HOUSE OF LORDS

International Relations and Defence Committee

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

Wednesday 10 November 2021

11 am

Watch the meeting

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

Evidence Session No. 6 Heard in Public Questions 51 - 59

Witness

I: Andrew Murdoch, Legal Adviser, Ocean Policy Unit, Foreign, Commonwealth and Development Office.

USE OF THE TRANSCRIPT

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

Examination of witness

Andrew Murdoch.

Q51 **The Chair:** Good morning. I welcome to this session of the International Relations and Defence Select Committee in the House of Lords Mr Andrew Murdoch, who is legal director at the Foreign, Commonwealth and Development Office. Welcome and thank you for sharing your expertise as we progress through our inquiry into the United Nations Convention on the Law of the Sea. We are posing the general question: is it fit for purpose in the 21st century?

At this stage, I always remind my colleagues and witnesses that the session is broadcast. It is transcribed and it is on the record. I remind my colleagues that when they first ask questions they should declare any relevant interest at that stage.

I will ask the first question, as usual, and when I turn to my colleagues their questions will be more narrowly focused. They will, I anticipate, wish to ask supplementary questions at the end when, if we have time, I will open the floor to my colleagues for wider and more general questions.

To set the scene, what is your assessment of how effective UNCLOS is in addressing new maritime security threats?

Andrew Murdoch: Thank you very much for the invitation to the committee. We very much welcome the committee's interest in the convention. It is seen as a fundamental component of the global legal order. It obviously covers a huge range of issues, many of which are government priorities. It is complex, very much so, but certainly worthy of consideration.

I think the UK takes a broad view of maritime security threats. This view is articulated well in the national strategy for maritime security of 2014, which is at this moment being refreshed and updated to take into account the latest developments. In that strategy, and more broadly, upholding UNCLOS will remain fundamental to our approach, as it provides the framework for other, more detailed, laws and regulation, which I think this committee has heard much about. There are certainly some articles in the convention that refer to security expressly, but in a relatively bespoke context. Much of the detail, though, is provided for in other instruments, principally those agreed by the International Maritime Organization in London.

It might be useful to illustrate how that has been done. You have probably heard of the safety of life at sea convention—SOLAS[1]—which deals with a huge number of issues that have a security relationship. In particular, a lot of work has been done in port state security on the inspection of ships. That has led to more detailed regulation in the International Ship and Port Facility Security Code—the ISPS code[2]—which

[1] International Convention for the Safety of Life at Sea (SOLAS), 1974
[2] The International Ship and Port Facility Security (ISPS) Code, 2004

came into force in 2004 and provides a framework for co-operation between contracting Governments and the maritime industry in detecting threats and taking preventive action.

What also has been seen is that, where there have been new or emerging security threats, the international community has used the convention as a framework by which to address them. For example, in the "Achille Lauro" incident, which members of the committee might be familiar with, one of the issues was that it was not technically piracy, and the convention dealt with piracy. The response was negotiations, not in renegotiating UNCLOS but in looking at a bespoke new instrument that led to the Convention for Suppression of Unlawful Acts Against the safety of Navigation of 1988[3]. There have been additional protocols to that to deal with new and emerging threats.

In relation to drug trafficking, there is the 1988 drug trafficking convention[4]. Again, its framework provision is much broader than maritime, but Article 17 deals with maritime specifically. Its provisions on co-operation between contracting states build on UNCLOS and use its jurisdictional provisions to tackle that. Other examples are on migrant smuggling at sea. You may have heard of the 2000 Migrant Smuggling Protocol[5]. In broad terms, the convention has been a very useful framework for states. As you know, it is widely ratified and, therefore, there is consistency and certainty among the laws that allow states to co-operate to address new threats as they emerge.

On the emerging threats that we see today—the hybrid threats—cyber issues in particular have certainly been very prominent for a while. The IMO has released guidance on maritime cyber risks and management[6], and how to deal with those. The UK released its cybersecurity guidance in 2017, again for the maritime sector[7]. It will be ever-evolving as the cyber threats and challenges emerge, but the theme is that the convention provides the framework to address those issues. It is often done through bespoke regulations.

