



House of Commons
Foreign Affairs Committee

2017 elections to the International Court of Justice

Fourth Report of Session 2017–19



House of Commons
Foreign Affairs Committee

2017 elections to the International Court of Justice

Fourth Report of Session 2017–19

*Report, together with formal minutes
relating to the report*

*Ordered by the House of Commons to be printed
27 February 2018*

The Foreign Affairs Committee

The Foreign Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Foreign and Commonwealth Office and its associated public bodies.

Current membership

[Tom Tugendhat MP](#) (*Conservative, Tonbridge and Malling*) (Chair)

[Ian Austin MP](#) (*Labour, Dudley North*)

[Chris Bryant MP](#) (*Labour, Rhondda*)

[Ann Clwyd MP](#) (*Labour, Cynon Valley*)

[Mike Gapes MP](#) (*Labour (Co-op), Ilford South*)

[Stephen Gethins MP](#) (*Scottish National Party, North East Fife*)

[Ian Murray MP](#) (*Labour, Edinburgh South*)

[Priti Patel MP](#) (*Conservative, Witham*)

[Andrew Rosindell MP](#) (*Conservative, Romford*)

[Mr Bob Seely MP](#) (*Conservative, Isle of Wight*)

[Royston Smith MP](#) (*Conservative, Southampton, Itchen*)

The following Members were also members of the Committee during the Parliament:
Ms Nusrat Ghani MP and Nadhim Zahawi MP

Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via www.parliament.uk.

Publication

Committee reports are published on the Committee's website at www.parliament.uk/facom and in print by Order of the House.

Evidence relating to this report is published on the [inquiry page](#) of the Committee's website.

Committee staff

The current staff of the Committee are Chris Stanton (Clerk), Zoe Oliver-Watts (Second Clerk), Hannah Bryce (Clerk), Dr Ariella Huff (Senior Committee Specialist), Ashlee Godwin, Dr Eoin Martin and Nicholas Wade (Committee Specialists), Clare Genis (Senior Committee Assistant), Alyna Poremba and Zara Wootton (Committee Assistants) and Estelle Currie (Media Officer). Tino Nieddu (on secondment from the National Audit Office), was also on the staff of the Committee during this inquiry.

Contacts

All correspondence should be addressed to the Clerk of the Foreign Affairs Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 6105; the Committee's email address is fac@parliament.uk

Contents

Summary	3
1 2017 elections to the International Court of Justice	5
The failed campaign to re-elect the UK judge	5
The elections of November 2017	5
Reaction to the failure	6
The FCO's account of the election and lobbying process	6
Reasons for the failure, and lessons to be learnt	7
The FCO's lessons learned exercise	10
Conclusions and recommendations	10
Formal minutes	12
Witnesses	13
Published correspondence	13
List of reports from the Committee during the current Parliament	14

Summary

For the first time since the creation of the International Court of Justice (ICJ) in 1946, the UK does not have a judge on the Court. The inability of the Government to secure the re-election of Sir Christopher Greenwood to the Court was a failure of UK diplomacy.

The Committee has heard a number of possible reasons why the UK's election campaign ended in failure. The most concerning was that it was an indication that the international standing of the UK had diminished, and specifically that there had been a fall in what Lord Hannay, former UK Permanent Representative to the UN, called the 'trepidation index'—the extent to which other countries worry about trampling on the UK's toes.

The Government's vision for 'Global Britain' must emphasise its commitment to the international rule of law, one of the UK's strengths as a global player. This makes the loss of the UK judge particularly damaging, and worrying. It is bad enough that the UK will not have a judge for this term; a longer absence from the ICJ would be seriously damaging to UK interests. Ministers must set a clear priority for the UK's Mission to the UN that it secure the election of a UK candidate to the ICJ at the next opportunity. Without the advantage of incumbency, this is likely to require serious and sustained diplomatic effort by the Government as a whole, both in New York and elsewhere. The FCO must notify the Committee in advance of future UN election campaigns.

1 2017 elections to the International Court of Justice

1. The 15-member International Court of Justice (ICJ) is the principal judicial body of the United Nations (UN). The Court's role is to settle, in accordance with international law, legal disputes submitted to it by States and to give advisory opinions on legal questions referred to it by authorised UN organs and specialised agencies. Its seat is in The Hague.

