HOUSE OF LORDS

International Relations and Defence Committee

Corrected oral evidence: UNCLOS: fit for purpose for the 21st century?

Wednesday 20 October 2021

10.05 am

Watch the meeting

Members present: Baroness Anelay of St Johns (The Chair); Lord Alton of Liverpool; Lord Anderson of Swansea; Baroness Blackstone; Lord Boateng; Lord Campbell of Pittenweem; Baroness Fall; Baroness Rawlings; Lord Stirrup; Lord Teverson.

Evidence Session No. 1 Heard in Public Questions 1 - 9

Witnesses

I: Professor Steven Haines, Professor of Public International Law, University of Greenwich; Professor Malgosia Fitzmaurice, Professor of Public International Law, Queen Mary University of London.

USE OF THE TRANSCRIPT

1. This is a corrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.

Examination of witnesses

Professor Steven Haines and Professor Malgosia Fitzmaurice.

Q1 **The Chair:** Good morning. It is my pleasure to welcome to this meeting of the International Relations and Defence Select Committee the two experts who will assist us today: Professor Steven Haines, Professor of Public International Law, University of Greenwich, and Professor Malgosia Fitzmaurice, Professor of Public International Law, Queen Mary University of London. Thank you very much indeed for joining us today. This is our first public evidence-taking session for our new inquiry on the United Nations Convention on the Law of the Sea.

At this stage I always remind members and witnesses that our session is on the record. It is transcribed and broadcast. I also remind members to declare any relevant interests before asking their questions. As ever, I will begin with the first question, which is always rather general in scope, and after that I shall turn to my colleagues for more focused questions.

The first question, to set the scene, is: what were the reasons behind the development of the United Nations Convention on the Law of the Sea? Why was it established? I will begin with Professor Fitzmaurice.

Professor Malgosia Fitzmaurice: I would like to thank you for inviting me. I am very honoured to be here.

I will start to answer the question by indicating the previous international treaties that preceded the UNCLOS and then I will briefly explain why the necessity for the UNCLOS arose.

I will start by saying that 1958 was a very important year for the law of the sea because after many years of work by the International Law Commission the four conventions on the law of the sea were adopted: the Convention on the Territorial Sea and the Contiguous Zone, the Convention on the High Seas, the Convention on Fishing and Conservation of Living Resources of the High Seas, and the Convention on the Continental Shelf. Out of all these conventions, I would say that the most important was the Convention on the Continental Shelf because it started the process of crystallisation of the norm of customary international law.

However, in the intervening years there were very important events in the law of the sea and international law that clearly indicated the necessity for states to meet again to try to accommodate the changes in the law of the sea.

First of all, during the intervening years they started to establish so-called exclusive economic zones and exclusive fishery zones, which was not an institution of the law of the sea covered by any of the original conventions. That was one of the very important issues to be addressed.

The second important issue was the incipient concept of Common Heritage of Mankind, or I should say Humankind. This concept related to the areas outside the state jurisdiction, i.e., outside the continental shelf.

It related to the very deep seabed area, which is rich in minerals. It was first presented by Ambassador Pardo from Malta in front of the General Assembly of the United Nations. It became obvious that the development of the law of the sea called for a new instrument in order to address it. On the basis of the resolution of the General Assembly, there was a process of negotiation of the law of the sea convention, UNCLOS III—I should say that the Geneva conventions were UNCLOS I, there was an unsuccessful attempt in 1960 for UNCLOS II, so the UNCLOS III proceedings started in 1974, which culminated in the signing of the Convention in 1982.

In principle, UNCLOS III codified existing customary law of the sea. I already mentioned that it was crystalising the concept of an exclusive economic zone that stretched 200 nautical miles from the baselines. During all these years of negotiating UNCLOS, we can say it became a norm of customary international law. Another concept, which was a guiding concept during negotiation of the law of the sea convention, was to formulate the law of the sea convention as a so-called package deal. It means that claims of states were supposed to be accommodated in the document, which was called *A Constitution for the Oceans*. A practical consequence of the package is that there are no reservations allowed to the law of the sea convention.

I could say when the law of the sea convention was signed it was basically codifying customary international law of the sea, with the exception of the so-called area under the concept of heritage of humankind and the settlement of dispute procedure, also appended to the convention. They were just two innovations because, as I have already mentioned, the exclusive economic zone already became the norm of customary international law. I would also add that the territorial sea limit was stretched to 12 nautical miles from the baselines, so that was also a norm of customary law.

