. There had been lots of rounds of negotiation, settling the terms of the agreement and the procedure that would apply, which were finished off in a negotiating session in Paris. Then the wish was to get the agreement signed immediately. So, once again, it was like that affair in Monaco. We had to get the texts prepared. Special treaty paper, of course, was brought across from London with us and the treaty text, as finally agreed, was whipped off by our highly competent typists in the British Embassy in Paris, under the eagle eye of Robin Renwick who I think was the Chancery First Secretary. They produced the texts and they were absolutely perfect. Impeccable. There wasn't one single thing wrong, in either the English or the French-language version. But that wasn't the way things were happening in the Quai d'Orsay where, every time the French *alternat* was typed, a new error would be found. You couldn't correct the error by tippexing or using an eraser; the whole thing had to be typed afresh. I can remember sitting in the anteroom of the Directeur des Affaires Juridiques for hours on end, while secretary after secretary trotted into his room and I could hear "Mais non!" coming from

inside the room and out she would go again. I had mixed feelings of sympathy and pride, because the Brits had got it perfectly right at the first shot. Eventually it was done, the agreement was signed and then the court of arbitration was set up. It operated in Geneva. We had to find suitable premises. The Swiss were not immensely tactful when they told us that the city of Geneva had offered the fine apartments where the Alabama arbitration had taken place because the Alabama arbitration was this epoch making legal defeat for Britain after the American Civil War which cost us a vast amount in compensation. But we found another nice little palais in the old town of Geneva. It was slightly creaky, but very charming and quiet. We found a Swiss professor, who has subsequently gone on to great things, and appointed him as registrar. My French counterpart and I set up the arrangements. The two governments then appointed an extremely strong court of arbitration, consisting of five very eminent lawyers indeed: the French and the British members of the court were the then sitting members of the International Court of Justice, which was not terribly busy at the time. There were three outsiders. It was an extraordinarily interesting process. I remember too that we had on our side, of course, people representing the Channel Islands. We had the Deputy Bailiff of Guernsey and the Attorney General of Jersey and both of them addressed the court. They took immense pride, of course, in explaining carefully to the judges that they had existed as political entities centuries before there had been a Kingdom of France, certainly in the form in which it is today! It was a very complicated case of course and, in the end, the court reached a decision which was only marginally acceptable to us. Quite rightly, we didn't cavil at the decision as such, but we did raise an issue over the way in which the court had decided to draw the boundary line going out beyond Finisterre, beyond the Scilly Isles into the Atlantic. We went back to the court of arbitration to ask them to correct the technique that they had used, not the principle of the drawing of the line, but the technique. And I remember that too, vividly, because we obviously needed to have the approval of Ministers to go back to the court and we needed the approval, in detail, of the Attorney General, for the application that we would make to the court. That took some time so, in the end, we had our application ready and we had to get it in to the court within a strict time limit laid down in the agreement. I had arranged for the registrar to be in attendance. The only way I could be absolutely sure of the documents being delivered to the right hands in time was to take them there myself. I suppose I must have been documented as a special courier. I made the big mistake of driving out to Heathrow in my own car which, perhaps because it was French car, decided to act up on the way there. So I ended up having no clutch at all, but I had to get to Heathrow. I knew perfectly well if I failed ... I couldn't stop the car or call for any other means to get to the airport, because I'd miss my flight and wouldn't get to Geneva that day. So I managed somehow to drive myself and park the car in the multi-storey car park and get to Geneva and hand over the documents. And, sure enough, the French raised an argument that we had missed the time limit because they claimed that the day from which you counted was

something other than the one we had been reckoning on. On that issue, the court had decided in our favour, so we were in time. In the end, they rejected our request for correction; but I got the papers there on time!

Actually, talking about papers, can I go back to the other arbitration, the Young Loan Arbitration? That was the occasion for an extraordinary little incident. The dispute over the Young Loan went back to a big international negotiation which had taken place in London in 1952. It led to the London treaty, so we had provided the secretariat for the conference, we were the custodians of the papers. We found, to our immense embarrassment (though this is not widely known) that, when the Germans asked to have access to the official records of the conference, some enthusiastic weeder of the files in the FCO had decided these records were obviously not worth keeping and had destroyed the lot! So we had to crawl quietly in embarrassment to the Americans and ask if we could make copies of the American records and reinsert them into our own archives to show to the Germans as the record of the conference. There was one particularly teasing linguistic point about the question of currency devaluation that was in dispute, namely how the Treaty dealt with the term 'devaluation' in the various official languages that were used for the final text. We searched everywhere. I even asked the man who had been the secretary of the conference to come out of retirement to go through the papers with me in the Foreign Office. Then, some weeks later, he rang me in some excitement, just before the hearing was due to begin and said, "My wife's been on at me for ages to go through those crates of papers that are in the back of the garage. I found some papers which I think could be of interest to you. May I bring them in?" Amongst the papers he brought in was a very interesting document: it was the glossary that the interpreters had put together amongst themselves of how the various technical financial terms were going to be translated, including some very significant stuff on this particular word. So in a great panic, just before the hearing was due, I decided that the only thing to do was to have a sworn notarised copy made and we would ask the court of arbitration to introduce this as evidence. But I had to get off to Bonn, so the document was sent out not in the regular bag, but by safe hand of the BA pilot, on a flight that was arriving on the Saturday morning. So I went out to the airport in my own car to pick up the document. I couldn't find the pilot. I did eventually track him down in the restroom. He said that he had flown that aircraft but he didn't have any envelope for me. But he said that he did bring with him a diplomatic bag, and he showed me the waybill and it was pretty obvious that somebody must have put my envelope in the bag. But when I saw the waybill, it was crossed. So he'd been carrying this bag, which obviously had classified items in it, not via the usual courier arrangements at all. I remember ringing up the duty Security Officer and asking what on earth I should do. He told me to do everything to get hold of the bag. I said I couldn't drive back to Bonn on my own with a classified bag on the seat beside me, but he told me I had better do so, because

the risk of having the bag sitting around was greater and they couldn't guarantee to get somebody out to me. And then we had another comic opera scene. I was able to work my way back through the system in the cargo part of the airport with the help of some nice, friendly officials.

Eventually, through the final door, there up against the wall was a massive steel rack, chock full of diplomatic bags. "Which one is yours?" said the person in charge. I managed to resist all temptation and pointed out the British one. There was hell to pay afterwards, because the bag contained loads of highly classified material, most of which was not Foreign Office material. But I got my document. Which the court did admit but, once again sad to say, it paid no regard to my particular gem of linguistic information when it came to the decision! Never mind. These are the curious incidents of international litigation.

So, back to maritime things. After the French, we were also in negotiation with the Irish and with the Danes (specifically in respect of the Faroes). The Irish were next on our list. The negotiation was extremely difficult, for the usual sorts of reasons. The Irish were resource poor so far as fuel was concerned, other than peat. They were desperate not to sacrifice any possibility of natural gas in the Western approaches. As far as the Danes were concerned, it was the Faroes, not mainland Denmark, and the Faroes had then, as it has now, a very considerable degree of autonomy and the Faroes were very, very obdurate people, difficult to deal with. So those negotiations simply rolled on during the time that I was there and didn't reach any final conclusion until years and years further down the line. But they were important negotiations and with close friends.

Negotiations with not so close friends were mostly in the disarmament field. There was a huge amount going on in disarmament at that time. As I recall, I must have been advising ACDD, the Arms Control and Disarmament Department. There were big negotiations on chemical and biological weapons which were split into two tracks: one led to an important Chemical Weapons Convention they're still talking about today in the context of Syria and there was a Biological Weapons Convention too. Very, very intricate negotiations taking place in Geneva under what must have been the auspices of the UN Disarmament Conference which met in Geneva. I had to go back and forth to that a lot. And then there was a period of heavy activity in the nuclear field which led eventually to the Treaty on Intermediate Nuclear Forces.

SR: 1977 – the Pershing missiles?

FB: That's it. The INF Treaty was a bilateral US/Soviet agreement, negotiated bilaterally. But I have a hazy recollection, though not in detail, of discussions within the Western Alliance on the stationing in Europe of a new generation of Pershing missiles, and later over including as an

element in the US offer allowing Soviet inspection of a certain number of bases in Europe, including here in the UK. It was such an explosive issue in Germany in particular. There again, this disarmament negotiation was the stuff of daily life. And all of these treaties were eventually concluded. A demanding mix of technical matters and of verification which was the absolute crux. This was a stage at which the IAEA was also further revising its normal safeguards régime, which it's done from time to time over the years, the latest being the régime it's currently applying in Iran.

Other things ... it's amazing how much was going on. In the scientific and technical field, there were negotiations still taking place over the Deep Seabed. What eventually became the Law of The Sea Treaty (UNCLOS) was under negotiation throughout the 1970s. I was not directly involved in that. There were other colleagues in the Foreign Office doing superb work on that Treaty. It's striking how much of this aspect of the Foreign Office's work was of a technical nature. I had the pleasure of working with two desk officers armed with really strong scientific qualifications. I don't know whether the Foreign Office set out to recruit people with that background. One was Diana Holden, as she then was, Diana Ratzer now, who came to the Foreign Office with a PhD in physics and was put straight into the Science and Technology Department. We worked together from her first days. And the other was Jeffrey Ling who had a Physics degree and he was also a desk officer. Perhaps Jeffrey was disarmament at this stage when I dealt with him? But I remember those two in particular as being exceptionally well qualified.

SR: But as a lawyer, Frank, you had to get your head round not only the legal aspects but also understand all these complicated, technical things. That's quite an intellectual challenge.

FB: I was lucky in that I had a scientific background myself, almost by accident. I went to a school in Cape Town which, uniquely, had a very powerful maths and scientific curriculum. We did a six subject matriculation. Out of the six subjects, three of them were physics, chemistry and maths. And then I did a science degree at Cape Town University before I started my law. But I was also lucky to encounter, as I did in these FCO activities, scientists who had the gift of lucid explanation. They were really interesting days.

On the other hand, a lot of the things one was talking about in these big scientific experiments was the rather distasteful and mundane question of money. The thing about big science is that it is very, very expensive. But it's always like that.

SR: So then you'd had quite a time in the FCO?

FB: We came back from Germany in '75 and we went to New York in '82. That's more or less normal, yes, a perfectly normal gap in the rather out of the ordinary career pattern of a Legal Adviser. New York was a plum posting. But what was happening at the time when I was due to go was, of course, the Falklands. My highly esteemed predecessor, David Anderson, who was the Legal Counsellor in UKMis New York, was critical in Tony Parsons's UN *équipe* for all of those Security Council issues. So Christine and I found ourselves sitting with our suitcases packed, as it were, waiting. There was no question of asking UKMis to lose their Legal Adviser and get a new person while things were actually in the throes of fighting. And that meant we didn't know when we were going. The moment the armistice was declared, the Andersons were out and the Bermans were in!

The Falklands continued to cast a bit of a shadow over things at the UN, though it was sunlight as well as shadow, because one of the effects of the way the Falklands had forced people into camps and into positions was the very strong solidarity that we'd had from our Commonwealth partners, particularly the island states who felt they were vulnerable. Not just the island states, though, but also the Europeans (or most of them!) who had spent all that time hammering out the Helsinki Final Act, one of the cardinal principles of which was that territory was not to be acquired by force. So there was a lot of strength of support. Those things carried over for a period of time before we got back into the usual UN anti-colonial slant. But I can remember, for example, there was a UN committee called the Committee of 24 which was the committee set up under a famous resolution on the independence of colonial countries and peoples to which one reported from year to year. We would also always invite a Falkland Islands councillor to join the British delegation for that, which was always the subject of vociferous Argentine protest. We always did some kind of deal under which the Committee agreed to admit the Falklander under some auspices. But I remember these people coming. And anti-colonialism was still solid, basic fare for the UN.

The UN was a very funny place in the 80s. Ideological warfare was the defining characteristic and almost anything we had to do with any UN committee was riven along Cold War lines, with very often the Russians and their Warsaw Pact allies taking particular positions just for ideological reasons. We would take the opposite position, usually with a bit more common sense behind us, to oppose them because we had to. They were always trying out new doctrines which they were seeking to get incorporated into UN resolutions: peaceful coexistence, good neighbourliness, all sorts of things. But at a time at which some of the outer parts of the Warsaw Pact were wriggling

to acquire a little negotiating freedom for themselves – Yugoslavia certainly, but then Yugoslavia had been a founder member of the Non-Aligned Movement, Romania too, in a strange sort of way - and they were always promoting initiatives for a UN Declaration on this or that. There was a proposed Declaration on good neighbourliness, there was a Declaration on the peaceful settlement of disputes, which were decent pieces of paper, once one had hacked one's way through all the jungle of things that everybody had wanted to hang onto them and implant into them. But they meant nothing, really, in the hard outside world. But then one had to struggle hard to gain sufficient support from this massively increasing Non-Aligned group in order to get your propositions accepted. What was happening at the time at the UN, though, was a move away from brute majority voting to a consensus mode of decision taking. It wasn't universal and there wasn't automatic agreement on what consensus actually meant. And a very good chairman of a UN committee would always find ways to manoeuvre the committee into not being able to disagree with the proposition that it had agreed on something. There were some exceptionally skilful people and others who used manipulation in order to try to achieve their ends. So it was fun. But there was a huge amount of skirmishing, not to very good purpose.

What else happened in New York during that time? Well, we had the famous US intervention in Grenada.

SR: Yes, an invasion of a British dependent territory!

FB: We got this into the Security Council very quickly indeed. But we had to be agile on our feet to make quite sure that the UN Secretariat accepted that the Governor General was the official voice of what was left of the polity of Grenada, not any other. That was quite interesting too. We had to bone up on our own constitution and then persuade the lawyers in the UN Secretariat to understand. But that was a little flash that died away. There were other things happening in the UN too. The US-Nicaragua thing was at its full, and that had gone to the International Court. The Americans had tried to get the Court at an early stage to decline jurisdiction, in which they'd failed, and then they rather stupidly walked out of the case, so they'd left the main argument on the merits of the case to their opponents, with the Court judges trying to hold the ring and infer the contrary argument, and all this against the very ideological background I've just referred to. Then the Americans got a judgment from the International Court which they didn't much like. It was embarrassing, because you never like to see your closest ally in those circumstances. But it had been – and continues to be – an article of faith for the United Kingdom that we believe in the judicial settlement of international disputes. We were, and remain, the only permanent member of the Security Council that had backed the International Court throughout its lifetime and accepted

the voluntary element of its jurisdiction. Had the issue of the non-compliance with the Nicaragua judgment come back seriously to the UN Security Council (as it could have under the Charter), it would have been a very awkward situation to cope with. It was one of the many things that just had to be managed, to the extent one could, behind the scenes.