The failed campaign to re-elect the UK judge

The elections of November 2017

2. On 9 November 2017, the UN General Assembly and Security Council held elections to fill five posts on the ICJ. Candidates from Brazil, France, India, Somalia and the UK stood for re-election, while a Lebanese candidate also stood for election. The Indian candidate declared himself relatively late. The UK's candidate, Sir Christopher Greenwood, had first been elected to the ICJ in 2009.¹

3. Candidates needed to receive an absolute majority in both UN organs (97 in the General Assembly, eight in the Security Council) to secure a post.² Candidates from Brazil, France, Lebanon and Somalia all achieved this on 9 November, after several rounds of voting by secret ballot. However, while he maintained majority support in the Security Council, Sir Christopher Greenwood's support in the General Assembly declined over the series of votes. This left him in direct competition with Dalveer Bhandari, the Indian judge also standing for re-election, who had majority support in the General Assembly but whose own support in the Security Council had dropped below the majority required to win a position outright.

4. By UN convention, the one remaining post would have been expected to go to a candidate from the 'Western Europe and Other Group', but this convention was not observed.³ Instead, the UK and Indian candidates entered a run-off which proceeded to a second day of voting on 13 November, following a weekend of lobbying and negotiation. This second day ended in the same deadlock, however, with Sir Christopher unable to secure a majority in the General Assembly and Dalveer Bhandari unable to do so in the Security Council.

5. The Foreign and Commonwealth Office (FCO) told us that the UK considered, but decided against, triggering the 'joint conference' mechanism outlined in Article 12 of the Statute of the ICJ. This would have involved three appointees from the General Assembly and three from the Security Council meeting to vote on the final slot. In the event of a further deadlock, the other judges of the ICJ themselves would have voted on candidates

1 ICJ judges sit for 9-year terms

2 States can vote for multiple candidates. If more candidates than there are vacancies receive majorities in the General Assembly or the Security Council in the first round of voting, further rounds are held in that organ until only the requisite number of candidates do so. If the same candidates have reached a majority in both organs when voting ceases, they are elected. If any seats remain to be filled, further rounds are held in both organs with the remaining candidates.

3 [Q73](#)

to fill the vacant slot—the eldest judge having the casting vote. On 21 November, the UK mission to the UN announced that rather than activating the joint conference mechanism or proceeding to a third day of voting, it would withdraw its candidate.

6. This meant that at the end of Sir Christopher’s term in February 2018, the ICJ would be without a UK judge for the first time since its creation in 1946.

7. The Committee heard evidence from the Minister of State at the FCO with responsibility for the UN, Lord Ahmad of Wimbledon, Lord Hannay, Permanent Representative of the UK to the UN from 1990 to 1995, and Sir John Sawers, Permanent Representative of the UK to the UN from 2007 to 2009. In addition we have raised the issue when taking evidence from Sir Alan Duncan, Minister of State for Europe and the Americas at the FCO, and former Foreign Secretary Lord Owen. We are grateful to our witnesses and to our Specialist Adviser, Professor John Bew, Professor in History and Foreign Policy at the War Studies Department at King’s College London, for their assistance.⁴

Reaction to the failure

8. Lord Ahmad told the Committee that the failure to secure Sir Christopher’s re-election was “bitterly disappointing” and “a blow, undoubtedly”.⁵ He said that “not having a British judge [on the ICJ] is a loss not just for the United Kingdom but, because of the individual concerned—Sir Christopher and his impeccable record—it is a loss for the ICJ”. He added, though, that the UK would “continue to respect and work constructively with the ICJ in future matters”.⁶ Former UK Permanent Representative to the UN Lord Hannay described the UK not having a judge on the ICJ as a “lamentable situation”.⁷

The FCO’s account of the election and lobbying process

9. In response to a request from the Committee for information about the elections, the FCO told us that the UK mission in New York had “lobbied extensively” for the candidate and contacted “a very high proportion of the UN membership”, following “the processes used successfully in previous elections”. The FCO in London and the wider FCO network had joined this effort. Ministers in the FCO and other Departments had raised the election on a number of occasions with counterparts both in New York and during bilateral meetings in the UK and overseas.⁸

10. Lord Ahmad told us that in view of the assurances and pledges of support that the UK was receiving, he had been “very confident that we would get Sir Christopher elected”.⁹ However, the support for him in the first round was not sustained in subsequent rounds, and countries “did not stay true” to their assurances.¹⁰

4 Professor Bew has declared the following interests: consultant for the think tank Policy Exchange on a project called ‘Britain in the World’, examining UK foreign policy (since March 2016); contributing writer (not contracted) for the *New Statesman*; past consultancy for M&C Saatchi on informal basis; father is Cross-Bench Peer in House of Lords (Lord Bew of Donegore)

5 [Q117](#); see also [Q115](#)

6 [Q55](#)

7 [Q12](#)

