



International Relations and Defence Committee

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

Wednesday 8 December 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 Campbell of Pittenweem; Baroness Fall; Baroness Rawlings; Lord Stirrup; Lord Teverson.

Evidence Session No. 11

Heard in Public

Questions 96 - 114

Witnesses

I: The Rt Hon Lord Goldsmith of Richmond Park, Minister for Pacific and the Environment, Foreign, Commonwealth & Development Office and Department for Environment, Food and Rural Affairs; Andrew Murdoch, Legal Director, 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 witnesses

Lord Goldsmith of Richmond Park and Andrew Murdoch.

Q96 **The Chair:** Good morning. I welcome to this meeting of the International Relations and Defence Committee Lord Goldsmith of Richmond Park, Minister for Pacific and the Environment at the Foreign, Commonwealth and Development Office and the Department for Environment, Food and Rural Affairs. Welcome also to Mr Andrew Murdoch, legal adviser in the Ocean Policy Unit at the FCDO. Mr Murdoch, welcome back. You gave us evidence previously on 10 November.

Thank you, Minister, for being so generous with your time this morning. This is our final evidence-taking session for our inquiry on the United Nations Convention on the Law of the Sea. We are posing the question to ourselves: is it fit for purpose in the 21st century? At this stage, I always remind members and witnesses that our session is on the record, transcribed and broadcast. I also remind members to declare any relevant interests they may have before asking their questions.

I shall begin, as always, by asking the first question, which is always more general in scope, and then turn to my colleagues for more focused questions thereafter. When my colleagues have asked their initial question, I anticipate that they may wish to follow that with a supplementary. If there is time at the end, it is open season on the Minister, because we will go more widely on questions, although they will still be related to our inquiry of course.

Minister, do the Government consider UNCLOS to be fit for purpose? Is it the Government's view that UNCLOS should be amended or updated?

Lord Goldsmith of Richmond Park: Our view is that UNCLOS is fit for purpose. That is not to say that we or anyone else should be complacent. There are all kinds of ways that it could be exercised or improved, but it is a pretty impressive achievement of international diplomacy and international lawmaking. It has undoubtedly made a meaningful contribution to everything from global peace and prosperity to security and the growing and very serious issues relating to the environment and climate change.

It is our view that the UK has directly benefited in numerous ways as a consequence of UNCLOS, not least with regard to issues of maritime boundaries with neighbouring states, both here domestically and through our network of overseas territories. Andrew is the expert, but I think it is true to say that there are no really burning live issues at the moment as a consequence of those maritime boundary issues.

Through UNCLOS and the associated architecture, we believe that this year we have a fighting chance of being able to advance many of our priorities, particularly in the area that I am focusing on in government: pollution of the ocean and broader issues, such as negotiations in the run-up to the BBNJ.¹

¹ The United Nations is currently negotiating a new International Legally-Binding

It will be a busy and very important year for the ocean next year, with lots of big events coming up. UNCLOS will be a thread that runs through each of those events, if not the umbrella above them. We have a lot to do this year. As a consequence of where we have got to with UNCLOS, we have a reasonable chance of making progress. We must make progress.

Q97 The Chair: I am pleased to hear you say that it will be a big year for the oceans and that there will be a focus on that. I certainly noticed that there was very little reference in the COP26 final statement on that. When I looked at the government website before we went to COP26, I was pleased to see the statement on the website that the Government were leading on the action day and that, with regard to the United Nations framework convention and the COP presidency championing five issues, the Government want to work towards achieving “an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction”.

I find that a welcome commitment, if it is the case. Do you see any difficulties in achieving progress in the negotiations on those changes in the next year or so?

Lord Goldsmith of Richmond Park: First, you are right about the formal recognition of these issues in what was negotiated at COP. This is one of those issues that is extremely difficult politically and always has been in the context of the UNFCCC.²

We had some important and very high-level events at COP where the issues we will be discussing over the next hour or two were raised very prominently. There is a general recognition now, across the board, that one of the most important ocean actions we can take, if not the most important one, is keeping that window of 1.5 degrees open. We know that the ocean has provided an extraordinary service in relation to mopping up some of the mess we have made in relation to carbon emissions and excess heat. I think that one in every two breaths we take, directly or indirectly, is generated by the ocean. We know that climate action is ocean action. That is a slogan that has been used many times, but it is true. Having said that, the UNFCCC has not been considered the vehicle for delivering the scope of changes that we will need if we are to safeguard the future of the world’s oceans.

That was a very long-winded preamble to your question. Do we have a chance? We may come to this; if we do, please tell me to stop. We have a number of priorities. At the UNEA³ in Kenya, we will be championing the agreement of what we hope will become a global treaty on plastic pollution and broader pollution of the ocean. We have already begun our diplomacy on that. It is not a UNFCCC thing, but it is certainly relevant to

Instrument for the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction (BBNJ Agreement).

² United Nations Framework Convention on Climate Change

³ United Nations Environment Assembly

what we are discussing today on UNCLOS. We are gathering supporters for that position, including the US. I do not know whether they have gone public. It is too late now; I have said it anyway. The US is a very important partner on this. We are fortunate that in John Kerry, the climate envoy, we have a passionate ocean enthusiast. We have a real partnership there.

We are also very anxious to make progress on the discussions about biodiversity beyond national jurisdiction, the BBNJ negotiations. They are difficult. They are almost two years delayed now. There are still lots of disagreements. There are many outstanding disagreements there, but if we play our cards right and form an alliance of like-minded countries, we feel there is every prospect that we will be able to achieve something significant there.

There are a number of things that we want to achieve, but if there were one issue at the top of the list, it would be to establish an international mechanism that allowed us to create marine-protected areas in areas beyond national jurisdiction. Without that, our international hopes of securing 30% protection of the ocean by 2030 may not be impossible but would certainly feel impossible. This is a really important part of the process.

I do not know whether it is okay to bring in Andy, but there will be other issues that I have not related in terms of what we are hoping to achieve this year.

Andrew Murdoch: I would only add that, because of the delays in the negotiations on BBNJ, there has been a great deal of intersessional work. It is not that there has been a complete hiatus of effort on this. The UK has been playing quite a leading role in bringing together different delegations and different interest groups to help to achieve, outside the formal negotiation process, a consensus or at least an understanding of some of these issues to try to bridge those gaps in positions before we arrive at the formal negotiations next year. That is one of the key points.

On the 30by30 target, it is worth mentioning that, following COP26, over 100 countries support that target. We are now pressing for that to be adopted at the meeting of states parties to the Convention on Biological Diversity (CBD) next year.

The Chair: Thank you very much for giving us such a helpful start to this session. It was helpful, because it illustrates the breadth of policies that are involved, which are not necessarily within the remit of UNCLOS. As we have discovered as we have taken evidence, as a framework convention it leaves many areas where other organisations have to come in to achieve international agreement.

Q98 **Lord Anderson of Swansea:** Minister, you have asserted that UNCLOS is fit for purpose, but is it not rather set in stone? It was negotiated 30 years ago and it carries the priorities of the time. We are told that amendment is almost impossible. There is no appetite for renegotiation of

the treaty itself. Therefore, one has to proceed by supplementary treaties, regulations or indeed new initiatives such as the seabed treaty that is now being discussed in Jamaica. What agreements outside the formal structures of the treaty are currently being promoted or supported by the Government?

Lord Goldsmith of Richmond Park: I agree with the premise of your question. My view, and happily the Government's view aligns with this, is that UNCLOS is fit for purpose. That is an answer that exists within the context of how difficult it is to get stuff agreed internationally. You are right to say that it lacks the flexibility that you would expect such a framework to have. An evolution of that framework over the last 30 to 40 years could have been a very useful thing, but it is incredibly difficult to secure that.

If the UK were to begin discussions about opening up that agreement in order to, as we see it, improve it, given the heightened political tensions over some aspects of global ocean politics, there is every risk that we would find ourselves going backwards and not forwards. That is undoubtedly a risk. There are people far better qualified than I am to assess how big that risk is, but that feels to me to be a risk not worth taking.

Where we want to achieve things that do not fit neatly into that framework, as you said in your question, we hope and believe we will be able to secure those things by negotiating those supplementary implementing agreements or through additional agreements that effectively rely on the provisions of UNCLOS, so we think that we can achieve what we need to do there.

There are issues now that are perhaps not that high on the political agenda but that absolutely will be probably within a year or so. One example is deep sea mining. There is a frenzy of excitement about the potential to access all kinds of minerals and so on from the deep sea, in part to facilitate this transition to a low-carbon future. If that happens at the expense of the fragile ocean ecosystem, we are in real trouble. In the absence of a regulatory framework and agreed environmental standards, we are facing what could easily be a catastrophic degradation of the global ocean environment. It is deeply worrying.