The other thing that was happening at the time was the Iran-Iraq war.

SR: And Iraq's use of chemical weapons.

FB: Exactly. Exactly. The Security Council's ability to find a useful role to play. That was the time at which the Security Council was ... I wouldn't say inactive ... but it was publicly inactive. The Council met regularly for what are still called informal consultations behind closed doors, sometimes to get reports from the Secretary General, usually to try to see whether the Council had a role to play. I can remember John Thomson, who was then our Permanent Representative, with whom I worked very closely indeed - he was a lovely man to work for - trying to see whether we could get at least a private formal meeting of the Security Council, which was permitted under the rules, on its feet. Trying to work out even the logistics and the procedure for that was extraordinarily difficult. So it never came to much. But it was a constant background noise, as was of course - as always - Palestine and the Middle East. Those were the things that were eating away, always.

In the middle of that, I had the strange experience of becoming Chargé for a while, because we were no longer a giant mission in the way they had been previously. John Thomson was on leave. The Deputy was John Margetson, who must have been on mid-tour leave. The next person in line was David Gore-Booth, the Head of Chancery, who was on leave. So I found myself as the next 'senior' Counsellor as Chargé for a couple of weeks. Thank goodness it was during summertime! Not much was happening, but I do remember going with Christine to a reception that Perez de Cuéllar, who was then UN Secretary General, was having at his residence, and our street cred going up enormously in the apartment block we lived in, because the Rolls-Royce turned up with the chauffeur to collect us. But it then went plummeting down again because the ancient Rolls broke down! We were sitting there on one side of the front door, with a badge of shame, until we commandeered a taxi to take us there.

It was an extremely good mission, UKMis. Absolutely full of able people. I mentioned David Gore-Booth, who came as Head of Chancery during the time I was there. John Boyd was there, carrying the economic portfolio. William Ehrman, Roderic Lyne, Charles Humfrey among the First Secretaries. I can remember how the First Secretaries, including those handling some of the

committees that didn't attract so much attention, like the Third Committee dealing with social affairs, had a lot resting on them individually and how well they acquitted themselves. I have absolutely no hesitation in saying that, at that period of time, the Brits carried more influence through sheer ability than any other mission of comparable size. I won't say than 'any other mission', but of comparable size. There were some very small missions which could be extremely effective. They had one person or maybe two people, but if the one person was well respected and could become spokesman for a little group, it could become powerful. And it was powerful.

The other thing which was a feature of the time, of course, was the European Communities (as they then were). Community consultation was creaking into effect in all sorts of areas. I think it was regarded by most of us in New York as a nuisance. Certainly our non-European partners amongst the permanent members thought it a real nuisance. We had to do the usual sort of thing: be nice, faithful Community partners, while ensuring that the process of Community partnership didn't stand in the way of getting things done in the way that they had to be done. But of course the P5 weren't interested in including other, privileged interlocutors into this closed group. The whole P5 process was also getting going in a more serious way. When was the Reagan-Gorbachev meeting?

SR: The fireside summit? 1985?

FB: I think it was probably slightly after that time. That gave the P5 its real impetus. Interesting. One of the things about the Legal Counsellor position was that you were always accredited as a full delegate to the Security Council and to the General Assembly, so you could sit in the official seat and do things. I remember, to my huge embarrassment, during General Assembly time, being sent off to take the seat when voting was taking place in the Plenary on the disarmament resolutions that had come up from the First Committee to the General Assembly. I say 'the resolutions', because, in typical UN fashion, there'd be something like eighty or ninety resolutions coming out of this Committee to be voted on. I was there because I was a full delegate and therefore I could cast the UK vote. I had with me whoever the disarmament person was. There was a huge number of resolutions, often with separate votes on separate sections or paragraphs. And because it was disarmament, we very often had a special position on some paragraph, either on our own, or with an ally, with a number of sub-votes under the votes. So our instructions were like a roll of parchment! At one point we got out of sync. I remember turning to him and saying, "We can't surely be voting this way on this resolution?" He replied, "No. You're right. We've got out of sync." So we managed to get ourselves back in sync and then afterwards we had to go and try and correct our vote. Quite rightly, it couldn't be done, but what the Secretariat did was

include a footnote saying that they had been informed that the vote was cast in error and should have been as follows. Yes, that was interesting!

Other things going on in the UN at the time? My UN committee was the 6th Committee, the Legal Committee. The 6th Committee, thank goodness, was different from other committees and it illustrated the factor, which I often refer to, that lawyers can have a way of being able to talk to one another, which doesn't set politics aside but creates a medium in which you can discuss and often find ways to do things which then become politically accepted. So I think we did quite a lot amongst our legal group. We had very, very close relations with our Allied counterparts. I was lucky to have for most of my time as my French counterpart Jean-Claude Piris, who subsequently became, for many years, the Legal Adviser to the EU Council of Ministers in Brussels, and is still the authority often quoted by people, including in Parliament, on issues of interpretation of the European Treaties. So he was very able: French colleagues always were. Americans too. You'd find amongst the bunch of lawyers, amongst the countries who had lawyers permanently on their missions, there were a lot of able people with whom you could establish close contact. When it came to the General Assembly, of course, it was a massive great circus. It really was like a holiday resort which suddenly arrives in season: more visitors than locals. On the other hand, the General Assembly was an important element in the annual calendar, so big figures in international law would come to the UN. The President of the International Court would come and the Presidents of other big bodies. The chief Legal Advisers from capitals would come for a period during that time and members of the International Law Commission. So there was a lot of real discussion and exchange going on. Still, you that felt you were tinkering with the machine, but the machine wasn't actually going anywhere. It was a strange time and New York was a funny place to live in at the time. Nowadays, if I say to Christine that New York has got a reputation for being a safe and friendly environment, she gives me one of those looks! It wasn't that way then. It was a time when social policy had turned really Ayn Rand-ish: they had turned hopeless, helpless individuals out of mental institutions, there were people sleeping on the streets, there were all kinds of vagrants and the police force was a mess. It was not a nice town, despite all the fantastic things there are in New York which we enjoyed to the full. Still, Christine sang in a choir which was a wonderful thing, a very good choir and she used to go down to choir practice and come back at night without any great difficulty. We used public transport a lot.

We had one memorable event during our time in New York. It must have been the 40th anniversary of the UN. New York University (NYU), which was then building up strongly in the area of international law and relations, held a conference to mark the anniversary. There was a reception, a dinner and, the next day, a whole day conference on the UN at Forty. It must have

happened during General Assembly time which is always fatal because we worked flat out. Christine and I were invited to the reception and the dinner, but I simply couldn't get free of my desk. I can remember phoning her and asking her to get a taxi to come to the Mission and wait for me. We could then dash off when I was free and go down to Washington Square. We did, eventually, but of course on a Friday evening in New York ... finding a taxi ... ha ha ha! We shouldered our way into a taxi, behaving like New Yorkers, and got to NYU in that awkward period when the reception was in full swing but was going to finish quite soon, so it was too late to barge into the reception. But it was also too early for the dinner which was being held in the Common Room. So we stood around feeling awkward and then one of the staff at the University told us there was another couple already sitting at our table and suggested we go and join them. We sat down. It was a very distinguished looking older man and a striking woman. We introduced ourselves and began to talk and Christine whispered to me, "She really does look like Jackie Kennedy!" At which I whispered back, "Who do you think she is?" That was the point at which the reception finished and people came flooding into the room. Everybody who was at the number one table came rushing over, because they all knew that Jackie Kennedy was going to be there, only to find that the best places had already been hogged by those Brits. It was an interesting dinner, interesting conference. She came to the first meeting of the conference and, I must say, I found her in conversation round the dinner table extraordinarily intelligent and well informed about the UN. She was there as the companion of the man who was the Chairman of the Board of Regents or whatever the governing body of the University was called. A nice moment. So we all debated the future of the UN the next day, and they're still debating the future of the UN all those years on.

It was a thoroughly interesting three year posting. Not easy to live in New York with a family, though. The two boys stayed at home in boarding school: one was 6th form level and the other would be moving in that direction. The girls came with us and we were astonishingly lucky to find a wonderful girls' school on the Upper East Side in Manhattan. Schooling was critical, so far as we were concerned. We couldn't have contemplated putting them in boarding school – they were just rising ten. So we went through the marvellous rigmarole of applying to New York private girls' schools and getting very different results. And of course we were applying for three ... we needed places for triplets. One school simply turned its nose up at us. Another school graciously said they could stretch a point and take two of our daughters, but not the third. Thank you very much. But the third school was absolutely marvellous. The third school said yes, and although they needed to interview all applicants, the Deputy Head would be visiting London that summer, and would come round to us and meet the girls at our home. That's exactly what she did. The girls did the SAT exam they were required to do at the American School in St John's Wood.

The New York school - I'm happy to salute it by name, Nightingale Bamford - was a really wonderful school, run on quite old-fashioned, rather English principles, but with that pizzazz that you got from New York and imbued with the idea, which hadn't quite reached Britain yet, that girls were capable of anything. *Girls can do anything* was the unofficial motto of the school, and that's the way they did their schooling. So from the girls' point of view, it was a marvellous time. And we found, to our interest, when we got back after three years, that, although they were behind in one or two subject areas, they were ahead in others.

What made our life manageable, from the personal point of view, was that we were able to organise a shared rental of a country place in upper New York State. We knew the country place, because way back when I had been in New York as a committee adjunct to the General Assembly in 1970, the then Legal Counsellor rented somewhere on the estate. The intriguing thing about it was that it was owned by an English aristocrat. I never quite puzzled out the life path of Frank Margesson. His father had been a politician. I think he may even have been Secretary for War under Churchill and then he was given a peerage. The son went into the forces. But, at some stage, the family had been the beneficiary of one of those arrangements in which a wealthy American girl was sent off to England to find a suitably elevated English husband. The couple must have been totally incompatible. She was obviously a strong minded woman and she absolutely insisted that she should have a social life outside New York. The result is this very nice estate in upstate New York which was laid out for her by Olmsted of Central Park fame, with an oldish homestead and then lots of separate buildings around the grounds. It had been designed as a place for entertaining weekend parties, which meant that now there were lots of assorted places in the grounds to rent. We shared a rental of an upstairs flat, which was really staff quarters in the grounds. It was just a lovely, lovely place to be. Charles and Enid Humfrey were the other tenants and we had a weekend-on/weekend-off arrangement with them, sometimes in slight trepidation that as soon as you got there you'd get a phone call to say that the Security Council was on and you had to get back to New York. That never quite happened to us, though.

SR: How long did it take you to get there?

FB: It was probably a two-hour journey or two and a half hours, just long enough to be managed. That's what we did, it was absolutely marvellous. If necessary, in General Assembly time I would come home late, sleep for an hour and then set off so we could wake up there in the morning. It was a lifeline: without that, we would have found it quite hard to manage in such an urban environment. So, from the family point of view, it was fine. A combination of the school and the

place to escape. We had a lovely swimming hole, all of our own, on the estate. There were places to walk and lots of fresh air.

Before we leave New York, I'd like to talk a bit about conditions of service. The other thing I remember about that time – I hate to have to say it – is money. Money was a serious worry. In New York, we experienced a period of enormous currency fluctuation during those three years. At one stage, the exchange rate went in our favour and then it went wildly in the reverse direction. So, from the peak to the trough, the exchange rate halved during the three years we were in New York. And of course you got your allowances in sterling and your expenses were in dollars. It was a really tough time for everyone. There was a formula for exchange rate adjustments. But the formula was rigid and tough and I can remember that, by the time the Treasury eventually got around to accepting that the trigger had been pulled, at least a year had gone by and they flatly refused to backdate the adjustment of allowances. So things were quite tight. We did have an Inspection during the time that I was in New York and John Thomson asked me take charge of a committee which would prepare the case for the inspection, which I did. The wives in particular were terrific at assembling the real, hard information. Apart from the fact that the actual setting of the allowances was out of kilter with reality, the whole allowance structure was so complex. We did achieve some improvements as a result of the inspection. But it was the whole system was crazy. And the improvements that were achieved were improvements for the future only and didn't come into effect until the next allowances review. So there was a long period of time in which I thought people were pretty harshly treated, though they took it surprisingly uncomplainingly. But it was bad. If ever there was anything designed to be demoralising, demotivating that was it! One fought and one struggled, but you could see that there were budgetary problems everywhere. It was characteristic of the whole period of time because when we came back to London, again it was a period in which times were hard. I can remember a very substantial number of complaints about what had happened to the housing market then. People who hadn't got their foot on the housing ladder and thought they would buy when they came back from postings abroad found that house prices had increased enormously and felt very aggrieved, not surprisingly. What went on over the setting of public service pay during that period was also pretty dire. There were particular oddities about the pay of the legal cadre in the public service. I can't quite remember why they worked the way they did, but they had the effect that, although you got early promotion amongst the Foreign Office Legal Advisers, you were then on a very short pay ladder, the top of which you reached quite soon and there you sat. There was absolutely no mechanism whatsoever for taking account of that. I came across quite recently in my papers a gigantic blast I sent off to the PUS at some stage. It must have been during that period after which we got back from New York. I tried to describe in concrete detail the situation of people at my

level. I'd forgotten about it entirely in the intervening years, and I know that I'm prone to write fiercely. But this was particularly fierce, so we must have felt it very strongly indeed.

SR: Good for you!

Foreign Office, 1985 – 1999

FB: One of the things that happened in my own personal path after we got back from New York was that I came back onto the committee of the Diplomatic Service Association, the DSA. The DSA had always had, throughout the whole of its existence, the specific provision that there had to be a Legal Adviser on the committee. I had been on the committee before my posting. We had had some interesting times on the committee. I remember dealing with the CPRS Review. When did that happen?

SR: Early 1980s, was it? Tessa Blackstone ...

FB: Yes, I think it must have been, in other words before I went to New York. Well, Tessa Blackstone was outgunned because our committee was extraordinarily powerful. Charles Powell was a member of the committee then and I remember a little inner group of Charles, me and somebody else producing a riposte, or maybe it was an input to the review, but more likely a riposte to the final outcome. It ought to be somewhere ... it was wonderful, terrific.