More broadly, there are direct or indirect threats that you might see through climate change or other drivers of insecurity or instability. We might see that with migrants or loss of fishing revenues, leading to those actors being involved in other, perhaps illicit, activity. It is important to address those issues as well. As you know, obviously we have the presidency of COP 26 at the moment. The Government are raising the ambition for ocean protection in that setting, mobilising finance and transformative science to deliver effective action and underscore the

[3] Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988
[4] United Nations Convention against Illicit Traffic of Narcotic Drugs and Psychotropic Substances, 1988
[5] Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organised Crime.
[6] Guidelines on Maritime Cyber Risk Management (MSC-FAL.1/Circ.3), 2017
[7] Code of Practice: cyber security for ships, 2017

oceans' role in mitigating, adapting to and having resilience to climate change.

There are more specific instruments. There are ongoing negotiations for a new implementing agreement to the convention. It is shorthanded as BBNJ—biological diversity beyond international jurisdiction. We are very ambitious in this agenda, with a wide range of things tackling issues of biodiversity beyond national jurisdiction, including area-based management tools and the like as regards how protecting the environment can be further codified and regulated.

A further initiative, which is quite complementary to that, is our call for a new target under the Convention on Biological Diversity—the CBD—to protect at least 30% of the oceans by 2030—the 30x30 goal—through marine-protected areas and other effective area-based conservation tools. Those measures together will, I think, complement what are called the hard security issues that might immediately be drawn to your attention. I think they also complement stability in the oceans, and actors acting lawfully in a compliant way and creating state stability.

As I understand it, evidence indicates that effective protection of at least 30% of the global ocean will reverse adverse ecological impacts, protect fish populations, increase resilience to climate change and sustain long-term ocean health. It very much serves as a nature-based solution. It is an ecosystems approach to support as well.

The Chair: Thank you for setting the scene so clearly from the point of view of the various issues that a strategy must address. In refreshing that strategy, with whom does the FCDO work at both official level and ministerial level? I imagine it would be the MoD, but could you tell me which departments and how that works?

Andrew Murdoch: Effectively, the penholder is the Department for Transport, which is engaged in a cross-Whitehall consultation, as you would expect, on all aspects of security. All the departments that you have just mentioned will be involved in that refresh to make sure that all the issues of threats, the changing threat matrix and obviously the prioritisation of those, are dealt with. I think the original 2014 strategy had to take into account the priorities, from a UK national security perspective, among those threats and therefore the strategy for addressing those priorities and how to do that.

It is a completely cross-government effort at official and obviously ministerial level. It will no doubt be signed off by the multiple ministerial levels. I think the original strategy was signed off by four Secretaries of State jointly in the foreword. Whether that is still the intention I do not know, but I think it shows the cross-working nature of the strategy.

The Chair: Thank you very much. That was against the background of having heard evidence about the Department for Transport's plans for legislation, and of course holding the pen on that. Thank you for the wider issue of refreshing the strategy.

Q52 **Lord Stirrup:** I would like to probe the impact of advances in technology on the international law of the sea. We have heard previously that, for example, some parts of UNCLOS assume that if you are hailing a vessel at sea it would need to be done by flags or by megaphone. Things have moved on a bit since then. We now, of course, face the challenges of maritime autonomous vehicles in both the military and the commercial sectors.

How fit do you think the international law of the sea is to accommodate those issues? Could you go into some detail about the division of responsibility, as it were, between the overarching structure of UNCLOS and what you have described as the subsidiary laws and instruments? Those have clearly been used to tackle specific issues, a number of which you have already mentioned, but they are issues-based approaches, not pervasive approaches, whereas technology tends to be pervasive. Is there some mechanism underneath the overarching UNCLOS that can be used to tackle those kinds of issues?

Andrew Murdoch: Thank you for the question. It is fair to say that sometimes it is not immediately apparent how the convention will address emerging technologies, such as unmanned vessels, which I will get to in a moment, when we look at some of the specific language, drafting and history of the convention.

We believe that the convention, seen more generally, is capable to some extent of accommodating those developments. To bring you back to the specific example you gave of hailing ships by flags, it was interesting that that was a live issue before a tribunal case in the rules of what we call hot pursuit—the "Arctic Sunrise" case involving the Russian Federation and The Netherlands. In that case, one of the issues was whether a ship could communicate in compliance with the hot pursuit rules through VHF radio, as opposed to what the rules seemed to see as visual or auditory signals. In that case, the tribunal said that, essentially, it had to take into account advances in technology, and allowed VHF communications as perfectly acceptable within that framework, even though clearly it is not said expressly in the convention.