This is an area where the UK has a particular interest. We may come to that in due course, but it is an area where we are all very much on the back foot. An enormous amount of work is required. If and when deep sea mining takes hold, I fully anticipate the UK playing a leading role globally to ensure that it happens within the context of at least the kind of protection that would prevent the worst of what could happen.

Apologies for the slightly gloomy answer, but we are talking about global politics, not just UK politics.

Lord Anderson of Swansea: With respect, that is your strong suit. What efforts are we making in any such attempts to carry the

international agreement further to promote our own interests?

Lord Goldsmith of Richmond Park: We are very active on BBNJ, as I mentioned earlier, particularly on the need for an international mechanism to allow us to create marine protection areas in the deep seas⁴. In the briefings that go out from the Foreign Office to Ministers, I often put in a request that the issues here be included, so that in our bilateral discussions with counterparts around the world we continually raise the importance of the BBNJ.

We have done a lot of engagement with some of the small island developing states, not least in the area that I am responsible for in the Pacific, and far beyond that. I had a discussion, albeit yesterday, with John Kerry, President Biden's special envoy for climate change, who has a particular interest in this issue. We did not go into great detail, but it feels to me like we are very close on this issue, which is a good thing. Historically, the US has been quite difficult on aspects relating to the BBNJ.

I might need Andy to tell me which countries, but I know we have partnered with Canada, for example, and NGOs such as WWF and Pew to create a template or a model of what those MPAs⁵ might look like and where they might best be placed in the high seas, so that we can get the ball rolling.

We have also been partnering with other countries, such as Guyana, Sierra Leone and Norway, and organisations such as Pew, which I mentioned, to try to figure out how we can raise the finance that will be needed to break through some of the negotiating barriers that exist and to reflect the fact that we vastly underinvest in the ocean from a sustainability point of view. That is true of nature across the globe, but it is particularly true of the ocean.

The next CBD COP will be hosted by China in Kunming. We are not hosts, so there is a limit to how bossy we can be about this, but I hope we will be able to replicate the finance offer that was delivered in the run-up to the climate COP but specifically for nature. There is a lot of extra donor money out there. There is a lot of extra philanthropic money out there. The hope is that we can arrive at the CBD with a serious finance offer that will allow some of those less developed countries with enormous ocean estates, particularly the small island developing states, to feel comfortable signing up to a really high ambition. Without that finance, we do not think it is possible.

Finance is a really big part of it. That is not something that we can do alone. It requires a lot of international negotiation. That is another reason why I met with John Kerry yesterday: to try to figure out how, between

⁴ The scope of the draft BBNJ Agreement is the 'high seas' or 'areas beyond national jurisdiction'.

⁵ Marine Protected Areas

us, we can divvy up the task of trying to persuade other donor countries to step up.

Q99 **Lord Stirrup:** Good morning, Minister. Whether it be with regard to UNCLOS or to subsidiary instruments, seeking changes to existing arrangements for the law of the sea or introducing new initiatives to deal with modern challenges will of course require a substantial degree of international support, particularly, as ever with international law, support from states that carry a great deal of weight in the international community. From the UK perspective, which are the most important partners?

You mentioned the work that is currently going on with Canada. In terms of preparing ourselves for the bigger picture, this will undoubtedly require a lot of preparatory work, a lot of preparing the ground. Which, in the UK's opinion, are the most important players, the ones that we should be developing relationships with? What is the UK's approach to the meeting of states parties that is provided for in UNCLOS?

Lord Goldsmith of Richmond Park: The answer depends very much on the issue that we are focusing on. I mentioned the US in the context of the BBNJ negotiations. They are hugely important, partly because historically we have not always been in the same place. It matters enormously to be able to work very closely with the US in those negotiations. I mentioned Canada as an obvious example, but that US relationship is crucial.

We tend to find that we are pretty closely aligned on most if not all the issues I have just raised with colleagues across Europe. We have a particular focus and an increasing focus on small island developing states, partly because Covid really exposed all their vulnerabilities as small island developing states. The conventional measurements just do not apply to small island developing states. They are often harder hit than their income peers, because of the nature of how they live. They also tend to be very large ocean states, so they are hugely important in this context. We are doing everything we can—I hope we will be able to do more—to improve those relationships and the partnerships that exist.

Andy, I do not know whether there is anything you want to add about partnerships, for example on the UNEA plastic negotiations.

Andrew Murdoch: The starting point is worth emphasising. Which are the key stakeholders will often depend on the issue that is being considered. In the International Maritime Organization, for example, where you might be looking at the regulation of the large shipping fleets, the countries with the largest registries often have quite a powerful voice. Those are not necessarily the main states that you would see in other multilateral negotiations, and you have to be aware of that.

Within the convention itself and the meeting of states parties, you are looking at the states that are part of the convention, which the US and other countries are not. They do not have such a significant voice in those particular meetings within that treaty body.

More generally, as the Minister said, we work very closely with European Union states but also with major maritime states beyond that. Often our interests align with those major maritime powers in protecting and promoting freedom of navigation and other interests in keeping the oceans open. It may also be worth mentioning our recent dialogue partner status as part of the Indo-Pacific tilt, which is referred to in the integrated review. One of the issues that was brought out in relation to those closer ties was to safeguard the key pillars of international law, like the UN Convention on the Law of the Sea. It is specifically mentioned as something that we work with.

More generally, there is the work in the UN General Assembly and the annual reports of the Secretary-General. We are involved with a very wide group of states. It is not necessarily an exclusive club, but in specific areas you are going to wish to target the most influential states for those particular issues.

Lord Stirrup: One name that does not seem to have surfaced very much in any of the evidence we have taken, rather surprisingly, is that of India. Particularly given the Government's tilt to the Indo-Pacific, I would have thought that this would be an area of considerable interest to the UK. What sort of relationships do we have there with regard to these issues?

Lord Goldsmith of Richmond Park: The relationship with India broadly is a good one. India moved far further in the context of the UNFCCC than it was given credit for. We wanted it to go and we pushed very hard for that, but its commitments on renewable energy, if delivered, will take a big bite out of the problem of emissions that we face internationally.

The same is true across this agenda. We are working very hard to sign up India and align it to our biodiversity aspirations, both terrestrial and marine. I am not going to pretend that we are there. We are not. In the end, India did not sign up to the Glasgow declaration on forests. We felt that we got very close to getting it to sign up, and I believe that is still very much on the cards in the next few weeks and months.

In relation to ocean politics and ocean protection, we are very closely aligned on issues such as plastic pollution and marine protection. There are no particular areas of difference. I would hope that we would end up on the same page with them on both those issues over the course of this year. On issues of marine protection, we are signed up to 30by30. India is a member of 30by30⁶. If not, it is about to be.

Andrew Murdoch: I think that might be right.

Lord Goldsmith of Richmond Park: I am not sure it is formally a member of the Global Ocean Alliance, but I would be astonished if it were not part of that alliance as we approach the CBD. We are in an okay

⁶ India is not a member of the Global Ocean Alliance but it is a member of the High Ambition Coalition for Nature, which supports protecting at least 30% of the World's land and ocean by 2030.

position with India, but a lot of work is required. I do not want to exaggerate, but it is an extraordinarily important partner. One reason why it is so important is that there are issues of maritime boundaries and ocean access where we are in a very different place to China. India is sometimes an important counterweight to that.

Q100 **Lord Stirrup:** We have been talking so far about the adequacy of current instruments. The real test is what effect they actually have on behaviour. I was about to say “on the ground”, but of course I mean on the water. We heard evidence earlier from Commander Tuckett of the Royal Navy, who told us, “For the Royal Navy and the United Kingdom, UNCLOS demonstrates state responsibility ... The problem is that we are reliant on the willingness of states to follow the provisions of UNCLOS”.

What are the Government doing and what can they do to ensure that member states comply with UNCLOS and its subsidiary instruments, and follow the principles of the law of the sea, including freedom of navigation, which is clearly coming under threat in certain parts of the world?

Lord Goldsmith of Richmond Park: This is a very live issue. It is true to say that the UK has a disproportionate voice when it comes to issues relating to the high seas. We have respect as a consequence of many years of work. Upholding UNCLOS is a clear and stated high government priority. That was reiterated in the integrated review. Therefore, UNCLOS-related discussions feature very highly across our entire diplomatic network.