When I came back, I think Hugh Cortazzi was the Chairman of the DSA at the time. The DSA had been in a habit of being wonderfully hierarchical, like everything else, making sure there was always a Deputy Under Secretary as Chairman and that sort of thing. That was beginning to fade away and we reached a period of time, after Hugh left, when there wasn't anybody obvious in the senior ranks: they were all too busy or not interested. So they elected me to the Chairmanship from within the ranks. I found being Chairman was a really fascinating and worthwhile thing to do too. But it leaves lots of memories of how people were suffering under the whip, during that period of time. There were loads and loads of financial remuneration issues; there were issues about the structure of the Service; lots of issues about the promotion process and personnel policy generally. The DSA was a wonderful organisation then, while it was still completely independent. Those were the days in which the DSA recruited from the administrative stream – the policy stream – and there were other unions that recruited from other streams, though all of that went later on. It also meant that in the DSA we had the most extraordinary membership figures: I think 90% of the eligible members of the Service were members of the union. The awkward moment

came when trade union legislation changed and the DSA found, like the character in Molière, that it had been speaking prose all along, i.e. it was undeniably a trade union but, in order to ensure that its voice could be heard, it needed to register as an *independent* trade union. Well, independence was as it were a no-brainer, but there were quite a lot of members who bridled at the very thought that what they were belonging to was a trade union! We had to manoeuvre that one. But that was achieved successfully and I remember organising the registration of the DSA as an independent trade union and then making an annual return to the relevant official.

The other worthwhile thing about being in the DSA was that you had the Trade Union Side, so you were dealing with the representatives of the other unions regularly in a way that helped remind me, as an essentially home-based person, of what the Service was as a whole. If you were abroad at a small post, you mixed together in a way that you don't do in London. It was a good reminder. It was also a good reminder of what was happening to social pressures within Britain during periods of time that you were abroad.

So it was an interesting period in my career but also quite a frustrating one. As I've said to you before, the career prospects weren't very clear once you had been promoted to Legal Counsellor: the thing you could look forward to was this posting in New York or there was an equivalent one, at the same rank, in Brussels. Those were two plum postings. Then the question was: what happens after you get back?

SR: Can I just check the dates, Frank? You left New York in 1985 but you were the FCO Deputy Legal Adviser in 1988. Did you come back as a Counsellor and were then promoted?

FB: Yes, that's right. I was promoted in 1988 on Henry Darwin's retirement. This period I'm talking about – the activity with the DSA - started before then and I'm trying to think what I was doing in London at the time.

There were interesting things going on at the time, again a lot to do with the general area of ... not so much disarmament, though there was disarmament then ... there were certainly UN things. I was advising the UN political department with the redoubtable Glynne Evans as its head, who worked particularly well with the Legal Advisers. But there were other things on the go as well in the area of the Red Cross and the laws of armed conflict. There was an endless process trying to move towards ratification of two Protocols updating the Red Cross Convention, which had been adopted in 1977 and which, to our embarrassment, we still hadn't ratified because we needed to sort out problems with our allies. While the European allies were solidly in favour of these

Protocols, the Americans had objections to them. So we then had a really demanding exercise, which we called 'interoperability', of trying to work out a detailed matrix of how we would apply the provisions in the Articles of this rather complicated Treaty, within an integrated NATO command, where some members of the command were parties to the Treaty but other members were not, but were applying similar principles. That was a really, really interesting process, working very closely indeed with the Americans and the Germans as I remember, culminating in a completion of the study and then being asked to present the result to the NATO Military Committee and the NATO Political Committee. The Military Committee was much more formidable than the Political Committee, because they all came in uniform and they expected you to have flipcharts and pointers and indicators! All we had was a document. But that was good. In the end, the interoperability problem sorted itself out, but it took a long time before HMG eventually ratified the Convention.

That's one thing I remember from that period of time, but there must have been a lot else going on. I do recollect that I was advising Middle East Department where there was a lot of activity, including of course the first strong suspicion of the use of chemical weapons by the regime of Saddam Hussein, which was not entirely easy to handle as there was no inspection regime to collect hard evidence.

SR: Well, there was the Middle East. Iraq, Kuwait, Operation Desert Storm ...

FB: Well, we ought to come on to that because that's the next critical moment. The Iraqis marched into Kuwait in the summer of 1990. It happened to be summer time and that's an important element in the story because the Legal Adviser was away on holiday. I was doing Middle East Department at the time, so I was the person who was thrown into the maelstrom of coping with all of this. And kept it when Arthur Watts, who was then the Legal Adviser, came back from leave. He told me he didn't want to make changes to the way things were being handled, but was there in support whenever needed. That was a really generous minded thing to do, typical of the man. We were in the Security Council immediately and stayed in the Security Council for a longish period of time. I can't remember how many resolutions there were over that intense period of time, but they were important and difficult to negotiate. Many of them included serious questions of law which meant all kinds of things: it meant, for one thing, constant contact with Ministers in the FCO which, curiously enough, had been an absent feature of my career. The amount of ministerial contact I had had until then was minimal, and in certain rather limited areas, occasionally consular and occasionally to do with the settlement of international claims. This was the first really intense one. William Waldegrave was the junior Minister most directly involved.

But it also required a lot of continuous contact with the Attorney General for the negotiation of these resolutions which had important legal points in them, against a tense political background – and we shouldn't forget that Margaret Thatcher was the Prime Minister and Charles [Powell] was her right-hand person at Number 10. It was a demanding time. The Attorney General was Patrick Mayhew, who was a real pleasure to deal with. I had to be a nuisance to him, a lot. Fortunately, he had an absolutely outstanding person as his chief official, Juliet Wheldon, who went on to even greater things and has sadly died since. Juliet and I knew one another and we worked closely, but one had to be able to consult the Attorney General at any time. I can remember waking him up in the middle of the night when he was away for the weekend with his wife, in order to get his view on a resolution. The impressive thing was that he was not just ungrumpy, but able to focus on the phrasing of the resolution on the spur of the moment, because we were operating up against the clock in New York with the five hour time difference.

It was an interesting period between the Foreign Office and Number 10. Margaret Thatcher was away herself when it all began. And that may be one of the clues to how we got things going in New York successfully. Charles, who could be a wayward person, must have decided that this was one thing the Foreign Office had gripped well: instead of turning her against when she came back from leave, he turned her towards us. So we were given the opportunity to carry our part of the lead, so long as the MoD retained their part of the lead. And she also rather took to Roger Tomkys. "That clever Mr Tomkys!" was a phrase that I heard used, which is true but it was interesting coming out of her lips. She would invite Roger and me to go across and brief her privately once or twice. She was a fascinating person. At one stage – it comes back more vividly now than it did at the time – I could tell, I had an instinct, that she was deliberately testing me. She wanted to see whether I would take advantage of the situation and try to sneak in a view which was different from the Attorney General's. I spotted the trap in time and managed to manoeuvre around it. As it happened, I did take a different view from him on one point that, in the end, wasn't that serious. But we manoeuvred around that. So that was okay.

We had a terrific mechanism for an officials' War Cabinet which met at two levels. We met in the FCO every morning, early. I mean early because we had a Whitehall wide meeting every morning which was also early. I guess we probably met in Whitehall at nine, which meant we would have been meeting in the Foreign Office at eight. It was very hard pounding indeed because we stayed late at night and there was a huge stream of incoming paper to read. So there was no sleep. But it was a very impressive bit of interdepartmental work. The good fortune, once again, was the really, really first-rate people around. I've already mentioned Roger Tomkys. But in the Foreign Office: Nigel Broomfield, Rob Young was the Middle East Under Secretary, John Goulden was doing the

military liaison side, Patrick Fairweather who I think was Rob's senior as the Deputy Under Secretary. Absolutely excellent people. Nick Bevan from the MoD who subsequently became Secretary to the Speaker, and the very able Margaret Aldred who ended her career as Secretary to the Chilcot Enquiry. There was a collection of really outstandingly able people. David Gore-Booth was there in the middle of it too: we benefited from the fact that we knew one another and had worked together in the past. Plus a lot of really good Arab experience. I'm thinking not of the political officers, but people like Julian Walker from the Research Analysts who knew the area intimately well. There was a lot we had to give. And the Foreign Office operation in New York at the Security Council was superb, really superb. It built up to that key moment ... the absolutely critical watershed decision was: do we go ahead in support of Kuwait as an exercise of collective self-defence, the defence of Kuwait with its allies, or do we seek authorisation from the UN through the Security Council in a way that had never been attempted before? That was the critical point. Margaret Thatcher was extremely sceptical – I wouldn't say she was hostile – she was sceptical. But she was ultimately convinced, I think, not so much by the fact that we would gain extra legitimacy if we got Security Council approval ... authorisation, but by the fact that we could bargain for ourselves a wider scope of action than if it were a purely circumscribed self-defence operation. So she agreed and we did.

Then there was this fascinating process of negotiating all these Security Council Resolutions, with David Hannay browbeating people in New York, demanding either new bits of drafting or approval for drafting from London. When it came to the famous Resolution authorising the use of force, we did most of the drafting in London and David saw it through in New York and convinced the Americans where they continued to be hesitant about the advantages, or at least the detailed terms. Our other allies, I think, were easily with us. But it was a pretty remarkable resolution, Resolution 670. It's unlike most other Security Council resolutions: it's about one and a half sides of paper, including the preamble. Concise and pregnant with meaning. After it passed (by a very substantial vote in the Security Council) there was all kinds of debate in legal circles. The academics weren't sure about it and there were other hesitations. But the arguments for what we did were so overwhelmingly strong, once properly developed. And we drew a lot of power from the way our governmental system was operating then. The combination of Foreign Office, good Foreign Secretary, Prime Minister's approval, the Attorney General, operating in close concert with all of those was a pretty powerful and effective operation in that period. Then we moved on to the actual hostilities. But there, once again, during the hostilities themselves, where we were in crisis mode continually, the Attorney General was important because we were continually seeking approval from him of particular targeting or methods of combat, drawing fully, of course, on all those interoperability discussions I mentioned, which related exactly to the question of how you

would deploy ... how you would comply with rules and principles of the laws of warfare which weren't purely recondite because this would resonate hugely in the political sphere. I think it was a pretty good operation, I really do. On the legal side, it certainly was. On the policy side, I think so too. On the military side, well they've been arguing for years whether it was right to stop at the pass or push on to Baghdad. It's a slightly artificial argument because they weren't two equally viable alternatives. And there were extremely good humanitarian reasons for stopping slaughter at the time that it was stopped.

I think that the Gulf War was critical for my career, because it meant that I was noticed by people, including Foreign Office Ministers. I suppose it also showed that I could take the pace, which was pretty unremitting. So when the time came, a little while later on in late 1990, early 1991, for a selection, a replacement to Arthur Watts, the choice fell on me and it was not at all what I had expected.

SR: Did you want to talk about the main building renewal?

FB: You need a lot of memory to recollect what the Foreign Office used to be like! Both the India Office side and the main Foreign Office building were grand and grubby. When I arrived, those funny little portable structures in the middle of the Durbar Court put up during the war were still there. Filthiness up above and that cracked filthy roof. And you saw this everywhere: rooms were partitioned off; there were funny bits and pieces; the main Locarno Room was chopped up with barriers into a whole series of little cubicles where some of the Legal Advisers sat; there were odd little staircases in the corners. So when the whole process of redoing the old buildings arrived, it was quite an event. It necessitated regular musical chairs and readjustment. I missed a lot of that, because it took place when we were in New York. But I know the Legal Advisers were shifted around on three occasions before we came back. I suppose we came back from around the time of the completion to a wonderfully revived building. The snag was that my predecessor wasn't allowed to move into the office traditionally occupied by the Legal Adviser, because some idiot junior Minister – a Parliamentary Under Secretary – had been taking a tour and had decreed that the room was too grand to be occupied by one person. So the way the system devised to deal with that was to agree with the Minister that it wouldn't be used by one person, it would be used by three people: we moved three secretaries into the grand room until the Minister had moved on somewhere else! And then slowly the secretaries moved somewhere else and the room was recouped. Sadly, it's no longer the Legal Adviser's room. The building was transformed in a way that, I think, made us all feel pleased and proud ... in fact it got an architectural award.

When were the cars moved out of the courtyard? I see they have crept back in again, but the cars being largely moved out of the courtyard was a good thing. And the cars moved out of Horseguards Parade, too. All of that transformed the area. It was nice to come back to. The Legal Advisers therefore ended up back in the India Office area that we had occupied over the years with a freshly revived Durbar Court and a beautifully restored India Office Council Chamber. And our own library, a room now used as a meeting room on the King Charles Street frontage which used to be the Legal Advisers' library. Alas, sadly no longer in existence. But it was good. It meant we sat in a concentrated area and could keep up that close personal working relationship.

SR: Good morning. This is Suzanne Ricketts recording Frank Berman on May 24 2018. Frank, last time we covered New York and you'd come back to the office where, slightly to your surprise, you were appointed Legal Adviser.

FB: Yes, I think I'm going to backtrack a bit because, at some stage during that earlier period, before I became Legal Adviser, I must have been given responsibility for advising, if not all the administration departments, at least the Personnel Departments as they were then called. I can't remember exactly when that is. It can't obviously have been during the time I was DSA Chairman because that would have set up an intolerable conflict of interest. But I certainly did act as their legal adviser, and that was a very valuable insight into the way the Office regarded its own and treated its own. Fascinating, interesting and important. I remember having the completely contradictory feeling that we both were too kind and not kind enough. Too kind in that we tended to cover over failure, to try to find some way of papering over a crack, without realising that if you did that you were going to make things worse in the future for individuals and those with whom they worked. And also not kind enough in the way that quite a lot of personnel administration was concerned. I think we spoke about allowances last time. That's an example, but it was Treasury led, not FCO led. But there were quite a lot of other questions of that kind. I remember that.

SR: Was this still when you were dealing as a departmental Legal Adviser?

FB: Yes and one recollection triggered by that is that during the period of time I was doing the Personnel Departments there was a reform – slightly too elaborate a term – of the Official Secrets Act, of Section 2, under the impetus I think of one or two notorious cases.

SR: Sarah Tisdall?