8 [Memorandum from the FCO, 27 November 2017, paragraphs 3 and 4](#)

9 [Q78](#)

10 [Q68](#)

11. As already noted in paragraph 5, once the UK and Indian candidates were deadlocked, with majorities in the Security Council and the General Assembly respectively, the question arose as to whether to invoke the deadlock resolution mechanism outlined in Article 12 of the Statute of the ICJ. The mechanism is untried, and the FCO said that some countries were “reticent about initiating it” and that “the Indians actively lobbied against it”.¹¹ The FCO told us that it judged that:

to launch the ‘joint conference’ option would engender negative reactions, especially in the General Assembly. We further judged that more rounds of voting would continue to result in deadlock. Despite strong and consistent support in the Security Council, the UK believed it wrong to take up the valuable time of the Security Council and the General Assembly on further rounds of elections and procedural wrangling.¹²

Lord Ahmad added that:

We certainly took soundings from some of the P5 members in the context of the Security Council, and it was our view that support for the mechanism would not be supported by others. We took a view on the importance of the institution of the ICJ, the workings of the UN and the time—I assure you, after sitting through several rounds of voting, that that takes a substantial amount of the UN’s time. I believe that was the right decision.¹³

Lord Hannay agreed that this was the correct judgment:

I would say from the outside that they made the right judgment not to trigger the dispute process, because the most likely result of that would have been a long stand-off in which the Court itself would have suffered. I think it was absolutely right to take the judgment that Britain’s interest was in a properly functioning International Court of Justice, and not to raise our interest in having a judge above that. Frankly, if we had triggered the dispute process, we would have probably lost quite a lot of influence in the process by being thought to be pretty selfish. I think the judgment is the right one, but I wish we hadn’t ever got there.¹⁴

Reasons for the failure, and lessons to be learnt

12. The FCO told us in November 2017 that it was “undertaking a comprehensive lessons learned exercise”.¹⁵ Lord Ahmad said that “It would be arrogant to suggest that we could not have done better. There are always ways to improve processes and our methodology, and I am certainly focused on doing that”.¹⁶ He shared with us some of his views as to possible reasons for the result, the lessons he had drawn from the episode and the issues that he believed the FCO needed to consider in future:

11 [Memorandum from the FCO, 27 November 2017, paragraph 6](#)

12 [Memorandum from the FCO, 27 November 2017, paragraph 7](#)

13 [Q102](#)

14 [Q35](#)

15 [Memorandum from the FCO, 27 November 2017, paragraph 8](#)

16 [Q75](#)

- “I don’t think it was anything to do with the candidate. The fact is that there were different factors interplaying. I think we can make an assessment that there were certain countries that went with other countries, because of their association through the UN and the fact that one was a permanent representative. Other countries aligned themselves because they were from that particular region”.¹⁷
- “I think in the final run-off it was very much about how people perceived India, and the fact that they are a non-P5 member but a growing influence within the General Assembly”.¹⁸
- “What we have discussed this afternoon reflects the importance of looking at how we work more effectively across the General Assembly”.¹⁹
- Lord Ahmad did not believe that the result was “an indication that Britain suddenly has a declining influence at the UN”.²⁰ Nor, in his view, was Brexit the reason: “I don’t think Brexit was an issue in this election. It was not raised bilaterally with me or in any lobbying calls I made. That is reflective of the sentiment experienced by other colleagues at the Foreign Office. There is deep respect [for] the United Kingdom’s position”.²¹
- “... I mentioned conventions of the UN. The Western European and Others convention—the WEOC—suggested very much that there would be two seats: one would be to the French, and one would be to the United Kingdom’s candidate. Unfortunately, that convention was not ultimately respected. I think there is a need to revisit such conventions and perhaps look at them in the light of what happened in the actual results ... the French candidate was also the president, which I think helped his position more than Sir Christopher’s”.²²
- “... the Indians had their campaign. One thing that I would say again, to be very candid, is that when they declared late, I am sure they had a perspective that they needed to do more, because suddenly they were behind the curve in terms of the other candidates, and clearly they were successful. ... they certainly upped their game”.²³
- “I have asked the team—the team has gone away under instruction from the Foreign Secretary as well—to look at whether there are things that we can do more effectively in future right at the start of the process. I have also asked, for every single election running into 2025, about the process that we adopt across Whitehall on the elections that we will prioritise. There are things that we can do better, and experience that I can put into play as a Minister who has served in different Departments. It should not just be the Foreign Office doing the lobbying, making the calls and having bilaterals; I think there should be a cross-Whitehall approach. Different Ministers from different Departments should be part of that”.²⁴