There is certainly scope in the terms of the convention to adapt to new technology, without too much straining of the provisions, to give it meaningful effect. There are also areas that are less clearly articulated. State practice is quite important in developing interpretations of the existing rules, or potentially new rules themselves. The UK is very cognisant in its own practice and statements of what we think the law actually requires in areas such as protection of sovereign immunity of vessels that might be unmanned, or other autonomous vehicles.

You heard from the previous witness about autonomous underwater vehicles. They have been operated for quite some time, but it is right that the technology and advances there have rapidly increased globally across defence and commercial sectors. The full impact of that is not quite crystallised, it is fair to say.

I think you have heard of the review by the International Maritime Organization[8]. It is essentially a gap analysis of the existing rules and whether they need to be plugged by new rules or whether they can be interpreted consistently with the new technologies. We are very much involved in that work through the IMO, which we see as a responsible international organisation for developing it, because you need consistent standards and approaches. The UK can have its practice and its voice, but it is really important that these things are done at international level. It is not the convention itself being opened up to new changes to its existing provisions, but the potential for additional agreements that complement it.

One of the themes, when you look at the convention more broadly, is that in certain areas it provides very detailed regulations. In other areas, it provides the fundamental principles of jurisdiction, duties and roles and responsibilities of states, whether that be coastal states, neighbouring states or flag states. That provides a solid foundation and framework for states because it is settled law. Even states that are not party to the convention are obviously some important players in that field, in starting the negotiation to deal with and tackle the issues. In that sense, the convention is very useful.

The particular issue of autonomous vehicles and the like definitely offers a huge amount of advantage. We might be straying a little into the next question on how this can contribute to cleaner and safer oceans, but along the way there needs to be a balance. The convention itself recognises a balance between the freedoms of states to operate and exercise the freedom of the high seas and elsewhere, and the roles and responsibilities to protect and conserve the environment and to respect the sovereignty and sovereign rights of the coastal states. A careful balance needs to be maintained throughout those negotiations, allowing new developments to take place but within a clear framework that, through very long-standing negotiations, has been carefully negotiated.

Your question touched on divisions of responsibilities, and our view would be that the right place for these incredibly technical issues is the IMO. It is name-checked in broad terms through the convention as the responsible competent international organisation to deal with that. The members of and delegations to the IMO are backed up by deep expertise in the relevant fields. They can take into account commercial interests and commercial activity as well as state interests and state activity. That is important in this field.

There is recognition that it is right that the convention itself and the bodies supporting it do not deal with these things directly unless they come up in a contentious dispute settlement, but that is not to say that these things are not being addressed by those same states in a different forum, in fact here in London. I think there is recognition that there is an acceptable and appropriate subsidiarity in who deals with it, but that does

[8] Outcome of the Regulatory Scoping Exercise for the use of Maritime Autonomous Surface Ships (MSC.1/Circ.1638), 2021.

not mean that there is any lesser importance to it; these are still state-level agreements, and they have the same legally binding effect, whether they are agreed through the UNCLOS framework or the IMO. It is to make sure that they have the right engagement by all the right actors. That is the appropriate way to deal with it.

Lord Stirrup: On the practicalities of the international agreements and discussions, which we referred to earlier, we have been talking a lot about the legal aspects of this, but it is as much a diplomatic aspect in many ways. If you do not get enough countries signing up to it, particularly those with power and influence, it will not have any effect.

What is the practical lived experience, if I can put it that way, within the IMO? Is there a general willingness among the larger and more powerful nations to engage constructively in the negotiations to address new challenges, or is it a more difficult diplomatic issue than that?

Andrew Murdoch: It is fair to say that any international negotiation that brings in new roles has its challenges. There is nothing new in that. There are clearly issues of real importance and significance affecting states that are not necessarily controversial in nature. That can lead to relatively rapid progress through negotiations, and agreement on particular instruments.

Where things become more difficult is where there might be competing interests among states. The negotiations to the convention itself were incredibly difficult, which is why they took so very long, because of the competing interests, primarily from coastal states wishing to expand their jurisdiction and control over the waters, particularly the resources off them, and other states with the same interests perhaps, as well as the need to protect the ability for major maritime powers to have free navigation through those waters. Agreement was reached on those big, difficult principles after a long time by most states, although not all.

Within the IMO, there are some areas of technical advancement, such as new standards on doubled-hulled ships, which people can see are important in response to collisions or accidents in the marine environment that have led to oil spills. There is an imperative to look at those issues, but there is also recognition in lobby groups, no doubt from industry, of the expense of those changes. I think that is just the nature of diplomatic negotiations. It is about finding the intent to reach your goal. It may well result in compromises on time for implementation or certain derogated standards and the like. I think that would apply equally.