FB: That was one in the 1980s, yes. And there was somebody else in the MoD, Clive Ponting, who was prosecuted for saying things or leaking things about the sinking of the Belgrano. That was probably the major impetus. It was a really interesting exercise, because there was a strong

view on the part of the powers that be that they didn't want to introduce a public interest exception, for reasons that I thought were actually quite good. But they had to get away from the idea of there being an absolute offence, irrespective of intention or circumstances. Now that I think of it, what happened to Clive Ponting was that he was clearly guilty of an absolute offence, but the jury refused to convict. It was that that caused the tension that had to be dealt with. That was interesting because I had to fight an almighty battle: I must have been doing it because I was advising Personnel Policy Department or whatever it was called then. An almighty battle to try to get Whitehall, in that administrative guise, to understand that the Diplomatic Service was different and what one did in the Diplomatic Service was different. So we ended up discussing a régime for authorisation: you were not criminally liable if your disclosure had been 'authorised'. That's a lovely concept and obviously, from a logical point of view, it can't be gainsaid. But the battle I had to fight was to get people to understand that, within a DS context, 'authorisation' wasn't by formal written document subscribed by some senior official, it was what you had been told to do, or allowed to do. But, most of all, that in our circumstances you were self-authorising most of the time; you had to make the judgement for yourself. In order to do your job, you obviously had to be exchanging information with people, who were sometimes pretty hostile people, and it was information that you'd got through your job, and might even in a technical sense be classified. Without making the disclosure, you couldn't do your job. You couldn't, for example, lobby or persuade or you couldn't even enter into the kind of discussion that we often had to do in the hope that it was going to open up a bit of space for a serious talk. So we had huge fun with that. I couldn't get the Home Office to understand this at all. Eventually, I think Parliamentary Counsel drafting the Bill understood rather more than the Home Office people instructing him. I remember that too. Because when you have to engage in something of that sort, it makes you think hard within yourself about what your circumstances really are. Interesting period. Anyway, that's a little backtrack. I think we ought to go on to the period as Legal Adviser.

It was a really fascinating time. It was a long period. I was terribly fortunate - I had eight years to go, eight years and a bit, before retirement, so it was a good long run. I hope not too long. The saddish thing was then that I had then to give up being a departmental Legal Adviser - I was no longer doing that direct lawyer-to-client process. But in return I was able to see things in the round and get a better idea of the context, and have as well the daunting task of managing a stable of racehorses, in the shape of all my lawyers. We stayed small. I can't remember the numbers exactly, but I guess the whole cadre was about 24 or 25. I can also remember being told by my much admired predecessor, Arthur Watts, that one of the most difficult problems I was going to encounter wasn't the one I thought, but was actually how to allocate rooms to individuals. Then I discovered that in some respects he was quite right! I also remember being told by my senior associates in the Legal Advisers that, oh no, goodness, I couldn't make new recruits share a room

– these were lawyers who all had to have a room of their own. I said that can't be true. You get a lot, as I myself had got when I joined, out of sharing a room with somebody, knowing that it was for a limited - as it were, probationary ... not probationary but introductory - period of time. And then after that people could be moved into separate rooms. So there was a lot of sucking of teeth over that: I put people into shared rooms and the world survived, the skies didn't fall. But there was truth in the argument about rooms, because rooms and status are terribly closely bound together. And nowadays the Legal Advisers are all sitting in one great big joint office in what used to be the old Commonwealth Library, sitting under the anaconda in what used to be library bays. I wonder how people survive, but that's the way the FCO of today is organising its space.

That was one side. On the other hand, the chance to be involved in giving people opportunities was a really invigorating thing, particularly when you could see how they responded, as most of them did willingly, to the opportunities they were given. And also to be involved in recruitment, at a time at which there was quite a lot of change taking place in Whitehall generally about recruitment. They were making big changes to recruitment and management for the Home Civil Service lawyers. This introduced, for the first time, a separate management organisation for the home legal cadre which is a pretty big collection of lawyers, some of them in very routine and mundane jobs, but a lot of them in extremely important ones, corresponding to the kind of things that we were doing. So we tried to track, to some extent, what they were doing. The previous arrangements for recruitment to the Legal Adviser cadre were very gentlemanly and old school: you applied, had an interview and were appointed. We had to formalise that a bit more, but that was worth doing. One of the things I certainly remember doing was introducing a written exercise. I suppose what we did was to get the first candidate on the interview list to come in early, in advance of the interview, and address herself/himself to a written exercise. Maybe it wasn't exactly a written exercise but rather studying a problem which we could then talk about at interview. And the others would have been looking at the same problem while waiting for their turn at interview. Not a bad thing in itself, because I think it helped remove the anxiety peak that otherwise hits you if you are sitting in a waiting room for an interview.

SR: And it also avoids the problem of people doing a rehearsed spiel.

FB: Precisely. And I think it also gave us something directly comparable to deal with. I enjoyed the interviews. I can also remember making sure that we had somebody from the home lawyers, probably the head of the new management organisation, on the interview panels. I can certainly remember the person saying, "You have a short list and you have to choose one. I would have taken them all!" That was just a reflection of the quality we attracted then and, so far as I gather, have continued to attract over the years. It was also a time at which the idea of sideways movement – did we call it secondment to the home civil service, or interchange? – began to take

root. That was tricky too, because I didn't want to do it on an unrequited basis: we had such small resources. The oddity was that there was a certain appetite amongst my young people to try things out elsewhere, but we didn't get the contrary movement, so it ground to a halt, not because we didn't want to do it. It's not the same today – there's much more lateral movement.

Talking of inward secondment and the reluctance of good lawyers in the home civil service to apply to the Foreign Office, one of them told one of my junior colleagues, in hushed tones, "I'd love to apply, but I've been told that in order to be a Foreign Office Legal Adviser, you have to have published a book." Would that it were so, but it was a lovely little insight into our reputation outside!

What else was on the go in the recruitment field? There was a lot of discussion about the size of the cadre, and there I'm thinking more internal discussion between me and my senior colleagues, with two very different views, both of which were valid in their own way. I kept the brakes on numbers for two reasons. One was that I thought that if you increased your numbers, you'd be taking on tasks that in reality could be better done by shifting them onto the general government legal service, for example defending lawsuits. Lawsuits were not a big feature of the day, but they were arriving and I felt it would be a waste of our highly specialised person power if we tried to scabble around acting as a solicitor in a lawsuit when there were plenty of highly experienced litigators out there. That was one. The other thought that was strongly present in my mind was that when you go beyond a certain number, you lose that tight knit, close collegiality. So I thought that our numbers of roughly two dozen were just about the limit one could go to. My successors have taken a different view, again for perfectly good reasons and have made it work. So maybe I was right, maybe I was wrong.

SR: Was there any pressure to take women?

FB: That's the other fascinating thing. I was about to come exactly to that. There was no pressure. Selection was always on quality but the outside world was moving. So by the time I left in 1999, by sheer natural evolution there were exactly equal numbers of women and men in the legal cadre, without having undertaken any consciously remedial action. And what's more, in our posts abroad, we had exactly equal numbers of women and men. And that had all happened perfectly naturally, even though we'd lost some of our very talented women, one of whom wanted to take a secondment to what was then the CSCE, the organisation that sprang out of Helsinki. But it all evened itself out which was encouraging, and I think that it made the Legal Advisers a front runner in the Office. The reason why that happened is the same as you can see in the legal field generally that law had become a career path of choice amongst able young women, so the talent pool was continually expanding. I think the Government was seen as being a good employer.

That's a very important factor. As a result, of course, we had to cope with the dreaded maternity leave. Dreaded only because in a small cadre it's really quite difficult to manage. It was disruptive but that was coped with well enough. One colleague had taken an extended career break to accompany her husband abroad and then came back ... one could somehow manage, but there was constant juggling. The fact that our organisation was so inherently flexible made it easier to do so, but still we were carrying, at any given time, quite a burden of unfilled posts.

We were also coping with a world that had changed in another sense. Whereas in the old days of a small, exclusively Foreign Office legal cadre, you had as it were fully formed international lawyers wanting to exercise, ply their trade, in the Foreign Office. What we were getting now was fully formed lawyers, who were interested in international law and had studied it at university, but had to acquire their own schooling as they went along. But all of that worked extremely well.

One thing that entered abruptly into my early years as Legal Adviser was the Scott Inquiry, which was commissioned not long after I'd started and didn't finish, I think, till about four years later. Matters Iraqi inserting themselves into my official life once again! Handling it in the FCO was an unusual combination of high policy and a kind of personnel management. What I mean is that a lot of individuals came under the microscope for their official acts, Ministers as well. It was a settled principle that for this sort of inquiry, officials who needed legal advice and support over their personal position could have it at public expense, because it had to be outside legal advice otherwise there would have been an impossible conflict of interest. But nobody was going to write a blank cheque so there had to be a filter: was legal advice necessary, and at what cost? And the filter was me. It worked well enough, though a few colleagues were immoderately anxious, and it wasn't always easy to talk over with them whether they really were in any kind of jeopardy and needed legal advice. The twist was that the Government decided that the same facility was going to be open to Ministers, and former Ministers, and here if you think about it the filter was even more important; officials were anxious about their careers, politicians about their public reputation. But I had to be the filter for that too, if it was an FCO Minister or ex-Minister. You can imagine how much some of them enjoyed having to go to an official to justify their need, and put limits on its cost! Most of them were good about it and saw the logic. Geoffrey Howe for one. But one or two - no names - were damned if they were going to submit and went ahead on their own. I can remember on at least one occasion having to get across to a solicitors firm, while staying of course inside my professional code of conduct as a barrister, that if their client thought he could run up any bill he liked and HMG would pay, then perhaps some rethinking was required. On the whole it was quite an instructive insight, of a kind I might possibly have had if I'd ever been a Private Secretary.

There were lots of other issues that arose in connection with the Scott Inquiry, but that's the one that sticks in my mind.

There was another intriguing personnel aspect of the job which resided in the fact that the Foreign Secretary was responsible for making British nominations to the big international courts and tribunals, with the exception of the International Court of Justice which has a special statutory regime of its own. So if it was Strasbourg, which was then both the European Commission of Human Rights and the Court, or Luxembourg which by then had acquired, in addition to the ECJ, a second Court, the nominations were made by the Foreign Secretary, not by the Lord Chancellor or the Prime Minister or anybody else. That led to some quite interesting strains and pressures too. I can remember that at the time one of my predecessors, John Freeland, had been nominated to be the British judge on the Strasbourg Human Rights Court and he'd hesitated about taking the position. He'd been retired for some years but felt there might be some muttering about the system appointing one of its own. He was only too right, because there was some really mean-minded muttering among the NGOs, which on the facts was about as unjustified as you could possibly imagine. But I felt that, as a result, we had to do something about the selection and appointment process. In doing so, we were, in a way, ahead of our time. For appointments to domestic courts, it was still a very closed shop; it was the tap on the shoulder from the Lord Chancellor which got you appointed to any of our higher courts. Which is not to say they didn't have a real sifting process operating underneath that, but that was the external face of it. With the enthusiastic help of the senior echelon in what was then the Lord Chancellor's Department, we pioneered in the FCO a system of not quite advertising but nearly ... putting the word around, asking people to express an interest, approaching those who might have an interest and then having an interview process for the job. This was challenging because what you had to make absolutely certain you did was to rustle up a good candidate pool, otherwise the system would have fallen flat on its face. But we did it and we were certainly surprised that, where the Strasbourg Court was concerned, we were well ahead of what anybody else in the rest of Europe was doing at the time. But did that lead to a diminution of the difficulties? No it did not. There is a very curious process that operates in Strasbourg: it's the Parliamentary Assembly which makes the final choice. Each member state has to nominate three candidates and the convention had grown up, for obvious reasons, of every country putting a list of three: number one was the real choice and the other two were makeweights on the list. And, God bless us, it was the British members of the Parliamentary Assembly, who must have been stoked up by NGOs, who made difficulty about our choices. This led to quite a dust-up at one stage and a debate in Parliament. But the debate in Parliament, I'm glad to say, was an occasion for those who knew to pay tribute to the kind of selection process we were using. And all that was at a time when, as I say, things were pretty unreconstructed in Whitehall. But we in the FCO had for years been using in the overseas

territories – the colonies – a judicial selection board and a judicial service board process which we built into all the constitutions we gave to newly independent countries.

It was also a time at which one was responsible, within government, for the operation of these courts and tribunals. You had waves of massive criticism. You could never tell at any period whether it was going to be the Human Rights Court in Strasbourg that would have the ire of the tabloids, or the Court of Justice in Luxembourg. It was either the one or the other. They were periods of time at which the courts, for all of their virtues, did need to have internal reform. They had massive reform of a kind in Strasbourg, but reform of a kind which made the workload even more difficult to manage. And now it's becoming virtually impossible. The Luxembourg Court too. So one was juggling. I was having to scurry back and forth with some of my excellent colleagues, on one hand to tell the Court that they needed to sharpen up and on the other hand to reassure at least the British Judge on the Court that things were being said in Britain that shouldn't be taken all that seriously, although they were serious. Interesting.

What else do I remember? While we are talking about the legal field, the other fascinating thing that happened was the building up of semi-institutional contacts and collaboration with legal advisers of significance in the wider world. We had already had, for some years – not too many – a process of P5 consultation which covered the lawyers as well. That all grew out of the Shultz-Shevardnadze/Reagan-Gorbachev meetings in Wyoming which one could build up quite easily out of a Three Power base – obviously we'd always spoken to the Americans and the French – but then it turned into something which was Four Powers, because the Russians then had ideas, most of which we distrusted, but they were ideas. Then it slowly crept into something which was genuinely P5 with the Chinese as well. But the Chinese were inching, inching ... I was going to say millimetreing ... their way in. I should go back and say that obviously we kept these P5 contacts fairly quiet, because there'd been resentment in the outside world. The rule was obviously that we took it in turns to host the meetings. Then it came for the first time to the Chinese turn and we didn't quite know what would happen. They did something beautifully Chinese. They'd organised that there was going to be some gathering of an Asian-African legal group in Beijing to which they would invite some distinguished guests and observers, which they did. Then secretly, behind the meeting, we could have a meeting of the P5. It was absolutely intriguing. But one thing that sticks in my mind is this. Over a long period of time before I became Legal Adviser, my predecessor, Arthur Watts, and Sir Robert Jennings of Cambridge, who later became President of the International Court of Justice, had been working to produce the first substantive new edition of a classic textbook in international law. It came out very shortly after I became Legal Adviser. I thought it would be a nice thing to do to organise a gift programme, which we did. We had to twist the publisher's arm to give us a decent rate, but we acquired a lot

of copies and they were sent out to missions to be presented as gifts to the local foreign ministry. I thought the thing to do was to take a copy to Beijing and ask if I could meet with the lawyers in the Foreign Ministry and have a ceremonial handing over. Well that was very much to Chinese taste. They had the meeting and the ceremonial handing over and we had a little meeting in the Ministry. Then – I remember this most vividly – there was a reception for the Asian and African conference in the evening. One of the young people from the Ministry who was acting as secretary to the conference manoeuvred me into a dark corner and virtually flung her arms round me to say, “You don’t know what a gift you’ve given us with that book!” She went on to say, “Our shelves are full of international law books, but they’re all junk. They’re what the Russians foisted on us during all of those years. We have nothing real to go on and the Ministry won’t buy Western books. This is a priceless jewel.”

