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Baroness Anelay of St Johns
Chair, International Relations and Defence
Committee
House of Lords
London, SW1A 0PW

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17 October 2022

Dear Joyce,

Government response to the International Relations and Defence Committee report, *UNCLOS: the law of the sea in the 21st century*

Thank you for your letter of 19 July 2022 and your flexibility allowing an extended timeline to prepare responses to the Committee's further questions. In agreeing to this extended timeline, you asked that we also provide a brief update on the UK's progress with the international negotiations that took place over the summer on deep sea mining regulations and BBNJ. These updates are provided below along with replies to the Committee's questions which have been prepared in collaboration with the Department for Transport, Ministry of Defence, Home Office and Maritime and Coastguard Agency (MCA) colleagues.

International Seabed Authority/Deep Sea Mining Update

The UK continues to be fully engaged in the ongoing negotiations to agree exploitation regulations with respect to deep sea mining at the International Seabed Authority (ISA). It is working closely with partners to ensure the highest environmental standards are embedded in the Regulatory framework of the ISA, with a view to adopting regulations in July 2023 in accordance with the ISA's road map for their elaboration. At the recent ISA Council and Assembly meetings in July and August of 2022, the cross Whitehall UK delegation (FCDO, DEFRA and the Joint Nature Conservation Committee) participated in the negotiations and held collaborative meetings in the margins with other States to work on the draft Regulations. The Council meeting progressed the negotiations on the draft exploitation regulations within its four working groups on i) a financial model and payment mechanism for deep sea mining, ii) the protection and preservation of the marine environment, iii) inspection, compliance and enforcement and iv) institutional matters. The next ISA Council meeting will take place from 31 October – 11 November 2022.

The UK's policy position is to not sponsor or support the issuing of any exploitation licences for Deep Sea Mining projects until there is sufficient scientific evidence about the potential impact on deep sea ecosystems, and strong enforceable environmental Regulations, Standards and Guidelines have been developed by the ISA and are in place.

The UK's nomination of Dr Jon Copley, an Associate Professor in Ocean Exploration & Public Engagement at the University of Southampton in the election to the Legal and Technical Commission of the ISA was successful during the recent ISA Council meeting. Dr Copley brings 28 years of experience in the ecology of deep-sea habits and is currently involved in a UK research programme investigating the potential impacts of harvesting polymetallic nodules in the Clarion-Clipperton Zone. Dr Copley will be a member on the Legal and Technical Commission from 2023-27.

BBNJ Update

Negotiations on an International Legally Binding Instrument under UNCLOS on the conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (BBNJ Agreement) took place at the UN in New York from 15-26 August. The Intergovernmental Conference suspended its work at the end of those two weeks with the intention to resume as soon as possible. We are disappointed that it was not possible to conclude the Agreement but more progress was made over two weeks than in many years of previous negotiations. At IGC5, the UK was proactive and creative. We played a key role in helping to find areas of middle ground where delegations needed to come together to agree a way forward. The UK also led work across regional groups to build a workable system for establishing Marine Protected Areas in the High Seas. This is essential to deliver the goal of protecting 30% of the global ocean by 2030. The UK remains committed to securing an ambitious Agreement as soon as possible and fully supports the way forward proposed by the IGC President, Ambassador Rena Lee, to resume IGC5 as soon as possible. We hope this will be as early as January 2023.

Committee's questions: General points about UNCLOS

1. Will the Government investigate whether there is an appetite for SPLOS meetings to be used to discuss substantive issues with other states? If not, please provide more detail as to why the Government thinks it is not appropriate to ask other states' views on this.

The Government has considered this issue, including discussing the matter with key partners. We note the provisions of Article 319(2)(e) of UNCLOS and also note that a proposal for a formal Conference of the Parties was raised during the negotiation of UNCLOS, but was not successful and was not included in the text of the Convention. The Government recognises that States Parties may choose to refer to matters of substance in their interventions at SPLOS, however there remains no agreement that SPLOS should be able to take decisions on matters of substance.