Lastly, I would like to say that Part XI of the Law of the Sea Convention, which addresses Common Heritage of Humankind, caused quite adverse reactions from developed states. It was a very unusual situation that the number of ratifications necessary for entry into force of the convention was submitted with Iceland as the only developed state. Then the Secretary-General of the United Nations started informal negotiations with legal advisers of the United Kingdom, France and Germany—Germany is the place where the International Tribunal for the Law of the Sea is based, created the basis for the wide participation in the Convention—it was of a paramount importance to bring into the fold of the Convention the developed states. Therefore, the Law of the Sea Convention was amended by a 1994 Agreement relating to the implementation of Part XI of the Convention, which enabled the developed states to also become the parties to the Convention. Thank you very much.

Professor Steven Haines: When I try to answer this sort of question I stress very much the extent to which it has to be put into some overall

historical context. I tend to be of the view that for about 300 to 350 years from the early 17th century through to the middle of the 20th century, the ocean environment was not exactly static but it was not developing very fast. It started to do so latterly but the very big changes that have occurred in the ocean environment have occurred since the middle of the 20th century. As a benchmark date, let us take 1950 onwards. We are now talking about 70 years or so of a very rapid and profound change in all the dimensions of the ocean environment. I tend to spilt the ocean environment into eight different dimensions. It is my way of doing it. It is not something that everybody would do, but there is a political dimension, an economic dimension, a social dimension, a technological dimension, a security dimension, a normative dimension, an institutional dimension and a physical dimension. I think that is eight but if it is not I can fill in the missing ones later.

Each one of those has gone through significant change over the last 70 years. I notice that the second question, which I probably should not be answering but I will come to it, is "What are the main successes and accomplishments?" As Malgosia has just said, one of the great benefits of the convention in 1982 was it codified a very large amount of what was developing custom and customary law.

The trouble with the convention, any convention like this—and it is the same, for example, with the United Nations charter—is that it is negotiated at a point in time and it creates a framework, a constitution in the case of UNCLOS. There is an awful lot of other law that is developed within the framework that was established in 1982 but it sort of freezes it and changing the convention is, therefore, very difficult. You will all be familiar with the extent to which is it very difficult to change the UN charter. The UN Convention on the Law of the Sea is something very similar, although, as Malgosia has said, there has been one amendment to it relating to the deep seabed.

What I want you to do, though, is think about the profound changes that have occurred since 1950 in the ocean and bear in mind that the convention started to be negotiated 50 years ago. It was being negotiated at a point when the whole of the ocean environment was undergoing profound change that has not yet been completed. We are moving from one era into another very profoundly different era and the UN Conference on the Law of Sea in the 1970s was grappling with what had already happened and trying to predict what would happen into the future. That has been problematic.

When I look at the convention as it stands, I say that it is beneficial in the sense that it has created a clear framework that we can negotiate and discuss and we can develop other law within it, but when I am asked, "Is it fit for purpose?", the answer has to be no because it was fit for purpose in 1982, arguably, although some would say that it was not. It certainly is not fit for purpose today. We are talking about something that is now 40 years after the convention was finally signed in 1982.

We have a mixed bag and it is not easy to provide a simple, straightforward yes/no answer to that sort of question. It is a very complex issue and I will later on, I think, be looking at issues of security and I will certainly mark up one or two problems that I have with it in the context of security.

Q2 **Lord Alton of Liverpool:** Thank you to our witnesses. Professor Haines has partly answered what I wanted to ask in my question, but perhaps I can invite Professor Fitzmaurice also to address what the successes and the accomplishments of UNCLOS over these past 40 years have been. You pre-empted my second question, which is: is it fit for purpose in 2021? You said that later in our discussion you will enlarge on that but perhaps Professor Fitzmaurice could address it now.

Professor Malgosia Fitzmaurice: Professor Haines made some critical comments about the law of the sea Convention. However, I will try to be a bit more positive and I will say that the Law of the Sea Convention is an umbrella treaty. It means that it has rules and regulations also bring into the fold of the convention other organisations and treaties. The Law of the Sea Convention has managed to create a system of law of the sea, through bringing into its framework the whole nexus of certain provisions. This is something that also touches upon question three: why UNCLOS is a living treaty.