From then the P5 collaboration went on to become a regular feature. People know that it happens. It’s not a secret any more. At the same time, European legal cooperation was becoming a real thing. In a curious way, it was the Council of Europe ahead of the European Communities. The Council of Europe had a well-established Committee for Legal Cooperation, COJUR. My predecessor had found it rather boring; it had been boring but it had potential and the potential built up. There were a series of meetings of the kind at which you got to know your key opposite numbers quite well. And then there was the additional possibility of making something out of the European Community under Political Cooperation. There was now a legal *volet*, so one could meet one’s European partners, and that was an even closer form of contact. These were pretty good. They really were good, because we found that, although other Foreign Ministries organised themselves differently, there was always a figure who was the chief international law person, dealing with the same kind of things as you were. One established really close personal and collaborative bonds. And, at the same time as all of that was happening, the fairly newly arrived legal adviser, the General Counsel to the UN, was a fellow European, a Swede, Sweden having by then become a member of our European group. He had the idea, which was a good one, of getting going private meetings of all of the legal advisers who came trooping in at that key moment in the General Assembly session; it became a feature on the scene. They were nice because they were private meetings which, strangely enough, he managed to achieve, were entirely off the record. Not quite the Chatham House rule, but something similar to that. These meetings were appreciated mostly by the developing countries, many of whom had a tiny, tiny legal function in the Foreign Ministry or sometimes not even in the Foreign Ministry, but in the Attorney General’s Department, and no contact with the general outside world. That helped them to build up networks of influence. They were useful for us too, because it was a way to discover who was out there, who the interesting people were. It enabled us to have surprisingly frank discussions in a UN framework.

The other thing which I remember vividly from the time is something that had been not started by my predecessor, Arthur Watts, but seriously developed by him: a real opening up to the academic community in the United Kingdom. Contact with the teachers of international law had been around for quite a long time. I can remember much earlier on talking to my then superiors about the need to engage our own academic community, largely I think as a way of showing that we were open for discussion and we could provide information to people, at a time when we didn't have the Internet. It was astonishing to some of the young academics who had been publishing rather ignorantly critical articles. All they had to do was ask and they would be given. Some of them were astonished. But we'd done that in a way and we'd encouraged the publication in leading British journals of materials showing what British practice was in the field and also encouraging critical assessment of our practice. We did this both because it seemed to us right and because there was mutual benefit: we benefited a lot from having seriously informed but intelligent criticism of what we were doing and we hoped that the academics also benefited from their side. It was good. This was what Arthur Watts took on and made into something much more elaborated (I don't mean elaborate but elaborated) using the facilities we now had in the nicely refurbished building to have big meetings. We were slightly taken aback when we started looking around to discover how many people there were teaching international law in what was now an expanded group of British universities, many of whom we'd never heard of. We were also taken aback to realise – I won't say discover – that a very large proportion of them weren't British, of course. So that slightly, but only very slightly, coloured what we were doing. I think that what was being done by us was certainly way out ahead and different to what any home government department would have considered doing. And it was way out ahead, I think, of what most of our European partners were doing too. While many of them had rather pompous advisory councils in which they had the great men in the field being called in occasionally for formal discussion, they didn't have a general outreach in the way that we did. The only people who had outreach of a different kind were the Americans, of course. But then they were operating in a totally different environment, with massive personnel resources in the Legal Office in the State Department.

All of that was a thoroughly fascinating dimension to the work, different in an expanded way from what I had been doing beforehand. The most different thing, though, was sitting in the upper echelon in the Office and getting to know Ministers. I don't know how to put this, but I'm not sure what the attitude of my predecessors was towards Ministers. They must obviously have had regular contact, particularly with a Foreign Secretary like Geoffrey Howe with his legal background. But, after all, in those days, the FCO had a lot of Ministers. Two or three Ministers of State, given that ODA had a Minister in its own right. Any number of Parliamentary Under Secretaries in the Commons and the Lords. So one of the things I thought I damn well ought to do was make sure, when a new Minister arrived, that the Minister knew that there was a Legal

Adviser and that the Minister was told by me, directly, “Minister, if there’s a problem you want sorted out, your Private Office knows what to do. We’re there and I’m there, if you ever want to talk to me.” That was quite intriguing, in a way. It was a good thing, because we were seeing the beginnings of what was then a much broader parliamentary involvement in foreign policy and foreign affairs which would obviously not exclude the legal field. I’ve spoken about the two examples of Strasbourg and Luxembourg, but almost anything else one could think about: certainly in the big issues of war and peace, treaty making too, to some extent. So one had to be alert, and as you were of course having Ministers answer for you, Ministers needed to know that the system was producing the kind of legal advice that they wanted.

The other interesting thing was sitting in the upper echelon on the bodies that mattered. I used to enjoy the PUS’s morning meeting and didn’t find it a drag as some other people did.

SR: That was every day?

FB: Every day. You learned a huge amount about what was going on in the Office that you wouldn’t learn from the telegrams, or what you could only partially learn from telegrams. More important still was getting to know the people. It seemed to be elementary: diplomacy is all about getting to know people so you needed to have working relations with your senior colleagues in the Office. There was – of course! – a hierarchy involved. There was the table and then there was the row behind the table. Who sat where to do what, I can no longer remember. The point is, we were there. During my time I can’t remember how many PUSs there would have been. I think when I arrived Patrick Wright was giving way to David Gillmore for sadly all too short a time. Who succeeded David? John Coles.

SR: Who went off to No. 10.

FB: And after John it must have been John Kerr who was there when I retired. I like to think that, over that period of time, PUSs too knew that if they needed – so to speak, personal legal advice – not legal advice to them in their personal position, but legal advice to them personally, just as Ministers or their Private Secretary could come to me direct. Those were good and worthwhile days.

The most interesting, in a way, was the development of the Board system: a Board of Management and a Policy Advisory Board. I know the Board of Management still exists but I’ve no idea whether there is still a Policy Board or not. The Policy Board, with ‘Advisory’ firmly part of its name, was always slightly odd. What it did was to hear papers from the Planning Staff and talk about them. Slightly artificial. The other one was intriguing, the Board of Management. I’m quite sure that when it all began – that must have been around about the time that I became Legal

Adviser – it was thought of by the PUS as providing some sort of cover for dictatorial rule. Strange isn't it? But that's the way things were in those days. The administration proposed, the PUS decided and it was nice for the PUS to be able to say that there had been some discussion in a wider group. Well it matured from that. We didn't have outside Board members then.

The Board was an interesting place to be. Its tasks built, in a way, on what I had been doing: advising the Administration and the personnel departments, then Chairman of the DSA. It was really an invaluable insight into the way the office was trying to reorganise and redefine itself at a time of – who would have guessed it? – financial stringency, which has always been there. And at a time at which the whole standing and arrangements for the civil service generally were shifting. I thought it was rather a good Board and it did establish the principle that decisions had to be taken collectively. But it was more than having to take them collectively. As a Board member, you also had a responsibility for representing, for broadcasting the decision, explaining, justifying if need be. We had then the practice of the occasional away day. Those really were rather useful. Chevening had by then become the official residence and the Foreign Secretaries under whom I served were quite willing to make Chevening available. We had some really valuable days which were not only on management. I think some of those away days must have been on policy as well. What's less easy to trace is exactly what happened as a result: you can take policy decisions, you can lay down frameworks and then the world has a way of messing them up. It was a period of almost continual reviews, either of the DS itself or of the whole Civil Service: there was always an externally imposed review of one kind or another on the go during my entire period of eight years as Legal Adviser – we had review after review after review. The problem was you were never given enough time to enable the results of one review to settle in before you had the next one. And we were never given, never had, enough money and resources to make the reviews effective. But still, diplomats are there to be adaptable to changed circumstances, so we did pretty well. I enjoyed the activity on the Board. I think as time went on, I became like the court jester, the person who was licensed to say things that other people wouldn't say. I suppose it was partly a function of the fact that I was slightly aside from the mainstream and I'd been around for quite a long time. So there was a little end of the table which was the somewhat mocking dissenters. I wasn't alone: Emyr Jones Parry certainly took to that kind of role rather well. And there were others too: it certainly wasn't a collection of yes people. I was going to say yes men: it was mostly men, there were very few women round the table in those days. There were some formidable women: Pauline Neville Jones, Veronica Sutherland – a very formidable person in her own way, others too. That was the collective discussion.

My eight years as Legal Adviser also had some pretty big policy questions to deal with. We'd just come out of the Gulf War. We were into that continuing stalemate in Iraq – difficult and so

corrosive. One thing we did well in the aftermath of Iraq was that little operation to establish safe havens in the north of the country at a time when the retribution of the régime against dissenting voices and in particular against the Kurdish minority was getting going. People were fleeing to the mountains, trying to go across the mountains to Turkey and finding the Turks wouldn't let them in. The winter was descending. The safe havens idea was very largely John Major's. I don't think that's widely recognised, the idea of creating safe havens and making them work. We did make them work. It was the only example I can think of a humanitarian intervention that was principled and stuck to its principles. There was no killing, no damage. What we were doing was a rescue operation. We did it and, having done it, we handed over the guard function to the UN. When that was done everybody left. That was good. The trouble with the rest of the Iraq situation was a stalemate and we'd allowed ourselves at the end of the Gulf War to push through the Security Council a massive ... it was like a peace treaty resolution which demanded a huge amount of Iraq in circumstances in which one couldn't rely upon continued willingness to comply, and we didn't really have the means available to compel compliance. That led to all kinds of awkwardnesses like the situation of those no-fly zones, the increasing size of the no-fly zones, the retaliatory strikes and so on and so forth and led to the creeping introduction of this idea that there was a sort of implicit continuing authority from the Security Council to the Coalition to do whatever they found necessary to do or thought was necessary to do. Which then led to the great débâcle in 2003 when we tried to parlay that idea of continuing authority into further Security Council approval which simply didn't work. That's one thing I bitterly regret. I allowed that doctrine of the revival of authority to take hold in people's minds as if it was an established legal category.

But that leads me into something else I should have mentioned earlier. One of the important ministerial contacts was with the Attorney General, of course. I mentioned that at the time of the Gulf War and it continued to be so. I was always determined that there should be, so to speak, a direct relationship to the Attorney General. I would never go to him without the Office knowing or consulting. But I felt there ought to be a personal relationship and that, on the whole, worked pretty well too during those years. I was always a great believer – continue to be – of the unique advantage we get from having an Attorney General who is both ministerial and also an independent legal voice. We had to go to the Attorney General over and over again: all kinds of targeting decisions, including quite small ones, would have to get the personal blessing of the Attorney. So we had Iraq and then, of course, later on, towards the end, we had the explosion in Yugoslavia which was pretty traumatic for everyone. Again, the awkward experience of trying to take what had been done in the case of Iraq and apply that by analogy to the case of Bosnia in particular and Kosovo where it wasn't really easily applicable. So it was a whirligig time. We were trying to manoeuvre ourselves and manoeuvre the UN into a different approach and certainly there was: the Security Council came alive in a way which had never happened before. The

Security Council, inevitably, whether it said so itself or not, was developing legal categories or categories under which where the legal input was extremely important. So we had the intervention ultimately by NATO in Kosovo, but that happened just as I was leaving. It was the very last phase. It required constant, constant, constant recourse to the Attorney General and the Solicitor General for quite detailed discussion. It took them aback slightly. Subsequent Attorneys General have got used to the fact that this is part of their role and I've no idea whether it's applied in the same minute detail with the number of different conflicts we are currently involved in. But the striking feature was – which I would never have guessed – that the whole of that period of my Legal Advisership was dominated by the fact that we were engaged in active hostilities somewhere or another. It was certainly not the case previously. I would never have imagined that in earlier days. And that produced a focus on other things too: on the Red Cross, one very good example. The Red Cross was important to us because of the function they could perform. Important for us because, once we'd found ourselves in a position in which we were in hostilities, taking people prisoner, putting them into camps, the Red Cross was the investigating authority and we did rely upon their fair-mindedness, and quite rightly so. But we had to realise that that exposed us to criticism and criticism, as always, of people who were quite sensitive to being criticised at all. Something which has become much, much more extreme since then.

The Red Cross movement was undergoing a bit of a crisis then, because they'd had two successive international conferences of the Red Cross movement collapse on the Palestinian issue. They simply could not have afforded to have a third one collapse: it could have spelled the end of the movement entirely. So there was a Red Cross conference in Switzerland which absolutely had to be made to work. Quite a huge amount of effort, but it did work in the end. We had absolutely excellent relations with the British Red Cross Society. They had in the Chair at the time the wonderful Lady Limerick, a very adept person with so much charm she could exert that throughout the movement. But there were big internal tensions inside the movement between the International Red Cross, the national Societies and so forth. But I remember that international Red Cross conference, too, because it had to be stage-managed to a degree, to prevent it getting out of hand. We forced upon it the idea that there had to be rigorous procedural arrangements. There was going to be some kind of general debate at which Foreign Ministers were coming to make speeches but, to cut off the tirades before they began, there was a strict time limit on speakers. It was part of the function of the Chair to police the time limit. Well, it was a Swiss conference, so of course the Chair was the Swiss Foreign Minister and I can remember a group of us virtually strong-arming the Foreign Minister into cutting off the microphone of a Foreign Minister speaker in full flight, because he had exhausted his allocation ration of minutes, then exhausted the extra little ration on top of that. You can imagine the picture of a Swiss Foreign Minister being told he had to turn the power off on the microphone! He did eventually, and it went without incident in the

end. So that was important and what the Red Cross was then doing was trying to deal with areas of the law of armed conflict that hadn't been properly dealt with, or that were coming under new challenge, including in the area of weapons. There was a lot of further discussion about weaponry, including new kinds of weaponry like lasers. We had a look again at landmines ... all sorts of things of that kind were taking place.