Within the IMO, I think the right people are around the table to deal with the issues. They have done so very successfully in a number of really important areas. You can see with the autonomous vehicle area that there is genuine concern as to how we are going to regulate that and that we need to get together for the benefit of all. You will see tensions from some states with excessive claims and entitlements on the one hand, which you might want to push back against, but also recognition from

those very same states that they rely on the same provisions to do exactly what they want to do, which is to trade and to operate their militaries. That same dynamic will fall into negotiations. You seek agreement where there is a mutual interest in finding the right line.

Ultimately, if agreement cannot be reached at that large-scale, multilateral level, states, particularly through regional issues, can take measures themselves to enforce standards, and that can be a way of crystallising support in particular areas, whether it is fisheries protection or pollution control. That drives up state practice and an acceptance that this is something that can be achieved within economic limits. That is how you then bring it back to a multilateral setting like the IMO and get consensus thereto. Obviously, it is much better, like a lot of these things, to get everyone on board as quickly as possible in that organisation and to tackle them through other ways. I think the UK is a very strong leading voice in those discussions.

Lord Stirrup: Thank you.

Q53 **Lord Teverson:** To follow on from Lord Stirrup's question, how might the changing technology change the uses of the sea? We have heard previously about uses of the sea such as energy production or server storage, and how effective UNCLOS is in responding to those questions. I want to follow it up with a question about deep sea mining versus biodiversity, but perhaps you could start us off on that one first.

Andrew Murdoch: Okay. I will hold back on BBNJ. More broadly, the sea is used for the movement of people, information and energy. It is also used for biological, mineral and energy resources, as you have heard. These continue to be the main uses of the sea.

What changing technology will do is perhaps carry out those activities differently, but they are the same broad areas of activity. By way of example, we can look at the new methods of propulsion that are coming online, potentially leading to quieter and more environmentally friendly movement of ships at sea. I have heard of developments in AI technology and autonomous vehicles. That has potential benefits in efficiencies, which have benefits for many states, and safety too. I know there is a question on the human rights of crew members and looking after them.

Floating wind turbines are another area. There is the possibility of extracting useful minerals from seawater. Of course—possibly going on to your second question—there is technology for the extraction of minerals from the deep seabed, which hitherto has not really been viable scientifically or technologically. Many of these changes could support improved compliance with existing obligations provided for in the convention on the preservation and protection of the marine environment. Others might help with managing security risks. As we have heard, the IMO is integral to that, and the UK has a leading voice.

The convention itself can accommodate many of these things. You will have heard about the maritime zonal approach and the rights of coastal

states, and I will not repeat it. Those have proven effective in giving states the ability to exploit energy generation in their territorial seas and exclusive economic zones, as the technology has advanced. We have seen it with underwater cables. The UK pioneered efforts with telegraphs moving to high-speed internet and other forms of communication, but still the framework of the convention is identical. It has not needed to adapt or change to reflect the change of use or the ability of those cables to do more than they ever used to do before. In that sense, there is a useful framework.

Carbon capture and storage is another area. Again, the convention provides for the rights of the coastal state to carry out that activity. There are, importantly, limits on how you go about it and to make sure that you manage it in a way that protects the marine environment, but these things are possible.

By way of example, the UK does this through a regional convention, the OSPAR convention[9], and there are detailed decisions and guidance on this particular area that will help to ensure safe storage of carbon dioxide streams in the relative geological formations. That is an area where we can involve ourselves with our neighbours in a co-operative environment. Other examples are geoengineering and things like that to store carbon dioxide through the use of iron filings, although that is controversial because, potentially, it has more risks than benefits.

These are illustrative examples of how we can respond to changes in technology. Sometimes—maybe this is the theme—it requires new regulations or decisions, but the framework has often proved a very satisfactory framework from which to start the discussions and as an appropriate way of regulating, because states essentially understand what their rights are over those areas. That goes to the importance of maritime boundary delineation and delimitation for crystallising where there are disputed areas of overlapping resources. I will pause there.

Q54 **Lord Teverson:** That is quite an optimistic answer, which is nice to hear. Perhaps I could come to a controversial area. I was very interested in your comments about the aspiration to have 30% of the world's oceans protected for biodiversity, and of course the UK, in its overseas territories, is in the vanguard on that. We also have, as you mentioned, deep sea mining, which is becoming possible and was always seen in the convention as a possibility in the future.