There are some provisions, which, with permission, I want to quote, that are formulated in the following way. In one of the articles, the UNCLOS says that "States, acting especially through competent international organizations" shall establish international rules and standards "to prevent, reduce and control pollution of the marine environment" from vessels and promote their adoption. This is, I think, a very important provision because under "international organizations" is understood as primarily the International Maritime Organization, and the general rules and provisions referring to pollution from ships relate to global conventions, the so-called MARPOL Convention i.e., the International Convention for the Prevention of Pollution from Ships. Ninety-nine per cent of states with commercial tonnage are parties to the MARPOL. It is a truly global convention. It is also very important in protection against climate change.

This is very important. The formulation of the convention allows the other institutions and other conventions to participate in development of the law of the sea—i.e., to make the UNCLOS truly a living treaty. Secondly, I would say that this concept of the Common Heritage of Humankind is also acquiring a realistic shape because it was an Advisory Opinion rendered by the International Tribunal for the Law of the Sea, in which it clarified the responsibilities of states giving licences for the exploration and exploitation of the area for the benefit of the whole of Humankind with a particular place for developing states. I would also like to say that this is an important element of the Convention that was started to be negotiated in 1974 that it has very many provisions, formulated to emphasise a special position for the developing states.

I would say that this convention was based on modern principles of general environmental law, like environmental impact assessment. I think that it has done a lot to streamline the law of the sea to bring everything together under the UNCLOS umbrella and to help states to achieve the unachievable; that for example pollution from ships is now only 15% of the whole pollution, through linking the law of the sea convention with the convention that is managed under the auspices of the International Maritime Organisation.

Q3 **Lord Alton of Liverpool:** If you were to put yourselves in our place as parliamentarians, perhaps with the opportunity to make a specific recommendation to improve this living treaty, what would it be that you would say to us we should be recommending to the Government? What would be realistically achievable?

Professor Steven Haines: That is a very pertinent question and before coming to the committee I have given some thought as to what might be realistic, because what is not realistic is to completely renegotiate the convention. That is a non-starter. There will be no UNCLOS IV to produce a replacement convention. We have what we have and what we have to do is act within its framework as far as possible while, to a certain extent, developing customary law to modify and move it into the future.

We are really concerned about what the UK could do in this context. The UK, as one of the top five, I would say, major maritime powers in the world today for a variety of different reasons, is in a very good position to lead on a number of things. What I would focus on, if I were trying to recommend things to government at the moment, is to look at what in the convention looks backwards and what it is that acts as a brake on the sensible development of sound ocean governance. In that context I would look very seriously at the concept of free seas and I would be very critical of the concept of free seas, which is often referred to by the Latin phrase "mare liberum". Often mistaken for freedom of navigation, they are not the same thing; they are not synonymous.

Looking at that issue of free seas and what it means, what Malgosia has said is absolutely correct; there are lots of positive things in the convention about pollution, environment, and biodiversity. There are many things that are positive. The unfortunate thing about a lot of these positive things is they are positive on paper but they are unenforceable. One of the reasons why they are unenforceable is because there is a vacuum in jurisdictional terms, particularly on the high seas where a lot of these problems are profoundly significant. The United Nations is going through the process at the moment of negotiating a biodiversity convention for the high seas. If you look through that biodiversity convention draft you will find nothing in that about enforcement and compliance with any regulations that will come out of it.

I am no legislator, and you, ladies and gentlemen, are legislators in this House, but you would not bring into law a law that is unenforceable. That is what international law is replete with, frankly. The law of the sea is one of those areas where negotiations are conducted, they are successfully

completed, treaties are signed and ratified, yet nothing is put in place to enforce the regulations that flow from them. That is my big criticism of the current law of the sea.

In a sense, the convention froze the concept of free seas. The major powers tried to do that in 1958 at UNCLOS I, and they tried to stem the tide of ocean enclosure subsequently. They came into UNCLOS III. The developing states had their agenda, the major maritime powers theirs, and there was quite a remarkable mix of maritime powers co-operating with each other— the Soviet Union, the United States, the United Kingdom co-operating as major maritime powers, seeing their interests at stake. They froze into the convention the notion of high seas freedom. That is causing me, personally, a lot of concern because it has led to the lack of enforcement, not only in terms of biodiversity, the environment and so on but also in the way that people are treated globally in the ocean environment. This is a very big concern of mine, which I can expand upon if you want me to.

Lord Alton of Liverpool: Thank you very much, indeed.

