



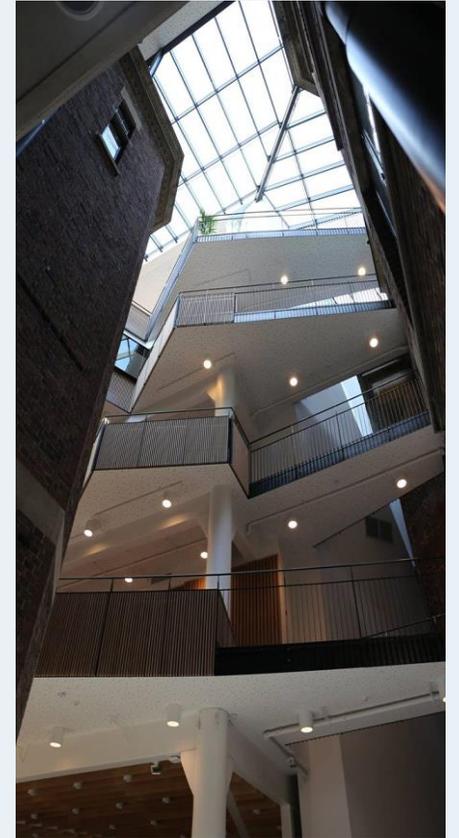
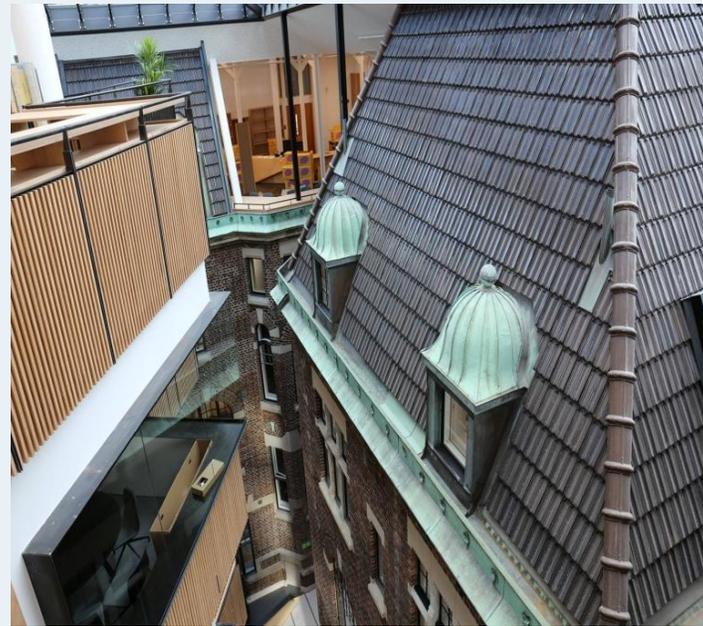
# Ocean Governance: *Policy, Legal and Institutional Considerations*



IFLOS Summer Academy, July 2019  
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World Maritime University, Sweden

# World Maritime University, Malmö, Sweden

Founded in 1983 by the International Maritime Organization, the World Maritime University is a postgraduate maritime University with the aim to further enhance the objectives and goals of IMO and its member States around the globe through education, research, and capacity building to ensure safe, secure, and efficient shipping and clean oceans



# WMU- Sasakawa Global Ocean Institute

The Global Ocean Institute's vision is to bring to life a platform for policy makers, the scientific community, regulators, industry actors, academics, and representatives of civil society to meet and discuss how best to manage and use ocean spaces and their resources for the sustainable development of present and future generations



# Today's lecture on Ocean Governance: Policy, Legal and Institutional Considerations

## Part I

1. Introduction
2. Division of the Ocean's Space
3. Oceans Management
4. Global Framework for Ocean Governance
  - 4.1 Legal Framework
  - 4.2 Institutional Framework
  - 4.3 Policy Framework
5. High Seas Governance (global, regional and national)
6. Current challenges and latest developments

