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INSTITUTO PORTUGUÊS
DE DIREITO DO MAR



Marine Environmental Protection
Marine Spatial Planning
Maritime Environmental Crimes

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Initial observations

- Three dimensionality and interconnectivity of the maritime space
- Progressive development and codification of international marine environmental law
- The fragmentation of international law and the plethora of organizations
 - Obligations under other conventions on the protection and preservation of the marine environment (art. 237)
 - Relation to other conventions and international agreements (art. 311)
- The sources of international marine environmental law (international conventions, custom, general principles and jurisprudence) and normative creation and flexibility (e.g. GAIRS)
- Dominant sectoral approach v. ecosystem-based approach and ecosystem services in Ocean governance
- Gaps and shortcomings of international law and discrepancies between national laws (protection regimes, including MPAs, liability regimes, access to remedies, etc.)
- Prescriptive and enforcement jurisdiction

Initial observations

- a) Fundamental principles in UNCLOS: freedom, sovereignty and CHM
- b) UNCLOS was adopted based on consensus ('package deal')
- c) UNCLOS codified and consolidated State practice:
 - i. Width of the territorial sea and contiguous zone
 - ii. Continental shelf and its extension, EEZ, High Seas, the Area
 - iii. Marine scientific research
 - iv. Pollution (types) and expansion of State responsibility (flag, port and coastal)
 - v. New bodies (ITLOS, ISA, CLCS)
 - vi. Three implementing agreements (1994, 1995, 2023*)
- d) Post-UNCLOS (legal) and scientific developments:
 - i. Climate change and sea-level rise
 - ii. Ocean warming, acidification and deoxygenation
 - iii. Pollution by plastics and greenhouse emissions
 - iv. Marine biodiversity loss ...

Initial observations

Agreement for the implementation of the provisions of the [UNCLOS] relating to the conservation and management of straddling fish stocks and highly migratory fish stocks

Article 5

General principles

In order to conserve and manage straddling fish stocks and highly migratory fish stocks, coastal States and States fishing on the high seas shall, in giving effect to their duty to cooperate in accordance with the Convention: ...

c) apply the **precautionary approach** in accordance with article 6. ...

Article 6

Application of the precautionary approach

...

3. In implementing the precautionary approach, States shall:

- a) improve decision-making for fishery resource conservation and management by obtaining and sharing the best scientific information available and implementing improved techniques for dealing with risk and uncertainty;
- b) ... determine, on the basis of the best scientific information available, stock-specific reference points and the action to be taken if they are exceeded; ...



UNCLOS

Preamble

...

Conscious that the problems of ocean space are closely interrelated and need to be considered as a whole

Recognizing the desirability of establishing through this Convention, with due regard for the sovereignty of all States, a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, **protection and preservation of the marine environment**

A vertical image on the left side of the slide showing an underwater scene with blue water, coral reefs, and small fish swimming.

UNCLOS

Article 1 Definitions

(4) "**pollution of the marine environment**" means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities;

(5)

(a) "**dumping**" means:

(i) any deliberate disposal of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea;

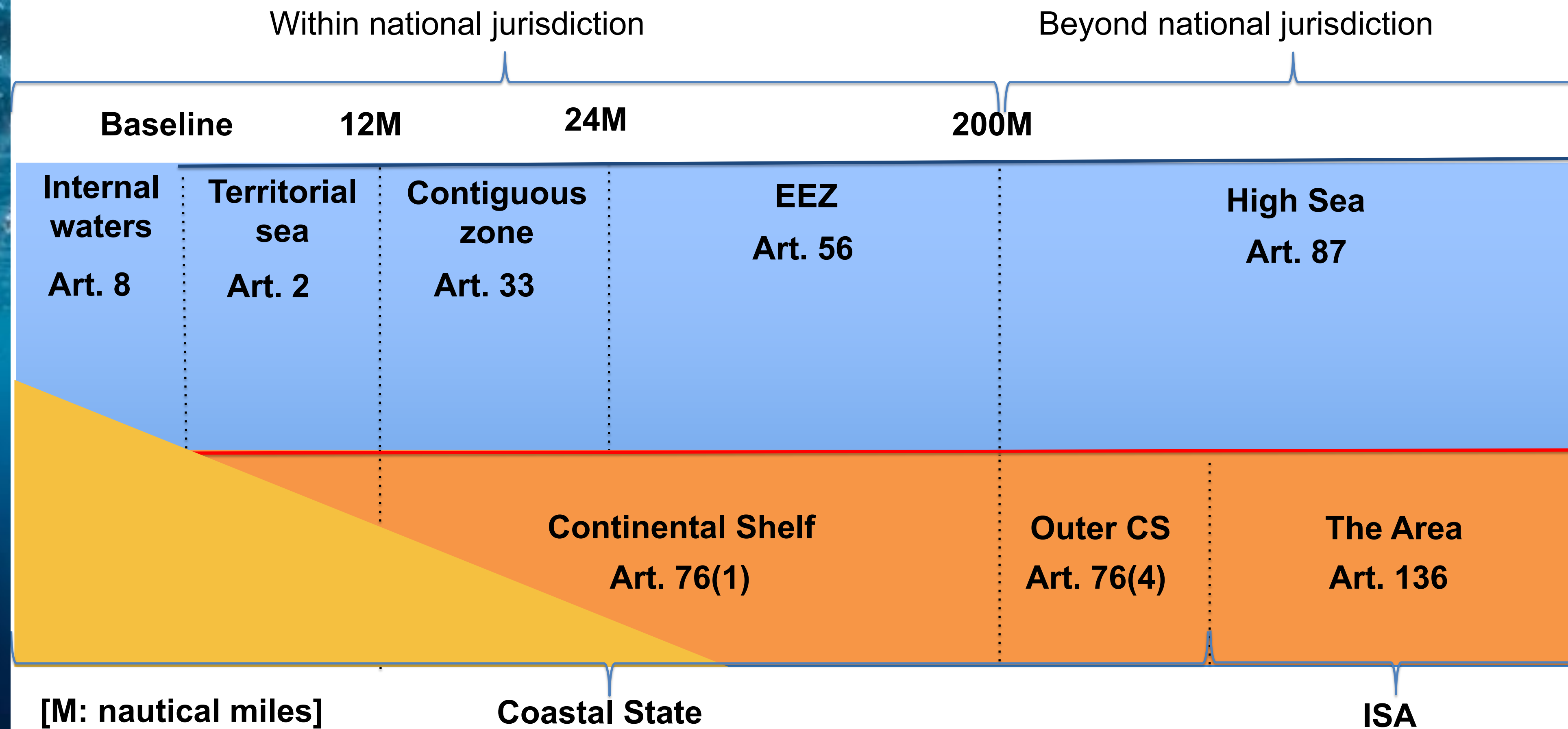
(ii) any deliberate disposal of vessels, aircraft, platforms or other man-made structures at sea;