Q4 **Lord Campbell of Pittenweem:** I have rather formed the view from that last answer that that is the essence of our inquiry. I am also wrestling with the notion of a living treaty that is not fit for purpose. As a practising lawyer, once upon a time, I would have found that a rather difficult proposition to advance before any court that I appeared.

I will just bring pragmatism and realism into play and seek to raise an alternative view to the one that this is a living treaty. We have had produced before us a number of case studies. One of them is Somalia v Kenya. Somalia liked the decision; it supports it. Kenya did not like the decision; it says there was bias. It does seem to me that the effectiveness of this body of law is entirely dependent on the parties to any dispute being the parties that were satisfied by the judgment. Whereas, almost inevitably, those that are not say the law is wrong and there is bias. I think that is one of the claims in Somalia v Kenya.

Another subsidiary point is that since so much of codification of customary international law took place, are there any elements of customary international law that ought now to be added to the code? Of course, customary international law is a developing issue rather than one that is the subject of an instant photograph at any particular time. Are there any other important international agreements and treaties complementing UNCLOS that ought to be given effect to any alterations or that ought to be embodied or have been embodied in some of the other conventions that you have referred to? I am sorry, that is rather a long question but I am afraid you set a number of hares running with your previous answer.

Professor Steven Haines: I am well aware that there are one or two noble Lords and Baronesses around the table who have a sound understanding of international law. It is very different from domestic law in the sense that we legislate for domestic law and we then enforce it.

The courts are then in a position to be able to determine what the outcome of a particular case is.

There are several cases where the parties to a dispute have not liked the result of a case. Some accept the decisions of the courts more readily than others, even if they are placed at a disadvantage. We have this very notable case that is constantly in the news these days because it refers to the South China Sea, where the arbitration that was conducted a few years ago between the Philippines and China took place without any Chinese involvement at all. Malgosia, please go ahead and say something about that.

Professor Malgosia Fitzmaurice: I would like to continue that. It is a different system, as Professor Haines said. However, states that submit a dispute to international arbitration—the International Court of Justice, the International Tribunal for the Law of Sea—by law undertake to follow the judgments or arbitral awards because they are binding.

We have to say that states usually follow the judgment. Even if they do not like it, they follow it. The South China arbitration was a different arbitration altogether because China, from the beginning, did not appear before the arbitral tribunal. The arbitral tribunal also tried to address the interests of China with the absence of China during the proceedings. The award of the arbitral tribunal has fundamental importance because it confirms certain principles of the law of the sea, principles of international environmental law and protection of marine environment. Several states from the region—the Philippines, Vietnam—praised the award, even states like the United States, for crystallisation of the principles of the law of the sea.

Further follow-up can be said to be probably political, but now the Philippines tries to play down the arbitral award in order to appear to be conciliatory with China. I have to say this is a bit of a paradoxical situation, when other states from the region that were not parties to the dispute praise the arbitral award, whereas the Philippines, which instigated the whole arbitral proceedings, is trying to now minimise the findings of the arbitral tribunal.

Lord Campbell of Pittenweem: Does that not make my point in a way? Pragmatism will out.

Professor Steven Haines: An awful lot of international law is complied with, runs routinely and works because it makes sense. Yes, there are disputatious cases that will always be problematic. It is not a perfect system.

Professor Malgosia Fitzmaurice: It is exceptional.

Professor Steven Haines: Yes, this is exceptional. I was going to roll off the fact that the International Maritime Organisation, just across the river, is responsible for over 30 conventions that have been negotiated since the beginning of UNCLOS III that fit into the framework that UNCLOS has provided. There is a very good example. A lot of those

technical conventions, which are vitally important, particularly in relation to the shipping industry, are routinely complied with. There is an issue over how they are complied with and how they are enforced but they are, generally speaking. It is rather like when you get into an aeroplane and fly across Asia towards Australia—when Covid is behind us. You are effectively using international law to fly from one continent to another without realising it. There are an awful lot of technical measures that are negotiated within the framework of UNCLOS that work sensibly, routinely, day to day, that we do not hear about because they are not controversial. The controversial element is always the one that is in the news.

Q5 **Baroness Rawlings:** Good morning. Thank you very much for the positive side, because one reads so much of the negative side of things. It is very nice to hear a positive.

Which of the key international actors do you see as influencing the international law of the sea? There is an ongoing case I have been reading about. Is Russia, for example, still claiming the extensions of the Eurasian continent specifically regarding Lomonosov and the Mendeleev Ridges as UNCLOS? It has been doing additional research here until recently. From what I have read everywhere, it has not yet been resolved. Do you have further information on that?