## Part II

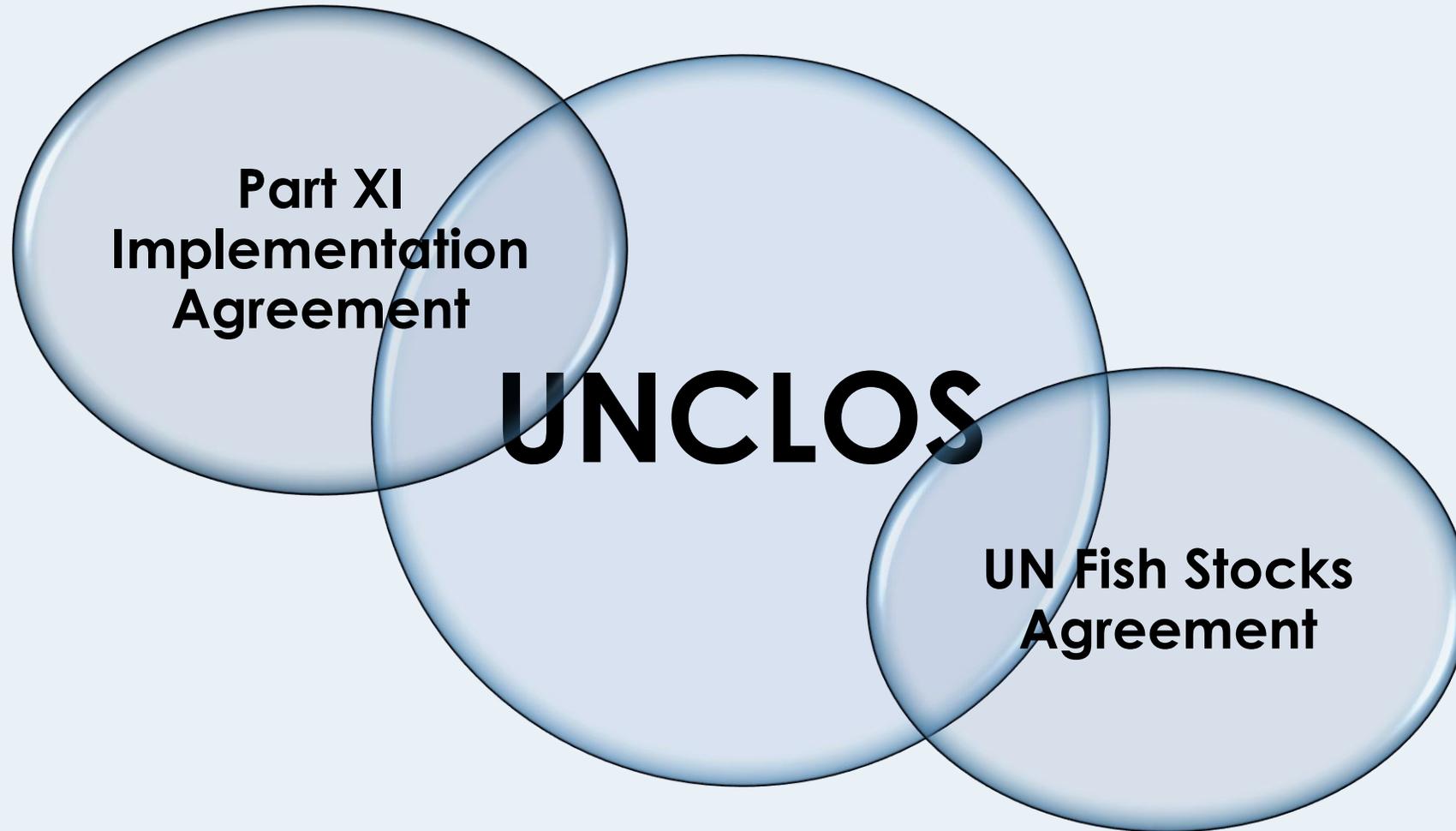
*Task:*

**Global** Governance

**or**

**Regional** Governance

# 1. Introduction to Ocean Governance



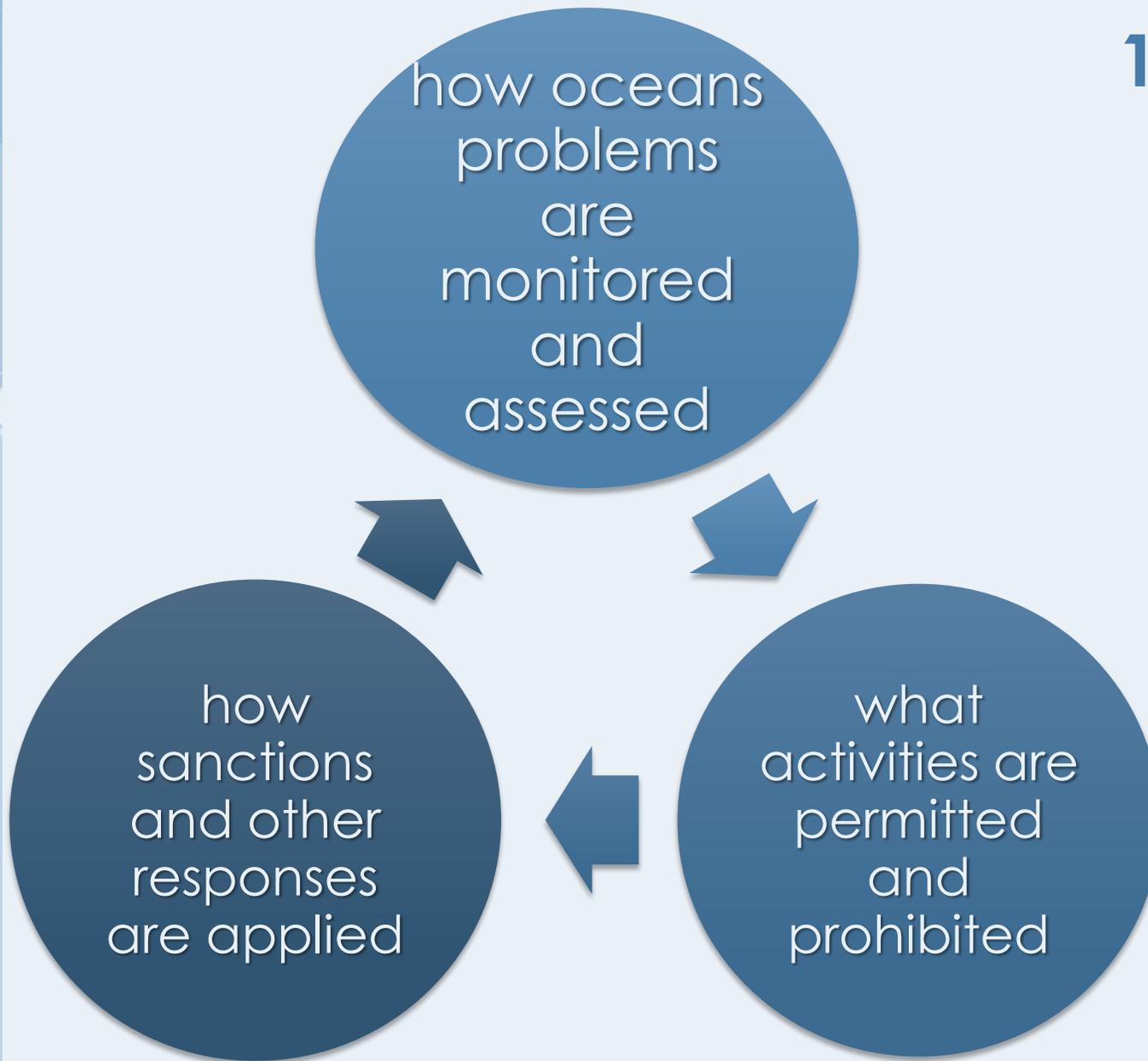
# 1. Introduction to Ocean Governance

## Government

- implies the making and enforcement of decisions by a centralized formal authority, something that is absent from the cooperation by States