More than that, we have shown that we are willing and able visibly to assert, promote and protect our own rights and freedoms. Where appropriate, we have been willing to deploy, for example, the Royal Navy to try to shine a spotlight, in a very obvious way, on some of the agreements that have been reached under UNCLOS and where there might be disagreements, for example in the South China Sea.

The UK is among the most active members of UNCLOS when it comes to emphasising the importance of international compliance. This is a big priority for us. We have strong representation on all the key associated bodies: the IMO—the International Maritime Organization; as someone mentioned earlier, the International Seabed Authority; the Intergovernmental Oceanographic Commission; and the International Hydrographic Organization. There are other such bodies that we are considering whether to join. In a very positive way, we are pretty active international marine agitators.

Andrew Murdoch: On the legal dimension and the submissions we have made, the Minister for Asia at the time in September 2020 put on the public record our legal analysis of the Chinese claims in the South China Sea. That was followed up shortly afterwards by notes verbales with us, France and Germany, which again set out our position on these important issues.

As part of the issue of promoting and protecting the convention, when states disagree or wish to put their voice on the record, there are means to do so. That is part of the responsibility of states. We have done that where we think there are excessive claims to certain maritime zones that affect us and other seafarers. We have also voiced those concerns in the UN Security Council.

To come back to the question on India, India brought this up in the Security Council as one of its thematic discussions. The Secretary of State for Defence certainly participated in that debate and made a very strong statement⁷ about the importance of states calling out bad behaviour when we see it and states' responsibility not to let it go by the wayside. One particular issue was the incident off the coast of Oman. You can raise, protect and promote the convention through these interventions.

Lord Stirrup: You have talked about activity, but how effective is our activity in this regard in the international arena?

Lord Goldsmith of Richmond Park: There is rarely a moment when issues such as those relating to the South China Sea are ever completely resolved. There is a long-term requirement upon us and allies around the world to continue to reassert and reaffirm the commitments agreed under UNCLOS. There will not be a moment when we can step down and think that the job is done.

In terms of galvanising international support for the priorities that I hinted at in my answer to the first question, the UK is probably the loudest and most active voice. It certainly feels like the UK is very much leading the discussions on those issues. Whether it is about deep sea mining or anything else, we are definitely not passive passengers in these discussions. We are doing everything we can to shape them and lead them.

Q101 **Baroness Fall:** It all seems to be a bit hit and miss on the high seas as far as human rights are concerned, although there is international law that covers it. In the existing law and reality out there, to what extent are human rights actually implemented?

Lord Goldsmith of Richmond Park: There are undoubtedly many human rights issues that are particularly prevalent on the high seas, for all the obvious reasons—lack of oversight, monitoring and enforcement. A lot of that relates to things that we often debate here—modern slavery, drug trafficking, people trafficking and so on.

We play an active role in the IMO and the International Labour Organization to try to improve health and safety and living and working conditions for seafarers. Article 94 of UNCLOS requires a flag state to “effectively exercise its jurisdiction and control in administrative, technical and social matters”, but there is clearly a limit to how policeable

⁷ <https://www.gov.uk/government/speeches/promoting-the-rights-and-freedoms-enshrined-by-the-un-convention-on-the-law-of-the-sea>

some of those commitments are on the high seas. There is no complete legal apparatus that enables a state such as ours to enforce this. Through negotiations and discussions with other countries, there are ways in which the net can be closed as much as it can be.

The flag states issue, which is coming up at some point in this discussion, is potentially one area where monitoring, enforcement and compliance are made easier through agreements reached internationally. We are struggling at the moment, I am struggling at the moment, to try to figure out how the UK can play an effective role in tackling illegal, unreported and unregulated fishing. It is incredibly difficult. I do not believe we have the answers. I am currently in the market for good ideas. I am hosting a number of round tables with people who know much more about the issue than I do, with a view to trying to understand how we can really have an impact on that issue. It is complicated, because we are talking about an area that is not entirely lawless, but it is not far off it.

Baroness Fall: What you say is absolutely right. The concern that I and other members of the committee have is that, with rising sea levels and the impact on resource—you mentioned deep sea mining earlier—you will have a fight for resources. You will have more refugees. You will have more squabbles over delineation. It could turn into the wild west out there on the sea. You are absolutely right: in the end, it comes down to political will and knocking heads together.

My ask is that this is not forgotten. When you talk about your busy year on the oceans next year, this potential chaos should be kept in mind and be a focus of your meetings.

Lord Goldsmith of Richmond Park: That is completely right. I can assure you that it definitely will not be forgotten. All these issues are linked. Many of the problems affecting the ocean—not all of them—relate to criminality or illegality. Plenty of things are permitted that are also very destructive.

The challenge is to try to inject accountability and a sense of ownership or responsibility into what is happening on the high seas. Every vessel on the high seas is in one way or another linked more to one particular jurisdiction than any other. We want to try to create a situation where the responsibility for whatever happens on that vessel lies with whatever that jurisdiction is. It is difficult.

The US is now, thankfully, showing a renewed interest in the PSMA, the agreement on port state measures, which requires ports to take responsibility for whatever is landed in those ports and to ensure that we do not see the importation and distribution of illegally caught fish, for example. Through the port state control system, that same principle applies well beyond illegally caught fish. It applies to labour standards, people trafficking and all the issues you mentioned in your question. This is ultimately all about trying to formalise and harden that sense of ownership and responsibility as much as possible. We are a strong voice

in that discussion, but this requires more co-operation from countries around the world.

Q102 **Baroness Rawlings:** What you have told us is very interesting. We heard from several witnesses who identified autonomous maritime systems as an area requiring further regulation. We also heard that the International Maritime Organization, which we visited last week, is currently working on new regulations, but these will not be released until 2028. I wondered what steps the Government are taking to seek consensus. We were told that, in the meantime, everything on the treatment of the autonomous maritime systems has to be resolved by consensus. How is HMG engaging with the IMO on this issue? Who are our allies here, as it has to be consensus that we are fighting with?

Lord Goldsmith of Richmond Park: I will cut your question in half, if you do not mind, and ask my colleague to talk about the particular work that we are doing with other countries.

It is quite a fledgling area, in the sense that the regulatory systems that exist simply do not work with autonomous vessels. The responsibility traditionally lies with the master of the vessel and the crew. If you do not have such a thing, if you do not have people on the vessel, you are operating in a near-perfect vacuum. There are also no clearly agreed definitions of what an autonomous or remotely controlled vessel is. You would have thought that it would be relatively straightforward to agree that definition, but that is currently not the case.

We are starting from a position where it is not about tweaking a regulatory system to accommodate these autonomous vessels. We are talking about a new regime being created that will fully incorporate and absorb something that is relatively new. This area is led by the Department for Transport. It talks to the Ministry of Defence and the FCDO, which is why I do not feel too mean in asking Andrew to comment.

This is an area where it is probably true to say that we are in the very early stages. We have committed to working very closely with the IMO and with IMO member states as this develops, but I do not feel equipped to tell you how advanced that thinking is yet or how clear we are in the UK about our position on what those regulations ought to look like. I am going to defer.

Andrew Murdoch: The lead representative on the IMO comes from the Department for Transport, but they link up very closely with the interested parts of government on any particular issue. As well as the commercial transport sector, you may have heard that the military are also very heavily interested in this particular sector.

Although the code is unlikely to be in place before 2028, I understand that in the meantime the IMO has published guidance on different degrees of autonomy, which is helping to shape the debate. That goes from fully autonomous through four different categories. There is fully autonomous at one end, and automated processes and decision-making

support with crew onboard at the other end. I understand that its guidance has been adopted in full by the Royal Navy and is now part of its integral certification process.

On the leading states, I am afraid I cannot give you the most influential states in those discussions. It would impact on all the different interest groups. It will no doubt impact on those with very large registries, because they have the most shipping. It will also impact those with a large military presence. It will also be of interest to states that do not necessarily have a strong commercial or military fleet but have the technological development that can assist on the commercial side. I suspect that in the debate on these particular issues the stakeholders are very wide-ranging. The IMO also has mechanisms for dealing with issues through circular advices. The MSC, the Maritime Safety Committee, can issue circulars on particular areas in order to help states.

In advance of 2028 and no doubt the negotiations for this, the discussion will be guided by the guidance that has been issued and by state practice along the way. As the technology advances, those discussions will mature. It is clear that the UK has an interest in all these areas. As we have heard before, we are pretty influential in those discussions.

Q103 Lord Teverson: Good morning, Minister. We normally interact on rather different issues in the House. One of the areas we have discussed quite a bit during this inquiry has been flag states. We heard from Commander Tuckett that, if you have a potential enforcement issue on the high seas and you come across a flag state, you have no ability to take any action unless you get permission from the state itself. Often there is absolutely no reply. When we were at the IMO last week, I was even more shocked, in a way, when it became clear that a number of vessels on the high seas fly flags that even those states are not aware are on the register, and it is very difficult to check whether they are on registers.