Professor Steven Haines: I cannot give you anything off the top of my head on that particular issue today. It would be unfair of me to do so.

Professor Malgosia Fitzmaurice: I can only say that there are constant disputes in the Arctic region between Russia and other states. They are now really quite difficult due to climate change, the melting of the ice, changing of baselines and changing of passages. I think that will be a continuing problem. I would also like to add that China is moving into the Arctic now with a lot of interest. China was very critical about the interpretation of the UNCLOS by the arbitral tribunal but when it suits it to apply the UNCLOS provisions to the Arctic, it is now saying that it is follows the UNCLOS in order to move into the Arctic area.

Baroness Rawlings: That is very interesting because with climate change it has opened up the whole thing, like the Suez Canal opened up, and the endless riches there. It is absolutely fascinating. Thank you very much.

Professor Steven Haines: You asked about which states have influence in the context of UNCLOS. It depends what the issue is to a very large extent. I mentioned earlier on that the UK was probably one of the top five major maritime powers in the world and we are, indeed, very influential, but there is a strange anomaly in many ways because if you go across the river into the IMO[1] the powerful states there are those with the largest registries. I will read off for you, just for the benefit of the committee, the top 10 registries in the world today: Panama, Liberia, the Marshall Islands, Hong Kong, Singapore, Malta, Bahamas, China, Greece and Japan. The UK is outside the top 20.

[1] International Maritime Organization

If you go across the river into the IMO building and you are trying to negotiate new IMO conventions, because the registries pay the piper the registries have great power over and above that of the traditional powers. Yes, we are very influential but I would not knock places like Liberia and Panama if you are coming down to discuss shipping issues and IMO convention development. It does rather depend on who it is you are talking to and what the groupings are within the conferences and the gatherings that you are dealing with. If you are talking about, for example, small island developing states in the Pacific where climate change is having an impact, Marshall Islands has a population of about 60,000 and it is losing islands every year due to water level rises. What will happen to the Marshall Islands? I saw an item in the newspaper the other day, or in one of the maritime press, that said that the Marshall Islands could lose its status as a state if this continues.

For the small island developing states—and the House of Commons Library has just produced a useful briefing on Commonwealth small island developing states—this is a big issue. The influence there is different from the influence if you are talking about major shipping issues or if you are talking about fishing. It depends what the issue is and who the major influencers are. Would you agree with that?

Professor Malgosia Fitzmaurice: Yes, absolutely.

Professor Steven Haines: There are groups of different states aligning with different groups of states for various different reasons. It is a complex web of different issues in the whole area of ocean governance.

Q6 **Lord Stirrup:** Thank you very much, indeed, to both our witnesses. I want to return to this issue of enforcement and perhaps suggest to you that it is the wrong word because there are no realistic or reliable mechanisms for enforcing international law, particularly in this area. Actually, it is much more an issue of compliance because if a powerful enough state decides that it is not in its interests to comply with something, then it will not. We have seen examples over recent decades of the United States failing to participate in international organisations and agreements when it reasons it is not in its interest to do so. That is likely to continue.

In terms of compliance with UNCLOS or whatever UNCLOS develops into, what do you think will be the key challenges there, particularly in terms of climate change, the environment, the entitlement of states, maritime security and so on? In our development of UNCLOS in the future, how are we to reach agreements with sufficient of the powerful and interested nations in terms of economic power, military power, maritime power and so on that they will feel it in their interests to comply with them in the future? You mentioned air navigation. The reason everyone complies with that is because it is in everyone's interest, but there is nothing to stop somebody closing off their airspace if they feel so inclined to do.

Professor Steven Haines: That is entirely true, Lord Stirrup, but I would say again what I said before, that it depends on the issue. For

example, let us take fishing as a good example of an area that is problematic. In 1950 there were 19 million tonnes of fish taken out of the oceans. Last year it was 170 million tonnes; 20% of that was either illegal, unreported or unregulated. That to me is a major problem. Compliance, yes, it is great. All coastal states have the right to declare a 200-mile exclusive economic zone within which they have responsibility for managing the fish stocks. As for the legislation that they bring in and the way that fisheries is enforced, I was myself involved as a naval officer for three years in fisheries enforcement around the UK. Please do not tell me that British fishermen are willingly compliant with the fisheries regulation, because they most certainly are not. If it was not for the presence of enforcement potential, then the laws would be broken more frequently than they are. It is not a simple case of "Most of it is complied with because it works and it makes sense". There is a tremendous amount of stuff going on out there on the oceans that will not result in a steady state of governance purely through compliance. Clearly, you have to adopt both approaches.