## Governance

- connotes a process in which there is close cooperation and coordination by States and other actors to achieve desired objectives



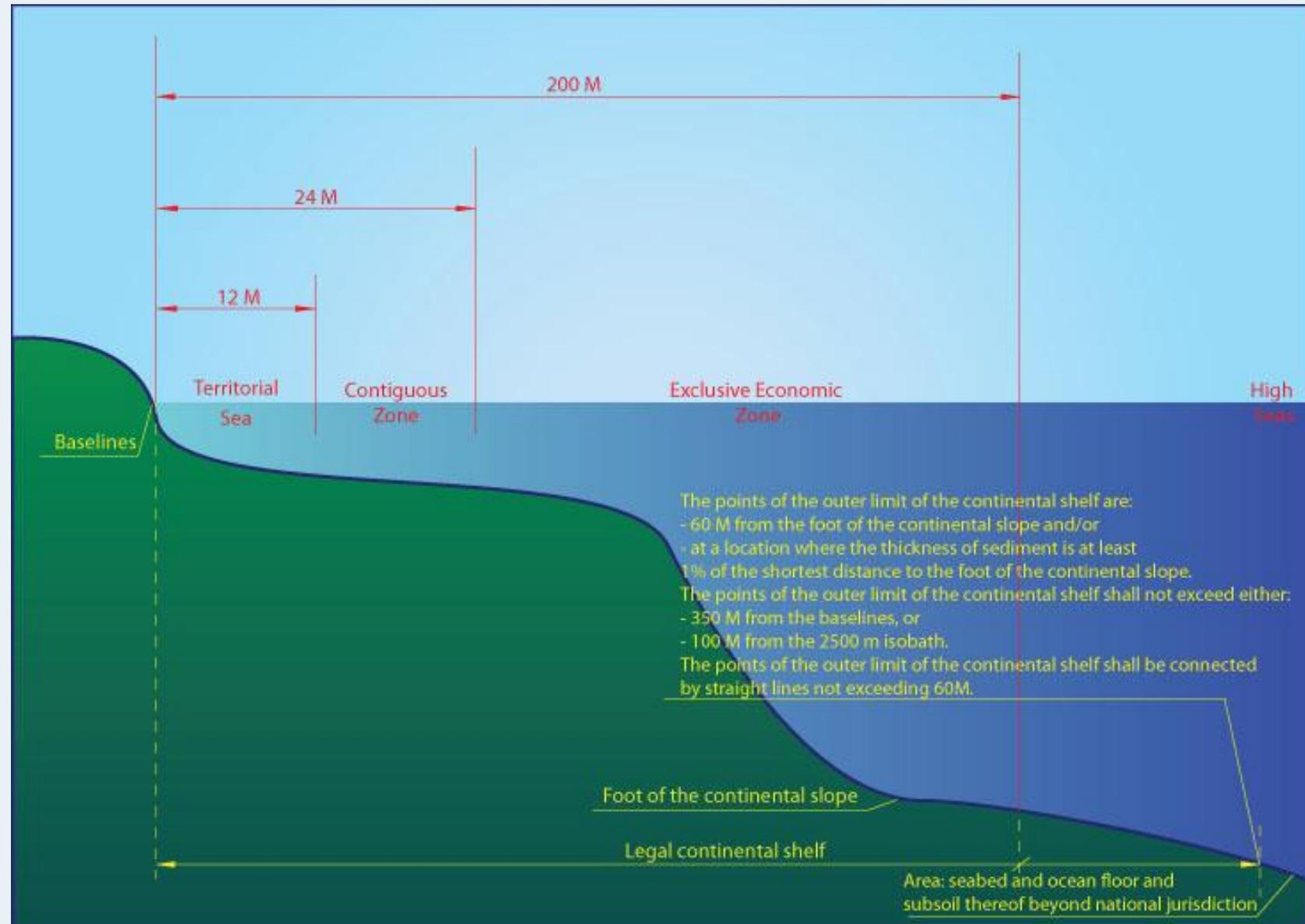
# 1. Governance without government

Oceans governance can be **described** as those:

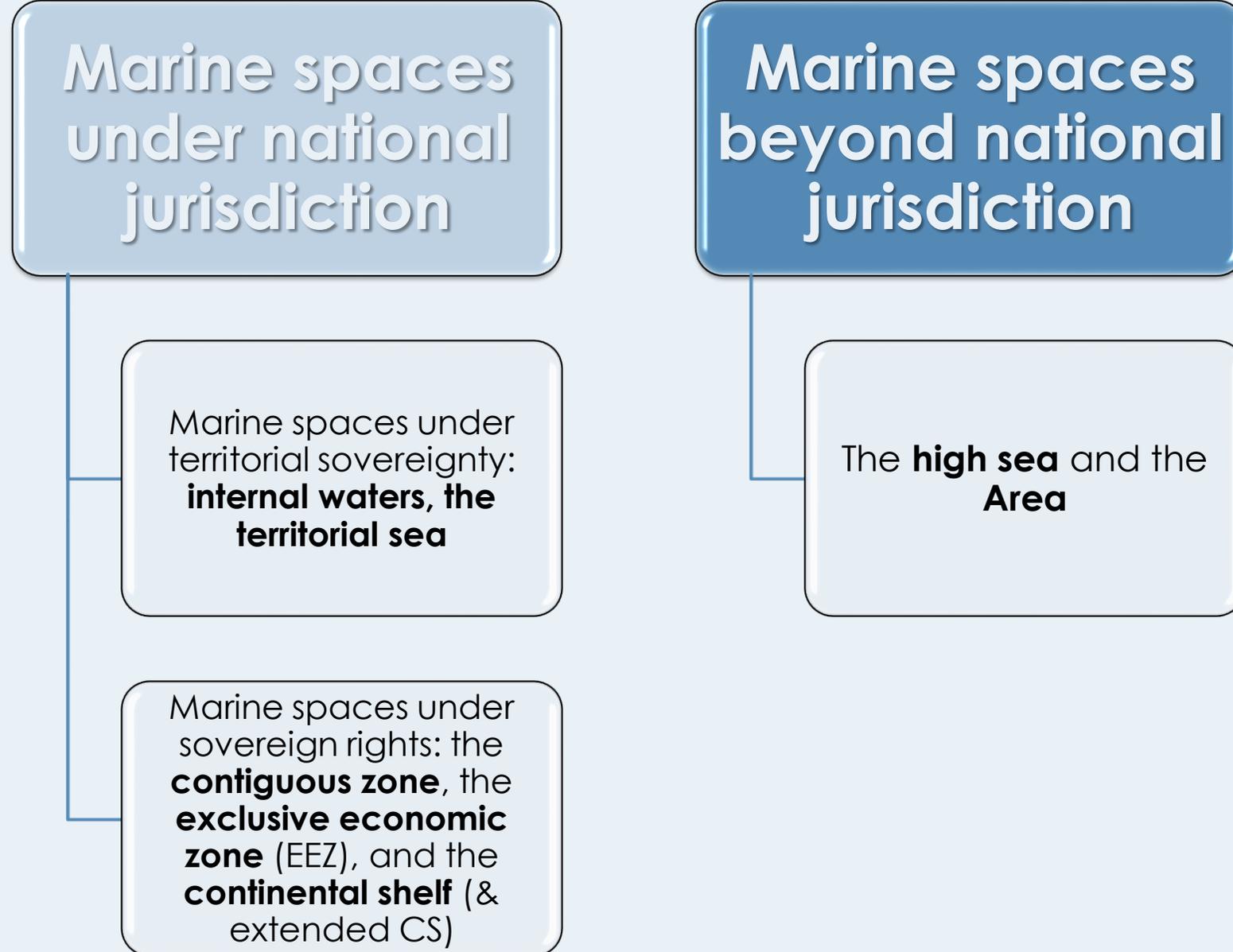
- formal and informal rules,
- arrangements,
- Institutions, and
- concepts

which **structure** the ways in which the **sea space** is **used**

# Division of Ocean's Space under UNCLOS



## 2. Division of the Ocean's Space



## 2. Division of the Ocean's Space

### The High Seas

#### Seabed and ocean floor

- Mineral resources  
(Common Heritage of Humankind)

#### The surface and water column

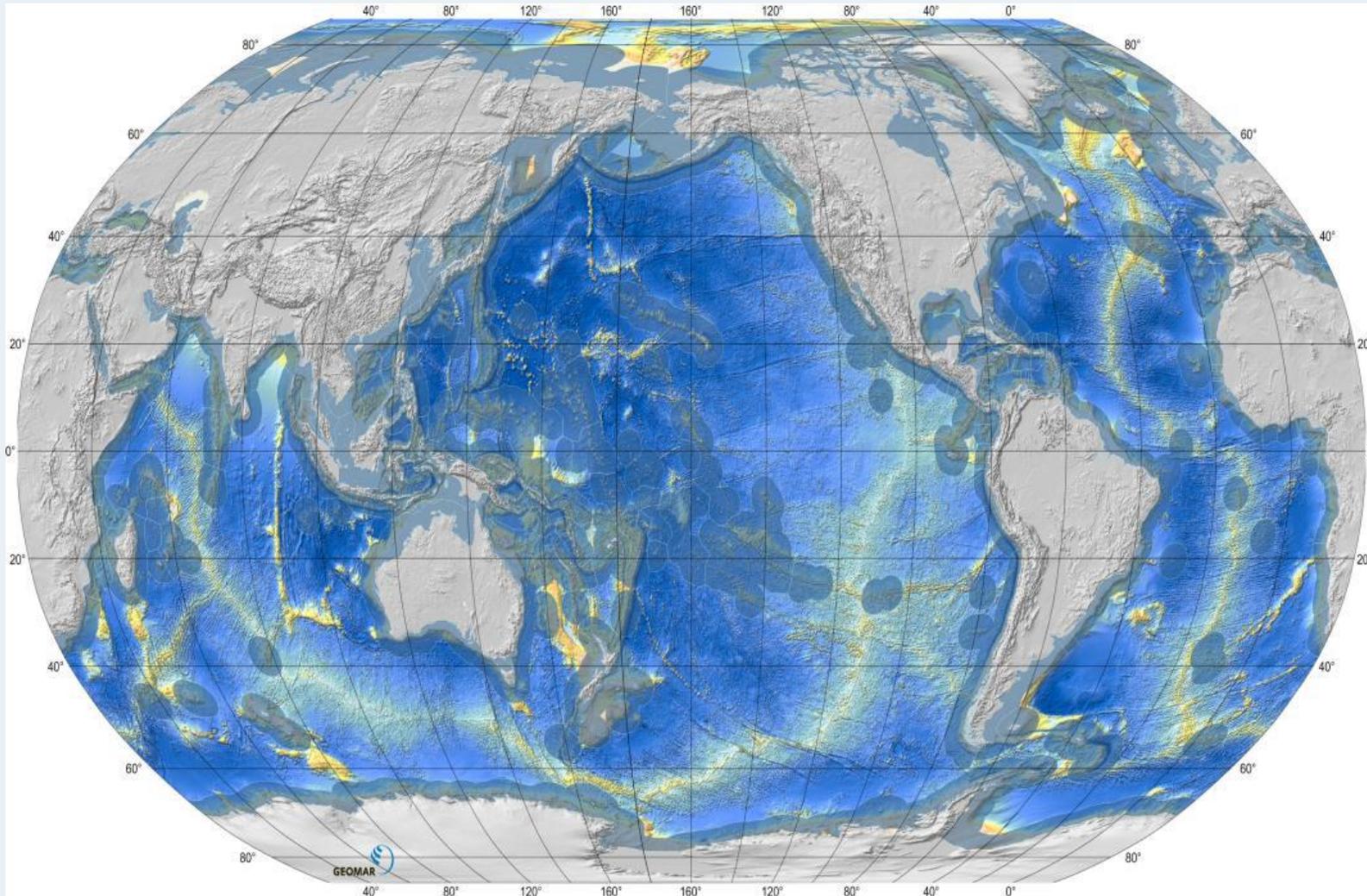
- All States enjoy  
freedom of the high  
seas (not absolute)