Where we have issues such as hydrothermal vents and black smokers at the bottom of the ocean, and we are only just starting to understand those ecosystems, is there not likely to be a clash in the future between aspirations for economic exploration outside the EEZs and concern to make sure that we maintain and improve biodiversity on the high seas?

Andrew Murdoch: Yes. In the broader framework, this is what is called "the Area", which is the area beyond coastal states' rights and

[9] Convention for the Protection of the Marine Environment of the North-East Atlantic

jurisdictions over the seabed. It is within the convention. It was subject to quite some controversy and led initially to many states not ratifying the convention until more detailed provisions were negotiated. They were, which led to a number of states, including the UK, ratifying the convention.

The responsible party for regulating the deep seabed is the International Seabed Authority, a body established by the convention. Its secretary-general is a British national, who was recently elected to the body. The UK has a strong delegation as part of the negotiations and discussions within that body. We are currently on the council. We also have a British national on the legal and technical committee, which supports that work.

It is right that there is no exploitation of the deep seabed at the moment. What has happened so far is exploration. In particular, there is a huge amount of work to understand much more about the nature of the deep seabed and the marine environment around it. Of course, with such a large area, there is a great difference between hydrothermal vent areas, highly sensitive and important marine ecosystems, and other areas of the deep seabed. I am not saying that they do not have so much importance, but certainly they are not so active in those particular realms.

At the moment, very active negotiations are going on, albeit unfortunately disrupted by the pandemic because of the inability to carry out in-person meetings in Kingston, Jamaica, which is the seat of the ISA, for regulations on the exploitation of the deep seabed environment. It must be recalled that the deep seabed environment is part of the common heritage of mankind. This is a very important principle. It does not belong to one state; it is for the benefit of all. There is almost an expectation that this will be realised, to some extent. A state, Nauru, has also triggered provisions through its lodging of a certain submission that will allow it to commence exploitation within a certain time limit. It is really important to ensure that when that starts, in conformity with the convention, the regulations are in place to do it properly.

The UK position on this has been very clear. We do not support or sponsor the issuing of exploitation licences for deep seabed mining projects unless and until there is sufficient scientific evidence about the potential impact on deep sea ecosystems, and strong and enforceable environmental regulations and standards are in place. Our goal at the moment, noting that this is a standard to apply for all actors, is to have a strong voice in those negotiations and to ensure that the standards are as high as possible.

Internally, we have commissioned an evidence review of the potential risks and benefits of deep seabed mining, including comparisons with obtaining the minerals from other sources. It must be recalled that existing sources, land based, also have many difficulties, which probably do not need repeating, so it is not necessarily a neutral equation.

There are already some 70 peer-reviewed publications detailing research into the environmental aspects of deep seabed mining. The policy in this

area will develop in light of the evidence and the progress. The overarching point is that our priority is to make sure that that body adopts the higher standards of negotiation, because otherwise there is the potential for this to go ahead, not necessarily with the UK but with other states, without those in place. That is certainly a result that we need to avoid.

The Chair: Thank you.

Q55 **Baroness Fall:** I would like to turn to the challenges of navigating human rights on the high seas. I have a simple question. What are the challenges in monitoring and implementing human rights?

Andrew Murdoch: As you have heard throughout the evidence, human rights at sea encompass a very broad range of activities, whether it be modern slavery, drug trafficking, people trafficking, working conditions on commercial vessels, including fishing vessels, crimes on ships, piracy and others. It is a very broad range of activity.

The convention itself addresses human rights issues in some discrete areas. There are obligations, for example, to save life at sea for those in danger of being lost or in distress. There are obligations concerning co-operation in the suppression and prohibition of slavery. There are rules dealing with co-operation on piracy and enforcement powers. Obviously, there is how victims engage with human rights issues. Indeed, some of the jurisprudence that has come out of the tribunals has brought in principles of human rights. For example, in the maritime law enforcement field, one of the very earliest cases they[10] looked at was when states use force against vessels to enforce their coastal state laws. States have to have regard to force only being used when necessary and proportionate, and with due regard to principles of humanity.

