



Department
for Environment
Food & Rural Affairs

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Foreign, Commonwealth
& Development Office

The Rt Hon Lord Benyon
Minister of State for Climate,
Environment and Energy

The Rt Hon Lord Peter Goldsmith KC
Chair, International Agreements Committee
House of Lords
London
SW1A 0PW

15 March 2024

Dear Peter

**2ND REPORT OF SESSION 2023–24 SCRUTINY OF INTERNATIONAL AGREEMENTS:
AGREEMENT ON BIOLOGICAL DIVERSITY BEYOND NATIONAL JURISDICTIONS: THE
UN OCEANS TREATY**

I am writing in response to the Report of the International Agreements Committee on the Agreement under the United Nations Convention on the Law of the Sea (UNCLOS) on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction – the BBNJ Agreement. As a point of information, the UK does not use the term UN or Global Oceans Treaty as that suggests a wider scope and risks confusion with UNCLOS, the parent Treaty, which sets out the legal framework for all activities in the ocean and seas.

I am grateful to the Committee for its consideration of the BBNJ Agreement and accompanying Explanatory Memorandum, which was laid before Parliament for scrutiny on 16 October 2023 in accordance with section 20 of the Constitutional Reform and Governance Act 2010. The Rt Hon Andrew Mitchell MP, FCDO Minister of State, and officials from the FCDO and Defra were pleased to be able to brief Committee members on 23 November 2023. Further information was provided in writing in response to a number of follow up questions. I note that the Committee also sought input from interested organisations and expert individuals, many of whom provided invaluable advice to the UK delegation throughout the negotiations and continue to be involved in work to prepare for implementation.

The Committee has reported the Agreement to the House for special attention and I have attached an annex to this letter that addresses the substantive points made in the Committee's report.

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The Government welcomes the scrutiny by Parliament of the BBNJ Agreement. An update will be provided to Parliament prior to the introduction of legislation.

I am copying this letter to the Chairs of the Environment and Climate Change Committee, Environmental Audit Committee, Foreign Affairs Committee, International Relations and Defence Committee and the All-Party Parliamentary Group on the Ocean.

Yours sincerely, *ever*

Richard

THE RT HON LORD BENYON

Annex: Government Response to the 2nd Report of the International Agreements Committee: Agreement on Biological Diversity Beyond National Jurisdictions: the UN Oceans Treaty

28. While noting that the passage of implementing legislation is dependent on Parliamentary time, we encourage the Government to set an ambitious target date for ratification of the Agreement.

The Government intends to ratify the Agreement as soon as legislation has been enacted and the UK is in a position to comply with obligations in the Agreement.

31. We welcome the resources that the Government has already committed to the Agreement but note that significant further funding will be required to ensure its effective implementation.

The Government wishes to see effective implementation of the Agreement by as many countries as possible. We are committed to working with and supporting others, in particular developing countries, to undertake the process of ratifying and implementing the Agreement and to playing a full role in the preparatory process at the UN level.

It is expected that the existing Voluntary Trust Fund to support participation by developing countries in the Intergovernmental Conference will be carried forward to support participation in this preparatory work. The UK has made several contributions to this fund, most recently a £50,000 contribution on 28 June 2023.

At its meeting on 7 February 2024, the Council of the Global Environment Facility (GEF) agreed Interim Guidelines on how to use US \$34 million from its International Waters Programme for the funding of ratification support and early action activities by developing countries. There will be a particular emphasis on conducting needs assessments which will enable support to be targeted.

The GEF, of which the UK is a major funder, will form an important element of the BBNJ Financial Mechanism to provide capacity-building support to developing countries once the Agreement is in force. Specific priorities for support will be determined by the Conference of the Parties once the Agreement is in force, taking into account advice from the Committee on Capacity-Building and the Transfer of Marine Technology established by the BBNJ Agreement.

The UK recently signed a Memorandum of Understanding with the Commonwealth Secretariat to finance a project to provide technical assistance to smaller Commonwealth countries in the early implementation phase.

32. We would remind the Government that full information on the financial implications of an Agreement should be provided when a treaty is laid before Parliament

As the BBNJ Agreement has not yet entered into force, and the Conference of the Parties will need to agree a budget for the BBNJ Secretariat and other institutional arrangements and determine the figure for assessed contributions by Parties according to the UN scale, there is no definitive financial information to provide at this stage.

The Explanatory Memorandum set out that public funding will be required to meet the obligations for the UK's assessed contribution under Article 52 of the BBNJ Agreement to support the institutions established by the Agreement and annual contributions by developed countries under the MGR provisions. Additionally, public funding may be required if the UK decides to make additional voluntary contributions to the Financial Mechanism established under Article 52. Public funding will also be required for UK officials to attend periodic meetings for the CoP and meetings of the institutions established under the Agreement.

The Committee asked a follow up question on the likely cost to the UK of participating in the Agreement arising from the amount of the compulsory assessed contributions payable under Article 52. Officials replied that while it is difficult to say what the final institutional size and structure of BBNJ will look like, it was realistic to look at something of the scale of the Convention on Biological Diversity (CBD), which is based in Montreal. Using that as a model, the UK believes that its contribution, including both the standard assessed contribution to the institutional budget and the 50% MGR "top up", could total up to £1million annually.

35. Given the potential for added value from participation by the UK Overseas Territories in the Agreement, we recommend that the Government should strongly encourage OT participation and support their capacity to implement the Agreement.

The Government would welcome extension of the Agreement to the UK Overseas Territories (UKOTs) and Crown Dependencies but recognises that they have their own domestic considerations and procedures to undertake. The Government will continue to update the UKOTs and Crown Dependencies on steps taken to enable UK ratification and to explore with them the consequences of extending the Agreement to them.

37. The Government laid the BBNJ Agreement in Parliament on 16 October, triggering the scrutiny process under the Constitutional Reform and Governance Act 2010 (CRAG). However, as we noted in paragraph 27, the UK will not be in a position to ratify the Agreement until primary implementing legislation has been adopted which is likely to be at least one or two years away. The Committee's scrutiny of this significant and complex Agreement has therefore been curtailed despite a clear lack of urgency.

38. On 7 December 2020 the Government made a commitment in relation to new Free Trade Agreements that it would give the Committee advance sight of such agreements for a reasonable period in advance of laying it under CRAG to enable effective scrutiny.

39. The Committee calls on the Government to extend this commitment to other agreements of comparable importance where there is no immediate urgency to ratify.

40. The rapid laying of the Agreement under CRAg means that the information provided in the Government's Explanatory memorandum is incomplete. The Committee calls on the Government to update the Committee prior to introduction of the implementing legislation.

The Committee has encouraged all Departments to lay treaties for scrutiny at the earliest opportunity after signature, noting that information contained in the Explanatory Memorandum can be updated if necessary. Given the level of interest in the BBNJ Agreement, the Government was keen to share the text with Parliament promptly. The information provided in the Explanatory Memorandum was complete at the time the Agreement was laid for scrutiny and remains so.

On 29 November 2023, FCDO Parliamentary Under Secretary of State David Rutley MP, the Minister responsible for Treaty Policy, responded to a request from the Chair of the International Agreements Committee for an extension of the 21 sitting day period. The Minister stated that the Government remains of the view that 21 sitting days provides sufficient opportunity for Parliament to scrutinise treaties laid under CRAg. It was confirmed that primary legislation will be required to implement the BBNJ Agreement before ratification could occur and that this would not be before publication of the IAC's Report.

The Government welcomes the scrutiny by Parliament of the BBNJ Agreement. An update will be provided to Parliament prior to the introduction of legislation.