17 [Q73](#)18 [Q64](#)19 [Q114](#)20 [Q92](#)21 [Q88](#)22 [QQ73, 79](#). The French candidate was re-elected with the most votes in both the UNSC and the UNGA23 [QQ77–8](#)24 [Q92](#)

- Lord Ahmad said that in future such elections “if there are subsequent rounds of voting, we must ensure the strength of our vote for subsequent rounds. Clearly, the evidence suggests that did not happen”.²⁵
- “it would be of benefit for the Minister responsible and the candidate, rather than lobbying at different times, to do so in unison. That sends a very strong message without having to spell it out.”²⁶
- Lord Ahmad was “very keen—it is in very early stages—to see how we can make that Commonwealth caucus work to good effect within the UN”.²⁷

13. Possible reasons for the failure offered to the Committee by other witnesses have included:

- The unique circumstances of this election, with a late candidacy and the stand-off between the UK and Indian candidates.²⁸
- Asian countries being more assertive: Sir Alan Duncan, Minister of State for Europe, viewed it as “a slight shift in Asia’s attempts to flex its muscles a bit within the UN”.²⁹
- A decline in respect for the Security Council: Sir John Sawers told us that “the Security Council’s ineffectiveness over the last five or six years has led to a decline in respect for the Security Council among the wider membership of the UN, which has affected several countries—not just the UK, although I think the UK’s failure to win a seat at the ICJ was the most prominent of the three recent occasions when a P5 member has not won an election”.³⁰
- The opportunity it gave for an attack on the UN Security Council ‘Permanent 5’: Lord Hannay said that “It was seen, I am sure, by many in the General Assembly as a way of chipping away at permanent member privileges, because there had been an unwritten rule that the five permanent members’ candidates for the Court would get through. This was a way of attacking that. That is not anything to do with us specifically; it is to do with the collectivity of the five permanent members. But the fact that they chose us to pick on is perhaps a worrying tendency—there were other possibilities that were not taken”.³¹
- Former Foreign Secretary Lord Owen drew our attention to the increasing importance of the UN General Assembly, and the position of the UK in relation to the UNGA: “I think we have very little influence on the General Assembly. Knowing how to handle the General Assembly is a skill. We have focused on handling the Security Council, which we have been very good at over the years, and we have disparaged the General Assembly. Whether we like it or not, it is

25 [Q68](#)

26 [Q75](#)

27 [Q99](#)

28 [Q12 \[Sir John Sawers\]](#)

29 [Oral evidence taken on 28 November 2017, The future of Britain’s diplomatic relationship with Europe \(HC 514\), Q230](#)

30 [Q12](#). In 2016, France failed to have its representative re-elected to the 34-member International Law Commission for the first time since the body came into being in 1949. Russia lost representation on the Human Rights Council in 2016

31 [Q12](#)

coming up. We have had a couple of losses in the General Assembly. We have had difficulties in the UN Security Council. Nothing will come automatically to us.”³²

- The standing of the UK: Sir John Sawers said that “The standing of the UK is coming into question—whether we are going to be able to play the role in the world that we have traditionally sought and our leaders still claim that they aspire to, but which has not really been seen in that light. It was striking that the French candidate—the same French candidate for the ICJ who came second to Christopher Greenwood in 2008—came top of the poll and was re-elected without any difficulty”.³³
- What Lord Hannay dubbed the ‘trepidation index’: “it is not for the UK and its own Government to say how it is regarded at the United Nations. It is about how other people regard us at the United Nations. That is what counts, and I am afraid in that respect there will be people who do not bear our interests to the same degree and give them the same value as we do who will regard that like a shark would regard blood in the water. To use a phrase that I have used when commenting on this journalistically, the trepidation index, when people at the UN mind about trampling on our toes, has gone down”.³⁴

14. As we have seen, the vote for the UK candidate fell away in the UN General Assembly after the first round of voting. The Minister was not able to report to us any reasons the UK had been given by other countries as to why they had not continued to vote for the UK candidate after the first round. In response to any FCO questioning, the Minister said that countries’ responses had merely been that the UK had a good candidate, that there were two credible candidates, and, in some cases, that they had voted for the Indian candidate.³⁵

The FCO’s lessons learned exercise

15. Lord Ahmad said that the FCO’s lessons learned exercise was “an internal review for the Government to look at”. This was because “People are much more open with those who are involved with the process knowing that their views are being submitted in confidence. That is an important aspect to retain”.³⁶ The FCO also said that revealing UK tactics to other countries might undermine future campaigns.³⁷ However, in response to Committee questioning the Minister said that he would reflect further upon whether to share the review with the Committee.³⁸