In some areas that has been dealt with, but it is fair to say that the convention has not dealt with human rights as a body of law specifically. Perhaps that is no surprise. During negotiations, there is recognition that human rights have been dealt with, or are being dealt with, in specific instruments of international human rights law or specific conventions that give rise to human rights in specific fields. That is the typical way these things have been addressed.

It is right that, while there are issues, the convention provides a very useful framework to be very clear as to the roles and responsibilities of port states in the relative maritime zones, as well as flag states and coastal states, on what control they are expected to do. It is principally flag states at all times, but importantly in areas beyond national jurisdiction. That is set out in the convention. It is clear and evident that there are human rights concerns at sea and that they are ongoing. I think the UK position has been to recognise that, and to be fully committed to the welfare of all seafarers and fishermen, regardless of their nationality.

[10] International Tribunal of the Law of the Sea

The issues will continue to be raised in G7 and G20 networks, and other international groupings, to raise concern and to highlight the responsibilities, whether it be shipowners, fishing vessel owners or Governments, wherever those responsibilities lie. It is also important at the international level to support this through effective legislation, through seafarers' welfare, minimum standards, health and safety, welfare working conditions and the like. This has been done principally through the International Labour Organization and the International Maritime Organization.

Perhaps I could deal quickly with both of those and how the UK has involved itself. The ILO work on the fishing convention of 2007 sets out global minimum standards for living conditions and working conditions on fishing vessels. I will not go into the detail, but it covers a wide range of minimum standards, ranging from ages and training to health and safety and social security. It also provides for provisions for enforcement for flag states, and to a limited extent port states, on complaints and dealing with them. It came into force in 2017. The UK ratified it in January 2018. All foreign-going fishing vessels in the UK register have been inspected by the Maritime Coastguard Agency and issued with documents of compliance where appropriate for the sector.

There are difficult parts of the sector to reach, particularly the smaller vessels, to ensure compliance. That is very much work in progress. There is an inspection framework under the ILO convention that allows flag and port states to identify particular areas of concern, particularly labour exploitation and modern slavery, which can then be referred to the relevant authorities. In our case, it is the Maritime Coastguard Agency or potentially the NCA.

The Maritime Labour Convention[11], which the UK ratified in 2013, is another important instrument in the field. It provides for relatively comprehensive rights affecting an estimated 1.2 million seafarers. It sets out rights to decent working conditions for those seafarers that are globally applicable. Again, it sets minimum standards. It is ratified by 98 countries representing more than 90% of the world's fleet. However, there are significant gaps in it, in that some of the important states are not party to the convention.

Our understanding is that there have been positive benefits from it. Certainly, the Maritime Coastguard Agency reports that it has been able to address seafarer complaints about, for example, non-payment of wages since 2018 when amendments were made to the convention to deal with that. More recently, there have been issues concerning abandonment of vessels with seafarers on them, leading obviously to quite difficult conditions for those seafarers. There are ongoing works to look at that particular issue. The UK has quite a strong position on that, to ensure that it requires seafarers to join abandoned ships only when there are adequate safeguards in place.

[11] Maritime Labour Convention, 2006, as amended.

It recognises—I think this is the question—the difficulty of upholding some of those rights and standards. It is particularly difficult for seafarers working far from home and beyond visibility, which is one of the things from the maritime environment: beyond sight, and sometimes beyond mind. States might be unaware of them or it might be difficult to enforce. There are methods and ways of trying to help. The industry, for example, has initiatives such as the Neptune Declaration on Seafarer Wellbeing and Crew Change, and we welcome that. It spearheaded the Global Maritime Forum, which I understand now has over 850 signatories.

There is also the important element of port state control. I think you will have seen or heard some evidence about areas where port states have got together in providing registers of those states and how they perform on various white, grey and black registers through instruments such as the Paris memorandum. The UK is strongly supportive of that. That can lead to quite significant sanctions for those that are not leading to it. You can get enforcement if not at sea then indirectly through the use of port state control.

Q56 **Baroness Fall:** The concern with climate change, of course, is that the situation that you have just outlined, which is already difficult and complex, becomes more so. While people adjust to new sea levels, boundaries become blurred and there is more exploitation in looking for energy and resources, and suddenly all this, which sounds okay—although there seem to be gaps, as you said yourself—comes under pressure and problems arise. Is that a concern?

Andrew Murdoch: I think it is. I attempted to address in answer to the first question the instability that can be caused through these factors. It sometimes leads to direct things, whether it is lawful seafarers moving to other trades, which might be illicit, because their livelihoods can no longer be supported, or instability caused by sea level rise and maritime boundary delimitations, and therefore uncertainty as to the rights over certain coastal maritime zones. It is really important.