We have this judicial blackspot and vacuum. I am interested to understand whether the Government see this as an issue at all. If so, what do they want to do about it? It seems to be solvable in various ways, if we have the wish to do that. I am particularly interested in why we as a nation have not signed up to the 1986 UN Convention on Conditions for Registration of Ships. It is very strange that we have not done that. Should we start to revive that convention?

Lord Goldsmith of Richmond Park: There is no doubt that there are flaws in the current system. There is a lack of oversight by numerous flag states over their vessels. That is a big contributing factor to many of the issues that have already been raised, not least by Baroness Fall—human rights abuses, human trafficking, poor labour conditions and so on—but also issues like IUU, pollution and so on. It feeds right back in to the points I was clumsily making earlier about ownership and responsibility. It makes it very much harder if there is no very clear link between the flagged vessel and the jurisdiction to which that flag belongs.

The traditional view, led by the Department for Transport, has been that this is not so much an issue of jurisdictional vacuum but more one of enforcement. I know that colleagues in the Department for Transport have worked closely with the international classification societies in the port state control regimes that we talked about earlier, such as the Paris MoU and so on.

I certainly do not pretend to be an expert, but it feels to me that this is an area that needs to be revisited by the UK Government. I asked the Department for Transport only very recently to review our current position. Our position at the moment is that we are not pushing for reforms of the flag state system. We think that standards can be raised within the existing regime. That may or may not be right. This is an area where the evidence suggests that we should review that position. I have asked the Department for Transport to do so, and it has agreed. It is reviewing this position. I will follow that process very closely. Our job would be made easier if we saw a tightening up of the system so that there was a very clear link between the flagged vessel and the jurisdiction that owns that flag, which, as you said in your question, is not the case at the moment.

This is an opportunity area for us. There could be movement in this direction. The DfT is leading on this, and it is the expert. If we make progress on this area and perhaps adjust our position, we might find it easier to address more effectively some of the other issues that we have talked about already in this session.

Lord Teverson: That is very positive, Minister. Thank you for your work with the Department for Transport on that. Perhaps I could just come back to why we have not signed that 1986 convention. Do we feel it is flawed or unnecessary? Are we going to revive our thoughts about it?

Lord Goldsmith of Richmond Park: My answer to you on this is very incomplete. There are insufficient signatories to that convention for it to have any force or meaning in law. The UK approach to the use of British flags on vessels is to have a relatively high bar and demand a clear link or justification. We cannot be accused of authorising phoney or convenience flags.

Why did we not originally sign up to the 1986 convention? I am afraid I do not know. Andrew, I feel very unkind coming to you with all the really hard questions, but I suspect you know a lot more about that than I do.

Andrew Murdoch: It is 25 years ago. Some of the corporate memory needs rechecking as part of this review. Part of the issue is that for this to be effective, like any international instrument it needs widespread support, in particular from the states with the largest registries. The two requirements for the convention coming into force are 40 signatories and over 25% of the gross tonnage, neither of which is anywhere near to being met at the moment.

When you have a convention like this in force, there will be times when there is a two-tier system, with the UNCLOS approach to genuine link and this particular convention applying much more rigorous standards. That is part of the reason for getting consensus and having any meaningful effect on the problem states. That is obviously not the UK, because of our strict conditions. Like any of these measures, it is about how you get on board the states that you want to raise the bar. That is part of any consideration in pushing and promoting a new convention.

Lord Teverson: Surely we are showing a signal by not having signed it. Is that convention sound, or is there a fundamental flaw in it? Is it wrong anyway? That is what I am trying to get at.

Lord Goldsmith of Richmond Park: I am not aware that there is, but that does not mean there is not. I do not disagree with the point you just made. This is why I have asked for a review: I want to understand whether there is a justifiable reason or whether there is something wrong with that convention. There is no doubt that what Andy has just said is true when it comes to the lack of take-up and the lack of support, despite the 25 years this thing has been in existence. We are also not signatories. Who knows what would happen if that discussion were to be entered into with more vigour and more enthusiasm? It is slightly an unknown.

With all these things, we have to pick our battles and figure out where we are likely to have the biggest impact. If it becomes very clear that, no matter how hard we push and no matter what signal the UK sends, we are not going to get other countries on board—that would be disappointing—we are better off focusing on areas where we can have an impact. I am particularly interested in the DfT take on this. I hope I will be able to share that with the committee, but I am not sure I can make that promise on behalf of the DfT.

The Chair: In considering the gaps that are left by UNCLOS and in looking look at the issue that has been raised by Lord Teverson, we may wish to call upon the department responsible for replying to our report—ie you—to follow up on some information from the Department for Transport about this. Thank you. I appreciate that you have gone as far as you are able to do so today.

Q104 **Baroness Rawlings:** Thank you for your very frank and clear answers. What is the Government's assessment of the dispute settlement mechanisms available under UNCLOS? Do they enable states to resolve disputes peacefully and effectively? More importantly, what is the Government's approach to the jurisdiction of the International Tribunal for the Law of the Sea, including its advisory jurisdiction and its relationship to international humanitarian law? It was mentioned this morning in the Reith lecture.

Lord Goldsmith of Richmond Park: As with your previous question, I will ask my colleague to step in. There is no doubt that this is an imperfect system, precisely because it all depends on members engaging

in good faith and adhering to decisions and rulings, but there is equally no doubt that the dispute resolution system has contributed enormously to the peaceful settlement of disputes relating to a whole bunch of ocean-related matters, not least those that we have already talked about.

I dread to think how those disputes would be resolved without the system we have in place, but that is not to say that it is a perfect system. I am putting my colleague in the deep end here, but it requires a more expert answer.

Andrew Murdoch: You may have heard this from other witnesses, but during the negotiations the incorporation of a compulsory dispute settlement provision within the convention was a very important part of the convention in bringing about accountability for states, which goes back to some of the other questions about states meeting their obligations.

There have been some very important cases either before the International Tribunal for the Law of the Sea or the ad hoc arbitral tribunals that have been set up to deal with some of those issues. We see that not just as part of the convention but more generally as part of international law when it comes to promoting compliance. It is very significant.

There are some exceptions, as you will be aware, but the compliance rate with the jurisprudence is generally high across the board. It probably has some kind of deterrent effect on some states' actions, because there is an ability for states to be brought in quite quickly before courts and tribunals to account for their actions.

On the second part of the question, on advisory jurisdiction, the convention itself provides express jurisdiction for the courts only in respect of giving advisory opinions at the request of the International Seabed Authority's assembly or council on legal questions arising within the scope of those activities⁸. There was a case brought before the International Tribunal for the Law of the Sea as to whether the tribunal had a more broad-ranging advisory jurisdiction.

The UK submitted as part of that case⁹, and its view was that the tribunal did not have that advisory jurisdiction within the convention. Although there were lots of points raised, the key point was this: that, as in every convention, if states want something, the presumption would be that they say so in clear terms on the face of the treaty. They did so in respect of the International Seabed Authority. They did not do so in respect of other matters. Our position was that, if states wanted ITLOS to

⁸ This is set out in Article 191 of UNCLOS: "The Seabed Disputes Chamber shall give advisory opinions at the request of the Assembly or the Council on legal questions arising within the scope of their activities. Such opinions shall be given as a matter of urgency."

⁹ <https://www.itlos.org/en/main/cases/list-of-cases/case-no-21/>

have advisory jurisdiction, they would have agreed and said it expressly on the face of the convention.

The tribunal reached a different view and took the view that it did have a more expansive jurisdiction, subject to certain conditions being met. Although we did not necessarily agree with that conclusion, we respect it as the conclusion. No doubt the tribunal will move forward based on that previous decision.

Q105 **Lord Teverson:** We come back to marine biodiversity, which I know you have already answered a fair bit on already, Minister. Could I ask you to confirm briefly what our priorities are there? How do we intend to make it effective? One area that I have some knowledge of is the regional fisheries management organisations that have management control over the high seas area. They have mixed success. I would be interested to hear what lessons we have learned that we could apply, if we are successful in this treaty. When might this treaty reach the situation of being signed and ratified sufficiently to come into force? I would be interested in your thoughts about timescale.

Lord Goldsmith of Richmond Park: Just on the last point about timeline, the answer is that I do not know. We are very keen for this to be resolved very quickly. We are pushing for a conclusion of the agreement in the coming year, 2022. It would be enormously disappointing if that did not happen. We are among the most active agitators in this space internationally.

