

# Biodiversity laws in the EC's associated territories

*The UK is just one of several countries in the European Community to accept responsibility for overseas or associated territories which are spread throughout various parts of the globe. Many of these territories are characterised by a high conservation value; they are often also unique in their constitutional status and their position vis à vis EC and international biodiversity law.*

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This article presents an outline of the 'associated' territories of EC Member States, and the overarching international and EC legal framework applicable there. It is based wholly on earlier research<sup>1</sup> undertaken by the Institute for European Environmental Policy, London, under contract to the RSPB and in conjunction with the UK Dependent Territories Conservation Forum, aimed at identifying deficiencies in the present coverage of nature conservation laws, as well as opportunities for further action.

The fifteen Member States of the EC have relations with some 37 territories lying beyond their primary European frontiers but associated with them in a variety of different ways. The UK and France lay claim to the majority of these, followed by Spain, the Netherlands, Portugal, Denmark and Finland. Together, these territories are scattered across different parts of the world, many being small islands in the southern hemisphere. Collectively, the territories represent a considerable area of land and sea, and contain natural and semi-natural habitats of high conservation value, vital for a large number of species of international importance.

Nature conservation policy of the EC has sought primarily to protect valued habitats and species within the homelands of its Member States. The development of EC policy has taken place against a background of increasing international activity in environmental and nature conservation issues, including agreement reached at the Rio Conference on the Convention on Biological Diversity. Legislation adopted at both EC and international levels in turn is having a significant impact on nature conservation activities nationally and locally. However, how far EC and international legislation extends to related and remote territories is not always apparent at first glance; the increasingly large web of non-national obligations falls on these territories in different ways.

## Defining 'territories'

The term 'dependent territories' is often given a broad meaning in the UK to reflect a variety of relationships with the sovereign power. Strictly speaking, a dependent territory is just one of several categories of UK 'associated' territories which also include crown colonies, crown dependencies and UK sovereign base areas (although it has proved difficult to secure official definitions of each of these terms). The individual relationship differs with almost every territory. The UK government announced in early 1998 that it would progressively adopt the term 'Overseas Territories' and review the individual constitutional relationships.

Quite different relationships exist in other Member States, determined by their own historical developments and national political systems. France has elaborated a three tiered structure involving *départements d'outre mer*, *territoires d'outre mer* and *collectivités territoriales*, the level of integration within the national administrative framework being the greatest for the first of these. A territory may be an autonomous or semi-autonomous region or community of a Member State with certain administrative features which mark it out for closer scrutiny, such as the Canary Islands in Spain. Other territories are entirely separate countries but share a sovereign (and constitution links) with another country. This is the case with the Netherlands Antilles which, like the Netherlands and Aruba, is a country within the Kingdom of the Netherlands.

There is clearly a broad spectrum of territories linked in some way with EC Member States. In order to include all these variations the broad term 'associated territories' is used to describe all territories falling into one of the following two categories (which are not mutually exclusive):

**Related territories** – those with their own national identity distinct from that of the main territory of their associated EC Member State. Related territories exhibit various degrees of self-government, and are subject to the jurisdiction of the Member State's domestic legislation only to a limited extent.

**Remote territories** – those which are geographically remote from the main territory of their related EC Member State. This places them outside the area considered to comprise 'Europe'. The physical separation from the mainland may mean that they are subject to different policies on account of their remoteness.

Within this wide definition are included 37 'associated territories' which have a particular relationship with a Member State of the EC, but which are not attached to the mainland of that Member State. A full list of these, accompanied by their constitutional status, is provided in the following table.

## International nature conservation agreements

An increasing number of multinational environmental agreements (MEAs) have been elaborated and adopted at the global and regional levels in order to address concerns for the environment. A significant number relate to marine and terrestrial biological conservation; indeed one of the earlier multinational agreements adopted in 1911 concerned the preservation and protection of fur seals.<sup>2</sup> More recently, conventions have been adopted on the conservation of, *inter alia*, wetlands, migratory species and biological diversity. Each offers great potential benefits to the associated territories of the EC Member States.

In order for MEAs to gain the force of law within these territories, however, such agreements must first be ratified by a sovereign power on their behalf. This dependency in international relations upon a sovereign power is one, perhaps even the only, common feature among all the associated territories described here. However, there is no uniform procedure for sovereign states to apply when ratifying an agreement on behalf of an associated territory. The approach adopted will instead depend on the particular constitutional arrangements between the territory and the sovereign power.