The international community is alive to both those issues, particularly in the law of the sea context. There are very lively ongoing discussions on how the convention or the law of the sea more generally can respond to sea level rise change. The Pacific Islands Forum group has made a declaration of its views in that area. The UK Government are considering their response to that. The International Law Commission is also doing work looking at how the framework can adjust to sea level rise, or whether it needs amendment or codification. It is very important. I think we are very alive to that and are actively engaged in it.

Q57 **Baroness Blackstone:** Could you tell the committee what you see as the challenges that are being posed by flagless ships? What is the UK policy in dealing with the problem?

Andrew Murdoch: The term "flagless ships", as the committee is probably aware, describes a ship that has no entitlement to fly a flag. That can be also created when a ship is registered or entitled, but then

decides to fly the flag of two or more states and is assimilated to that status.

The entitlement to fly a flag leads to flag state control. It is a fundamental and important building block for the convention, and rights attract to it. If you look at the convention, things such as rights of passage attract to states, not necessarily particularly to independent ships operating. There is a clear connection.

From an enforcement perspective, the UK position is very much that we are entitled under international law to exercise criminal jurisdiction, prescriptive and enforcement, over ships without nationality, subject to what boundaries and maritime zones they may be operating within. There is jurisprudence to support that. Recent legislation has made that much clearer. There are amendments in the Policing and Crime Act 2017 to make it very clear that law enforcement officials at sea can operate on those ships to tackle criminal activity.

The concern is not so much about large vessels doing international trading, because essentially if a vessel does not have a flag it is unlikely to gain port entry and the controls by the port state will bite quite quickly. The concern is the smaller end of the spectrum. There is evidence that those vessels can be, and have been, used for illicit activity such as drug trafficking, migrant smuggling, weapons trafficking and the movement of terrorists by sea. When they are within territorial waters, there is no problem; coastal states can take enforcement action. Beyond that, states tend to legislate purely in respect of their maritime zones, their entitlements and their ships, and leave it at that. Potentially, there is then a gap where stateless vessels are operating on the high seas and states have not extended their domestic laws beyond that. It leaves almost a lack of control of those vessels, more so than any others.

The UK and other states have attempted in our legislation to make sure that we are closing that gap. We encourage other states to do the same thing so that there is no impunity around that area.

Baroness Blackstone: Are there any diplomatic moves in the international community to tackle that problem and to deal with the gap? We were given the impression at an earlier session that flagless ships, particularly in the middle category where they may not be very big vessels that are operating internationally all the time but are sometimes on the high seas, may well be operating in a way that is deemed criminal in a variety of different contexts. Is there a debate about that, or is it just pushed under the carpet and left, hoping that it does not happen too often?

Andrew Murdoch: It is fair to say that among international scholars there are different views on the entitlement of states to exercise jurisdiction over those vessels. Some take the view, essentially, that unless there is some form of nexus to that particular vessel, through perhaps its nationals or what it is actually doing, there is no entitlement to prescribe your laws over them. At the other end of the spectrum, there

are views like the UK's where we say that we can. A view that is shared by others leads to greater instability and disorder on the seas. We have certainly advocated our view with our partners in discussions. We have published—it is certainly in academic publications—the UK practice in this area, and we encourage others to do the same.

It is right that often one of the answers is, "Well, if these vessels are going to port, that solves the problem", but there are some vessels that do not actually come into port. It may well be that if a coastal state has a particular problem, it can go back to its own laws. It tends to be more on a reactive basis than proactive. We are out there and our views are known, in that there is a permissive basis that states can do that. Other states do, but not all. We continue to make that legal basis clear and encourage others, particularly where there are concerns off waters, to address the issues as they arise.

The Chair: Thank you.

Q58 **Baroness Rawlings:** You have answered these questions very fully, and mine repeats them, really. I wondered if I could go back to Lord Stirrup's question and ask a supplementary.

I am fascinated by the risks and timing from years ago, when they were hoisting flags. They had time to think and take a decision rather than this very rapid, high-speed internet. I wondered whether there were many more mistakes, and how many legal problems you might have had to deal with. Were there decisions that were taken too quickly because they suddenly had to come by internet, not having time to reflect as they hoisted the flags?

Andrew Murdoch: Is that in operations at sea?

Baroness Rawlings: Yes, at sea.

