



HOUSE OF LORDS

Lord Goldsmith of Richmond Park
Minister for Pacific and the Environment
Foreign, Commonwealth & Development
Office and the Department for
Environment, Food and Rural Affairs

19 July 2022

Dear Zac,

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

The International Relations and Defence Committee has considered the Government's response¹ to its report, *UNCLOS: the law of the sea in the 21st century*,² published on 1 March 2022.

Overall, the Committee was pleased with the level of detail provided in the response, and would like to thank the FCDO for their detailed consideration of our recommendations. The Committee is also pleased that the report appears to have given the Government the opportunity to consider these issues in a holistic way.

There are, however, seven areas on which we would like to seek further information from the Government. There were also two areas (flags of convenience and human rights at sea) where we were disappointed with the Government's response and would like to raise further questions.

These areas are outlined below (using the same headings as the response document³), containing 20 specific questions to which we would like a response. We would be grateful for a written response by Friday 9 September 2022.

General points about UNCLOS

With reference to the recommendation in paragraph 55 of our report⁴, the response restates the Government's view that annual meetings of States Parties to UNCLOS ('SPLOS' meetings) should not be used to discuss substantive issues, but the only reason given is that there is "no consensus" that this can be done. However, the recommendation asked for the Government to reconsider this position.

¹ <https://committees.parliament.uk/publications/22581/documents/168699/default/>

² <https://committees.parliament.uk/publications/9005/documents/159002/default/>

³ With the exception of 'Refugees and Asylum Seekers', which is included within the section on human rights at sea, as it appears in the report

⁴ "The UK should reconsider its position that annual meetings of the States Parties to UNCLOS are not an appropriate forum to discuss substantive issues. There is scope for these meetings to be used to come to agreement amongst states on the interpretation of UNCLOS's provisions in the light of emerging challenges. To make the most of this, the UK must ensure it invests in preparatory diplomacy and engagement with likeminded states." (Paragraph 55).

- I. 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.

Flags and registries

The Committee was disappointed with the Government's response to our recommendations relating to flag states and flags of convenience.

With reference to paragraph 77 of our report,⁵ the response recognises that flags of convenience "may pose a challenge", but otherwise does not engage with the Committee's conclusion that "the widespread use of flags of convenience poses a particular challenge for maritime security and the enforcement of laws on the high seas." The response says that flags of convenience comply with regional regimes in place, but this does not address the issue of lack of enforcement mechanisms when this does not occur.

In answer to paragraph 78 of our report,⁶ the response states that "Open Registries with the largest tonnage feature on the compliant flag states list", but our evidence repeatedly highlighted that such states do not always have the capacity or inclination to ensure compliance. The response also states that the UK is an "example of excellence in meeting flag state obligations and responsibilities", but this does not address the problem of other flag states not meeting their obligations, and the international implications this can have.

The response also highlights an International Tribunal for the Law of the Sea statement, which says:

"The purpose of the provisions of the Convention on the need for a genuine link between a ship and its flag State is to secure more effective implementation of the duties of the flag State, and not to establish criteria by reference to which the validity of the registration of ships in a flag State may be challenged by other States."

However, this statement appears to refer to the ability to challenge whether a vessel is flagged or *flag-less*, the latter of which enables greater law enforcement control over the vessel by other states. This should not, therefore, impact the ability to call out poor practice regarding the conditions for *flagged* vessels.

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"?

⁵ "While exclusive flag state jurisdiction is an important principle of the law of the sea, the widespread use of flags of convenience poses a particular challenge for maritime security and the enforcement of laws on the high seas." (Paragraph 77).

⁶ "The use of flags of convenience is a major barrier to the enforcement of rules on the high seas. Often flag states with the largest registered tonnage do not have the capacity or inclination to fulfil their obligations in terms of management, control or enforcement of their registered fleet. The Government 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." (Paragraph 78).

1986 Convention on Conditions for Registration of Ships

The Committee was particularly dissatisfied with the response to the recommendation in paragraph 80 of our report,⁷ which refers to the 1986 Convention on Conditions for Registration of Ships. The response states that: “The UK does not accede to maritime Conventions until they have entered into force, the reason for this is that ratifying such Conventions before it enters into force causes an uneven playing field for UK vessels”. But, if every state took this approach, no international conventions would ever enter into force. This does not suggest the UK intends to be a leader on this important issue.

That said, we were pleased that the response suggested the UK has begun preliminary discussions with the IMO for the 1986 Convention to be accepted as an IMO Convention, which, presumably, the Government would be more amenable to ratifying.

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.
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.

Human rights at sea

Applicability of human rights law at sea

We were disappointed with the Government’s responses to paragraphs 190,⁸ 191⁹ and 192¹⁰ of our report. The response acknowledges that while “human rights for workers ashore in the UK are enforced through tribunals/the ECHR...there is scope to clarify where seafarers have access to these.” But it gives no detail on how the Government seeks to address these gaps. It also only refers to rights for workers and not wider users of the sea, which we explicitly asked about in our recommendation in paragraph 192.