Flags and Registries

2. Does the Government recognise that flags of convenience and, as a consequence, the lack of enforcement mechanisms on the high seas, pose a significant challenge for maritime security? Will it therefore act on our recommendation that it should "take a leadership role and work with others to ensure the link between vessels and the state in which they are registered is genuine and substantial"?

Government response: We welcome the Committee's follow up question on open registries or so called 'flags of convenience'. As stated in the initial response to recommendation 77, we recognise that open registries may pose a challenge to maritime security on the high seas and we support and encourage the need for all flag States (including those that operate an open registry) to meet their duties and responsibilities as provided for by international law in order to secure more effective implementation of their duties.

The UK will engage at the IMO to support the transfer of responsibility of the 1986 Convention on Conditions for Registration of Ships to the IMO. As the shipping world has changed significantly since the Convention was drafted, we will take a leading role in reviewing this Convention and work with other members of the IMO to determine what changes may be required for it to best reflect global ship registry today – including topics about links between a vessel and the state in which they are registered.

3. We ask that the Government provides six-monthly updates to the Committee on progress towards the IMO accepting the Convention as an IMO Convention.

As highlighted previously, we have begun preliminary discussions with the IMO secretariat as to whether the IMO is a better UN body for the Convention to sit under. If it is agreed in the UN that the IMO is better suited to owning the Convention, then this would provide an opportunity for the IMO to review the Convention.

The MCA will be happy to provide the Committee updates on this every six months.

4. While the response indicates a reporting date for the Maritime and Coastguard Agency's review into the Convention (some time in 2022), it does not give the requested additional information on its remit. Please provide details on this review, including the extent to which this process relates to the discussions about accepting the convention as an IMO convention.

As per the response to question 2 in respect of open registries, the UK is engaging with the IMO Secretariat to review the status, object and intent of the 1986 Convention on the Conditions for the Registration of Ship and support the IMO to negotiate the transfer of the Convention on Conditions for Registration of Ships to it.

As the shipping world has changed significantly since the Convention was drafted, the review being undertaken by the MCA will determine what changes may be required to the Convention to best reflect global ship registry today – including topics about links between a vessel and the State in which they are registered. This will place the UK in a good position to work with the IMO to revisit this Convention should it be accepted as an IMO convention.

Human Rights at Sea

5. How does the Government intend to explore the gaps in human rights for workers and other groups at sea, and over what timeframe?

As set out in our response to the Committee previously, the Government is concerned about the human rights abuses that are taking place at sea and recognises the challenges around upholding human rights in view of the jurisdictional complexities that exist at sea.

Identifying and acting on cases requires working together between Government departments and efforts have already been made in this area. We will continue to work to improve awareness and collaboration.

We consider that the European Convention on Human Rights (ECHR) and International Covenant on Civil and Political Rights (ICCPR) apply equally to the UK territorial sea as it does on land. With respect to the application of international human rights law in the High Sea we do not consider there to be gaps but the effective enforcement and recognition of those rights needs to be addressed.

This is multi-stranded and goes wider than just the relevant international agreements. We need to consider how the State of an alleged victim(s) may take its own action under either its own domestic or international law and where the relevant flag, port or coastal

state fails to act under the relevant international law or where those Conventions do not apply in that State.

6. We ask again that the Government acknowledge, as recommended, that the issue of human rights at sea applies beyond workers at sea, and that it outlines in detail what it considers its obligations to be concerning human rights at sea in general.

The Government acknowledges that States Parties to the ECHR and ICCPR have an obligation to secure to individuals subject to their jurisdiction the rights defined by those instruments: Article 1 ECHR; Article 2(1) ICCPR. The Government considers that this obligation includes the territorial sea of States Parties.

Whether an individual outside the territory or territorial sea of a State Party is subject to its jurisdiction for the purpose of human rights obligations depends on the specific facts of the situation.

7. We ask again that the Government confirms, unequivocally, that international human rights law applies equally at sea as on land, beyond just the jurisdiction of the ECHR, and to all categories of seafarers, not just workers.