The UK, Dutch and Danish approach to ratification is to identify positively in the ratification instrument those territories to which the MEAs apply – although this does not hold true where territories are added to the instrument at a later date and are thus listed separately. In practice, therefore, whilst it is somewhat easier to identify terri-

EC Member State and associated territory	Status
<b>Denmark</b> • Faeroe Islands/Greenland	• <i>Hjemmestyre</i> – home rule
<b>Finland</b> • Åland Islands	• <i>Landskap</i> – autonomous province
<b>France</b> • French Guiana/Guadeloupe/Martinique/Réunion • French Polynesia/French Southern and Antarctic Territories/ Wallis et Futuna/New Caledonia and Dependencies • Mayotte/St Pierre et Miquelon	• <i>départements d'outre mer</i> • <i>territoire d'outre mer</i> • <i>collectivité territoriale</i>
<b>Netherlands</b> • Aruba/Netherlands Antilles	• <i>Land</i> – country
<b>Portugal</b> • Azores/Madeira Islands	• <i>Regio Autonoma</i> – autonomous region
<b>Spain</b> • Ceuta/Melilla/Canary Islands	• <i>Autonoma Communadad</i> – semi-autonomous region
<b>United Kingdom</b> • Anguilla/British Indian Ocean Territory/British Virgin Islands/ Cayman Islands/Montserrat/Pitcairn Islands/St Helena and Dependencies of Ascension and Tristan de Cunha/South Georgia/Turks and Caicos Islands • Bermuda • Falkland Islands/Gibraltar • British Antarctic Territory • Bailiwick of Guernsey/Bailiwick of Jersey/Isle of Man • Cyprus Sovereign Base Areas	(At least the first 4 types below will become 'overseas territories') • dependent territory • self governing crown colony • crown colony • dependency • crown dependencies • UK sovereign base areas

territories included in ratification instruments; it is rather more difficult to know which territories are definitely excluded.

This 'positive' approach is not adopted by all other EC Member States with associated territories. In the case of France, for example, several approaches are adopted according to the type of territory in question. Once an MEA has been ratified it will automatically apply to *départements d'outre mer* and *collectivités territoriale*, unless individual circumstances require otherwise. On the contrary, to be applicable to a *territoire d'outre mer*, such as New Caledonia, the legal text adopted by the French Parliament must make specific mention of the territory. Alternatively, the MEA must be the subject of a legal instrument adopted by the territorial institutions with the legal competence. These complex arrangements are thought to be responsible for the large number of inconsistencies found in reference literature.

Consequently, the legal application of an MEA in each of the territories is far from obvious at first sight. Rather, considerable effort is required to establish which international laws do or do not apply in each case. The lack of transparency in this area presents a formidable obstacle for convention secretariats already suffering from limited resources. As a result, secretariats are not always in a position to know the

geographical limits of a ratification instrument. Other organisations interested in overseeing implementation of international biodiversity laws are equally disadvantaged.

The information has been obtained from a variety of sources, mainly secretariats to the convention – although even these are often only in a position to provide information on signatory parties, *i.e.* the sovereign state. As a consequence, and as the empty boxes illustrate, there is some difficulty in getting hold of a complete set of information in each case.

An increasingly important feature of MEAs is the requirement for some form of reporting by contracting parties, either on state of the environment issues or, increasingly, on policy developments relating to implementation of the MEAs' provisions. Limited research on this subject suggests that EC Member States with territories do not always fully meet their obligations in this respect, however. The somewhat piecemeal evidence which has been collected suggests that national reports often omit any substantial reference to territories. As before, the lack of clarity as to which MEAs apply to which territories, added to limited resources of secretariats, reduces pressure to comply fully with reporting requirements. It is worth noting, however, that the emphasis being placed on the issue of implementation of MEAs in the territories appears to be gaining ground. For example, the UK Foreign and Commonwealth Office is considering implementation of individual environmental agreements, including the Cartagena Convention, across its territories.

### EC environmental policy and the associated territories

If the place of associated territories within MEAs is less than transparent, arrangements relating to EC environmental policy add yet another layer of complexity. Here too, arrangements are highly diverse, but are dictated by provisions of the EC treaties, acts of accession, or specific items of legislation. While the French *départements d'outre mer* form an integral part of the EC, unless specified otherwise, the relationship with other territories, such as the British Virgin Islands, is more tenuous and set out in detailed legislation.

Focusing on nature conservation specifically, only eleven territories are subject to relevant EC legislation, out of the total of 37. These are the *départements d'outre mer*, Åland, Gibraltar, Madeira Islands, Azores, Canary Islands, Ceuta and Melilla. Even then, however, there are some differences in actual legal obligations placed upon these territories. Arguably the most important difference concerns application of the Habitats Directive 92/43 and the Birds Directive 79/409. In both cases, the Directives state that they apply to the 'European territory' of the Member States, thus excluding the *départements d'outre mer*. This has further repercussions for regional development in the region. Projects funded by the EC Structural Funds in Guadeloupe, for example, are, strictly speaking, not required to observe provisions of both the Birds and Habitats Directives.

Further anomalies are created in territories which are not subject to EC environmental policy but which are subject to other EC policies which have an impact on the environment. This is the case for EC common commercial policy and the Isle of Man. The Isle of Man is not subject to EC environmental policy but is potentially required to apply the CITES Regulation as this is essentially a trade measure.

In the limited cases where items of EC environmental legislation are applicable, the administrative differences make implementation and enforcement more problematical than is the case for the mainland. As with MEAs, lack of transparency as to which

Information about selected international conventions concerned with terrestrial biological conservation and their application to the territories is summarised in the table below.