In relation to the exclusive economic zones, for example, I think that one area that we could produce a tremendous amount of effort on is enhancing the ability of developing states to enforce regulations within their zones, capability enhancement providing developing states with advice and, indeed, material to assist in the enforcement and observation monitoring process. This has always been a serious problem as far as I am concerned. It is all very well for a developing state to declare a 200-mile exclusive economic zone, but if it does not then negotiate or legislate for that zone and enforce the regulations within it there is no point in it having it. It is a mix of the two. It is not simply a question of compliance, although a great deal of it is complied with. I talked about the shipping conventions. The IMO conventions are complied with and they are enforced as well in state jurisdiction.

Professor Malgosia Fitzmaurice: I would again like to be more positive and say that both global conventions that are managed by IMO are related to UNCLOS. MARPOL, the protection against pollution from ships, and the London Convention with the Protocol against dumping are very successful. I think that the success of MARPOL is that it has the six different annexes, out of which only two are obligatory. States do not feel forced to ratify all the annexes, only those they can comply with.

Therefore, as I said, only 15% of marine pollution comes from ships, which I think is a positive achievement and shows compliance. MARPOL tries also to catch up with climate change, which is my area, and annex VI of the MARPOL introduced the measures to reduce the greenhouse emissions and the substances that adversely affect the ozone layer. I think both those conventions are a success story, maybe because, for instance, in the IMO there is joint co-operation between various groups of institutions involved in compliance and with enforcement. Ship owners can participate in negotiations. This is a very positive step into compliance.

Q7 **Lord Stirrup:** You are talking about success stories of the present and the past, yet two key themes we heard earlier, particularly from Professor Haines, were that this convention is not fit for purpose and particularly that the concept of free seas should be challenged. I accept entirely that within coastal territorial waters and exclusive economic zones there is ample scope for enforcement, but once we get out on to the high seas and we look at the challenges—which, Professor Haines, you were pointing to—that will emerge in the future and will need international agreements within the convention framework, then we will require some sort of agreement that will be fit for purpose and acceptable to all. What are the key challenges in those areas?

Professor Steven Haines: I am in danger here of being labelled the person who claimed that UNCLOS was not fit for purpose. I will be nervous when I read the maritime press this week. I am a great fan of a lot of what has been going on in terms of the law of the sea. I wrote my own PhD on the subject 30-odd years ago.

The area I want to stress in terms of security, enforcement and so on is to do with people. I am a former naval officer and I have worked a lot on what navies do. Fundamentally, of course, navies involve themselves in constabulary operations. I spent seven or eight years of my naval career involved in constabulary operations, not in fighting wars. For me personally, constabulary functions were important for navies.

I will tell you a story. In the Mediterranean two years ago, a cruise ship registered in Panama was sailing outside territorial waters in the western Mediterranean when an Italian adult male apparently sexually abused a British child. The age difference was not massive—the Italian male was 18, the child was actually already 17—but it was a sexual assault at sea on board a Panamanian-registered vessel. The vessel went into the Spanish port of Valencia. It was investigated by the Spanish police and put in front of the Spanish court. The Spanish court dismissed the case because it did not have jurisdiction. There has been no effective remedy for that British—at that stage underage—woman, of course. Panama will not do anything about it. Panama is not in a position to do anything about it, arguably, practically. As far as I know—and I should declare a particular interest as trustee of the NGO Human Rights at Sea—we are not aware of either the Italian, the British or the Panamanian Governments doing anything at all to produce a remedy for that girl, now a woman, who was sexually abused on board that cruise ship in the western Mediterranean.

If you want an example of a part of the law that has not been featured in the law of the sea, it is human rights law. That was not on the agenda between 1973 and 1982 because, as we all know, although we have had the universal declaration for the best part of 75 years, international human rights law has not been substantive and effective for anything much more than the last 20 years, so human rights issues at sea did not feature at all in the convention. If you want one example of a major shortcoming in UNCLOS, it is a total ignorance of human rights law.