(b) "**dumping**" does not include:

(i) the disposal of wastes or other matter incidental to, or derived from the normal operations of vessels, ..., platforms or other man-made structures at sea and their equipment, ...;

(ii) placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Convention.

Jurisdiction at sea





Jurisdiction at sea and the marine environment

- a) Right of innocent passage in the territorial sea (art. 17-27 and art. 8 – internal waters, art. 42 – straits and art. 52 – archipelagic waters)
- b) Artificial islands, installations and structures in the EEZ (art. 60, 80 – CS and 87 – HS)
- c) In the EEZ and CS, coastal State enjoys jurisdiction also with regard to the protection and preservation of the marine environment (art. 27 and 28, 73 | art. 77-79, and Part XII)
- d) On the HS, flag State pre-emption is the strongest form of jurisdiction (art. 91-94), which also entails obligations (“duties”) for flag States, including taking measures regarding the “seaworthiness of ships”, namely the prevention, reduction and control of pollution
- e) The Area (art. 139, 142, 145 and 147, also see the 2011 Seabed Disputes Chamber Advisory Opinion, Case No. 17)

A vertical strip on the left side of the slide shows an underwater scene with vibrant blue water, coral reefs, and various fish swimming. The text 'Part XII' is overlaid on this image in white.

Part XII

- a) States have the obligation to protect and preserve the marine environment (art. 192)
- b) The sovereign right to exploit natural resources pursuant to their environmental policies, in accordance with their duty to protect and preserve the marine environment (art. 193)
- c) Take measures necessary to prevent, reduce and control pollution from any source, and they shall endeavour to harmonize their policies in this connection (art. 194)
- d) Take all measures necessary to ensure that activities under their jurisdiction or control do not cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread (art. 194)
- e) Duty not to transfer damage or hazards or transform one type of pollution into another (art. 195)
- f) When a State becomes aware of cases in which the marine environment is in imminent danger of being damaged or has been damaged by pollution, it shall immediately notify other States it deems likely to be affected by such damage, as well as the competent international organizations (art. 198)

A vertical image on the left side of the slide showing an underwater scene with coral reefs and fish. The text 'Part XII' is overlaid on this image.

Part XII

- a) Cooperation on a global or regional basis in formulating and elaborating international rules, standards and recommended practices and procedures (art. 197)
- b) States in affected areas, in accordance with their capabilities, and the competent international organizations shall cooperate, to the extent possible, in eliminating the effects of pollution and preventing or minimizing the damage. To this end, States shall jointly develop and promote contingency plans for responding to pollution incidents in the marine environment. (art. 199)
- c) States shall cooperate promoting studies, undertaking programmes of scientific research and encouraging the exchange of information and data acquired about pollution (art. 200)
- d) States shall cooperate in establishing appropriate scientific criteria for the formulation and elaboration of rules, standards and recommended practices and procedures for the prevention, reduction and control of pollution of the marine environment (art. 201)

Part XII

- e) States shall endeavour to observe, measure, evaluate and analyse, by recognized scientific methods, the risks or effects of pollution of the marine environment (art. 204(1))
- f) States shall keep under surveillance the effects of any activities which they permit or in which they engage in order to determine whether these activities are likely to pollute the marine environment (art. 204(2))
- g) EIAs:

Article 206**Assessment of potential effects of activities**

When States have reasonable grounds for believing that planned activities under their **jurisdiction or control** may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, **assess the potential effects of such activities on the marine environment** and shall communicate reports of the results of such assessments in the manner provided in article 205.



Part XII: Types of pollution

- a) Pollution from land-based sources (art. 207)
- b) Pollution from seabed activities subject to national jurisdiction (and from artificial islands, installations and structures under their jurisdiction) (art. 208)
- c) Pollution from activities in the Area (art. 209)
- d) Pollution by dumping (art. 210)
- e) Pollution from vessels (art. 211)
- f) Pollution from or through the atmosphere (art. 212)
- g) Other: marine scientific research (art. 263(3): *States and competent international organizations shall be responsible and liable pursuant to article 235 for damage caused by pollution of the marine environment arising out of marine scientific research undertaken by them or on their behalf*)



**Part XII:
Pollution from
vessels
(art. 211)**

1. States, acting through the competent international organization or general diplomatic conference, shall establish international rules and standards to prevent, reduce and control pollution of the marine environment from vessels and promote the adoption, in the same manner, wherever appropriate, of routeing systems designed to minimize the threat of accidents which might cause pollution of the marine environment, including the coastline, and pollution damage to the related interests of coastal States. Such rules and standards shall, in the same manner, be re-examined from time to time as necessary.
2. States shall adopt laws and regulations for the prevention, reduction and control of pollution of the marine environment from vessels flying their flag or of their registry. Such laws and regulations shall at least have the same effect as that of generally accepted international rules and standards established through the competent international organization or general diplomatic conference.
3. States which establish particular requirements for the prevention, reduction and control of pollution of the marine environment as a condition for the entry of foreign vessels into their ports or internal waters or for a call at their off-shore terminals shall give due publicity to such requirements and shall communicate them to the competent international organization. (...).