But all of that was against another background in which the Red Cross got itself rather hysterically over-involved: the notion of creating tribunals and prosecuting people for war crimes and crimes against humanity, something which had never been done in any serious way since Nuremberg and Tokyo. That all arose heavily, of course, after the Yugoslav conflict. It was a really contentious topic, posing the classic tension between idealists and realists, in circumstances in which the public mood was very, very strong indeed ... the public mood was of course being encouraged and inflamed. But the problem was always if you're going to make a new move, how do you do it? How can you do it on a solid framework? Can you make sure you can follow through on what you're doing? So there was any amount of discussion about what would happen. In the case of Yugoslavia, the Council of Europe came down in favour of negotiating a new treaty which would set up a war crimes tribunal. The Americans, being both realistic and idealistic, said that wouldn't work because you wouldn't get your treaty. That was no doubt right. You wouldn't get it in any case in a short space of time. And the French who were, for once, extraordinarily pragmatically adept, helped push the idea of doing it by a Security Council resolution: this was a revolutionary thing to propose. But in the end that's what was done and created the War Crimes Tribunal in The Hague for the former Yugoslavia, and then subsequently, a few years down the road, the attempt to create a clone of that Tribunal for the aftermath of the ghastly events in Rwanda. Really, really difficult things to do. Difficult in every possible sense: difficult practically, difficult politically, difficult legally too. This led to a constant interchange on all sorts of levels: government to government, governmental to non-governmental, governmental to secretariats like the UN Secretariat.

It all culminated in, in a way, in the push towards the creation of an international criminal court. It was a massive undertaking. Discussion of the subject had been going on in the UN for years, for decades, for ages, and we had always said – we, the United Kingdom – when people were trying to create a code of international crimes, that there was no sense in having a code of crimes, unless you had a court or tribunal to try them. That wasn't intended to be cynical – it was a good reflection of the way things worked out in the world. But it began to look quite cynical, as if it were just an excuse not to do anything on anything because you couldn't have both things at once. And then the climate changed decisively as a result both of Rwanda and of Yugoslavia, and we did get into a process in which some of the legal bodies within the UN, notably the International Law

Commission, marked out a path by which you could create a criminal court. That led to unstoppable momentum towards doing, now by treaty on a permanent basis, what the Security Council had done, by resolution on a temporary basis, with the two War Crimes Tribunals. This was a mammoth undertaking, because the number of different components that get woven into the thick strand of creating an international criminal court with, not just the mechanisms and personnel of the court and its jurisdiction and the way it operated and its finances and its organisation, but also the substantive law it would apply and the creation of a system of international cooperation that you would need in order to make it work. Huge. So that led to – certainly within well organised government systems like our own – a terrifically dense network of internal, interdepartmental discussion, all of that feeding into a preparatory body within the UN framework. And then a Plenipotentiary Conference in Rome where I was, in effect, the leader of the delegation because, although we had a nominal ministerial presence, the Minister arrived to make a speech and then left again. Quite rightly too, because it was all technical. That was the conference in Rome in 1998, the worst international conference I've ever been to, perhaps the worst one one could ever hope to go to, because the task was so difficult, to the point of being virtually impossible. But it all took place under an atmosphere of semi-hysteria from outside public opinion. A massive NGO presence, absolutely massive: there was an NGO Coalition for the International Criminal Court which had hundreds of NGOs as part of it, all housed by the conference organisers in a sort of enormous bear pit of a room. The physical temperature was as high as all the rest of the temperatures. That was one of the intriguing things about that conference. I said that you had to be prepared to confront people. I was never greatly in favour of having NGO presences intruding into international conferences, but if they were there, you had to engage with them. My people said I was mad, as if I was going to get torn limb from limb. But I said we just had to do it, it wasn't going to be nice. Once a week, or whatever it was, we were going to go. We did; apart from showing willing, I'm not sure it ever did any good, but we did show willing and we needed to show that we were willing to talk to people. But also that in order to be willing to talk, the other side had to be willing to talk to us as well. That was one of the peculiarities of this conference. It took place in Rome. The Italians, with their massive gift for improvisation, put everything together at the last minute. Bless them, although they were nice people, they produced an aged figurehead to be President of the conference who really played no role at all. Nor did the Italians. They were the host government and you would have thought there was a huge amount of kudos to be gained. The only thing they were interested in was getting a result and having the name 'Rome' attached to the final outcome. No heavy lifting at all – we had to do that all ourselves in Rome, in the heat of the summer where the temperature was 95° most days. It was utterly ghastly. It led to the most bizarre result that I have ever encountered an international conference. We were pushing up to the wire and, although there had been some

agreement on minor issues as a result of intense discussion, the whole thing was not going to lead to a conclusion. Well, the obvious thing to have done would have been to suspend the conference, have a gap and come back in another year, something which has happened frequently with international conferences. The highly charged atmosphere of the moment made that impossible, though, so we had to push on. In the end, although this is not widely recognised in the outside world, the final text of the Statute was put together behind closed doors, overnight, by the delegation of the country which held the chairmanship of the Committee of the Whole: that was Canada, whose delegation leader was very able. They locked themselves behind closed doors and, on the final morning of the conference, the text was presented to this massive international conference on a take it or leave it basis. It was a huge challenge, particularly as there had been certain amendments and proposals formally tabled previously that would have to be addressed. So the first thing to do to clear that out of the way was that somebody had to be found brave enough to propose a motion that the Conference take no action on these amendments. As most of them were in the name of the USA, it was a brave thing to do. Then, in the end, the Treaty was adopted by a non-objection consensus and signed on the last day. But it is the most extraordinary way by which a big international treaty has ever been put together.

We tried mightily throughout the conference to find some sort of deal that would respected the idea behind having an international criminal court and reflect what had been the actual experience of the tribunals in The Hague and Arusha, and would at the same time meet the legitimate anxieties of the countries who put troops into peacekeeping or might have been involved in military intervention. Very difficult. We did try mightily, but failed in the end. It was very difficult even to try, because it involved a lot of behind-the-scenes closed door discussion. At the same time, we, the UK, were not blessed but cursed by the fact that we held the Presidency of the EU, so we had to convene Community coordination meetings at which we were simply not in a position to be fully frank with our partners. Some of them guessed what might be going on and had the sense to keep quiet; some of them feared what might be going on and made a nuisance. It was really an uncomfortable dual role to be performing. At the end of the day, it didn't get anywhere. The result of that was that the Americans never joined the International Criminal Court, in fact came quite strongly to oppose it. That meant there could never be a proper link established to the UN. The Americans not joining gave cover for others and, although Russia possibly would have been in a mood to join, in the way things were in Russia at that moment, US resistance was the ideal excuse. So Russia out, China out. Other significant Third World countries never coming in ... that meant this institution was born under an unfavourable constellation. It was really tough going and, I fear, an object lesson in how not to do international diplomacy. And, as I kept on saying to people until I was blue in the face, you only get a chance

to do this once: if you don't do it right once, you're never going to get another opportunity.
(Pause) It was tough going indeed.

I had an absolutely superb delegation, made up of good people. One of the things that I did – and this again may have been, if not a first, nearly a first – I asked if we could have somebody from outside, from the British Red Cross, as part of the delegation. I think it led to slightly more umming and ah-ing on the part of the British Red Cross than it did on our side, because they were anxious that their own independence should not be compromised. But we gave them ample guarantees. I did have somebody and he was really excellent. So I suppose that was another example of the way one could break some of the bounds.

But by golly, it was an awful negotiation! And the Court has struggled.

We had, incidentally, previously had a lot of experience with how difficult it was to some extent to elect, to choose, the members, judges, of an international criminal tribunal, but also what a really difficult job it was to get a prosecutor who satisfied all the requirements of independence, professional integrity, experience. We'd had experience with the war crimes tribunals where it had been very difficult going and then the same thing was going to happen again in spades with the International Criminal Court. The negotiation at the Conference was broken down into chunks under coordinators, so I was tasked by whichever Chairman it was with doing the negotiation on the qualifications, nomination, election, terms of service of the judges. That was tough because you had the whole gamut, from the far left side of the spectrum which wanted guarantees of gender equality and also precursors of issues about sexual identity to be foregrounded and on the other side were the ultra, ultra, ultra conservatives, not just in the Muslim world but there were also parts of the Christian world which wouldn't have dreamed of doing things of that sort. Trying to struggle through the middle with getting a decent régime for who were the people qualified to take on the really tough task of judges on this Court. We didn't have a bad outcome, I suppose, in the negotiation, but our successors have been plagued with trying to make that into a reality under the pressure of the inevitable fact that the only way to make the selection is by having an election, internationally, by secret ballot, with all of the problems that that inevitably brings. So that was tough. My last big negotiation.

What else can I tell you connected to my time as Legal Adviser?

SR: Will you say something about Lockerbie? That presented all sorts of interesting legal questions, didn't it?

FB: Yes. We were doing two things at once over Lockerbie. We had demanded, with American support, the surrender of the two suspects for trial in Scotland. We were absolutely set on that,

because the only alternative was that they would be tried in Libya which was obviously not satisfactory. And we persuaded the Security Council to pass a binding resolution supporting our demand. Then we were faced with a case brought against us in the International Court by Libya, against us and the Americans, separately and in parallel, for breach of the Montréal Convention through our insistence that the trial must take place under our jurisdiction, with a very powerful Libyan legal team. Libya's lead counsel was British and very good too. Having to defend that case, while trying to keep our policy alive and making sure that we could not allow a position to arise in which the International Court had acquired a power of supervision over what the Security Council had decided to do. Quite a tricky row to hoe. The nice aspect of that was the close working relations with the Americans, of course. I've mentioned the importance of the Attorney General, well this was a Scottish matter, so it was the Lord Advocate who did the case and the Solicitor General for Scotland, with their lawyers, plus international lawyers supplied by us. It really made a super, super legal team, extremely good. My admiration for the Scottish legal profession has always been high, but the civil service side of the Scottish legal outfit is pretty good too. So that was excellent and the case went well enough, with the result that we held off anything untoward happening in the short term in The Hague. Then by the time it came to the medium or long term, events had moved on.

The decisive change came in '97 with the election of the Labour administration, with Robin Cook as Foreign Secretary and his determination that we should find a way out of the impasse. The way out of the impasse was trial by Scotland, but not in Scotland. That led to an intriguing double-sided negotiation ... no, it was three-sided, three opposing forces. On the one hand, we had to persuade the Americans that that wasn't sacrificing a point of principle. I can remember certainly going to Washington with a team led by the Lord Advocate and talking to the US Attorney General, Janet Reno, in person. She was a pretty tough cookie! So we had to persuade the Americans. It wasn't so difficult to persuade the Scots that it could be done. But we had to find a friendly partner country which would have credibility, which would both agree to take on what could have been a reputational burden and agree also to allow a foreign trial to take place under the conditions that we had to insist upon, but in a way that was not going to compromise their own standards. The Dutch were absolutely marvellous: they really couldn't have been better. They had to put a special statute through the Dutch parliament which they did in the best possible way. But then we had to persuade the outside world, which meant the Security Council, at the core, but also the wider penumbra of people, that this was a valid way to do things. It was a complicated operation, but Robin Cook was solidly behind it: he was at his best. He was at his best partly because he didn't interfere. He didn't meddle but just told us what he wanted done. He said that if we found the way to do it, we would have his backing. We had the Lord Advocate: that was a good thing. He and the Lord Advocate had confidence in one another and we got it done. I

wouldn't say by any means that it was all my own personal doing. It was the hard negotiating that took place by colleagues in the Legal Adviser cadre, but we had absolutely solid support from on top. If there was any problem with No. 10, Robin Cook looked after that. There wasn't, in the end. And then we had to get hold of the suspects – they had to be produced before the court. We had to ask the UN who deputed their Legal Counsel, the person I've spoken about – the Swede, to go on a special flight to Tripoli and collect them. It was quite a brave thing to do because nobody really knew what was going to happen when he got there. I remember getting the call that they were safely on board. Was it in the middle of the night? I can't remember. And then, by the time the trial happened ... the trial is still mired in some controversy, because when you have a tragedy of that sort there are some people, who are directly affected, who will always have the feeling that there's a story somewhere that's never come out. And your heart bleeds for them, because they can never find closure. You can understand all too well, but you've got to push on being firm but sympathetic.

So, we had our Lockerbie trial: a first in the world and one can't see it being replicated! But, in a sense, it was because we'd had other sorts of – not Lockerbie-type but war crimes – operations in Sierra Leone, in Cambodia which have been national courts with international elements added to them. They've not always worked terribly well, but it shows you there's quite a lot you can do. It shows what with legal ingenuity and engineering you can do if there's a political wish to do it.

We were in the International Court again over Bosnia because the former Yugoslavia brought a case, parallel cases, against all of the NATO states who'd taken part in the bombing. That was another one that was dealt with by persuading the Court that there was no need to take any urgent decisions. By the time one had got to the point at which the case might mature, the former Republic of Yugoslavia had disappeared, translated into the new state of Serbia, so the case went away too, though that was well after my time.

So, when you come to think of it, we had quite a lot of work. And we had one other outing before the International Court too, because of a strange set of circumstances. The World Health Assembly, that's to say the plenary body of the World Health Organisation, under pressure from a strong ginger group of physicians against nuclear arms, requested an advisory opinion from the International Court on the lawfulness of the use of nuclear weapons because of their effect on health. Obviously, as can be said about foxhunting, these weapons have a ... what was the word that Terry Burns used about the effect of foxhunting on the welfare of foxes? Deleterious. And then when those who'd been behind the initiative realised that it might run into difficulties over whether it was within the competence of the World Health Organisation to request that kind of opinion, action moved to the UN, and the UN General Assembly then made a slightly different request for an opinion on the same subject. It was not what is called a contentious case, i.e.

between disputing parties, but an advisory procedure, which meant that all of the member states of the UN had the right to make written submissions or oral arguments. A very, very tense and difficult thing to do and hugely, hugely contentious. In the end it, it came out, I suppose, tolerably. The Court decided, quite rightly, that the World Health Assembly was not competent to request an opinion because, although the effects of warfare on health were undoubted and unarguable, that did not depend on whether the weapons were lawful or unlawful. The effects were the same either one way or the other. It was not a competent question for the World Health Organisation to request an opinion from the Court. Good for them. Then the Members of the Court found themselves seriously, seriously split on trying to cope with the impossible question of not just the use of nuclear weapons, but the threat or use of nuclear weapons – the duality *threat or use* coming from the wording of the UN Charter – because the threat brought the deterrence policy into play, even before you got to any question of use. So it was a terribly difficult one for the Court. In the end, they split right down the middle but in a way that didn't really make much difference to life thereafter.