The Government acknowledges that human rights obligations are capable of applying equally at sea as on land, provided that there is jurisdiction. Where jurisdiction exists, human rights obligations do not in general distinguish between workers and other seafarers.

Flag states and human rights at sea

8. Please provide further details on the UN Cross Agency Task Force, the UK's involvement in it, and the extent to which it is considering human rights for all seafarers, not just workers.

The UK government is not involved in the UN Cross Agency Task Force, the members of which we understand are drawn from the UN Agencies, led by IMO and the International Labour Organization (ILO), rather than governments. The Task Force was requested "to examine the implementation and practical application of the MLC, 2006 during the pandemic, including its impact on seafarers' fundamental rights and on the shipping industry." "Seafarers" under the MLC includes anyone working on a ship, and the standards of the Convention are focussed on their living and working conditions although ratifying countries are also required to satisfy themselves that its laws respect the fundamental rights of seafarers (Article III). We understand discussions so far have focused on obligations under the Maritime Labour Convention, 2006 (MLC). The last Task Force meeting took place on 22 September 2022.

Forced labour and excessive working conditions

9. Please provide further information on what other avenues the Government is exploring to tackle the issue of forced labour and other labour exploitation abuses at sea.

The UK draws on international standards that tackle abuse including the ILO, MLC 2006 and the Work in Fishing Convention 2007 which has a "no more favourable treatment" clause. That means that if a ship or a fishing vessel flying the flag of a non-ratifying state enters UK waters or a UK port, the MCA can inspect it against the standards of the Work in Fishing Convention in the same way as they would apply to a UK flagged fishing vessel. So the fact that only 20 countries have ratified the Work in Fishing Convention does not limit the enforcement of ILO Work in Fishing Convention standards within the UK's jurisdiction (as the UK is a ratifying country). We understand there are several more states currently working towards ratification of that Convention and over 100

countries have now ratified the MLC. Both Conventions set standards for “decent work”, and make provision for flag State and port State inspections, so providing a framework to identify labour abuses.

The 2015 Modern Slavery Act gives law enforcement agencies, including Border Force and the Police, the powers to investigate modern slavery offences at sea, including the power to stop, board, divert, detain and search a vessel, and to make arrests and seize any relevant evidence.

Border Force operates a fleet of vessels around the UK coast with the ability and remit to board vessels visiting the UK and the UK territorial sea to conduct customs and immigration checks. Border Force works closely with Government partners such as the MCA and trains its officers to identify offences relevant to those partners, such as labour abuses under the ILO Maritime Labour Convention or ILO Work in Fishing Convention No.188 (ILO C188).

Border Force officers can and do take direct action to remove seafarers from abusive or exploitative environments for their protection, regardless of whether the offence is detected in port or at sea.

With specific regards to offshore bunkering, all vessels within the UK territorial sea may be subject to boarding at sea by Border Force Maritime Command officers. Where offences relevant to the MCA (MLC/ILO C188), Police, or any other partner agency are identified, Border Force can gather evidence and share it with the relevant partner.

Border Force is developing a new strategy to disrupt and deter modern slavery and human trafficking in the United Kingdom commercial fishing industry, maximising the impact of our powers in close collaboration with other regulatory agencies. The new approach amounts to a national drive to break the business model that makes this criminality profitable.

Justice for victims of human rights abuses at sea

10. Please provide clarification as to the Government’s position on where victims may bring a complaint or case in the UK. Please also provide clarification as to what the Government considers to be the responsibilities of all states, and what steps the Government is taking to ensure all states comply with these responsibilities.

The UK has procedures enabling seafarers on ships calling at ports in their territory to make a complaint alleging breaches of the requirements of the MLC (including seafarers’ rights) to an MCA surveyor on board their ship or in the port in order to facilitate a prompt and practical means of redress. The surveyor has the powers to investigate the complaint, including where appropriate, to carry out an inspection of the ship. However, the surveyor is required by the MLC where appropriate, to seek to promote a resolution of the complaint at the shipboard level. As far as possible, the complaint will be treated with confidentiality.