**Part XII:
Pollution from
vessels
(art. 211)**

4. Coastal States may, in the exercise of their sovereignty within their territorial sea, adopt laws and regulations for the prevention, reduction and control of marine pollution from foreign vessels, including vessels exercising the right of innocent passage. Such laws and regulations shall, in accordance with Part II, section 3, not hamper innocent passage of foreign vessels.
5. Coastal States, for the purpose of enforcement as provided for in section 6, may in respect of their exclusive economic zones adopt laws and regulations for the prevention, reduction and control of pollution from vessels conforming to and giving effect to generally accepted international rules and standards established through the competent international organization or general diplomatic conference.



**Part XII:
Enforcement**

- a) Enforcement with respect to pollution from land-based sources (art. 213)
- b) Enforcement with respect to pollution from seabed activities (and from artificial islands, installations and structures under their jurisdiction) (art. 214)
- c) Enforcement with respect to pollution from activities in the Area (art. 215)
- d) Enforcement with respect to pollution by dumping (art. 216)
- e) Enforcement by flag States (art. 217)
- f) Enforcement by port States (art. 218 and 219)
- g) Enforcement by coastal States (art. 220)
- h) Measures to avoid pollution arising from maritime casualties (art. 221)



**Part XII:
Enforcement by
flag States
(art. 217)**

1. States shall ensure compliance by vessels flying their flag or of their registry with applicable international rules and standards, established through the competent international organization or general diplomatic conference, and with their laws and regulations adopted in accordance with this Convention for the prevention, reduction and control of pollution of the marine environment from vessels and shall accordingly adopt laws and regulations and take other measures necessary for their implementation. Flag States shall provide for the effective enforcement of such rules, standards, laws and regulations, irrespective of where a violation occurs.
2. States shall, in particular, take appropriate measures in order to ensure that vessels flying their flag or of their registry are prohibited from sailing, until they can proceed to sea in compliance with the requirements of the international rules and standards referred to in paragraph 1, including requirements in respect of design, construction, equipment and manning of vessels.



**Part XII:
Enforcement by
flag States
(art. 217)**

3. States shall ensure that vessels flying their flag or of their registry carry on board certificates required by and issued pursuant to international rules and standards referred to in paragraph 1. States shall ensure that vessels flying their flag are periodically inspected in order to verify that such certificates are in conformity with the actual condition of the vessels. These certificates shall be accepted by other States as evidence of the condition of the vessels and shall be regarded as having the same force as certificates issued by them, unless there are clear grounds for believing that the condition of the vessel does not correspond substantially with the particulars of the certificates.
4. If a vessel commits a violation of rules and standards established through the competent international organization or general diplomatic conference, the flag State, without prejudice to articles 218, 220 and 228, shall provide for immediate investigation and where appropriate institute proceedings in respect of the alleged violation irrespective of where the violation occurred or where the pollution caused by such violation has occurred or has been spotted.



**Part XII:
Enforcement by
flag States
(art. 217)**

5. Flag States conducting an investigation of the violation may request the assistance of any other State whose cooperation could be useful in clarifying the circumstances of the case. States shall endeavour to meet appropriate requests of flag States.
6. States shall, at the written request of any State, investigate any violation alleged to have been committed by vessels flying their flag. If satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, flag States shall without delay institute such proceedings in accordance with their laws.
7. Flag States shall promptly inform the requesting State and the competent international organization of the action taken and its outcome. Such information shall be available to all States.
8. Penalties provided for by the laws and regulations of States for vessels flying their flag shall be adequate in severity to discourage violations wherever they occur.



**Part XII:
Enforcement by
port States
(art. 218)**

1. When a vessel is voluntarily within a port or at an off-shore terminal of a State, that State may undertake investigations and, where the evidence so warrants, institute proceedings in respect of any discharge from that vessel outside the internal waters, territorial sea or exclusive economic zone of that State in violation of applicable international rules and standards established through the competent international organization or general diplomatic conference.
2. No proceedings pursuant to paragraph 1 shall be instituted in respect of a discharge violation in the internal waters, territorial sea or exclusive economic zone of another State unless requested by that State, the flag State, or a State damaged or threatened by the discharge violation, or unless the violation has caused or is likely to cause pollution in the internal waters, territorial sea or exclusive economic zone of the State instituting the proceedings.



**Part XII:
Enforcement by
port States
(art. 218)**

3. When a vessel is voluntarily within a port or at an off-shore terminal of a State, that State shall, as far as practicable, comply with requests from any State for investigation of a discharge violation referred to in paragraph 1, believed to have occurred in, caused, or threatened damage to the internal waters, territorial sea or exclusive economic zone of the requesting State. It shall likewise, as far as practicable, comply with requests from the flag State for investigation of such a violation, irrespective of where the violation occurred.
4. The records of the investigation carried out by a port State pursuant to this article shall be transmitted upon request to the flag State or to the coastal State. Any proceedings instituted by the port State on the basis of such an investigation may, subject to section 7, be suspended at the request of the coastal State when the violation has occurred within its internal waters, territorial sea or exclusive economic zone. The evidence and records of the case, together with any bond or other financial security posted with the authorities of the port State, shall in that event be transmitted to the coastal State. Such transmittal shall preclude the continuation of proceedings in the port State.



**Part XII:
Enforcement by
port States
(art. 219)**

Measures relating to seaworthiness of vessels to avoid pollution

Subject to section 7, States which, upon request or on their own initiative, have ascertained that a vessel within one of their ports or at one of their off-shore terminals is in violation of applicable international rules and standards relating to seaworthiness of vessels and thereby threatens damage to the marine environment shall, as far as practicable, take administrative measures to prevent the vessel from sailing. Such States may permit the vessel to proceed only to the nearest appropriate repair yard and, upon removal of the causes of the violation, shall permit the vessel to continue immediately.