So yes, when you come to think of it, there was quite a lot of time at the International Court. We had time in the UK courts too, because we had our own version of the Gina Miller case. In the aftermath of the Maastricht Treaty, we had the father of the current Rees-Mogg, financed by James Goldsmith (the father of Zac), bring an action to challenge the ratification of the Maastricht Treaty. That was a fun case to do, too. It didn't start off well on the other side but, at the end, it was extremely well argued by two of the very best available advocates at the Bar. We won hands down, but we had to do some fairly tricky manoeuvring on the issues of international law involved in order to get the court to understand the legal issues involved at a time at which, as you remember, in Parliament things were touch and go from one day to the next. This could have wrecked the whole thing completely. We got through that.

We had another outing in the courts over the Pergau Dam. This was a dam for the generation of hydro-electricity in Malaysia which was financed largely by overseas development monies, but under one of those deals in which the quid pro quo was that the British contractor would get the contract to build the dam. This was challenged by an environmental NGO. It wasn't actually a Foreign Office case, it was the ODA. But they didn't have their own lawyers ... I'm not even sure that they do to this day. It must have been the ODA because the Foreign Secretary was answering the case, so we had to go and defend the not very easily defensible. On that one we lost, quite comfortably. I then raised the roof about the fact that the ODA had no legal component of its own. I think Lynda Chalker may still have been the Minister and she understood perfectly well, but I'm not sure what the ODA did. I made it quite clear that we weren't going to find ourselves in the position in future in which things had been done without any legal advice, because there wasn't

any legal adviser to go to and then my Foreign Secretary found himself having to stand up in court and argue that. Well, in the end, it all went away. I suppose a similar case would now be against DFID in its own name.

I'm jumping from one thing to the other, but DFID calls to mind that one of the most tricky moments of the creation of the new Ministry after the Blair election in '97 was the creation of DFID, particularly the allocation of money. There was something seriously wrong in the relations between Robin Cook and Clare Short: I don't know exactly what it was, but it may have been something long-standing, it may quite possibly have been something rather gritty and incautious he'd said at the time that Blair was putting together the structure of government. But she was up in arms and she won the argument. The financial consequences of her having won the argument and then the pledge to keep to the share of GDP that would go into the aid budget has been disastrous for the FCO ever since. Hey ho ...

I think those were the only cases in court. Nowadays, the Foreign Office is in court all the time in one case or another. I don't envy my successors the task of having to deal with it.

So I think that's more or less it. I'll just round off by mentioning a little aftermath, as a postscript, I suppose, to what I've said about my involvement in personnel things, that I was asked some time after retirement to become the Chair of the Diplomatic Service Appeal Board, the body (since abolished) which then heard appeals against internal disciplinary decisions. The experience more or less reinforced what I said to you at an earlier stage: the Office tended to be, at the individual level, too nice sometimes and thereby laid up problems in store for itself later on. I subsequently resigned from the Board in disgust over something else, which was Jack Straw's insistence on looking outside the Office for a Legal Adviser to succeed my successor, which I vigorously pleaded with him not to do. He obstinately stuck to this, because at that stage he had adopted a policy that all senior jobs were going to be made open to outside competition. This was outside competition without restriction, not just Whitehall-wide. And lo and behold, what was the first senior job that should come up but the least suitable one for this, namely the Legal Adviser's job. But he stuck to it and I don't think the Foreign Office machine did its stuff properly, so I was sufficiently out of sorts with them that I announced that I wasn't going to be able to be objective enough as Chairman of the Appeals Board. So it was time for me to go and I left. But again, it was an illuminating experience on the Appeals Board.

So that was it. Looking back over those years, it was a marvellous career to have had.

SR: The words that come up most often, Frank, are words like *fun*, *interesting*, *lovely*, *wonderful*. You obviously had a very intellectually challenging but also very rewarding time.

FB: People used to say to me afterwards after I'd retired, "Do you miss the Foreign Office?" My answer would always have been that the work was fascinating and I would hate not to have had it, but what I miss is my colleagues.

SR: Yes, another leitmotif is your constant tribute to the excellence of your colleagues.

FB: Yes, Foreign Office colleagues across the board. They really were – and I'm sure are – a marvellous bunch. I suppose I could sit down and just about dredge together the names of a tiny handful whom I thought were not worth it, not worth raising the flag, but by golly it would be a tiny handful! Having the experience of what they went through as the competence of their careers and how they and their families dealt with it was an eye-opener to me.

It was an extraordinarily interesting time. I can't believe sometimes the happy accident that led me there and what it made possible at the time. I repeat what I'm sure I've said to you at the outset: the ready and willing way in which I was absorbed and made to feel part of it, from the beginning, the very, very beginning.

SR: Frank, that's an excellent note on which to stop. Thank you so very much.

Valedictory written by Sir Frank to Sir John Kerr on his departure from the FCO.

1. You and I discussed once or twice, before I left, the possibility of my writing a 'Valedictory Despatch'. Despite your encouragement, I decided against; I felt that it would be going just one step too far (even for me) to claim to exercise a privilege granted specially to Heads of Mission. So may I do this instead: reply to your generous & gratefully-received letter of 13 March in the approximate form of a minute from the far side of the River Styx? The hope or even expectation being that if I said anything that was worth saying you would make sure it was seen by whoever needed to.

2. Eight years in a senior position in the Office seemed like an eternity. By comparison 35 years in the Service seems merely a lifetime. The Service was good to me. It invariably took me for what I am - and who could ask for more than that? I suspect that at times it even saw things in me that I would not have seen myself.

3. Like Jeffrey Ling, I was the offspring of a family which would never in its remotest imaginings have seen the Foreign Office in its teacup. Nor were he and I the only two. I was a Colonial to boot, with only the lightest veneer of Oxford on top. My father was consumed with anxiety because he was sure that anti-Semitism (latent, I suppose he meant) would bar my advancement. I imagine that many a Black or Asian parent might have similar feelings today. I hope that they will be as wrong as he was; indeed, I know it.

4. I arrived just in time to join "the Foreign Office". The successive amalgamations which led to the FCO followed hard on my heels. That changed more things, more profoundly, than many today realise or remember. It was a change as great as that any recent joiner will go through, globalisation or no globalisation. I don't think we have fully worked through its consequences yet. But it was change brought on by a seismically changing world, and for once the organisational change was ahead of events.

5. "The Foreign Office" I joined was not just a place of coal fires and frock-coated messengers (as people are too fond of recalling). Nor was it just dingy, dark and dirty (though it certainly was that). It was also a place without

photocopy machines. And its work centred round a thing called a "file", an antique invention which contained in chronological order the incoming and outgoing correspondence, and alongside it on minute sheets the comments and recommendations of officials and ministers and the record of action taken. Every picture told a story; so an earlier Lord Justice Scott, investigating a mythical 'Arms to Mossadegh' scandal, would have had little trouble in following it, and no excuse at all for taking even half as long to do so. When you wrote a minute at my level, you did so in longhand, so you took trouble to get it right, and of course you kept it short. But then I had in my hands just before I left a 10 Downing Street file from the late 1940s: it shows Clement Attlee (who must have had a few things on his mind in that frantic post-War period) receiving a minute on a rather serious matter from a ministerial colleague, writing out that afternoon a draft reply in his own hand, sending it across the road to Ernie Bevin for observations, which he gets the next morning (again in longhand), and only then does it go for typing and signature in the afternoon. Not a Private Secretary in sight. Fifty years ago? It feels more like Jurassic Park. And if this dinosaur feels nostalgic for it, then it's time he died out.

6. Nostalgia is a bad emotion, when it comes to thinking about institutions or about government; bad because it has too much of sentiment in it, and too little of rational calculation; bad also because the sentiment on which it draws tends to be a sentiment of long memory which has no necessary connection with the felt experience of younger generations. But it is a *non-sequitur* to assume that no necessary connection means no connection at all, and it is certainly only mythology that tells you that when planning bold leaps into the future you dare not look back, at peril of turning into a pillar of salt or losing your Euridice.

7. Why do I say this? I say it because, Foresight-ed¹ with the best of them, I read the British Council's launch of "Through other Eyes"; not so much that I read it but that I noted what seemed to me its casual acceptance that, if an opinion poll suggested that tradition was seen by foreigners as our second greatest strength but also our greatest weakness, then it must be so. I have to say in all honesty that that has not been my experience. The foreigners I meet and met have listened to what I had to say as a representative of Britain (as they still do) with an extra portion of consideration and respect, because of something they see and value in Britain. It's quite hard to sum up exactly what that is. It seems to be a stability and continuity they rather envy, and as a result our views are thought to be imbued with a sort of innate balance and perspective. In a trade like ours, whose currency is impact and influence, that matters. I'm not concerned to debate the historical reasons why my foreigner sees what he sees in us, though obviously it

¹ "Foresight" was an internal report into how the FCO should look in 2010.

must hang together with the continuity of our democracy and the institutions which support it. My foreigner thinks we have a particular talent for bridging what has been to what ought to be, and I think he's right. Peoples from other countries have an enormous respect for our institutions, almost a mythical admiration, a phenomenon it can be difficult for us to come to terms with, particularly at a time when we are putting ourselves through a prolonged spasm of self-doubt in respect of those very same institutions. Sometimes I think that it's worse than self-doubt, it's actually self-contempt. That leaves the Diplomatic Service with a problem and a paradox. Obviously, we the British choose the institutions that are right for us, we remake ourselves in the way that fits our own inner picture of what we want Britain to become. But the foreigners to whom we in the Service have to represent Britain don't want or expect a Britain that has kicked over the traces, but one that remains recognisably itself, and helps supply elements in which they fear they may be wanting.

8. Did we invent the Heritage Industry for ourselves? I hope not; I hope it was something foisted on us by the tourist industry. So the modernisation challenge (if that's the right word for it) is to show we're not stuck in the past, but to do so without trying to reject the past, and while allowing to flourish to the full the qualities that have always been there: inventiveness, enterprise, idiosyncrasy, tolerance, humour, a good dose of fantasy, wanderlust, culture both high and popular, a sense of fairness, and probity in administration and public life. If we do need re-branding (hateful term) I quite like the Prime Minister's "to use the strengths of our history to build our future".

Modernisation and the Service

9. Difficult ground, this. Throughout my nearly 35 years in the Service, I hardly knew a moment when we weren't being reviewed, revised or revamped. Nor did I know a moment when the money to run the Service wasn't tight. Yet the word has always been: hang on a little while longer; if we play this one right, better times are just around the corner. But in the last eight years (my time on the Board of Management) we went through so many 'fundamental' reviews of one kind or another that I've given up the attempt to count. You will detect a tiny touch of cynicism. A good chunk of the time, I freely confess, I've been hard put to understand if not exactly what it was we were reviewing, then for what purpose we were doing it. As review succeeded review, so my ability receded to distinguish one from another. The last Government reformed the Civil Service; now the present one is doing it again. The last Government scorned and mistrusted the Civil Service; whereas the present Government, true to its political roots, has said in many welcome phrases that it believes in public service and the

values that underpin it. Yet in what essential respect are this Government's reforms different from those of its predecessor? They certainly don't start by looking to find out what was wrong with its predecessor's and reverse it; the two apparently stand on common ground, or start from the same set of premises. So what exactly is going on? My failure to grasp it may be because I am become old and slow; but if I wasn't able to grasp it and explain it, how was I to light the fires of enthusiasm in those to whom I was supposed to give a lead? I could do so without any difficulty if the message were: this is all about sharpening ourselves, our working methods and our efficiency, after which we (the Diplomatic Service "we") will be given the resources we need to run an effective foreign policy and its instruments. And what's more we'll have a decent assurance that it will continue to be so in the longer term. Perhaps that is the message; for the sake of my successor and the Service, I hope so.

10. But could I ask us (I mean you: the habit dies hard!) in the meanwhile to pause for a moment? Wherever I went on my travels I found people in our Missions actively producing change; they were not promoting change or promulgating it, they were just doing it. The driving force was the inner compulsion to do their own jobs, or their collective job, better. They don't need huge buckets of change dumped on them from Home. All they need is a sense of support locally (or where absolutely necessary from London) for what they are doing, together with one even less tangible thing: the feeling that what they are doing is making a difference to the organisation. That entails in turn, alongside good helpings of credit where credit is due, a system for cross-communication in our very dispersed organisation, so that a good idea in one place helps others somewhere else, or that the pitfalls in an apparently good idea don't have to be separately stumbled into all over the world.

11. That's why the Foresight project is so good: for the first time I can remember, a great surge of internal thinking has been generated from the working level about how lives and jobs can be improved, and it's been distilled into a product with forward vision, expressed in language that people can readily relate to their own circumstances.

12. But do beware of change just for change's sake. There's plenty of change fatigue out there, too. And cynicism. Things that can be improved should be, and things that are wrong shouldn't be let lie. But if anyone thinks that a big, dispersed organisation can be run on a diet of perpetual revolution, I beg to differ. I started out as a mathematician and was taught that logically there is no solution to an equation in which all the variables are independent. So, too, creativity and

efficiency both need a stable platform to stand on. And change which is centrally imposed, not locally generated, must be given time to bed down before the next lot arrives, otherwise the risk is disorientation not invigoration. That's the fatigue side. The cynicism comes in when change programmes are promulgated with a flourish of trumpets, and promise great things, but the flourish has hardly died away when a new set of trumpets sound, and somehow the great things never arrive.

13. So forgive me if I still put "Modernisation" inside big quotation marks. Some of the things coming out of the Home Civil Service these days bring back fond memories of times past when the Chancery in Peking would sneak out to Tiananmen Square to read and report back on the slogans put up in preparation for May Day: "Resolutely drive forward the Five Great Modernisations!"; "Denounce the Ten Old-Fashioned Enemies of Service Delivery!!". 'Modern' is a terrible trap, because it's fine until it stops being, and then you have nowhere left to go but 'post-Modern', and then what? Its big danger in our case is if our Cultural Revolution can only succeed by trampling on what has gone before. Do we really have to devalue what people have been doing until now by implicitly denouncing it as 'not-modern'? Full marks again to Foresight, not only for the way it has been generated but for its more careful choice of vocabulary. In using it as a springboard, will you please employ psychology as well as fervour?