Territory	Ramsar	CITES	Biological Diversity	World Heritage	Bonn
<b>DENMARK</b>	✓	✓	✓	✓	✓
Faeroe Islands	✓	✓ <sup>2</sup>		No	✓
Greenland	✓	✓		No	No
<b>FINLAND</b>	✓	✓	✓	✓	✓
Åland Islands	✓	✓		✓	✓
<b>FRANCE</b>	✓	✓	✓	✓	✓
French Guiana	✓	✓	✓	✓	✓
French Polynesia	✓	✓	✓	✓	✓
French Southern and Antarctic Territories		No			
Guadeloupe	✓	✓	✓	✓	✓
Martinique	✓	✓	✓	✓	✓
Mayotte		No			
New Caledonia and Dependencies	✓	✓	✓	✓	✓
Réunion	✓	✓	✓	✓	✓
St Pierre and Miquelon		✓			✓
Wallis and Futuna Islands	✓	✓	✓	✓	✓
<b>NETHERLANDS</b>	✓	✓	✓	✓	✓
Aruba	✓	✓		No	✓
Netherlands Antilles	✓	No	✓	✓	✓
<b>PORTUGAL</b>	✓	✓	✓	✓	✓
Azores	✓	✓	✓	✓	
Madeira Islands	✓	✓	✓	✓	
<b>SPAIN</b>	✓	✓	✓	✓	✓
Canary Islands	✓	✓		✓	
Ceuta	✓	✓		✓	
Melilla	✓	✓		✓	
<b>UNITED KINGDOM</b>	✓	✓	✓	✓	✓
Anguilla	✓	No	No	✓	No
Bermuda	✓	✓	No	✓	✓
British Antarctic Territory	No	No	No	No	No
British Indian Ocean Territory	No <sup>3</sup>	✓	No	No	✓
British Virgin Islands	✓	✓	✓	✓	✓
Cayman Islands	✓	✓	✓	✓	✓
Cyprus Sovereign Base Areas				✓	✓
Falkland Islands	✓	✓	No	✓	✓
Gibraltar	✓	✓	✓	✓	✓
Guernsey	No <sup>3</sup>	✓	No	No	✓
Isle of Man	✓	✓	No	✓	✓
Jersey	✓	✓	✓	No	✓
Montserrat	✓	✓	No	✓	✓
Pitcairn Island	✓	✓	No	✓	✓
St Helena and Dependencies	✓	✓	✓	✓	✓
South Georgia and the South Sandwich Islands	✓	✓	No	✓	✓
Turks and Caicos Islands	✓	No	No	✓	✓

## Notes:

- Blank = unclear
- Only the Faeroe Islands have the legislative power in respect of trade in endangered species on the Faeroe Islands and accordingly the Convention will only be applied there when the appropriate legislation has been put in place.
- UK Government has indicated that its ratification of Ramsar will be extended to British Indian Ocean Territory and Guernsey.

provisions apply to which territory is prohibitive to what are often relatively weak non-governmental organisations aiming to further implementation locally. Even the European Commission, acting as guardian of the EC Treaties, finds it difficult to keep abreast of how measures are implemented in these territories.

### Overseas countries and territories (OCTs)

Apart from the eleven territories subject to aspects of EC environmental legislation, a separate relationship exists between the EC and a group of 20 'overseas countries and territories' which are governed by an Association Decision (Decision 91/482). The Decision establishes a framework for the provision of Community development aid to promote and accelerate economic, cultural and social development in these territories. The agreements are similar to the Lomé Convention which provides a separate framework for the Group of African, Caribbean and Pacific (ACP) countries.

These 20 OCTs are not required to apply EC environmental legislation, although certain environmental 'safeguards' are incorporated within the Association Decision, such as the need to undertake environmental assessments of "large-scale development projects". There are some efforts underway to increase the environmental dimension of the EC's relationship with the OCTs, bringing it closer in line with other aspects of EC development policy.

### Conclusions

The approach adopted to the various 'associated' territories of the EC Member States is clearly far from streamlined. Instead, it reflects the vagaries of the sovereign power upon which these territories depend for their international relations. An immediate consequence of this diversity is the difficulty in actually defining and identifying the 'associated territories' of the Member States. The definition used here is intended as a catch-all, to include territories from the British Indian Ocean Territory to the Canary Islands, and illustrates the predominance of territories under UK and French sovereignty.

The difficulty in identifying the territories is itself thought to be a major impediment to the application of international and EC biodiversity laws in the territories. Furthermore, the different constitutional relationships between territories and the Member States lead to diverse arrangements for ratifying multilateral environmental agreements. In practice, these complexities do nothing to improve transparency for, and awareness among, convention secretariats charged with overseeing implementation by the contracting parties, and non-governmental organisations assisting them in this task.

### References and Notes

- The research was carried out in 1996 by Coffey C, Emmott N, Mitchell K, Mullard S and Baldock D, on behalf of RSPB/BirdLife.
- Birnie P and Boyle A (1991) *International Law and the Environment*. Oxford University Press.

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