Andrew Murdoch: That is right; these issues have arisen, particularly in maritime law enforcement operations, where ships or aircraft have got a lot quicker. For example, drug trafficking in the Caribbean for many years used very small vessels to move drugs at very high speed. There is a real difficulty. In the old days, you might chase it down with your faster ship. These days, as fast as destroyers and frigates are, they are not going to catch vessels going at 60 knots.

The rules provide that you can use powers to stop them. That has been shown to be flexible enough, for example, to allow for boardings to take place with the use of force from aircraft and helicopters, using maritime sniper teams to disable engines at sea. That would not have been conceived of in the early days.

We mentioned other areas where the communications technologies have been relatively easily adapted to carry them out. For example, in Australia there are huge maritime areas with very valuable fishing resources that are vulnerable to illegal fishing—IUU fishing. Trying to patrol those areas is a real challenge because of their size, so you look at

other ways of doing that, perhaps through remote vehicles to pursue the vessels in order to carry out operations. That has been done quite successfully through aircraft and other surveillance methods in order to address new challenges. The adversary is quite alive to your weaknesses, and, as it exploits them, states need to respond accordingly. I think they have been able to do that within the convention. I hope that answers the question.

Baroness Rawlings: Yes, thank you very much.

Q59 **Lord Anderson of Swansea:** My supplementary is a simple one. Have the effects of global warming on the Arctic exposed gaps in UNCLOS?

Andrew Murdoch: There are provisions in UNCLOS that deal with ice-covered areas, and particular rules and responsibilities for states with proximity to ice-covered areas. That was relatively understood, and we have bodies such as the Arctic Council, in which we are an observer state, looking at those areas.

With rising temperatures and the opening of the northern sea routes for part of the year at least, a number of questions arise. Some of them are about the continued applicability of provisions on ice-covered areas, which are not ice-covered areas all year round, and whether the new routes are subject to the rules containing international straits used for navigation and the rules of transit passage provided for in the convention, when the passage, to the extent there is any, is very limited.

Of course, you then have the rules on the incredibly fragile marine environment and the right balance in the legitimate concerns of all states, but particularly coastal states, to look at concerns about the proper regulation of ships passing through those waters, while not hampering legitimate innocent passage or other freedoms of navigation through those waters depending on how proximate you are to those waters.

I think the framework is sufficient to deal with them. The factual change means that there are, rightly, ongoing discussions about how to apply the rules. Again, that might go right back to one of the earlier questions about the rights and interests of some of those states as to where they might be on the spectrum of controlling access to areas where they might see that control being useful, and others seeing it as a very useful freedom to allow increased trade, subject to environmental protection, which could reduce 10 days of a Suez passage transit, which obviously has a huge benefit in emissions reductions.

I think those tensions are still there. There is ongoing tension with regard to where the balances are. I do not think there is necessarily consensus on some of the provisions, but as time goes on I think the issues are being discussed. In some ways, practice will push this forward as states become more able to move it, particularly commercial vessels. When it becomes economically viable to use routes, that often forces those discussions because stability is important in those areas for both the coastal states and those exercising the freedoms. It is not settled

completely. We have our own views, but there is no consensus on some of those points yet.

Lord Anderson of Swansea: Are there any prospects of consensus?

Andrew Murdoch: We always hope for consensus in these areas. Maybe I am being optimistic in this area, but where you apply these rules—for example, in a territorial sea—states sometimes want to protect their freedoms. They often also want to use those freedoms in other areas. When you see the balance, if a state takes an overly restrictive view in a geographical area, it can come back to bite them in their exercise of freedoms in other parts of the world that are also useful to them militarily or commercially. Those often lead to areas where there could be a landing zone, recognising the competing legitimate interests of coastal states and flag states. We have seen that in other areas too.

That is not to say that any negotiations in these areas will be straightforward. The default is that we would just exercise the freedoms as we see them, and practice will develop in those areas. We might take the view that there is no need for additional rules and regulations, but perhaps a need for more clarification that state practice allows you to use the rules that are already there.

The Chair: Thank you very much indeed for contributing to the evidence we have heard today. I think what has become very clear is that in an increasingly uncertain world, and with the gaps that there can be within legislation internationally on maritime security and adherence to it, the one certainty is the importance of diplomacy in resolving the issues, and the certainty that UK departments need to continue to work closely together. We shall need to look at how that actually works in practice. Thank you very much indeed.