Any seafarer or a professional body, an association, a trade union or generally any person with an interest in the safety of a ship, including an interest in safety or health hazards to seafarers may make a complaint to an authorised officer (i.e. the MCA). Complaints should be sent to mlc@mcga.gov.uk and will normally be allocated to a surveyor for investigation, either desk based or an inspection as appropriate. There are similar processes for fishermen under ILO 188 and complaints can be sent to workinfishing.convention@mcga.gov.uk.

On a UK ship, where necessary the MCA will agree corrective action with the shipowner. On a non-UK ship in a UK port, the MCA will contact the flag state who should, where

necessary, provide a corrective plan of action within an agreed timescale. If the flag state demonstrates that it will effectively handle the matter, the MCA may take no further action. Criminal sanctions are available under UK law for the worst cases where offences have taken place on UK ships or in UK waters but alternative measures such as improvement notices or detention of the ship, which have an immediate impact and require rectification of the matter, are generally favoured.

A unified approach to human rights at sea

A reply to paragraph 232 of our report was missing from the response. Paragraph 232 said: "Piecemeal solutions will not be sufficient. We call on the Government to work with likeminded partners to advance a unified approach to human rights at sea. This will need to draw together practical solutions to challenges including mass migration, forced labour, physical and sexual crimes, and crimes committed by privately contracted armed security personnel, and must lead to the creation of new mechanisms to address the issue."

11. We would like to reiterate this recommendation and ask again whether the Government is planning to work towards a unified approach to human rights at sea. The Government is committed to the welfare of all seafarers. It will continue to work with international partners to raise standards and to work towards practical solutions for the concerns highlighted. The Government will also encourage efforts between Departments on a crosscutting and multifaceted basis to improve awareness and working together to take forward action on human rights cases at sea.

Maritime Autonomous Vehicles

12. In reply to paragraph 92 of our report, the response indicates that the Government plans to develop a legal framework for remotely operated and autonomous vehicles. Please keep us updated with progress on this framework, including likely timings for such legislation to be introduced.

The Department for Transport and the Maritime and Coastguard Agency have noted your interest in this area and will keep you updated.

13. In reply to paragraph 266 of our report, the response provides further information on how the new regulation may empower the Secretary of State to update specific security regulations at pace. This appears a good idea in principle, but would be any consultation be required before regulation can be expanded by the Secretary of State?

The Government is considering the legal framework and regulatory requirements which may be needed to manage technological developments in maritime autonomous vehicles, including the increased cyber security risks, and will give careful consideration to balancing the ability to respond at pace to emerging security threats with the need for open consultation with the sector and appropriate parliamentary scrutiny of new regulations.

The Arctic

14. The response to paragraph 11317 does not offer sufficient detail on the actions the Government is taking to monitor security developments in the Arctic. Please provide further detail on this, including on specific alliances.

The Ministry of Defence published its High North strategy, The UK's Defence Contribution in the High North, on 29 March 2022. It sets the following objectives: to

protect our Critical National Infrastructure and our other national interests, and those of our Allies; to ensure our freedom to navigate and operate across the wider region; to reinforce the rules-based international system, particularly UNCLOS; and contest malign and destabilising behaviours.

The Government will achieve this by improving our understanding of the region, how it is changing, and the activities of state and non-state actors within it; working with regional Allies and partners, including through NATO, the Northern Group, and the Joint Expeditionary Force, aligning policy, activity, and capability where possible and across all domains. It will maintain a coherent Defence posture, presence, and profile in the region, including training, partnering, and operating from and in the Arctic; and developing sustainable, modernised, and proportionate Defence capability for the region, including through investment in Research and Development.

As a non-Arctic state, the key to our ability to increase our understanding of security developments in the Arctic, is the continued development of our relationships with our Allies and partners, sharing information and specific domain awareness. We are doing this by leveraging our close bilateral relationships, through UK-led mini-lateral groupings such as the Joint Expeditionary Force and the Northern Group, through the Arctic Security Forces Roundtable (which last met in May 2022, with a focus on situational awareness), in NATO, and in the FIVE EYES (Aus/NZ/Can/USA/UK) format. This increased co-operation covers a broad spectrum of topics, ranging from intelligence sharing and enhanced situational awareness, through the co-ordination of policy and planning, and deconfliction of activity, to joint military exercising and the development of the capabilities needed to operate together effectively.