## 2. Division of the Ocean's Space

Division of the Ocean's Space under UNCLOS

- Zones under national jurisdiction (TS, CZ, CS, EEZ)
- Zones beyond national jurisdiction (HS, A)
  
- Exclusive resources (TS, CZ, CS, EEZ)
- Shared resources (HS, A)

# 3. Ocean Management



EEZ Boundaries  
Scale of the  
marine areas  
beyond  
national  
jurisdiction in  
terms of the  
surface and  
water column

# 3. Ocean Management

## Ecosystem Approach

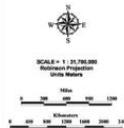
The starting point for effective ocean governance is the identification of an appropriate scale for management



**MAP KEY:**

- LME Numbers:**
- 1 East Bering Sea
  - 2 Gulf of Alaska
  - 3 California Current
  - 4 Gulf of California
  - 5 Gulf of Mexico
  - 6 Southeast U.S. Continental Shelf
  - 7 Northwest U.S. Continental Shelf
  - 8 Scotian Shelf
  - 9 Newfoundland Labrador Shelf
  - 10 Inular Pacific-Norwegian
  - 11 Pacific Central American Coastal
  - 12 Caribbean Sea
  - 13 Humboldt Current
  - 14 Patagonian Shelf
  - 15 South Brazil Shelf
  - 16 East Brazil Shelf
  - 17 North Brazil Shelf
  - 18 West Greenland Shelf
  - 19 East Greenland Shelf
  - 20 Barents Sea
  - 21 Norwegian Shelf
  - 22 North Sea
  - 23 Baltic Sea
  - 24 Celtic-Biscay Shelf
  - 25 Iberian Coastal
  - 26 Mediterranean Sea
  - 27 Canary Current
  - 28 Guinea Current
  - 29 Benguela Current
  - 30 Agulhas Current
  - 31 Somali Coastal Current
  - 32 Andean Sea
  - 33 Red Sea
  - 34 Bay of Bengal
  - 35 South China Sea
  - 36 South China Sea
  - 37 Indo-Andaman Sea
  - 38 Indonesian Sea
  - 39 North Australian Shelf
  - 40 Northwest Australian Shelf - Great Barrier Reef
  - 41 East-Central Australian Shelf
  - 42 Southwest Australian Shelf
  - 43 Southeast Australian Shelf
  - 44 West-Central Australian Shelf
  - 45 Northwest Australian Shelf
  - 46 New Zealand Shelf
  - 47 East China Sea
  - 48 Yellow Sea
  - 49 Kurushio Current
  - 50 Sea of Japan
  - 51 Oyashio Current
  - 52 Sea of Okhotsk
  - 53 West Bering Sea
  - 54 Chukchi Sea
  - 55 Beaufort Sea
  - 56 East Siberian Sea
  - 57 Laptev Sea
  - 58 Kara Sea
  - 59 Eastern Shelf
  - 60 Farna Passaic
  - 61 Antarctic
  - 62 Ross Sea
  - 63 Hudson Bay
  - 64 Arctic Ocean

- Large Marine Ecosystems
- Watershed Boundaries
- Political Borders



# Large Marine Ecosystems of the World and Linked Watersheds



**LARGE MARINE ECOSYSTEMS** are areas of the ocean characterized by distinct bathymetry, hydrography, productivity, and trophic interactions. They annually produce 95 percent of the world's fish catch. They are national and regional focal areas of a global effort to reduce the degradation of linked watersheds, marine resources, and coastal environments from pollution, habitat loss, and over-fishing.

For More Information Visit: [www.edc.uri.edu/lme](http://www.edc.uri.edu/lme)

**UCN**

# 3. Ocean Management

## Large Marine Ecosystems

Because LMEs are confined to marine areas of continental margins they have limited relevance for the management of the high seas areas

High seas `governance gap`

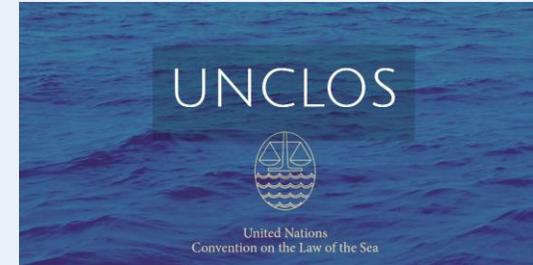
# Area-Based Tools for Ocean Management

There is a wide range of area-based management tools that take into consideration the ecological reality of the marine environment in order to protect the oceans:

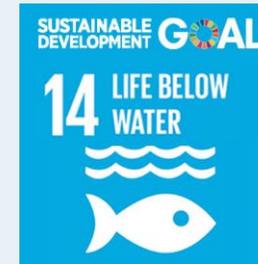
- Marine spatial planning (MSP)
- Marine protected areas (MPAs)
- MARPOL special areas
- Particularly sensitive sea areas (PSSAs)

# 4. Global Framework for Ocean Governance

Legal Framework



Institutional Framework



Policy Framework



## 4.1. Legal Framework

Three different phases or periods may be identified:

Up until the Geneva regime of 1958

From 1959 until the conclusion of the UNCLOS in 1982

After the conclusion of the UNCLOS in 1982

# 4.1. Legal Framework

## UNCLOS I Geneva 1958 Conventions

The territorial sea and the contiguous zone

The high seas

Fishing on the high seas

The continental shelf

**Primary focus** upon the **rights of the States** on maritime spaces

Limited attention given to **cross-cutting issues**

## 4.1. Legal Framework

1959 - 1982

Marked by **growing appreciation** of marine **environmental threats** and the emergence of a **zonal approach**