⁷ “It remains unclear why the UK Government has not signed the 1986 Convention on Conditions for Registration of Ships, and we regret that this has not happened. We ask that the Government includes in its response to this report more detail on the review they have commissioned into this, including its remit and when it will report.” (Paragraph 80).

⁸ “UNCLOS has little to say about human rights. Nonetheless, it is clear that international human rights law applies to people at sea. But there are barriers to the application of human rights at sea in practice. The Government acknowledged the existence of these barriers, but did not say how it intended to address them.” (Paragraph 190).

⁹ “We ask that in its response to this report, the Government confirms that it considers international human rights law to apply equally at sea as it does on land, and to commit to taking a clear and unequivocal position on this both domestically and internationally.” (Paragraph 191).

¹⁰ “We urge the Government to acknowledge that human rights at sea include a wide range of rights, and not just those pertaining to labour conditions, important though these are. In its response to us, we ask that the Government sets out what it considers its obligations to be concerning human rights at sea, including with reference to human trafficking and modern slavery.” (Paragraph 192).

The response also does not confirm, as requested, that the Government considers international human rights law to apply equally at sea as on land. Instead, it refers to the application of the ECHR as applying equally in UK territorial sea as on land. This is a geographically restricted interpretation of human rights at sea and does not explicitly acknowledge the inherent rights of individuals wherever they are located. Further, while the response acknowledges there are jurisdictional complexities that exist at sea, this should not detract from the commitment that human rights law applies regardless of these jurisdictional complexities.

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

Flag states and human rights at sea

In response to paragraph 193 of our report,¹¹ the response again asserts that: “The record of compliance with international conventions by vessels on Open Registers is not significantly worse than that of vessels on other registries.” However, this does not address the issue of whether a flag state is able to enforce international law when a breach occurs, which is a particular concern for human rights. We ask that in response to question 2 above, you include reference to the specific challenges relating to flags of convenience and enforcing 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.

Forced labour and excessive working conditions

In response to in paragraph 214 of our report,¹² the response states that the Government “believe[s] that the Maritime Labour Convention, 2006 and the ILO Work in Fishing Convention, 2007 (No.188) provide an effective framework to identify ... abuses through port State control.” However, this does not address the challenge of bunkering (where ships do not come into port in order to avoid such controls), and where, as the report concluded, “the flag state system again stymies [the] enforcement and realisation [of international labour

¹¹ “The principle of exclusive flag state jurisdiction and the issue of flags of convenience poses a challenge to the effective monitoring and enforcement of human rights at sea. We reiterate our request for the Government to provide more detail on its review of this issue.” (Paragraph 193)

¹² “Forced labour and excessive working conditions are increasing concerns for those working at sea in the fishing and shipping industries. While there are international agreements for the protection of labourers’ human rights, the flag state system again stymies their enforcement and realisation in practice.” (Paragraph 214).

agreements] in practice.” In addition, the ILO Work in Fishing Convention has only been ratified by 20 states, limiting its influence.

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.

Justice for victims of human rights abuses at sea

The response to paragraph 219¹³ of our report was very brief. The response acknowledges that “internationally the applicable jurisdiction for victims of human rights abuses at sea may be difficult to ascertain”, and that there is “scope to clarify where victims may bring a complaint or case in the UK”, but it does not provide this clarification.

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.

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.

Refugees and asylum seekers

Since the Committee published its report in March 2022, the Government has withdrawn the part of the Nationality and Borders Bill relating to turnaround tactics in the Channel. We are very pleased that these elements have been withdrawn.

¹³ “Victims of human rights abuses at sea, including victims of physical and sexual crimes, do not have sufficient access to timely or effective justice. Their situation is exacerbated by complex questions concerning legal jurisdiction and the flag state’s responsibility to investigate and prosecute human rights abuses committed at sea. The obligations of third states to exercise jurisdiction over these abuses and crimes are also not clear: states appear to use the principle of exclusive flag state jurisdiction to avoid intervening on behalf of victims, even if the abuse takes place within their maritime jurisdiction. As a result, victims of human rights abuses at sea are denied access to an effective remedy.” (Paragraph 219).

However, the response says that the Government still considers the tactic to be “lawful”, but did not provide an assessment of how, as requested in paragraph 205 of our report,¹⁴ the policy reflects obligations under Article 98 of UNCLOS. If the Government reintroduces this policy in future, the Committee is likely to re-visit this issue and ask these questions again.

Maritime Autonomous Vehicles

The Committee was satisfied by in the majority of the responses in this section, and would like to reiterate its commendation of the UK, and in particular the Royal Navy, on its sensible policy approach to maritime autonomous vehicles. We have two requests for further information:

12. In reply to paragraph 92 of our report,¹⁵ 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.
13. In reply to paragraph 266 of our report,¹⁶ 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 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.
15. In response to paragraph 160,¹⁸ 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.