The UK is encouraging NATO to take a proactive long-term approach to the High North, acknowledging the leadership and expertise of Arctic Allies. This approach should be calibrated, proportionate, and should acknowledge the region's significance, within a 360-degree approach, to our deterrence and defence. The 2021 NATO Summit Communiqué was the first to address the High North. The new (2022) Strategic Concept now recognises that, in the High North, Russia's capability to disrupt Allied reinforcements and freedom of navigation across the North Atlantic is a strategic challenge to the Alliance.

Whilst the UK has the capability to operate alone in the High North, we always look to work with our Arctic Allies and partners, contributing to a broader effort to monitor the region, protecting our shared interests, and upholding the existing legal framework and constructive international co-operation that have characterised the region for decades. The UK is already making a telling contribution to the comprehensive understanding of the region's environment, key to enabling access and supporting our freedom of manoeuvre, through our specialist geospatial centres. This includes the collection, processing, analysis, exploitation, and dissemination of underwater, above-water and space environmental data. The UK is a leading provider of hydrographic, meteorological, and oceanographic data and services.

Our current contribution will be bolstered through the development of specific capabilities to ensure the UK is better able to monitor, and respond to security developments in the Arctic and High North region: The Royal Navy is investing heavily in military data-gathering capabilities for use in all environments, to better understand the High North underwater environment, protect our underwater critical national infrastructure, and improve our ability to detect threats in the High North. These include the purpose-built Ice Patrol Ship HMS Protector, and the new Multi-Role Ocean Surveillance capability announced in the 2021 Defence Command Paper.

The Army has increased its cold weather training, including as part of its enhanced Forward Presence deployment in Estonia, where Army cold weather doctrine has been tested and refined alongside the Estonian Defence Forces. Army exercising with Joint

Expeditionary Force partners, including Finland, Norway, and Sweden, enhances its cold weather capabilities, building on Royal Marine and Joint Helicopter Command expertise in the High North.

The Royal Air Force has the capacity to rapidly deploy and operate in the High North. The Royal Air Force's fleet of nine P-8A Maritime Patrol Aircraft, as well as F35 Lightning II, including aboard HMS Queen Elizabeth and HMS Prince of Wales, will contribute to the UK's capabilities in the region. New opportunities exist following the procurement of three E7 Wedgetail aircraft and the Protector RG Mk1, which enters service in 2024. Both will further contribute to the UK's capabilities and support our enhanced situational awareness in the region.

15. In response to paragraph 160, the response notes that the UK seeks to join the Central Arctic Oceans Fisheries Agreement, which is an important commitment. Please keep us updated on the UK's progress towards joining this agreement.

The first meeting of the Central Arctic Oceans Fisheries Agreement parties is scheduled for November 2022 (having been postponed from June 2022). This meeting will establish the rules of procedure, including accession process for new members. Until then, we do not know exactly what that process will be. In the meantime we continue to maintain good bilateral relationships with most of the Arctic states and have gathered evidence of our interest in the Arctic and the Agreement, in anticipation of the accession process being agreed. The Government notes the Committee's interest in this matter.

Climate change

Baselines and maritime entitlements

16. Please provide further detail on the types of solutions the Government envisages to the problem of changing maritime entitlements as a result of sea level rise, given that, if baselines continue to be seen as ambulatory, maritime zone regimes will need to be regularly updated, likely contributing to instability and confusion.

The Government notes that the issue of sea level rise and maritime entitlements is currently being considered by the International Law Commission (ILC). The ILC continues to seek information from States and international organisations on their practice in relation to the updating of baselines and maritime boundaries, and other related issues. It has also now asked the United Nations Office of Legal Affairs, Division of Ocean Affairs and the Law of the Sea to undertake a survey of updates to charts or list of co-ordinates which have been deposited at the UN and updated since 1990.