**Part XII:
Enforcement by
coastal States
(art. 220)**

1. When a vessel is voluntarily within a port or at an off-shore terminal of a State, that State may, subject to section 7, institute proceedings in respect of any violation of its laws and regulations adopted in accordance with this Convention or applicable international rules and standards for the prevention, reduction and control of pollution from vessels when the violation has occurred within the territorial sea or the exclusive economic zone of that State.
2. Where there are clear grounds for believing that a vessel navigating in the territorial sea of a State has, during its passage therein, violated laws and regulations of that State adopted in accordance with this Convention or applicable international rules and standards for the prevention, reduction and control of pollution from vessels, that State, without prejudice to the application of the relevant provisions of Part II, section 3, may undertake physical inspection of the vessel relating to the violation and may, where the evidence so warrants, institute proceedings, including detention of the vessel, in accordance with its laws, subject to the provisions of section 7.



**Part XII:
Enforcement by
coastal States
(art. 220)**

3. Where there are clear grounds for believing that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, committed a violation of applicable international rules and standards for the prevention, reduction and control of pollution from vessels or laws and regulations of that State conforming and giving effect to such rules and standards, that State may require the vessel to give information regarding its identity and port of registry, its last and its next port of call and other relevant information required to establish whether a violation has occurred.
4. States shall adopt laws and regulations and take other measures so that vessels flying their flag comply with requests for information pursuant to paragraph 3.



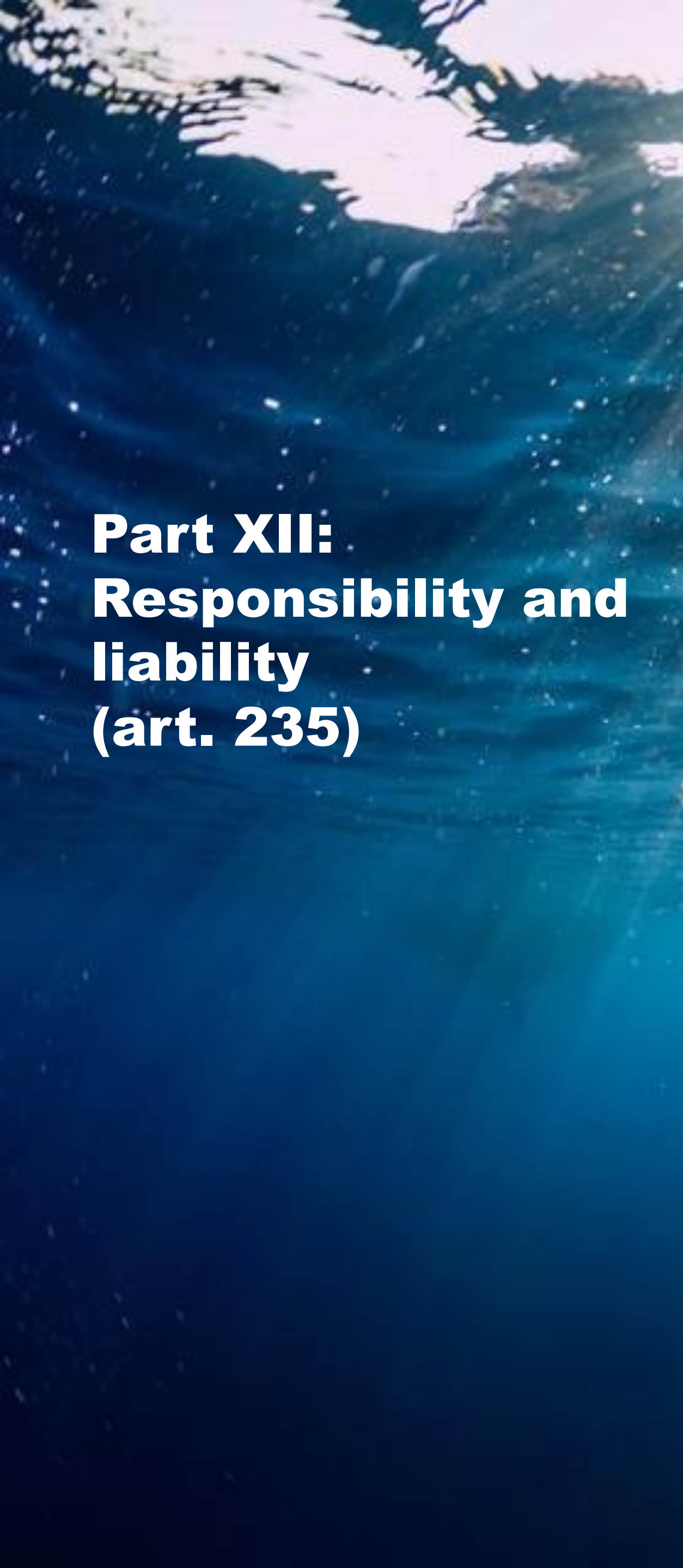
**Part XII:
Enforcement by
coastal States
(art. 220)**

5. Where there are clear grounds for believing that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, committed a violation referred to in paragraph 3 resulting in a substantial discharge causing or threatening significant pollution of the marine environment, that State may undertake physical inspection of the vessel for matters relating to the violation if the vessel has refused to give information or if the information supplied by the vessel is manifestly at variance with the evident factual situation and if the circumstances of the case justify such inspection.
6. Where there is clear objective evidence that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, committed a violation referred to in paragraph 3 resulting in a discharge causing major damage or threat of major damage to the coastline or related interests of the coastal State, or to any resources of its territorial sea or exclusive economic zone, that State may, subject to section 7, provided that the evidence so warrants, institute proceedings, including detention of the vessel, in accordance with its laws.



**Part XII:
Safeguards
(art. 223-233)**

- a) Facilitate proceedings
- b) Duty to avoid adverse circumstances in the exercise of enforcement powers
- c) Limitation of measures to the scope of investigations (avoid delays by examination of certificates)
- d) Non-discrimination
- e) Suspension and restrictions on institution of proceedings (flag State preemption)
- f) Due process
- g) Liability resulting from enforcement measures



**Part XII:
Responsibility and
liability
(art. 235)**

1. States are responsible for the fulfilment of their international obligations concerning the protection and preservation of the marine environment. They shall be liable in accordance with international law.
2. States shall ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction.
3. With the objective of assuring prompt and adequate compensation in respect of all damage caused by pollution of the marine environment, States shall cooperate in the implementation of existing international law and the further development of international law relating to responsibility and liability for the assessment of and compensation for damage and the settlement of related disputes, as well as, where appropriate, development of criteria and procedures for payment of adequate compensation, such as compulsory insurance or compensation funds.