There are a number of things that we want. What is most important depends on one's view, but the most important thing that we want is the establishment and agreement of rules that would enable us to establish those marine protection areas in the 64% of the ocean that is beyond national jurisdiction. For all the reasons I mentioned earlier, we cannot deliver 30by30 without that, or at least it would be very difficult. We want agreements around environmental impact assessments on new activities on the high seas, and then there is the highly politicised issue around the sharing of the benefits of research into marine genetic resources. The fourth component is harder to measure, but it is important and it ties back to something we talked about earlier: the support for developing countries.

This connects to one of the many reasons that I was very keen for us to establish the Blue Planet Fund, which the Prime Minister launched a few months ago. It is a £500 million fund that comes from ODA money. A big part of that is to show good faith on our part, particularly to the less developed and small island developing states, and to demonstrate that we are serious about the concerns that we have. We are putting real money on the table. It is a significant fund. On the back of that, we hope to be able to persuade other donor countries to step up as well.

We are nowhere near where we need to be on that. We are supportive. In fact, at COP we announced an initial contribution to PROBLUE, the new division of the World Bank that is specifically around marine issues and

marine sustainability. It is a drop in the ocean; that is a bad analogy, but it is. One of the key goals we have in the run-up to CBD is to ramp up support for marine sustainability and marine finance. That is everything from coastal protection, mangroves, corals and so on to the establishment of large protected areas further out to sea.

That is a big part of what we want to do. Those are the four main areas. I hope there is not anything that I have forgotten. The last one on finance will be a hard graft, but it is very doable. I have no doubt that we will secure lots of finance. How much I do not know.

On the first part on establishing rules for the protection of the high seas, we are pushing really hard to get new countries on board. There are quite a few countries that have told us privately that they are likely to or even will come on board, but they are not formally or publicly associated with that target. Clearly, we are not there yet. I was going to ask whether Russia have signed it. Is Russia a member of GOA 30by30?

Andrew Murdoch: I do not think so.

Lord Goldsmith of Richmond Park: There are some big players out there that remain to be convinced. I was asking colleagues whether Russia has signed up. Although there have been lots of difficulties relating to ocean politics with Russia, it feels more in reach than it has done at any other time. I am quite optimistic, and likewise for China.

I am sorry. I have completely forgotten the question. I hope I answered it in that long, rambling answer.

Lord Teverson: I did ask, Minister, whether there was anything to learn from the operation of regional fisheries management organisations. Their performance has been mixed.

Lord Goldsmith of Richmond Park: You are right. Clearly, some are more effective and more ambitious than others, but they are the most important vehicles we have at the regional level to get stuff done. The UK, partly as a consequence of having our own seat at the table, has been able to move the debate. For example, on the ICCAT¹⁰ decision on tuna, the UK played a blinder. We did not get everything we wanted, clearly, but it is probably true to say that, if the UK had not been in those discussions, we probably would not have ended up with the agreement

¹⁰ International Commission for the Conservation of Atlantic Tunas

¹¹ The UK is a contracting party to 5 RFMOs:

ICCAT – International Commission for the Conservation of Atlantic Tunas

IOTC – Indian Ocean Tuna Commission

NAFO – Northwest Atlantic Fisheries Organisation

NASCO – North Atlantic Salmon Conservation Organisation

NEAFC – North East Atlantic Fisheries Commission

that was reached between the Maldives, the European Union and others. That is an example of how these things can be effective.

There was the mako shark decision that was taken a week or two ago. That was ICCAT. Again, the UK played a very strong role. It is probably also true to say that we would not have reached that agreement otherwise. Maybe I am trumpeting the UK's credentials too much here, but that is probably a view that would be shared by NGOs working in that space.

We recently joined up to five RFMOs—I think we have joined up to five RFMOs¹¹. I had a meeting with colleagues from the Falkland Islands, because there are quite large areas of completely unpoliced ocean that do not fall within the remit of any RFMOs, but where an enormous number of highly destructive practices happen. We are internally now talking about how we can work with other countries in the area to try to fill that gap with a new RFMO. I feel that that is completely unavoidable if we want to address some of the really big issues that are happening.

That is an ongoing discussion. I do not think that is government policy, but it is certainly the case that the Government are looking very closely at how we can follow up on the recommendations put to us by the Falkland Islands.

Lord Teverson: On that same theme, very briefly, a couple of years ago there was an international decision to have a moratorium on fishing in the Arctic area, where the sea ice is melting away, until there was a greater understanding of the ecology there. As a country, are we making sure that that sticks and that agreement stays?

Lord Goldsmith of Richmond Park: We are pushing very hard at both poles for progress to be made. I think the European Commission is leading on the Antarctic. We are partners, for sure, on this issue. We are trying to get China and Russia, in particular, on board with protection of the Antarctic. In the Arctic, our position remains absolutely the same. We want maximum protection.

The question from Lord Teverson is about making it stick. I do not know whether Andrew has any updates or anything to say in relation to the Arctic.

Andrew Murdoch: No, but certainly in the Antarctic, we are working with CCAMLR.

Lord Goldsmith of Richmond Park: Yes, thank you. I know your question was not about the Antarctic, but that is a very live issue. We have a very large ocean area within our jurisdiction around South Georgia and the South Sandwich Islands. We are also very strong supporters of the establishment of proper protection for the Weddell Sea. Support for that is growing. Although we do not have the support from Russia or China, the view from my colleagues in the European Union and the

European Commission, who are closer to this than I am, is that quite significant movement is being made.

It is a campaign worth pushing, worth fighting, with a view that, if we get one of China or Russia on board, it is likely that resistance would fall away and we would be able to establish something really very huge. To put it in context, in the unlikely event that anyone out there is watching, we are talking about the area that is most important for the blue whale, which featured very heavily in the extraordinary series, "The Blue Planet", which, when it was launched, it attracted 80 million people in China. The internet almost crashed; I think it did crash, in fact, in China. Some 80 million people downloaded it, so there was a lot of interest around the world. We are talking about an enormously important part of the ocean.

Q106 Lord Alton of Liverpool: Can I move you on from the Antarctic and blue whales to the threats and consequences of rising sea levels to small island states? Perhaps you could share with the committee how the Government are responding to the Pacific Islands Forum's 2021 declaration on preserving maritime zones in the face of climate change-related sea level rises. Perhaps you can tell us also whether the Government think that baselines should ambulate with sea level rise or whether they should be fixed. How do the Government plan to support those affected by sea level rise? How prepared is the UK to support climate change refugees, especially in the absence of anything in the 1951 Refugee Convention or the 1967 protocols protecting such refugees?

Lord Goldsmith of Richmond Park: On the first point, the actual position of the Government, unless I am corrected by colleagues, is that we are still considering what our position is in relation to the proposals by the small island developing states on baselines. Having said that, there is no suggestion from anyone in the Government that baselines are not ambulatory. We understand and are fully signed up to the overwhelming consensus on climate change and the consequent risk to small island developing states—not just risks but realities in many cases.

Baselines are changing. They are moving as a consequence, and this is a very real concern. It has been brought up in many discussions I have had with counterparts and leaders in small island developing states in the Pacific. Therefore, that reality needs to be reflected. This existential threat to those small island developing states needs to be reflected in our position, when we formally reach that position. I do not think there is any argument, internally or externally, about the ambulatory nature of these baselines.

Andrew Murdoch: As the Minister has said, the UK's practice in its own baselines has been ambulatory. For the purposes of the declaration, the suggestion is that they are fixed in time, in effect, once they have been promulgated and fixed on charts. From there, any maritime boundaries that have been properly negotiated and claimed by them would also be fixed in time.

As the Minister said, that, in some ways, is not set out. I do not think climate change was envisaged when these provisions were negotiated, but this is a real problem going forward, not just for the Pacific Islands Forum states but for our overseas territories, which face the same problems. This issue is being looked at very carefully by the International Law Commission, including our newly elected member of that, Professor Dapo Akande, who was recently elected to that commission to take over from Sir Michael Wood. It will also be looking at whether the convention, in terms of its rules and practice, would allow this development of an interpretation of the convention to allow this to happen, in view of this change, or whether other interpretations, state practice, declarations or other instruments might be needed to give that certainty.

As the Minister said, this is clearly a very important issue, but one where states are not necessarily rushing to come out with a view. To do so might risk undermining the convention. Even the Pacific Islands Forum declaration is very conscious of not doing that itself. It is trying to make sure that that balance is struck. That requires careful consideration and discussion with interested states. We are but one voice in that.