1972 Stockholm Declaration on the Human Environment

United Nations Environmental Programme's Regional Seas Programme

# 4.1. Legal Framework

- LOSC Umbrella Convention
- Multilateral treaties
- Regional agreements
- Bilateral agreements
- Soft-law instruments

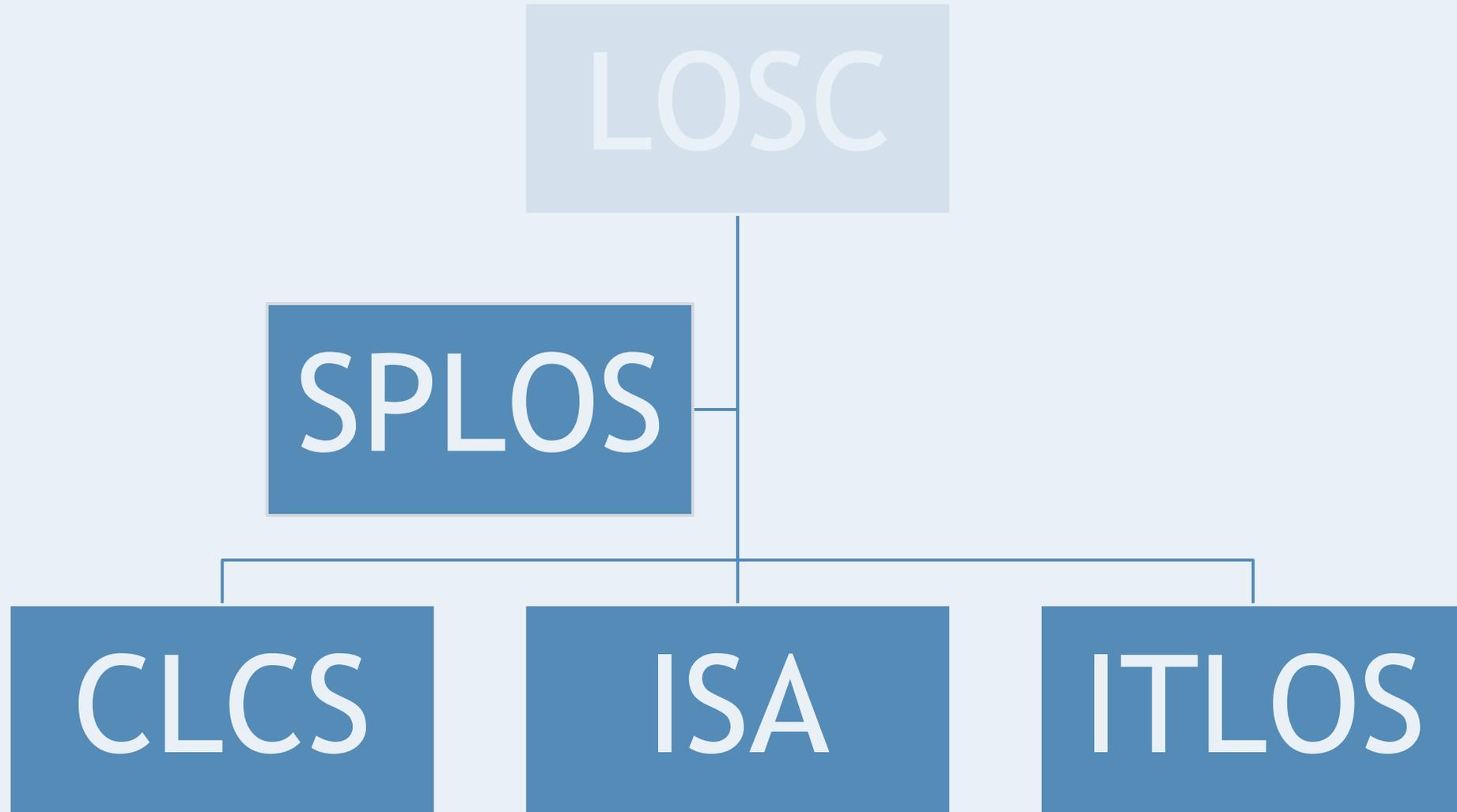
## 4.1. Legal Framework - Pollution

- LOSC Part XII: Obligation to protect and preserve the marine environment, vessel- source, land-based and atmospheric pollution, and from intentional dumping
- IMO Conventions
- Regional agreements (UNEP and non-UNEP)
- Other Conventions:
  - Maritime Labour Convention (MLC)
  - Convention on Biological Diversity (CBD)