The FCO, the Service & Britain

14. Yet, as Foresight tensed up for its launch, one began to detect the wavelets of anxiety. How would it be received? Not (NB) by the Service it spoke to, but by, well, by whom precisely: the Treasury? the rest of Whitehall? Parliament? They can't all be dyed-in-the-wool enemies, or else we'd be lost whatever we did. The Media? Ah! I spoke above about our institutions and the almost mythical respect they enjoy abroad. I ought to have qualified it. I often ask myself the question, when exactly was it that our newspapers switched from being a source of pride to a standing embarrassment in our dealings abroad? I mean not just that you mostly have to go abroad if you want the news written as if its job was to purvey facts, rather than as a vehicle for attitude; I mean also the shrieks of unholy glee with which problems are conjured up where they hardly exist, are magnified once created, and that the mark of journalistic virility (where a problem does exist) is apparently to make it as difficult as possible to solve. In my experience officials are full of instinctive sympathy for Ministers running the perpetual gauntlet between being actually mocked by the press and wondering when they're going to be. But 'the Office', too, has an institutional problem with the press - a problem that breeds the deep feeling that, until it's resolved, there will

be no solution to the existential questions of national standing, role and resources. So we (you, of course) comfort ourselves round the fireside by telling ourselves tales of how much we are admired abroad, which is true. But however fervently we re-tell the tale to successive inhabitants of Downing Street Nos. 10 and 11, we know in our inner hearts that the domestic conundrum will not sort itself out until we are admired a bit more thoroughly at home. And that means until we get a better domestic hearing, sc. from the press and from Parliament, I guess in that order.

15. To start in the same order, I have found myself over the years going from upset at what the press chooses to say about us, to resigned, to helpless. Were the stock cliché simply a matter of lazy journalism, resignation would no doubt triumph over helplessness, but we know from experience that the incessant drip produces a cumulative effect of its own: damaging in the longer term to the institution, it is hurtful and deeply unfair to individual members of the Service who find themselves singled out. We saw quite how hurtful and unfair during the Scott Inquiry and again over Sierra Leone. It sets up a tension and tensions will burst, whether it is the tension between the civil servant's ingrained discretion and reticence and the human need to defend yourself when attacked, or the tension between loyalty to your political masters and loyalty to yourself and your family. It asks a lot of people to grit their teeth and bear it in silence, and to carry on all the while giving loyal, selfless service, when the press have free reign to pillory. So I applaud it with every fibre of my Diplomatic Service being when Ministers stand forth in public and say the sort of things the Foreign Secretary said in the foreign affairs debate on the last Queen's Speech, even more so than when he repeated it in-house in his New Year message to the Service. For my money it can never be done too often, or too consistently across the Government as a whole, until the journalistic drip, drip, drip has been stopped up by a steady plug, plug, plug. It has to be a longer-term process, it can't be achieved by news management and absolutely not by leaking, from whatever quarter. I hope we've not done badly ourselves in assembling material for 'good news' stories about the Service in action. And there can be no doubting the good effect of the initiatives taken under present management to open the Office up to the public, and of the enthusiasm of our and of the public's response. The best proof was those astonishing figures for the recent recruitment round. In time the glaring contradiction between what people actually see and experience and the stale old stereotypes will have reality chasing out myth. And with luck the myth will never gain ground at all in the devolved territories, if we can capitalise on the excellent start we have made in showing ourselves to be open and positive in our role of representing the whole United Kingdom abroad.

16. I hope that the same will be true of Parliament as well. I suspect that the Parliamentary problem is already different from the media one and may be more tractable. I salute whoever it was who had the brainwave of roping in a Parliamentary Clerk to head PRD. FCO officials seldom have much in the way of regular experience of the Parliamentary process and the Parliamentary dimension, and too little experience has meant too little knowledge: far too little at a time when Parliament's process has itself been changing fast. It seems obvious that Parliament will not much longer be content with the onlooker's role to foreign affairs conducted under cloak of the Prerogative, and equally obvious that senior officials will find themselves spending far more time before Parliamentary Committees. If Parliament intends to take more notice of us, we must pay more attention to it. I see nothing the least bit harmful or damaging in that, on the contrary a real potential dividend in terms of public understanding of what we do and why. And if it takes a lot of our time, that will simply be something to be factored in to the way we staff and organise ourselves.

17. The 'we' in the last few paragraphs refers of course largely to officials (I'm desolate to see that my pronouns are slipping again!). By definition it has little if any application to Ministers. It can sometimes be disconcerting to see the carefree abandon with which Press & Parliament talk of 'the Foreign Office' without bothering to distinguish between Ministerial policy and official advice + implementation. Perhaps we should take it as a compliment to our cohesiveness. But, media looseness aside, the accepted understandings about Parliamentary accountability and Cabinet solidarity can only work if the burden continues to lie on Ministers to answer for their policies and the duty of officials remains to expound and explain their Ministers' policies and how they have been implemented, but not to justify them. And that in turn can only happen if Parliament abides by the conventions, which it has shown, shall we say?, a less than total commitment to doing since May 1997. Or at least Parliamentary Select Committees have. The accountability of Ministers to Parliament is not my business, except to the extent of the no doubt trite observation that a Committee, eager to get its teeth into policy but unable to get hold of the Minister is bound, is it not?, to try to go after senior officials instead. And that, if it happens, puts the official in an impossible position. What strikes me most about the situation - and I speak from quite a lot of hard practice at it over my last two years!- is just how uncertain the Parliamentary rules and conventions turn out to be. My impression from Whitehall contacts is that the uncertainty is felt every bit as keenly by others more seasoned in Parliamentary business than the FCO. And with the uncertainty comes a good deal of unease and anxiety. Surely that is not an acceptable state of

affairs? It seems to me a crying need, which can't be postponed much longer, to get a proper set of rules corresponding to current circumstances and demands, and rules which are agreed by both Executive and Parliament. Without it, every issue becomes a trial of strength. Nothing less than it is capable of offering official witnesses the individual protection they are entitled to.

The Office and the Service

18. This is about the way the DS administers itself. Note the way I put it: not 'the Administration & the Service', not 'the way the DS is administered', but the way the DS administers itself. One of the few shameful things I observed latterly was the truculent insistence by far too many colleagues on maintaining in their mental framework a 'Them and Us' demonology. Anyone who stops to think knows perfectly well that there ain't no 'them': them's us. It may once have been otherwise when the Treasury held the strings to the apron as well as to the purse, but it's not so any more. It defies logic but also experience to behave as if those of 'us' who move *pro tem.* into Administration jobs not only don't understand life abroad but make it their whole business not to do so. But it's worse than illogical, it's also immature and speaks of an unwillingness to accept that administration has to be about saying No as well as Yes, or sometimes neither the one nor the other, and that the process is a shared responsibility. I don't however deny or decry that members of the Service are only human and that humans are psychological beings. Assuming that we are not only psychological but also perfectible, I offer three prescriptions. The first is that if the Administration don't want to be treated as Them, they'd better take care not to behave like Them; there are ways to say No, and there are ways not to say No: a Service whose whole being is influence and persuasion should be chastened if it can't apply some of the same techniques to dealing with its own. The second is that, if we've managed by and large to shake off the bossy hands of the Treasury nanny, we shouldn't promptly reinvent her for ourselves; it's better that our decisions should be ours, and we should be quite open with ourselves that they are. The third is the Hornby principle (which I hope we haven't jettisoned or forgotten) that the aim should be to have rules which are clear, simple and flexible, and then adjust them sensibly in their application to particular cases. But then to apply the Hornby principle you have to have the [clear & simple] rules in the first place, and I am horrified to discover (through my own private secret sources) that the Code of Management process has not yet caught up with the Hornby package.

19. And now let me mount a hobby-horse before I leave this subject, by saying that nothing encapsulates what I have been saying more than the way the Office sets about the recovery of overpayments to staff. There's no avoiding the fact

that every (non-fraudulent) overpayment starts life as a management mistake; and even if you accept that mistakes are endemic (as I do, reluctantly, though I still think there are far too many of them), it remains the case that the way the system responds to the consequences of its own mistakes - some of which can be very severe for the individual - tells you a lot about what kind of system it is. I don't buy the excuse that the existence of 'Treasury rules' absolves Departments from the need to take decisions - both general and particular - about who should be asked to bear the consequences of its mistakes, and how. And once again, as with saying no, there are ways to do it and ways not to do it. I seem to recall that I struck a bargain with the Administration in the aftermath of one of the worst ever cases last year (whose combination of circumstances would have given the Press a field day) that there would be a thorough review of policy and practice over recoveries. I do hope the bargain is being kept.

The Office and the Unions

20. This is a subject on which I've kept quite quiet over recent years, for obvious reasons, though one about which I have strong feelings. My long admiration for the DSA stems from two of its cardinal features: its very high representativity and the fact that its constitution makes into its first objective the welfare of the Service as a whole (i.e. not only its own members) - plus, I suspect, my inner approval of its tradition of non-professionalised self-help. Years ago I nurtured as a secret wish the aim of one single Union for the whole Service - but that was at a time when the other Unions were not behaving in the best interests of their members and were, moreover, dominated by Headquarters staff who had little concern for the Diplomatic Service as such. So I watched with more than interest the moves towards opening up the DSA's membership criteria. I ought to have been more enthusiastic than I was, and probably would have been had I felt that those promoting the change had more grasp of what one Union for the whole Service was likely to entail. Now that the change has happened, and mercifully without any of the hostile outside reactions that would in the past have been a racing certainty, one can only wish it 100% success. The Office needs its Union(s) as a valid partner for negotiation and agreement, however much current circumstances have broadened out the patterns of consultation within the Service.

The Board of Management

21. So I move from the sublime to the ridiculous. I was not much conscious of the Board before I joined it, and the time since then was the time in which the Board grew up. The prevailing orthodoxy then was the astonishing one that all top management decisions (or at least those with serious financial consequences) were for the PUS alone, and the Board was there to be some sort of friendly

council of advisors. Analogous, if you like, to the Policy Advisory Board and Ministers. Since then, not only has the Board's composition been anxiously head-scratched and its functions developed along with the development of the present organisation of the Office itself and of present-day systems of Whitehall finance, but it has turned into a genuinely collective top management for the Office and the Service. So natural a development, you would have thought, that it would have been instinctively understood and widely welcomed. Understood by any of our colleagues who had any knowledge of the normal patterns of governance of either commercial companies or non-commercial bodies, and widely welcomed by those among them (*v. sup.*) who nurture inordinate suspicions and would like the reassurance that the plans and schemes of the Administration have to survive hard testing in the collective crucible of the Board. But, like my view of the newspapers, my response to the attitude of colleagues towards the Board has gone through a gamut from puzzlement to irritation and on to weary resignation. Any member of the Service (certainly in the responsible grades) who says he doesn't know what the Board does/is there for should be found guilty at once on the basis of his voluntary confession. And as for those who affect to believe that the Board is some vile and faceless conspiracy to do them down, Ah well! I'm sure you and your fellows will keep plugging away with saintly patience. For my part, I conclude that people seem to have need (psychology again) of a devil to cast out with imprecations. And if the Great Bad Board serves as the lightning conductor for their (real) frustrations, then it's not a wholly ignoble role, and one that shoulders with epaulettes on ought to be broad enough to bear.

The Rule of Law

22. You must have been wondering whether I was going to say anything about law. I will, and it will be very simple: that the notion of the Rule of Law has been one of Western liberal civilization's greatest gifts to the world, and that Britain's national role in the achievement has been greater than that of any other state. I won't even bother to demonstrate that, without the prior concept of the rule of law, there would have been no footing for a culture of freedom and human rights; the only alternative footing would have been religion, and as we have seen religion, globally, has made a poor job of it. Nor will I bother to expatiate on what I understand by the Rule of Law, except to say that it necessarily comprises two ideas: that all public power needs legal authority, and that there must be effective processes for testing whether legal authority exists or not. I used to get amusement out of the indignation with which policy colleagues would quite regularly treat the reminder that the actions they were recommending not only were subject to legal review but ought to be!

Foreign Policy and the Rule of Law

23. Two comments follow at the high policy level (if I'm not getting above my station). The first is that it is simply not possible to make upholding the rule of law a cardinal article of faith in your domestic policy without doing the same in your foreign policy, and the more policy values become globalised, the more obvious the connection becomes (cf. the Foreign Secretary's Chatham House speech). The second is more subjective and more reflective, and like the first is not directed at any particular one amongst the many Governments I have served. It used always to intrigue me over the years how Ministers would regularly consider doing things abroad of a kind which they would never contemplate authorising at home unless they were absolutely sure they had cast-iron legal cover. The rule of law principle, and its concomitant the legal cover principle, were the ones around which I ordered my official legal adviser life. I would have been flabbergasted in my earlier years to have been told that my years as Legal Adviser would be dominated by the problems of the use of military force for foreign policy objectives, which do rather tend to put these principles 'into sharp focus. I need say no more on that subject as my views and advice are all too fully recorded on your files. I will say only that a world post-Pinochet and with a fully functioning International Criminal Court will be (or is it 'would be'?) an interesting place, with all the potentiality for being different in radical ways. But all of that is inherent in the Foreign Secretary's speech.

The Foreign Office and the Law

24. Since I have already said my say on foreign policy & law, I mean by this heading, of course, the Foreign Office and its lawyers. They truly are a fine bunch, as good now as they have ever been (though I hope rather more human and less Olympian). It would be churlish of me to say - to you in particular - that I hope the Office knows just how good. It is a wonderful job, combining analytical challenge, creativity, variety, principle and purpose; one couldn't think of a better for one's (first) career. I leave with the particularly satisfying feeling that, on my departure and replacement, numbers in the legal cadre reach exact parity as between women and men, both at home and at home+abroad. That's a good sign that the market sees it as a worthwhile career path, and one which points forward into the future. I have every hope, based on experience, that you will carry on being able to recruit the best of Britain's young people to it. But please don't take that, or them, for granted. My successor will keep you, and the Heads of Personnel and Finance, more firmly to the mark than I did over numbers and tasks. I offer you only the friendly warning that, if you still want the best, you are soon going to have to start paying more for them; from my vantage point of the moment, amongst the Bar pupils, I see that more clearly than ever.

Envoi

25. As this is not a Valedictory Despatch, I am spared the awkwardness of having to disburse thanks but knowing as I do it that I am bound to sound stilted and mawkish. My gratitudes are keenly felt, but the one to whom I owe the most knows how much she has meant, as I hope do you, Sir, for what I owe to you and countless colleagues, not so much for their friendship etc. but for their ready gift of that collegiality which is the precious lifeblood of our Service.

26. So may I sign off finally & definitively with one last futile gesture - against the side-copy culture at whose hands I have impatiently suffered - by saying that I am sending no copies of this letter to anyone (but see para. 1 above)?

(Frank Berman)

Sir JO Kerr KCMG
Permanent Under-Secretary of State
Foreign & Commonwealth Office