Marine Spatial Planning

- There is no international regime specifically regulating Marine Spatial Planning (MSP)
- Nonetheless, it does not mean that there is a vacuum or legal gap
- The Preamble of UNCLOS recognizes that *the problems of the ocean space are closely interrelated and need to be considered as a whole*
- It also acknowledges the need for establishing *a legal order for the seas and oceans which (...) promote the (...) the protection and preservation of the marine environment*

Marine Spatial Planning

- UNESCO recognizes that the governance of the marine space must be integral and not merely sectoral or restricted to the preservation of the marine environment in certain maritime areas
- It also underlines the importance of rational organization of the use of the marine space and of the interactions between its multiple uses
- MSP – a public (decision-making) process of analysing and allocating the spatial and temporal distribution of human activities and to pursue ecological, economic and social objectives
- Simply put: MSP consists of spatial and time management of marine spaces, but also so much more

Marine Spatial Planning

- MSP requires the adoption of governance models that include:
 - a. planning measures that allow for sustainable development in time and space of different uses and activities, and
 - b. implementation measures, control, monitoring, evaluation, research, stakeholder participation and identification of financial resources
- MSP must take into consideration the three-dimensionality of marine spaces (seabed, water column and water surface)
- If used properly, MSP is a process that entails a plethora of decision-making processes that can achieve important environmental, economic and social objectives
- MSP is essential to balance different interests at sea, avoiding and resolving conflicts
- MSP is also crucial for the Blue Economy that is legally and financially sound
- MSP is, above all, a tool to safeguard that we have a healthy Ocean and resilient marine ecosystems



EU Directive on Marine Spatial Planning

The EU Directive on Marine Spatial Planning (Directive 2014/89/EU):

- The foremost regional approach to MSP to address national discrepancies
- Yet, only 6 Member States (April 2020) have adopted legislation on MSP (source: European MSP Platform), despite the fact that passing legislation on MSP is not, in itself, a pre-requisite of efficiency



EU Directive on Marine Spatial Planning

- Recognition that climate change effects can have severe impacts on coastal economic development and growth, and on marine ecosystems and that due regard should be had to these various pressures in the establishment of maritime spatial plans (applying an ecosystem-based approach)
- Member States need to ensure that the planning process or processes result in a comprehensive planning identifying the different uses of maritime space and taking into consideration long-term changes due to climate change
- Through their maritime spatial plans, Member States shall aim to the preservation, protection and improvement of the environment, including resilience to climate change impacts



EU Directive on Marine Spatial Planning

- Provide regional coordination on maritime planning and management and to tackle cross-border effects caused by the increasing development of offshore and competing economic activities
- MSP is also valuable for the implementation of the EU's Integrated Maritime Policy and Marine Strategy Framework Directive (Directive 2008/56/EC), which establishes the regional approach and the background against which Member States shall take the necessary measures to achieve or maintain good environmental status in the marine environment by the year 2020*



EU Directive on Marine Spatial Planning

– Do we need a new paradigm?

- How to ensure interconnectivity and legal coherence between different national legal regimes and tools (ex. MPAs) in areas within and beyond national jurisdiction?
- How to include ‘good science’ and environmental triggers in MSP legislation?
- Is there a risk of ‘creeping jurisdiction’ in the implementation of the MSP Directive?



Key issues

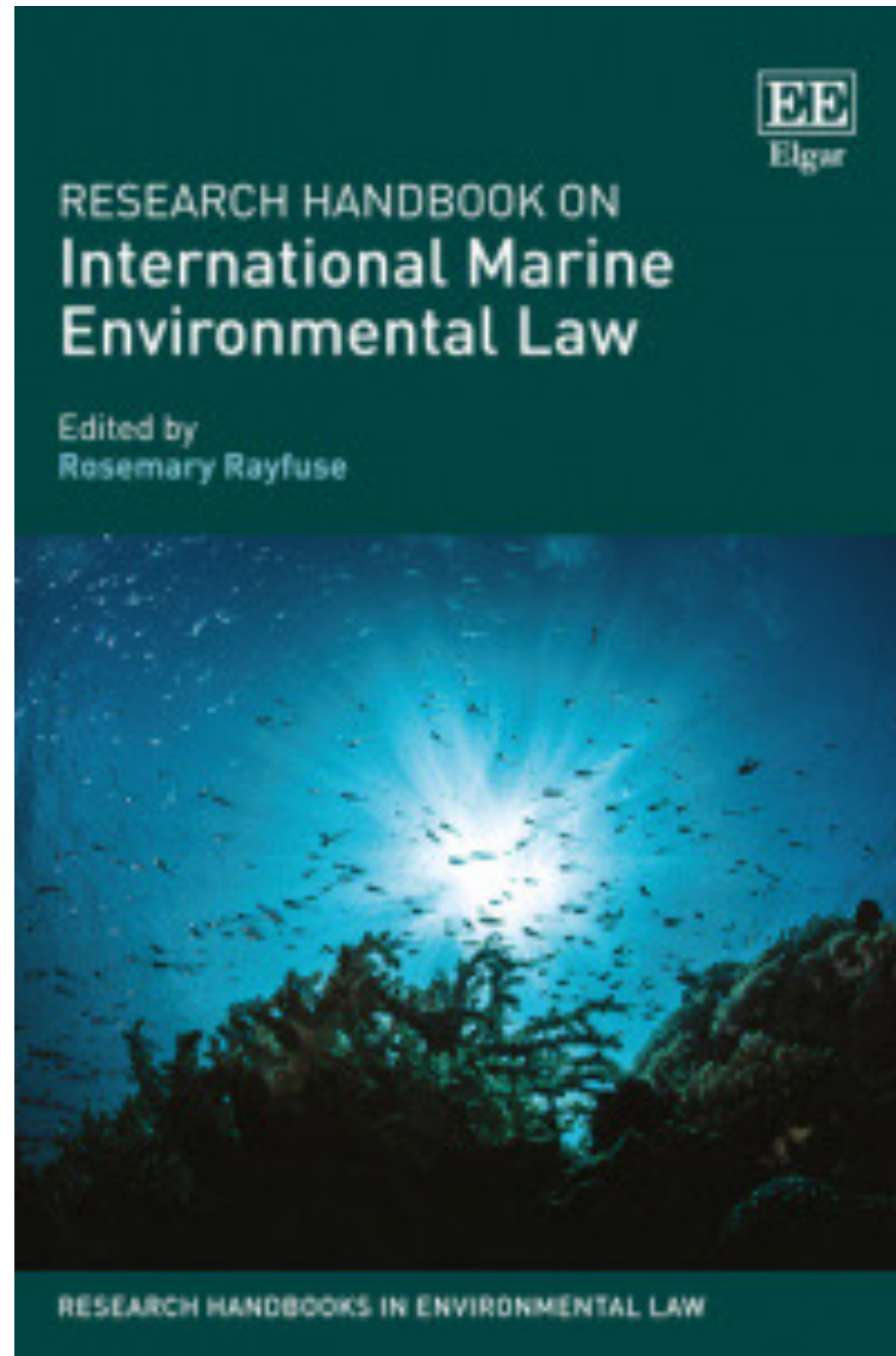
- There are key unanswered issues that are generally absent in most MSP models:
 - a. How to legally integrate in MSP the environmental tipping points of the climate system?
 - b. How to address the legal challenges in implementing the ecosystem services concept in MSP?
 - c. How do we feed the information on ecosystem services in the decision-making processes, particularly as MSP should be a dynamic process?