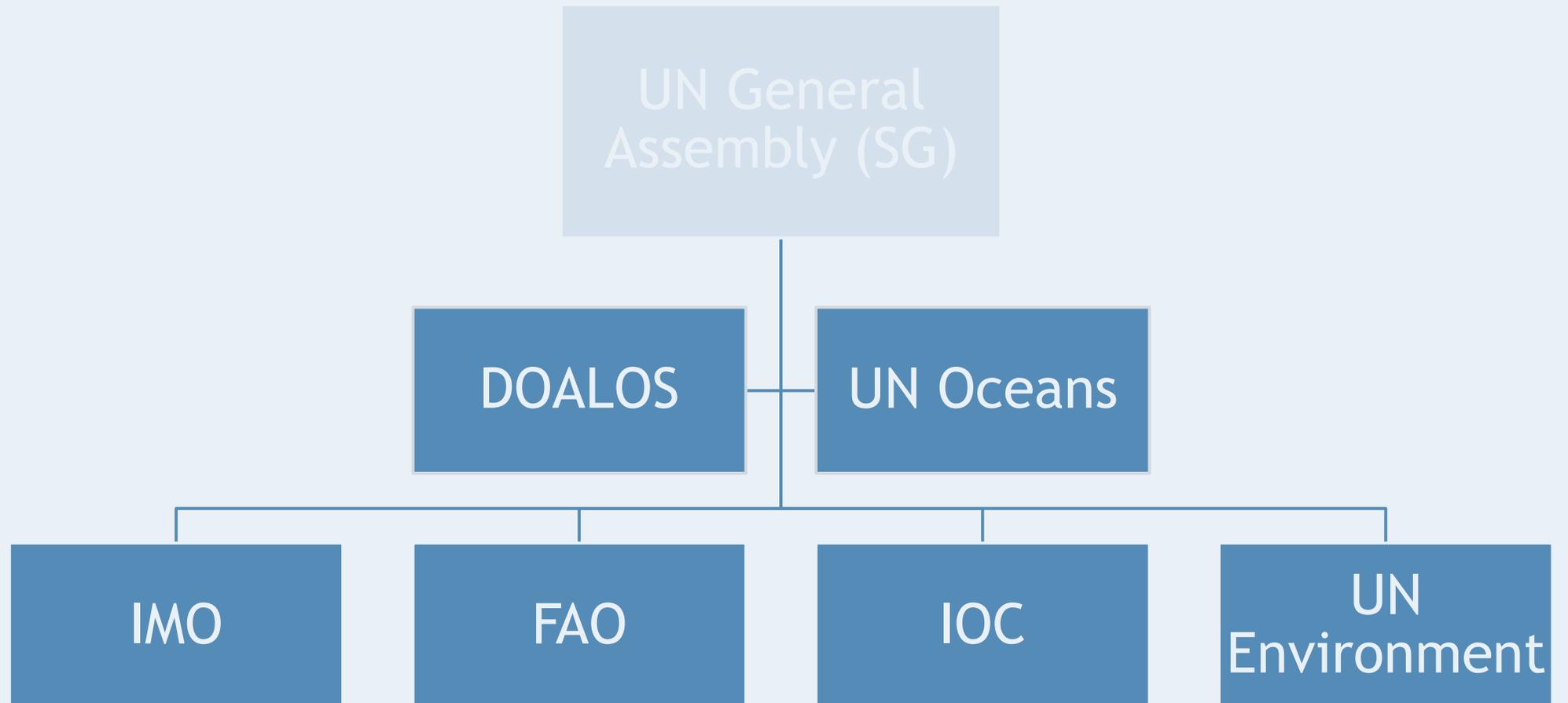
## 4.1. Legal Framework - Fisheries

- LOSC: **Obligation of cooperation** upon States to manage shared, straddling and highly migratory fisheries and several other specific species, including cetaceans
- Fish Stock Agreement (FSA)
- **Bilateral and regional agreements** establishing **fisheries commission** and other arrangements
- Other Conventions:
  - Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

## 4.2. Institutional framework



## 4.2. Institutional framework



## **4.2. Institutional Framework (global, regional and national)**

- ▶ UNEP Regional Seas Programme**
- ▶ Regional Fishery Bodies**
- ▶ Large Marine Ecosystem mechanisms**

## 4.2. Institutional Framework (global, regional and national)

### UNEP Regional Seas Programme

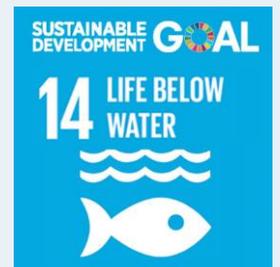
- seeks to facilitate cooperation among States that neighbor and share marine regions to achieve sustainable management of the marine environment
- Action Plan
- framework convention – issue by issue protocol

## 4.3. Policy Framework

- ▶ Differences between a policy and a law
- ▶ The two most fundamental policy documents for ocean governance: 1992 United Nations Conference on Environment and Development (Chapter 17, Agenda 21) and the 2002 Johannesburg Plan of Implementation

# Should or can we prioritize the targets in Goal 14?

- 2025: reduce marine pollution
- 2020: sustainably manage and protect marine and coastal ecosystems
- 2020
  - end overfishing, IUU & achieve MSY
  - Conserve >10% of coastal and marine areas
  - end fisheries subsidies
- 2030: > economic benefits to Small Island developing States
- Minimize impacts of ocean acidification
- Increase scientific knowledge, develop research capacity and transfer marine technology
- Provide access for small-scale artisanal fishers to marine resources and markets
- Enhance the conservation and sustainable use of oceans and their resources by implementing international law



# Principles for Ocean Governance

1. Obligation to protect the marine environment
2. Polluter-pays principle
3. Ecosystem approach
4. Use of best scientific knowledge
5. Environmental impact assessment
6. Sustainable development
7. Information sharing/transparency (Aarhus Convention)