Lord Goldsmith of Richmond Park: Thank you very much for that. I think that answers it, unless you feel like coming back. There is a broader issue of small island developing states and climate-vulnerable nations, but I should not pre-empt.

Lord Alton of Liverpool: You have answered the first part of the question superbly. I am very pleased with the response you have given, but I also asked you about the position of people who become refugees as a result of what you have described as an existential, man-made threat. Because it has come about through the environment or through natural causes, as lawyers see it, such people are not covered by the 1951 convention or the 1967 protocol.

The *Harvard Environmental Law Review* has set out a proposal for an independent convention that could either stand on its own or be a protocol to the refugee convention or to the United Nations Framework Convention on Climate Change. I wonder if that is something that you are looking at, given that these will be real casualties. We already have over 80 million people who are displaced or refugees worldwide, as you are well aware.

Lord Goldsmith of Richmond Park: You mentioned when you opened the question that climate change is not recognised under the 1951 Refugee Convention. Therefore, it is not something that can be used to justify either requesting or granting refugee status. That is the current state today. There would be huge resistance internationally to changing that for all the obvious reasons, politically. The recommendation from the assessment that we commissioned was that we should talk about climate-related migration, as opposed to climate migrants, partly to reflect that much migration is not monocausal.

There is no doubt that, if trends continue, even if we do stay within 1.5 degrees, change is inevitable. We know that. Change is already happening in many parts of the world. There are people whose current livelihoods will be dashed. There are people whose homes will no longer be viable. That is unarguable, unless we reject this whole body of science and, indeed, anecdotal evidence and our eyes. Sadly, this will become an increasingly important issue and therefore an increasingly important question, as to how that new reality is recognised by international law.

Obviously, I cannot change our position on that now and I recognise that, were that position to change, there would be enormous implications for countries around the world. To have a position that does not acknowledge the reality of our dependence on the natural world and therefore our displacement when we destroy the natural world is not a viable position in the long term, or even the medium term.

Lord Alton of Liverpool: Finally on that point, Minister, the *Harvard Environmental Law Review* says that, by 2050, the number of climate change refugees will dwarf the number of refugees in the world already. Given that you have rightly pinpointed that this will be a massive issue for the future, is there some way in which Her Majesty's Government can start to get a discussion going at an international level about what we will do about this and tackle the root causes?

Lord Goldsmith of Richmond Park: I strongly agree with the premise of your question. That discussion needs to happen, both internally and internationally. We accept the science and therefore we cannot deny the implications of that science. This feeds into a lot of issues that were raised at COP, not so much directly around the status of people or this question of climate refugees or environmental refugees, but around issues of loss and damage and adaptation.

The UK presidency moved the issue very significantly in the right direction by putting a huge focus on the need to invest as much in climate mitigation as in adaptation, precisely for the reasons that you have just outlined and specifically in countries that are climate-vulnerable. Also, we opened the door to a discussion internationally, in the context of UNFCCC, on loss and damage—a door that had been pretty firmly locked until then.

The small island states, particularly Fiji, which has really championed this issue, would not have celebrated where we got to on loss and damage, because we are nowhere near where they would like us to be, with a whole separate financing mechanism compensating countries for irreversible change. We did not get there and I am not surprised by that. They are nevertheless very happy that that discussion has taken a big jump forward. It allows us to try to build on that in the coming year, as we approach Egypt.

The second thing that the UK in particular has done, not so much with our COP presidency hat but through our ODA and associated work, is co-lead a taskforce on access to finance for the small island developing states

and climate-vulnerable nations, on the basis that the current architecture just does not work for them. A place such as Samoa just cannot tap into the global climate fund or even the GEF, run by the fantastic Carlos Manuel Rodriguez. There can be a five-year gap between the application, even a successful application, and getting some cash.

As one of the biggest contributors to that multilateral system, we are taking a much more muscular approach than we have in the past. Our contributions to any multilateral organisation are not unconditional. Where we think that those multilateral organisations could improve their performance and improve the access to them by those vulnerable nations, we are willing to be much bossier about that than we have been in the past. That is a very good thing.

Q107 Lord Anderson of Swansea: Minister, the International Tribunal for the Law of the Sea was established in 1996. Given that we are such an important maritime nation and that we have so many eminent lawyers specialising in that area, it is surprising that we have had only one judge since that time, since 1996. I believe that the term of office of that judge ended in 2006. Do we intend to remedy that? Are we proposing to put forward a candidate? When will the first opportunity arise to do that?

Lord Goldsmith of Richmond Park: As I understand it, there is one seat in our regional group that is up for election next year, 2022. The assessment across the board is that Tomas Heidar from Iceland has been pretty effective in that role, so it is not our intention to contest his re-election with a British candidate. We want the job to be done properly. Of course, we want to have as many seats at the table as possible, but it is more important that the people doing the job are the right people. The view is that he is the right person.

That is not to say that that will not change in the future. We have been very active in our international outreach and diplomacy to try to galvanise support for candidates in other fora. For example, in the International Criminal Court we did an enormous amount of heavy lifting to secure support from countries around the world for elections there. Andy mentioned Professor Akande earlier, who was our favoured candidate, and we did an enormous amount of lobbying on his behalf as well to the International Law Commission.

We are very active. It is not that we are being lazy or complacent when it comes to these elections, but we need to pick and choose when it is right for us to be pushing for our candidates. Our view is that Tomas Heidar is doing a good job.

Andrew Murdoch: It is also reflecting the broader approach to international elections, in terms of seeking to prioritise. In 2022, the priority election is getting back on the Council of the International Telecommunication Union. In terms of priorities, taking into account Judge Heidar's performance and other priorities, that is the decision there. As the Minister said, when the next cycle comes for the WEOG¹²

seat, that will have to be considered at the time, in due course. There are some very eminent, suitable British candidates for these roles that could be put forward.

Lord Anderson of Swansea: Nevertheless, it is surprising. Perhaps we should follow the Chinese precedent in seeking to ensure that there are our nationals in key positions, if not in this tribunal but generally in international organisations.

Lord Goldsmith of Richmond Park: As a principle, I strongly agree with that. I do not have that much personally to compare it with, having been a Minister for two and a half years or so. Ensuring that we are represented on as many important international bodies as possible has been a goal of the UK Government.

The only other thing I would add is that it is fair to say that we have a pretty strong influence on the law of the seas issue generally. The IMO is here in London. A lot of the maritime law practitioners are based in London. Michael Lodge, who is a British national, is secretary-general of the International Seabed Authority. Dr Gordon Paterson from the Natural History Museum sits as an independent member of the ISA's legal and technical committee and so on. There is a lot of representation through these bodies. It is not that we are absent, but I take your point. In principle, that is right.

Q108 **Lord Anderson of Swansea:** Back to the seabed, there is a deadline that negotiations will have to conclude by. Is it July 2023? That was an initiative of Nauru. Do we agree that this is feasible? Some claim that there is insufficient research on the effects of deep mining at the moment and we should await that before concluding within this rather artificial deadline.

Lord Goldsmith of Richmond Park: This is a real concern. The clock is ticking. It is not an absolute. Even if we get to the deadline and have not secured agreement, my understanding is that it is still possible for parties to, in effect, veto licences going live. It is not the end of the world if we do not get to the end of the process within a year. There is a huge regulatory vacuum at the moment. The pressure to exploit the seabed is only going to grow.

The position of the UK is that we have committed not to issue licences—I am not sure whether that is the correct term—unless and until we have a robust regulatory system that guarantees the highest possible environmental standards. We are a long way away from that. Our position is that it is not technically a moratorium we are calling for, but we are certainly saying that there should be no such activity until these hugely important issues have been agreed. That is reflected in our positioning overseas.

¹² Western European and Others Group. It is one of five regional groupings within the UN.

You ask how likely it is that we will reach agreement. If you do not mind, I will ask for an assessment from Andy, because he is at the coalface on that.

Andrew Murdoch: The council is sitting now and part of our delegation is there at the moment. The secretary-general of the International Seabed Authority has, as part of that, instituted an enlargement of the negotiating timetable throughout 2022, in terms of longer sessions. We have obviously had the delays because of the pandemic, in terms of in-person meetings. That has had a knock-on effect. Certainly, the proposal is to have longer meetings in 2022 to allow states to get into the meat of negotiations and move forward on these issues.

If those negotiations take place and states approach them in good faith, there is every reason to expect that those standards that we are approaching can be achieved. There is still, as the Minister said, a long way to go. We have a strong delegation. We have been very clear and consistent throughout, in terms of commenting on drafts as they have gone through and trying to promote discussion with states, on the rationale for that. The adoption of the regulations and the accompanying standards is the first step. Then there is the application and the licensing, as to whether those meet those standards that we hope will be sufficiently robust, which is what we are negotiating for.

