

COP15 and the Kunming-Montreal Global Biodiversity Framework – Part 1: background to the Convention on Biological Diversity



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In December 2022, at the second part of the Fifteenth Session of the Conference of the Parties to the United Nations [Convention on Biological Diversity](#) (“COP15”), the [Kunming-Montreal Global Biodiversity Framework](#) (“the KMGBF”) was adopted.

While the KMGBF has been heralded as a “[landmark](#)” agreement and described as nature’s “[Paris moment](#)”, both it and COP15 have received comparatively little attention in the domestic media, by contrast with, for example COP27 (discussed in an earlier [post](#) on this blog) and the Paris Agreement itself.

This is the first of two posts on this important development in international law discussing the Convention and its implementation in the UK. A second post will consider COP15 and the KMGBF in more detail.

The Convention of Biological Diversity

The Convention on Biological Diversity was made in Rio de Janeiro in June 1992 at the [United Nations Conference on Environment and Development](#), which also produced the [Rio Declaration](#) setting out 27 universal principles for the environment and sustainable development and the [UN Framework Convention on Climate Change](#). It was developed in response to concerns around the loss of biological diversity around the world and in recognition of the intrinsic value of biodiversity. The Convention is accompanied by two protocols. The [Cartagena Protocol](#) on biosafety governs the movements of living modified organisms from one country to another. The [Nagoya Protocol](#) provides a legal framework for access to genetic resources and the fair and equitable sharing of benefits arising from their utilisation.

There are 198 parties to the Convention. Notably, the USA is not a signatory, which given its status as the largest economy in the world is a major impediment for the successful implementation of the Convention. The UK has signed and ratified the Convention and became a party to it on 1 September 1994.

A summary of the main provisions of the Convention is set out below.

Article 1 sets out the three objectives which underpin the Convention, namely the conservation of biological diversity, the sustainable use of the components of biological diversity and the fair sharing of the benefits of the use of genetic resources (which the Nagoya Protocol regulates in more detail).

By Articles 6 and 7 the parties commit to developing conservation strategies and identifying and monitoring important components of biodiversity.

Article 8 sets out a number of provisions for in-situ conservation, which is to be preferred over ex-situ conservation (as provided by the preamble and Article 9). These include establishing a system of protected areas, promoting sustainable development in areas adjacent to protected areas, rehabilitating and restoring degraded ecosystems, controlling alien species, developing legislation for the protection of threatened species and preserving the knowledge of indigenous and local communities which embody traditional lifestyles relevant for conservation.

Articles 16, 17 and 19 make provision for the sharing of knowledge and technology in relation to conservation, biodiversity and biotechnology.

By Article 20 parties undertake to provide financial support both nationally and, in the case of developed countries, internationally to facilitate the implementation of the Convention.

The preamble to the Convention also sets out an early international codification of the precautionary principle (albeit in different form to that now well-established in EU law). [1] It provides that *“where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimise such a threat”*.

Implementation of the Convention in the UK

As with much of the UK’s environmental legislation, the implementation of the Convention domestically is in large part through transposed EU law. There is a close relationship between the Convention and the Habitats Directive, which both came into being within a few months of each other. The designation of special areas of conservation, protected species and appropriate assessment of plans and projects in the Habitats Directive all reflect provisions of the Convention. The Habitats Directive is, of course, transposed in England and Wales by the Conservation of Habitats and Species Regulations 2017. For now, these remain part of domestic law as retained EU law (for previous blog post on retained EU law and plans for its reform, see [here](#), [here](#) and [here](#)).

Biodiversity has also been made a material consideration in all public decision-making, pursuant to [section 40](#) of the Natural Environment and Rural Communities Act 2006 (“the 2006 Act”), which requires public authorities to have regard to “the purpose of conserving biodiversity” when exercising any of their functions. For central government, this is explicitly extended by section 40(2) to include consideration of the Convention. [2].# Sections 41-42 of the 2006 Act set out further requirements on the English and Welsh Governments to produce lists of organisms and habitats of principal importance for conserving biodiversity, as well as taking appropriate action to further the conservation of such organisms and habitats.

Regarding the compliance by the UK with its international obligations under the Convention, this is the overall responsibility of the UK Government, with Defra as the lead department. The [UK Post-2010 Biodiversity Framework](#) acts as an overarching framework document for compliance along with separate biodiversity strategy and action plans produced for each devolved nation. The Joint Nature Conservation Committee, along with the statutory nature conservation bodies for each of the devolved nations, [3] has an advisory and monitoring role in relation to the Convention obligations.

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[1] See, for example, *R (Amvac Chemical UK Limited) v Secretary of State for Environment, Food and Rural Affairs* [2001] EWHC Admin 1011 at paras.65-86.

[2] Further discussion of the application of this duty can be found in *R (Langton) v Secretary of State for Environment, Food and Rural Affairs* [2021] EWHC 2199 (Admin) at paras.91-100.

[3] Natural England, Council for Nature Conservation and the Countryside (Northern Ireland), Northern Ireland Environment Agency, NatureScot and Natural Resources Wales.