## 5. High Seas Governance (global, regional and national)

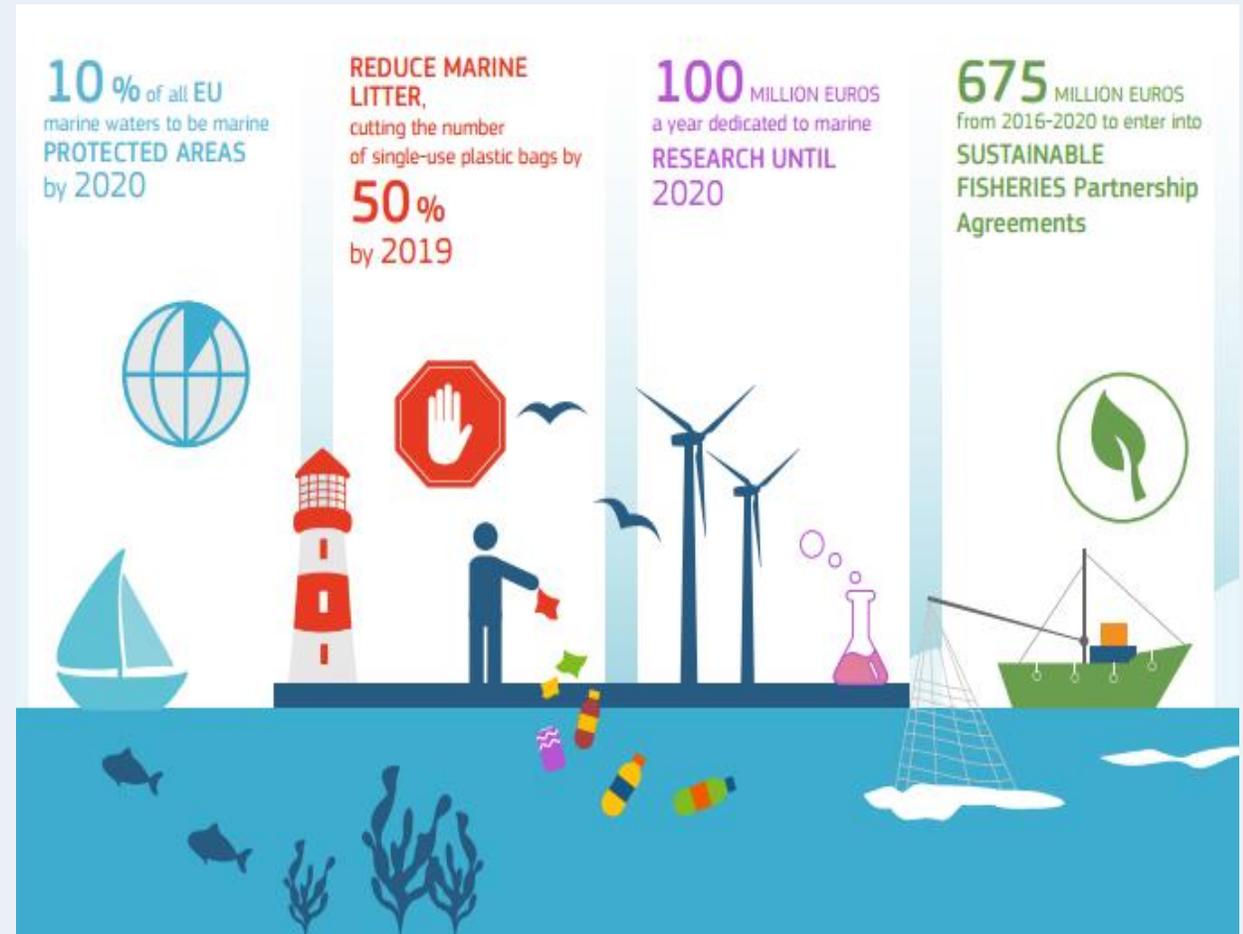
Some efforts have been made to develop new high seas governance arrangements:

- United Nations Open-Ended Informal Consultative Process on Oceans and the Law of the Sea (UNICPOLOS) or (ICP)
- Preparatory Committee for the development of an internationally legally binding instrument under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction – Intergovernmental Conference
- A Regular Process for Global Reporting and Assessment of the State of the Marine Environment including Socioeconomic Aspects (the Regular Process)

# 1. Examples of actions to improve Ocean Governance

## EU Actions:

1. Improving the international ocean governance framework
2. Reducing human pressure on the oceans and creating the conditions for a sustainable blue economy
3. Strengthening international ocean research and data



# 6. Current challenges on Ocean Governance

- > The implementation of the LOSC
- > The development of “effective” rules for poorly regulated areas (land based pollution, fisheries, offshore industry)
- > The development of an implementation agreement to protect biodiversity in areas beyond national jurisdiction (ILBI)
- > Improvement of inter agency cooperation - UN Oceans mandate
- > The accomplishment of voluntary commitments to reach SDG 14
- > The need to take climate change into account when developing measures to protect the oceans
- > The gather of regional data for the Second World Oceans Assessment

# PART II: WORKSHOP

## Global vs. Regional Governance



# WORKSHOP

## Global vs. Regional Governance

Indonesia's Proposal for an International Convention (*Montara Incident*) (2010)

Members States did not approve the proposal to develop such a Convention within IMO

Outside the scope of the Organization

IMO could not duplicate for the offshore oil sector the liability rules generated by oil spills caused by ships

Issues of transboundary pollution could be better addressed through bilateral or regional agreements

In addition, there are problems with the discharge offshore of various chemicals that are used in the course of exploration and exploitation of the seabed

# Seabed mining in areas under national jurisdiction (the offshore oil industry)

There are several Conventions on regional levels, especially among European Countries, to regulate pollution from activities in the marine environment

The 1992 Convention for the Protection of the Marine Environment of the North East Atlantic (**OSPAR Convention**) and its Annex III, On the Prevention and Elimination of Pollution from Offshore Sources

The Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean Sea against Pollution (**Barcelona Convention**) and its Protocol for the Protection of the Mediterranean Sea against Pollution resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil (**Mediterranean Offshore Protocol**)

# Solution to the Task

**Problem:** Prevention - Liability and compensation - Transboundary pollution of the marine environment

**Pollution Source:** Pollution from seabed activities subject to national jurisdiction

**Legal Framework:** UNCLOS principles Part XII

**Art. 192** States have the **obligation to protect and preserve** the marine environment

**Art. 208 - 1)** Coastal States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment arising from or in connection with **seabed activities subject to their jurisdiction**

- 2) States, acting especially through **competent international organization or diplomatic conference**, shall establish **global and regional rules**, standards and recommended practices and procedures to prevent, reduce and control pollution of the marine environment

**Art. 235** States **are responsible for the fulfilment** of their international obligations concerning the protection and preservation of the marine environment

**Policy Framework:** Agenda 21, Sustainable Development Goals

# Solution to the Task

**International Convention:** 1977 Civil Liability for Oil Pollution Damage resulting from Exploration and Exploitation of Seabed Mineral Resources (not in force)

International Convention / Regional Convention / Bilateral Treaties

**Competent international Organization or Diplomatic Conference**

IMO?, UNEP See Regional See Programme?

**Main Provisions (possibility):**

Scope

Pollution prevention and emergency plan

Reporting and cooperation in emergency situations

Settlement of claims

Jurisdiction and enforcement

Liability and limitation of liability

Other compensation issues

**Principles (possibility):**

Polluters pays principle / duty not to cause transboundary harm / principle of cooperation / use of best scientific knowledge / environmental impact assessment

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