¹⁴ “Despite the Minister’s assurances, we are not convinced that provisions relating to maritime migration and ‘turnaround tactics’ in the Nationality and Borders Bill are compliant with the UK’s duties under UNCLOS, in particular Article 98. We therefore ask that in its response to this report, the Government provides us with a full assessment of the compatibility of the provisions in the Nationality and Borders Bill dealing with so-called forced turnarounds with the UK’s international responsibilities under Article 98 of UNCLOS.” (Paragraph 205).

¹⁵ “The advent of maritime autonomous vehicles provides a direct challenge to UNCLOS, which assumes vessels are crewed and cannot be operated remotely. The Government should monitor such developments carefully, and advocate for a clarification of the existing rules if there is an increase in the use of autonomous vehicles for piratical acts.” (Paragraph 92).

¹⁶ “We urge the Government to be vigilant to cybersecurity issues relating to maritime autonomous vehicles which might cause serious operational and accountability issues.” (Paragraph 266).

¹⁷ “Climate change is likely to lead to additional maritime security challenges, particularly in the Arctic. We ask that in its response to this report the Government provides us with information about how it is monitoring security-related developments in the Arctic.” (Paragraph 113).

¹⁸ “We welcome the recent 16-year international agreement banning commercial fishing in the Central Arctic Ocean. The UK, in its role as an observer at the Arctic Council, should continue to advocate for the prevention of unregulated fishing in the Arctic Ocean, and for the establishment of marine protected areas.” (Paragraph 160).

Climate change

Baselines and maritime entitlements

The Government does not commit to taking a position that baselines should be frozen, as recommended by the Committee in paragraph 126.¹⁹ While there is a recognition that states will need to be open to “pragmatic and creative solutions”, the response does not outline what solutions the Government envisages.

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.

Climate-related migration

In paragraph 129 of our report,²⁰ we asked that the Government provides “details of those territories most likely to be at risk and the number of people likely to be adversely affected” by climate change-induced loss of territories and statehood. While the response provides some additional information on climate-related migration, it does not include the requested information.

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.

Deep sea mining

The response to paragraph 289²¹ and 290²² of our report notes that: “The report of the independent evidence review of existing data and information related to deep sea mining

¹⁹ “The Government should take a formal position that baselines should remain fixed in their current position. This would ensure that no states, including the UK and its Overseas Territories, lose their current maritime entitlements. The Government should work with partners to advance agreement amongst States Parties to UNCLOS and create supplementary legal mechanisms that secure maritime baselines and entitlements.” (Paragraph 126).

²⁰ “We are encouraged that the Government recognises that climate change will become a significant driving factor for migration, but ask that it provides further detail in its response to this report on the ways in which the UK is preparing to support these people in light of the real risk some may lose their territories and statehood. This is an immediate and growing problem which needs global leadership and political will. We ask that the response includes details of those territories most likely to be at risk and the number of people likely to be adversely affected.” (Paragraph 129)

²¹ “We would like to hear more about the FCDO’s evidence review of the potential risks and benefits of deep seabed mining, and would like further detail on what the Government is doing to assure that ISA’s regulation on deep seabed mining is evidenced and supported by science. We would also like to hear what assessment the Government has made of the potential future risk of disputes over deep-sea resources.” (Paragraph 289).

²² “Deep-sea mining should only be authorised when the minerals in question cannot be recovered in sufficient quantity from existing products, as in a circular economy model, and when the deep-sea mining of those minerals is less environmentally damaging than extraction on land. We therefore welcome the Government’s cautious position and ask that it continues to encourage other states to do the same in order to ensure protection of the marine environment.” (Paragraph 290).

commissioned by the Government and its Terms of Reference will be published in due course.”

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

Regional Fisheries Management Organisations

In paragraph 302 of our report²³ 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.

Subsea cables

The response to the recommendation made in paragraph 328²⁴ of our report recognises the security and resilience of subsea cables are a matter of importance, and that the Government is “considering the best options to take forward to improve and ensure the security and resilience of subsea communications cables and maintain the UK as an attractive destination for transnational cables.” However, it does not provide detail on how its goals will be met.

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

As you will see from these questions, the Committee retains a strong ongoing interest in issues relating to UNCLOS and feels that the UK could be a leader in promoting a holistic understanding of these issues. I look forward to your response, and to the debate on the report in due course.

Yours, as ever



Baroness Anelay of St Johns
Chair, International Relations and Defence Committee

²³ “We urge the Government to mark the 40th anniversary of the Falklands War with a serious effort to establish a regional fisheries management organisation that would address the current fishing challenges in the waters between the Falkland Islands and Argentina.” (Paragraph 302).

²⁴ “Subsea cables are a critical element of the UK’s communications infrastructure. While UNCLOS places obligations on states to allow for the laying and repair of such cables, these are not always followed in practice. It is crucial that the laws are clear where responsibilities lie for the maintenance and protection of subsea cables. The international regulatory regime is unclear, and this must change, considering their significance. The Government should work with partners and others to address this. The UK should work to improve domestic legislation for cables in the UK’s territorial waters, as well as working with partners to strengthen the international regulatory regime.” (Paragraph 328).