Lord Anderson of Swansea: Is it then our view that the state of research is sufficient at the moment to establish these regulations? Are we on our own, or do we have a large number of countries with us in our policy, which you have outlined? Presumably, the mining companies are salivating at the prospects of the riches of the seabed.

Lord Goldsmith of Richmond Park: On the first question as to whether there is sufficient evidence, the answer is that there are huge knowledge gaps. We commissioned an evidence review; there are 70 peer-reviewed studies on this issue that we are pulling together to try to understand and see whether, between them, those 70 studies fill that knowledge gap. That process is under way and that will inform the specifics of what we think should be any kind of new regulatory system.

There are certainly not many, if any, countries calling for a moratorium on deep sea mining, but many countries are supporting the extreme caution position that we are taking here in the UK. As I said earlier, we have committed not to sponsor or support issuing any exploitation licences at all until that system is in place and agreed, with appropriate safeguards.

I am pleased to hear the answer from my colleague, in terms of how likely it is that we will get there. It feels that this will be one of those battles where very powerful vested interests will seek to ensure that whatever regulatory system exists is as light-touch and permissive as possible. Governments will need to stand up to that. I am absolutely convinced that we will here in the UK. I hope that is true internationally as well.

Lord Anderson of Swansea: Presumably our licensing responsibilities relate to the overseas territories as well.

Lord Goldsmith of Richmond Park: Yes, they do.

Q109 **Baroness Fall:** Our report, which is about whether UNCLOS is fit for purpose in the 21st century, in my view could be reworded as being about whether it is fit for purpose for climate change. Listening to all the very good answers you have given, it makes me wonder whether we should be doing more internationally in a creative, imaginative way to create new institutions, as they did after the Second World War to reflect those issues, to combat the issues around climate change.

You talked about resources. We have talked about loss of life and human rights. What about something like a sort of IMF for climate? In the end, sometimes you have to put money down. Not everyone will do that. You are not necessarily going to get the whole world behind you. It comes down to limited resources, losses and damages and paying people off. I wondered whether you, with others, thought creatively about some of the answers in terms of next steps or new institutions.

Lord Goldsmith of Richmond Park: I am doing a lot of thinking on this issue, because it is huge; it is a really big and difficult challenge. Whatever we do, I do not think we will be able to secure enough public money to solve the problem, because it is \$180 billion or so of aid deployed globally. The gap is probably three, four or five times that, in terms of what really needs to be spent to turn things around.

Of course, I am hoping that we will be able to use the momentum we have created at COP to raise much more public finance and philanthropic money, but the really big challenge is to try to ensure that money that is currently flowing in the wrong direction starts to flow in the right direction. We got commitments from the main multilateral development banks at COP. It was a real battle to get them over the line, but they have committed to aligning their entire portfolios not just with Paris but with nature as well. They do not know how they will do that. They are in the market to try to understand how they can shift the way they invest, so that they support the solution, rather than the problem.

Between now and the CBD, I would love to see countries, including the UK, commit to all aligning our ODA—obviously, this relates only to donor countries—that \$180 billion, with nature, to commit to going nature-positive. That way, although you may not be directly financing nature in the way we are talking about now, it means, for example, if you are looking to invest in solving a water problem in a water-insecure country, your first instinct, your default position, should be to look for the natural solution. Is it planting trees to protect the source of water? Is it reeds to clean the water that people are drinking? Is it mangroves to try to insulate communities from surge, et cetera? That would be the effect of all those aid agencies around the world making that commitment.

Even that is not enough, but it is things like that, where we are trying to figure out where we can have the biggest possible impact over the next

12 months. There are things that we realistically can do that require a lot of heavy lifting. I am thrilled that it looks like most of the key people who are assembled, in many cases looted by us from other departments of government to help deliver COP, are still in place. There are some really good people in government who are completely committed to ensuring the UK does its bit. That infrastructure looks like it is largely intact. That is a very good thing.

Q110 **Lord Teverson:** I want to come back to a question that Lord Stirrup asked, which was around how we are ensuring that member states comply with UNCLOS. We usually look to the South China Sea and the problem with the nine-dash line. We have a much closer issue to us than that, which is in the eastern Mediterranean, where Turkey is being particularly aggressive around the EEZs of Cyprus and Greece. I am interested to understand what the UK Government are doing, particularly with Cyprus, as a fellow Commonwealth country, to help assert the rights of Cyprus and Greece against Turkey.

Lord Goldsmith of Richmond Park: I am going to struggle to answer that, I am afraid, in terms of what practically we are doing. I think I mentioned earlier that there has been a lot of Royal Navy deployment around the South China Sea, the territorial seas of Ukraine, the Taiwan Strait, the Gulf of Guinea and other places as well. I do not know specifically what we are doing in relation to the issue that Lord Teverson has just raised.

Andrew Murdoch: I do not have the details.

Lord Goldsmith of Richmond Park: If you are happy for me to do so, I will commit to writing to you on this issue.

Lord Teverson: I would be very happy if that was the case, Minister. Thank you.

The Chair: That would be helpful.

Q111 **Baroness Rawlings:** Following Kate's question, knowing your knowledge of and interest in climate change, and especially as you are also a Minister in the Foreign Office, what are your broad views on climate change, the melting of the icebergs and the opening up of sea lanes in the Arctic?

Lord Goldsmith of Richmond Park: That is the awful thing: as a consequence of climate change, we could end up paving the way for even further exploitation, which will exacerbate climate change. That is why international co-operation in areas such as the Arctic and Antarctic, and the high seas generally, is so important. That is why it is a priority for us.

I will answer in a really general way and say that we delivered the actual COP conference, but our presidency of COP is beginning now. We have a year and that gives us enormous influence globally. We have incredible convening power over the next 12 months. It is particularly helpful that that time overlaps with other hugely important moments, not least UNEA,

which I mentioned, and specifically the CBD COP15 in Kunming. So much of what we delivered, in terms of commitments at COP26 is directly relevant to CBD COP15. Everything we committed in relation to nature and land use, and everything we discussed in relation to oceans, notwithstanding the first question I was asked today, is entirely, completely and directly relevant to a good outcome at CBD.

We are in a really good position to ramp up ambition. Right now, there are allies around the world, leaders in place in key countries, whose commitment is really staggering. I mentioned John Kerry in the US. We could not hope for a stronger ally, nor a more knowledgeable one. In Colombia, a key part of the Americas, we have President Duque, whose passion for nature matches my own. He has been extraordinarily helpful regionally in helping us get other countries, including very reluctant ones, over the line. The same is true internationally.

There is an informal emerging club of high ambition, of which the UK is proudly a part. It is not to say we have everything right here. We have lots of things we have to do as well, but there is this informal coalition of ambition, which enables us to behave almost like a group of activist countries, to ramp up ambition between now and CBD COP15. I am quite optimistic. I am certainly not deceiving myself about the scale of the challenge, but we have an opportunity now that is really unprecedented.

Q112 Lord Alton of Liverpool: I was very taken by the phrase you just used about having high ambition and bringing coalitions together to achieve those things. Can I take you back to human rights and some of the points that Baroness Fall was raising earlier? We asked witnesses at the outset of this inquiry what more we could do about human rights. There was a general sense that there is a gap.

Although none of us wants to unravel UNCLOS—we can see that this would be a counterproductive exercise and probably would not go very far—we were told that there was scope for the United Kingdom to go to the United Nations, perhaps to the Human Rights Council, and to raise some of these issues concerning people that you have mentioned: traditional refugees, people being exploited through trafficking, people who have suffered physical and sexual abuse on the high seas, and exploited seafarers. There was a feeling that was an area we could do more about. I wonder whether that fits, in terms of the ambitions you have described.

Could I ask you one other thing? You mentioned the Falkland Islands earlier on. As a young MP in 1982, I came here on a Saturday morning on the day that we sent men to their certain deaths, knowing the awesomeness of that decision. You used the phrase earlier on about there being no burning issues. None of us saw that as a burning issue before it erupted. You mentioned the Falklands and I wonder if you could tell us a little about those to whom you are talking. I presume Argentina is one of them. You mentioned that there are bilateral discussions within the region. How are we working with them to preserve fish stocks? What are we doing about ensuring that there could be a sharing of resources,

building up long-term guarantees for long-term stability in that region and for peace for the Falkland Islanders as well?