Conclusions and recommendations

16. The inability of the Government to secure the election of the UK candidate to the ICJ in November 2017 was a failure of UK diplomacy in an area of traditional UK strength: international law and multilateral governance. It leaves the ICJ with no UK judge for the first time in its history. Strengthening the rules-based international

32 [Oral Evidence on 30 January 2018, Global Britain \(HC 780\), Q48](#)

33 [Q12](#)

34 [Q15](#)

35 [QQ70–2](#)

36 [Q94](#)

37 [Q96](#)

38 [Q95](#)

system is a priority for the UK and will be an essential building block of ‘Global Britain’, and the lack of a UK judge on the ICJ is damaging to UK influence and the UK’s future foreign policy strategy. This is particularly regrettable given that the UN will have increased significance as a vehicle for UK foreign policy in the future.

17. The FCO was surprised by the failure, and has rightly launched an internal exercise to identify the reasons and learn lessons for the future. It appeared unwilling to share the results of this review with the Committee, however. The Committee accepts that there are likely to be parts of the FCO review that are sensitive to individuals, and that detailed discussion of future electoral tactics could assist competitors and so should not be published. However, the Committee needs to be able to read the report of the review in order to assess both how the FCO has analysed this serious failure and the actions it is taking to prevent a repetition. Therefore, *the FCO should make available to the Committee, in confidence, the full report of the lessons learned review. In addition, in order to fulfil its obligation of accountability to Parliament and the public, the FCO should supply to the Committee a version of its report for publication.*

18. We appreciate that the election was by secret ballot, but the FCO did not appear to have been sufficiently curious or persistent in discovering why countries in the General Assembly may not have continued to support the UK candidate after the first round.

19. *In future, the FCO should inform the Committee in writing each time it intends to campaign for a UK person to be elected to a UN position, setting out in broad terms how it will be campaigning, how it will apply lessons drawn from previous experience, and how the post fits into its wider strategy.*

20. *A future UK candidate to be a judge on the ICJ will need to be introduced widely around the UN well before the next election.*

21. *While the Government must be responsible for leading any campaign to elect UK candidates to international organisations, the Government should also mobilise parliamentary support, which could reach wider audiences and would bring additional experience of election campaigning to bear in support of UK interests. Many Members of Parliament are involved in the work of international parliamentary assemblies, and there are also parliamentary trade envoys to more than 50 countries appointed by the Prime Minister from across the political spectrum. These sources of expertise and experience appear underused by the FCO at present. The Committee, as well as other relevant parliamentary groups, should therefore be briefed by the Government about future UN election campaigns.*

22. It is possible that this failure was not a one-off but might instead be an indication that the influence of the UK within the UN is at risk. Possible reasons suggested for this were: increased influence of Asian countries; a change in the standing of, and attitudes to, the UK itself; and changes in the relative influence of the Security Council and the General Assembly. The Committee will be examining in more detail in the near future the standing and influence of the UK in the United Nations, as part of its work on ‘Global Britain’.

Formal minutes

Tuesday 27 February 2018

[Morning sitting]

Members present:

Tom Tugendhat, in the Chair

Ian Austin Stephen Gethins
Mike Gapes Mr Bob Seely

Draft Report (*2017 elections to the International Court of Justice*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 22 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Fourth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till today at 2.15pm]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Tuesday 19 December 2017

Question number

Lord Hannay of Chiswick GCMG, CH, Permanent Representative of the United Kingdom to the United Nations 1990–1995, and **Sir John Sawers GCMG**, Permanent Representative of the United Kingdom to the United Nations 2007–2009

[Q1-48](#)

Wednesday 7 February 2018

Lord Ahmad, Minister of State for the Commonwealth and the UN; **Sir Iain Macleod KCMG**, Legal Adviser, Foreign and Commonwealth Office; and **Paul Williams**, Director, Multilateral Policy, Foreign and Commonwealth Office

[Q49-123](#)

Published correspondence

The following correspondence was also published as part of this inquiry:

- 1 [Foreign and Commonwealth Office memorandum dated 27 November 2017](#)

List of reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website.

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2017–19

First Report	Violence in Rakhine State and the UK's response	HC 435
Second Report	The future of UK diplomacy in Europe	HC 514
Third Report	Kurdish aspirations and the interests of the UK	HC 518
First Special Report	The United Kingdom's relations with Russia: Government Response	HC 332
Second Special Report	The UK's relations with Turkey: Government Response	HC 333