Q8 **Lord Teverson:** In particular, Professor Haines, I am interested in what you say. You are a great optimist about enforcement of law territorially, but we do not, actually, at all. Environment law in this country is hardly enforced. I put you right on that one.

This is the UK Parliament and we are interested particularly in what influence we can have as a Parliament and with the Government in terms of UNCLOS and to understand whether from your point of view the British Government or the UK Government have an interest in this area. Does it have an agenda you are aware of? What particularly could we contribute to it?

Recently, we signed up to the International Convention for the Conservation of Atlantic Tunas. We have had to sign up to a number of international fishing organisations like the Northwest Atlantic Fishing Organisation—NAFO—and others. Do they work at all? Are we getting those to work? They deal with the high seas. The UK has an important role, let alone its blue belt activity, on overseas territories. I have no idea how they can be enforced, either.

Q9 **Baroness Fall:** My question is enormous. To what extent is all this affected by climate change? Vis-à-vis the UK, of course, we are the convening country of COP 26 coming up in two weeks. What should we be pushing at COP 26? Is it a missed opportunity for that moment when we hold the presidency? Should something be on the agenda and then, going forward afterwards, what do we need to address?

Professor Malgosia Fitzmaurice: I would like to stress the importance probably of maybe the UNCLOS and climate change and what the UK Government could do. I try to be positive but there is not much I can say in a positive way.

The UNCLOS was not formed and especially constituted to deal with climate change. This is one of the issues in which UNCLOS is lacking provisions. The stress in dealing with climate change—and probably where the UK Government should help—is now supporting the actions taken in other sister conventions like the London convention against dumping. A lot of initiatives deal with substances that deplete the ozone layer. This is, in a way, more promising than the UNCLOS. The UNCLOS has no provisions in relation to stopping climate change.

The London convention, especially the protocol to the London convention, now deals with carbon capture and sequestration. This area should be explored by the UK Government. It is a novel area. It involves injections into geological underwater formations of CO_2 and then it is presumed that it will remain there for ever. It is presumed that this sequestration is likely to exceed 99% over 1,000 years, so I suggest that this may be technical but it is a promising way that the UK Government could contribute to combating climate change within the marine environment.

Another area that is still controversial is so-called geo-engineering, where carbon should be captured through the atmosphere. However, it changes the oceans because it also contributes to acidification of oceans. The UK

Government can contribute to protection against climate change in marine areas in various ways—but not through UNCLOS, rather through co-operation with the MARPOL convention and the London Convention of the IMO.

Professor Steven Haines: To address Lord Teverson's point, the Government are agreeing to a lot of these things. You mentioned the tuna agreement, and one that I frequently make mention of in these sorts of contexts is the marine protected areas that have been established around overseas territories. I remember that Lord Hague was very much associated with those when he was Foreign Secretary. The MPAs were put in place but almost nothing was done, frankly, to ensure that they were complied with and enforced. You cannot declare literally hundreds of thousands of square miles as a protected area and simply hope that everybody will comply with it in a positive way.

We have had a bit of a debate over the deployment of two OPVs[2] out into the Pacific. I have been involved in operating OPVs, and I can tell you that the chances of two OPVs based in the Pacific making a fundamental difference to the management, compliance and enforcement of marine protected areas around, for example, Pitcairn are virtually zero. I am sure that my naval colleagues in the building down the road will not thank me for saying that in this committee, but the whole issue of high seas enforcement and compliance is a massive problem.

If I would like to see the Government do anything at all, it is to beef up considerably the process by which good, safe, secure law and order—what I call mare legitimum—exists on the high seas. Instead of talking about mare liberum, the freedom of the seas, we should be talking about safe, secure and lawful seas. As a major maritime power, frankly, we should be leading the charge on this sort of thing and I do not believe we are at the moment, certainly not to the extent I would like to see.

The Chair: I am aware that we are keeping another witness waiting. I was going to ask whether Lord Teverson wished to follow up on that but there will not be time for any other supplementary questions, I am afraid.

In that case, I thank our witnesses very much for not only setting the scene but then answering questions in such depth. You have launched us on what we knew would be an interesting and challenging inquiry, but we know that now a lot more. We are ready to carry on our inquiry along many of the avenues that you have so clearly delineated. Thank you for your positivity. Thank you for your incisiveness as well. Thank you very much indeed.

Professor Steven Haines: Thank you for the privilege of being able to come and say what we said.

Professor Malgosia Fitzmaurice: Thank you very much.

[2] Offshore Patrol Vessels