Conclusions

- The Ocean is getting busier: there are more competing uses and an increasing need for maritime space
- The Ocean is an integral part of the global climate system and is a major contributor to reduce CO2 emissions (carbon storage). In a nutshell: the Ocean is the best chance we have!
- Central to maritime policies at national, regional and global level are the principles of integrated ocean use management and the ecosystem approach
- MSP is essential to achieve consistency between rights of sovereignty and jurisdiction of coastal States and the overall interests of sustainable Ocean Governance
- The connection between MSP and MPAs is extremely relevant for ensuring the effectiveness of different regulations and management rules
- Also when implementing cooperation and coordination measures between States to provide an integrated approach and safeguard the interconnectivity of the different maritime zones within and beyond national jurisdiction

Conclusions

- In order to integrate environmental tipping points of the climate system, MSP must not be a static system
- The normative implementation of the ecosystem services concept in MSP is one of the key challenges only achieved by feeding good science into the decision-making process
- In this regard the EU's Marine Strategy Framework Directive (Directive 2008/56/EC) could be useful
- The MSFD requires monitoring measures, the definition of environmental targets and implementation of programmes of measures. It should be noted that MSP, similar to MPAs, are a tool to implement the EU's Marine Strategy Framework Directive
- However, the implementation of the MSFD has raised concerns, including regarding cross-border cooperation



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“Enhancing marine protected
areas and marine spatial
planning through an ecosystem
approach”
(2023)



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“Preliminary thoughts on
marine spatial planning in
areas beyond national
jurisdiction”
(2017)



What are maritime environmental crimes?

Out of sight, out of mind

- The maritime dimension of environmental crimes is a departure from the factual and legal reality of crimes taking place on land
 - ✓ Evidence of environmental crimes on land is more ample and easily obtained: even in situations of accidental pollution, ships often fail to report for fear of legal and financial repercussions
 - ✓ Establishing causation can also be extremely difficult and is dependent on States cooperating by sharing information and intelligence, in addition to collaborating at operational level together with international law enforcement agencies
 - ✓ Legal regimes addressing environmental crimes on land are greatly advanced and provide a more efficient response, particularly regarding responsibility and liability
 - ✓ There is no harmonisation with respect to the standard of evidence admissible under different national jurisdictions



What are maritime environmental crimes?

Not like-for-like

- There is no set definition of maritime environmental crimes, nor does international law criminalize acts or conducts considered as such
- Individually or collectively, environmental rights are an extension of human rights: include the right to a healthy environment, access to information, public participation in decision-making and access to justice in environmental matters, all of which reinforce the connection between the human element and the environment

What is the impact of these crimes?

Crimes happening in one part of the ocean will affect the whole ocean

- No specific data on the value of maritime environmental crimes
- Crimes are perpetrated in every part of the ocean and affect the livelihood of coastal communities
- Most are related to ship-source pollution, particularly accidental and wilful oil discharges
- Crimes take place across the whole shipping sector, from unseaworthy vessels engaged in IUUF to oil tankers and luxury cruise lines
- Crimes occur while vessels are on route and when there is low visibility
- The impact of human-produced incidents greatly offsets natural processes, given the large volumes of oil that can be released in a single incident:
 - ✓ 53% of all petroleum reaching the marine environment is human-produced and occurs near coastlines (Polinov et al, 2021)
 - ✓ Most of the 2.1Mt of oil discharged every year into the sea goes undetected (Giovannini et al, 2013))

What is the impact of these crimes?

MEC are a quick and inexpensive solution and the chances of criminals getting caught, prosecuted or convicted very small

- Despite improvements in oil-spill response, clean-up and restoration methods, restitution of affected areas is generally very difficult, in addition to being extremely costly and time consuming. In some cases damage is simply irreparable
- Perpetrators are organized and act in a concerted and evasive manner, taking advantage of existing gaps and overlaps in international law
- Financial reward: not calling into port to use facilities and avoid procedures established under national and/or international law which are time-consuming and entail significant costs
- The rewards of maritime environmental crimes can be seen, for example, in the fact that illegal disposal can save a ship owner anywhere from US\$80K-220K every year, depending on the size and age of the ship, the number of days at sea and how well it is maintained, which can represent 5% to 12% of a ship's operating costs (Vollaard, 2017)

Why nothing has been done?