Lord Goldsmith of Richmond Park: I had an extensive series of discussions at COP with counterparts from Argentina to talk specifically about not just the ocean issue but the terrestrial issues. I was very surprised. There were plenty of very positive things that Argentina was doing that I was not aware of. Equally, I was very surprised by the openness with which it approached those bilaterals. Not having had such discussions before, it was a new experience for me. It feels to me that we have opportunities to collaborate, because there are plenty of areas where Argentina shares our concerns around sustainability of fish stocks, for obvious reasons.

It has been put to me, including by friends and colleagues in the Falklands but also beyond, that the establishment of the new RFMO to fill that gap that I mentioned earlier—the high seas that are currently, in effect, not protected by any system at all—could be a really perfect opportunity to create something with Argentina where our mutual concerns can be addressed in a way that means everyone wins. I do not want to exaggerate the scope there, because I do not know, but it feels right to me. It feels like an opportunity to do something in relation to our relationship, but also solving some really big international issues.

On the refugees, you are right and there are lots of opportunities. I know from discussions with colleagues in our Government that the UK Government are being proactive at the international level to try to curb some of the excesses and abuses that happen on the high seas, but I will not be doing them justice; it is not something that I am directly involved in. I apologise for not coming with a proper answer to that. I wonder whether that is something we can also follow up—unless, Andy, you are happy to address that now.

Andrew Murdoch: Yes, in part. As you heard, there are ongoing discussions in specific forums, such as the International Labour Organization, on some of the specific issues on this. Also, there are matters raised on the G7 and G20 networks as well on human rights. That is not to say that these matters cannot be raised in other forums as well, where there is a locus for it, whether that be the Human Rights Council or otherwise, to deal with whether it is the right forum for that specific issue.

One thing that we think is most helpful is unpacking the issue of human rights abuses at sea to look at and give tangible examples of what exactly we are talking about. That will often assist in working out what the right forum for taking that forward is. Certain organisations have a much better locus and a much more likely ability to take actual action in that particular area than others. That type of discussion, in terms of unpacking it and looking at the issues specifically where they arise, is often where you will get most progress.

Q113 **Lord Stirrup:** Minister, there are two sides to the issue we are

considering, the law and processes that govern the ocean. One is to prevent their abuse, and we talked a lot about that this morning. The other side is to promote and protect their safe and secure use. We really have not talked about maritime security very much at all. The integrated review identified China as a systemic competitor and a challenge to the international order. Lord Teverson mentioned the South China Sea and China's nine-dash line.

You said, in reply to an earlier question, that we have had a lot of Royal Navy activity, exercising freedom of navigation. Actually, what we have had is a brief burst of naval activity through a one-off carrier deployment to the Indo-Pacific region. Is the UK doing enough on a sustained basis, and putting enough resources in on a sustained basis, to protect the important issues of freedom of navigation in these contested areas, not just by itself but, more particularly, in long-term partnership with others, thinking particularly, for example, of things such as AUKUS?

Lord Goldsmith of Richmond Park: I understand your point about the flashes of activity. I would not underestimate the value of a flash of activity, because it shows a political appetite and will and a recognition that a problem is serious enough to merit such activity. That matters in and of itself. Equally, the South China Sea is probably the most obvious example, and it is the one that you raised as well. In the last three years, since 2018, it was not just the UK carrier. I think there were five other deployments as well¹³. Is that right?

Andrew Murdoch: Yes.

Lord Goldsmith of Richmond Park: I am not suggesting that we should be waging war and sending all our capacity, but we have had quite a sustained presence over the last three years. Over the last three years, this issue has gained in prominence and probably in heat as well. It is more than just a flash in the pan, but I would not want to diminish the optical and symbolic value, the signal that is sent, by those relatively short bursts of activity.

On the broader question about working with allies to try to hold the line on some of these issues, that is really the central activity that we engage in, talking to like-minded countries and trying to keep them as aligned with us as possible, whether that is a tiny small island developing state or the United States of America. This is what our diplomatic outreach is engaging in on a routine and permanent basis. I do not know whether you want specifics, but I think that is the bread and butter of what Andrew's guys are up to.

Andrew Murdoch: As well as the South China Sea situation, it is fair to point out that the activities of the Royal Navy more generally, for a number of years, have been looking at maritime security issues in the

¹³ The FCDO's written evidence provided five examples of recent Royal Navy deployments in a range of locations across the globe, including the ones referred to by the Minister and Andrew Murdoch. This does not represent the total number of RN deployments since 2018.

round. That is starting just off our own coasts, in terms of threats around those in our own waters, whether it is counter-narcotics or other illicit activity. We have had long-standing operations in the counter-narcotics field, whether in the Caribbean or off the west coast of Africa.

More generally and recently as well, there have been issues of normal passage of ships through territorial waters. That often may not give rise to a particular protest or a press report, but it is an example of exercising freedoms of navigation more generally. That is relatively routine for the Royal Navy.

In the waters off Ukraine in June 2021, there was an innocent passage by HMS Defender, which gave rise to reactions by the Russian Federation. Again, that was an exercise of innocent passage and freedom of navigation more generally. While the South China Sea is certainly a focal point, there are a number of other examples that can be pointed to in terms of promoting and protecting freedom of navigation more generally across the world.

Lord Stirrup: Minister, you said in reply to an earlier question this morning that there are a number of maritime security and maritime use issues more generally. The people we were mostly closely aligned with on a number of issues were our EU neighbours. This is not a Brexit issue or an attempt to refight Brexit. There is no doubt that, since Brexit, the mechanisms for co-operating effectively with the EU countries, including at sea, and developing the appropriate policies to underpin those sorts of operations have become much more difficult. How are we addressing that particular problem? What processes and mechanisms is the FCDO setting up in order to make that partnership effective in the future?

Lord Goldsmith of Richmond Park: There may be examples that I am not familiar with or aware of where what you just said is correct. In the areas where I have been involved, albeit at the periphery, in particular the RFMO examples I gave around tuna, mako sharks and so on, it has been in large part because we have an independent, individual seat at the table that we have been able to broker agreements, in the case of tuna, between the European Commission and the Maldives; they were not in the same place, and the UK played a very active role in bringing them together—it was not just those two parties, obviously—for what is, admittedly, a compromise but nevertheless a big jump forward in terms of the future of the yellowfin tuna. That is just one example, but I do not think that would have been possible in the same way had we pooled our voice, in effect, with one side in that debate.

I can see other areas where, thinking of my own portfolio, they overlap with ocean issues but not entirely. CITES¹⁴ is one example. The UK's influence in improving CITES protections for endangered species has been massively enhanced by our ability to create and bolster a negotiating unit within Defra, which is set up to deliver the Government's priorities. In every case that I am aware of, we have the most ambitious

¹⁴ Convention on International Trade in Endangered Species of Wild Fauna and Flora

voice around the table. We have secured not everything but a lot of really big wins for nature, in a way that would not have been possible had we had closed-doors negotiations internally, with a view to establishing a position, which is then much harder to change, once that position has been established. We have the freedom to be more flexible and to play a role that we were not able to play so well before.

Having said that, I definitely do not want to refight those battles, and there may well be examples that you are thinking of that I am not aware of; I would be very interested in any kind of follow-up from you on that. If there are areas where you think we could be doing things differently or mechanisms that you think we could give a bit of love and attention to to strengthen them, I am up for that.

Q114 The Chair: Minister, in answer to a question earlier from one of my colleagues, you said that the UK is strong on promoting international compliance. I wonder how that statement will fit with the requirements of Article 98 of UNCLOS, the duty to render assistance at sea, with regard to potential plans about how we would prevent refugees from our friends across the channel reaching here.

Lord Goldsmith of Richmond Park: I am not avoiding your question, but, incidentally, that is another enormous vacuum that exists in relation to the question I was asked about autonomous vessels. How does that obligation apply if there are no people?

That obligation is one that we have always taken very seriously. It is absolutely critical and there can be no movement in any way at all to undermine it. Whatever solutions, proposals and policies will be brought forward in the next couple of weeks in relation to this grim episode that you are alluding to must not be at the expense of our commitments internationally. I do not think there is any suggestion that they would be. I understand why you ask the question, clearly, but there is no suggestion from anyone that those obligations are not of paramount importance. I would be astonished if that were the case.

The Chair: Thank you for that assurance. I shall certainly remember it. We will be thinking perhaps of that and wider issues about the importance of the leadership that the UK can take, particularly on soft power, around the world. I realise that this morning, at 10 am, as we began our session with you, the Foreign Secretary was setting out her plans for foreign policy as a network for liberty. I shall look at that on the catch-up with great interest.

Minister, thank you and thank you to your colleagues for your assistance today and for agreeing to follow up on one of the issues that was raised earlier with further information.