The Government was pleased to contribute a description of the United Kingdom's practice in relation to the updating of baselines. Information on State practice will help to inform legal analysis and the development of options for lawful responses to the challenges posed by sea-level rise. We will continue to engage with the ILC as it considers these issues, and will work with it and with international partners to identify possible legal solutions.

17. Please provide further detail on the Government's assessment of the territories most likely to be at risk of loss of statehood or territory, and the number of people likely to be adversely affected.

According to the Intergovernmental Panel on Climate Change (IPCC) Assessment Report No 6 released in 2021¹, which the Government supports, climate-related displacement and migration are expected to vary over time and by region according to a number of different factors. Global statistics collected since 2008 by the Internal

¹ (Chapter 7: https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_Chapter07.pdf)

Displacement Monitoring Centre (IMDC), show an annual average of over 20 million people internally displaced by weather related extreme events, with storms and floods the most common drivers. The largest absolute number of people displaced by extreme weather each year occurs in Asia, followed by sub-Saharan Africa, whilst small island states in the Caribbean and South Pacific are also disproportionately affected. The IPCC AR6 also recognises the vulnerability of low-lying coastal areas and Small Island States to the impacts of climate change to coastal hazards, including longer term hazards such as sea level rise.

Deep sea mining

18. Please provide the Committee with a timeline of expected publication of this report, and keep us updated on its progress.

We currently expect the independent evidence review related to deep sea mining to be published later in 2022. We will update the Committee upon publication, or should there be any change to the expected timing.

Regional Fisheries Management Organisations

In paragraph 302 of our report we urged the Government to make a serious effort to establish an RFMO in the Southwest Atlantic. The response provides insufficient detail on how the Government will work to establish the RFMO.

19. Please provide further detail on the work the Government is doing to establish this RFMO, and keep us updated on its progress.

We continue to share the Committee's concerns over the lack of governance in high seas fisheries in the South West Atlantic, and the impact unregulated fishing will have on the longer term sustainability of fishing in the region. Our interests in the South West Atlantic are focussed on the Falkland Islands, where the fishing industry is responsible for approximately 65% of the territories' GDP. Natural resources is a responsibility of the Falkland Islands Government and as such we are working closely with it and our partners in the region to understand the impact of unregulated fishing further. This will include encouraging closer scientific cooperation. Although the political situation makes formal intergovernmental measures in the South West Atlantic challenging, we are working to understand the impact of unregulated fishing and what steps can be taken to address it.

Subsea cables

20. Please provide further details on the options the Government is considering, and how it will approach implementing them.

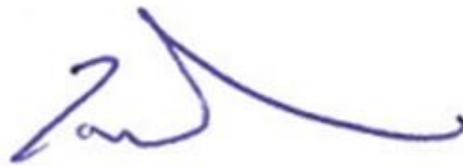
Government departments and agencies are working together to address a range of issues affecting subsea infrastructure, from spatial deconfliction to future repair and maintenance capability of telecommunications cables. We will continue to support the application of UNCLOS provisions and the development of supportive regulatory and legislative regimes for cables' resilience and protection, both nationally and internationally.

For subsea telecommunications cables, the Government's focus is not only their security and resilience but also maintaining the UK's attractiveness as a destination for transnational connectivity. These are both important to ensure access to the global internet, which underpins our modern society, supports our economic wellbeing and ensures the long-term resilience of the UK.

The work to protect and support delivery of subsea infrastructure involves a multitude of agencies, departments and organisations both within the UK government and beyond in industry and our international partners and allies. The type of infrastructure, and the breadth of stakeholders involved in managing it and the wider marine environment, necessitates balancing a broad range of objectives.

We continue to work closely with like-minded ally and partner governments, international organisations, and industry to identify and adopt best practice to improve the resilience, maintenance, protection and future development of subsea communication cables.

Yours sincerely,



Rt Hon Lord Goldsmith
Minister of State for Asia, Energy, Climate and the Environment