**Maritime environmental
crimes are a global problem
that has been severely
overlooked**

- Lack of awareness or clear sense of direction by States to address these crimes and to do so in a collective manner
- No single State is able to tackle the causes and consequences of maritime environmental crimes
- The existing legal rules addressing spatial and functional jurisdiction at sea result in complex multijurisdictional challenges that can cause conflict of jurisdictions
- General ineffectiveness of international law to prevent and combat maritime environmental crimes
- Do we need specific legal rules addressing maritime environmental crimes?

What can be done?

Law enforcement

- 2018 Interpol led-international operation: 276 law enforcement and environmental agencies across 58 States and a global network of 122 national coordinators
 - ✓ This operation lasted one month and carried out 5,200 inspections that resulted in approximately 185 investigations and detected more than 500 offences, including illegal discharges of oil and garbage from vessels, shipbreaking, breaches of ship emissions regulations, and pollution on rivers and land-based runoff to the sea
- 2019 Interpol led-international operation: 61 States and regional law enforcement partners
 - ✓ Identified thousands of illicit activities behind severe marine pollution. The preliminary results of this concerted operation that lasted one month, gathering more than 200 enforcement authorities worldwide, across all continents, revealed more than 3,000 offences, detected during 17.000 inspections. These offences were committed primarily to avoid the cost of compliance with environmental legislation

Multijurisdictional challenge

**A global problem, not one
exclusively subject to
national jurisdiction**

- Increasing number of vessels at sea, involved in a variety of activities
- Impossibility of any flag State controlling every single ship flying its flag at all times
- ✓ How to tackle existing gaps and overlapping rules that cause conflict of jurisdictions and, consequently, the ineffectiveness of international law to prevent and combat maritime environmental crimes?

Shortcomings

The need for the recognition
of maritime environmental
crimes

- Although there is clearly a collective interest in protection and preservation of the marine environment, international law has not made the right of each State to intercede on behalf of the marine environment in areas subject to the jurisdiction or sovereignty of other States
- One State may only seek legal action against another State based on the latter's responsibility for damage suffered
- No international legal regime specifically criminalizes and/or requires States to criminalize and punish acts and conduct that cause harm or damage to the marine environment
- Criminalization only exists under national law, subject to States' discretion

Shortcomings

Criminals as non-State actors, benefit or suffer from the shortcomings of international law

- Only few States have legislation on maritime environmental crimes and even fewer exercise jurisdiction: the USA has exercised prescriptive and enforcement jurisdiction, in addition to accepting and rewarding whistleblowers: The Oil Pollution Act 1990 and The Act to Prevent Pollution from Ships 1980
- There is no international body to monitor maritime environmental crimes, measuring performance and progress, and identifying ways to enhance cooperation between States
- Existing organizations, such as the IMO or the UNODC do not have the competence to tackle these crimes, despite the natural contiguity of their mandates with respect to protection and preservation of the marine environment and combating transnational organized crime or providing maritime law enforcement capacity building

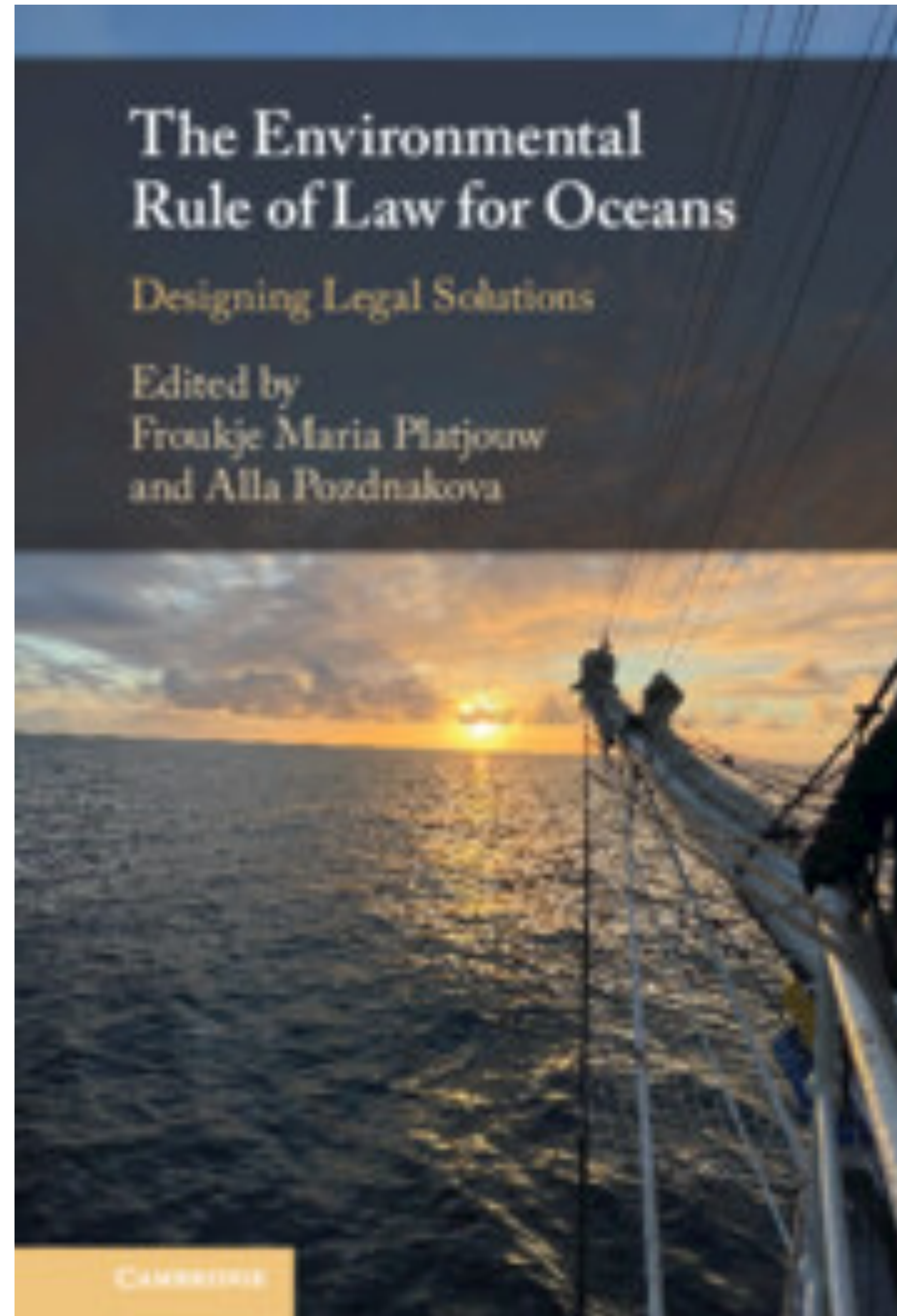
Moving forward

There is room for maritime
environmental crimes within
international law

- Despite the shortcomings of international law for not including specific rules on maritime environmental crimes, this does not mean that there is no room for maritime environmental crimes in international law
- The unity of international law and functional systemic integration of different legal regimes: no international legal instrument is a self-contained regime and is not impermeable to other legal regimes
 - ✓ How can environmental rights be interpreted and protected under the existing rules, when there is no international legal instrument establishing international criminal responsibility of natural or legal persons for maritime environmental crimes?
 - ✓ How to demonstrate that pollution has had a harmful effect on the rights of persons and not simply a general deterioration of the environment?

Conclusions

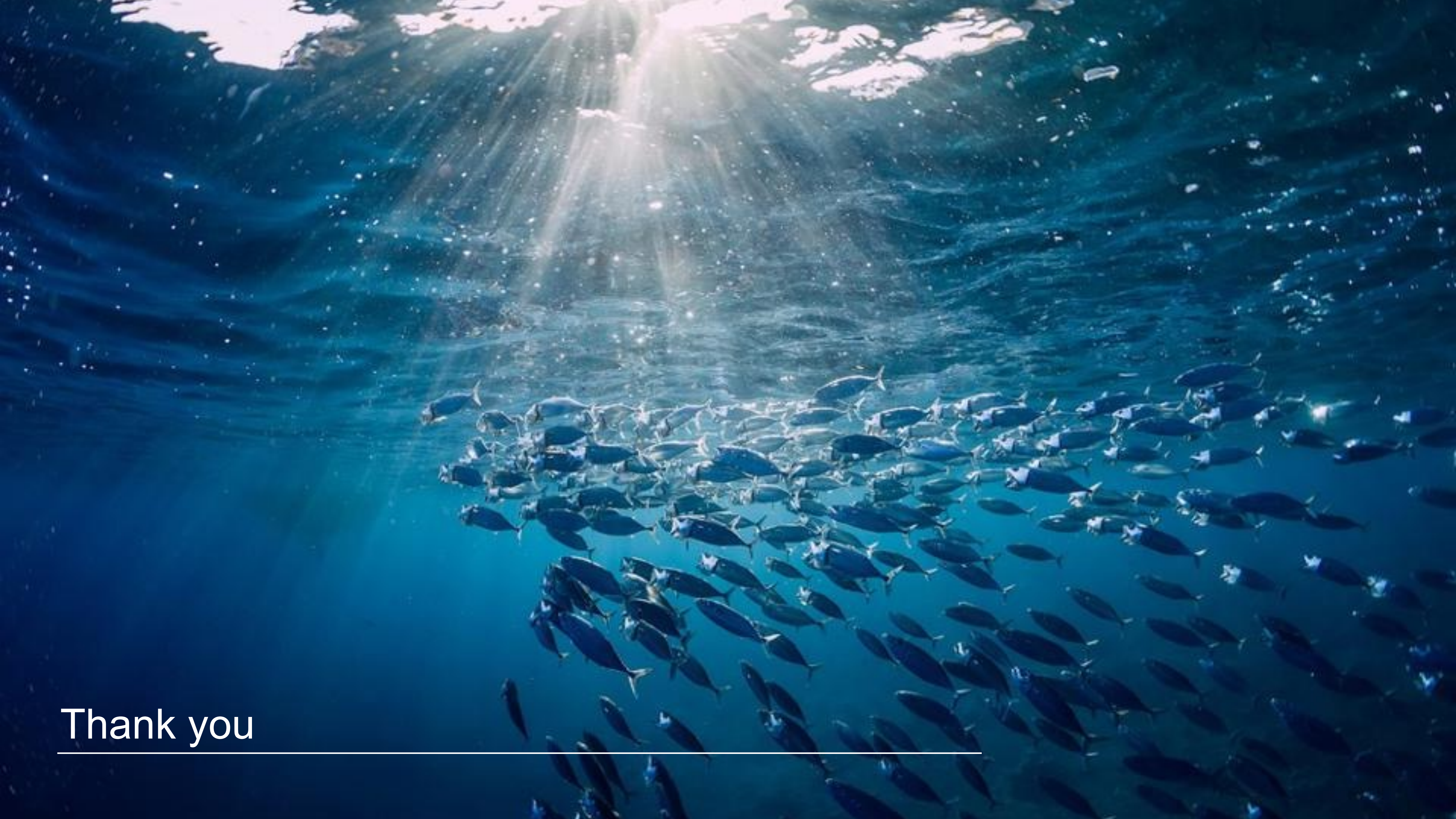
- There is a deep disconnect between international law and protection of the marine environment from criminal acts
- Existing international legal rules do not echo the overall concern for protection and preservation of the marine environment, or meet the expectations of those looking for implementation and enforcement of more stringent and effective rules
- Recognition of and adherence to the concept would have the effect that criminalization would no longer be dependent solely on domestic law, but would not overcome the limitations resulting from the existing legal framework applicable to prescriptive and enforcement jurisdiction at sea
- Proposals for a new international crime such as “ecocide”, could potentially lead the way for further development of international law and of the legal tools necessary to ensure a collective and effective legal response to maritime environmental crimes



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Thank you
