

# Oceans Economy and Trade Strategies (OETS) Project National Stakeholder Workshop

Barbados

Feb 2019

## Ocean Affairs and the Law of the Sea: the Framework for Sustainable Ocean-based Economies

Division for Ocean Affairs and the Law of the Sea  
Office of Legal Affairs

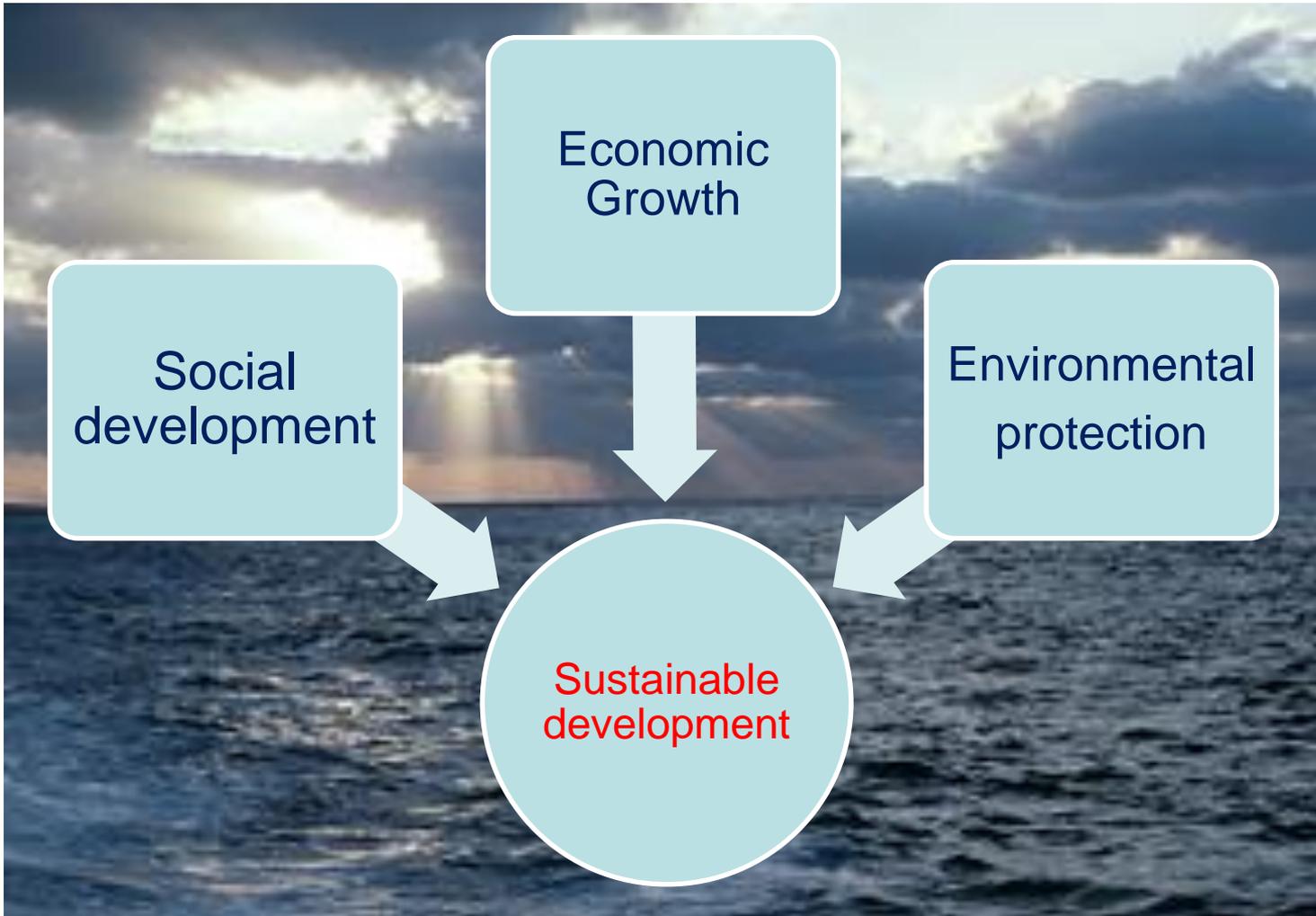
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Francois Bailet  
Senior Legal Officer

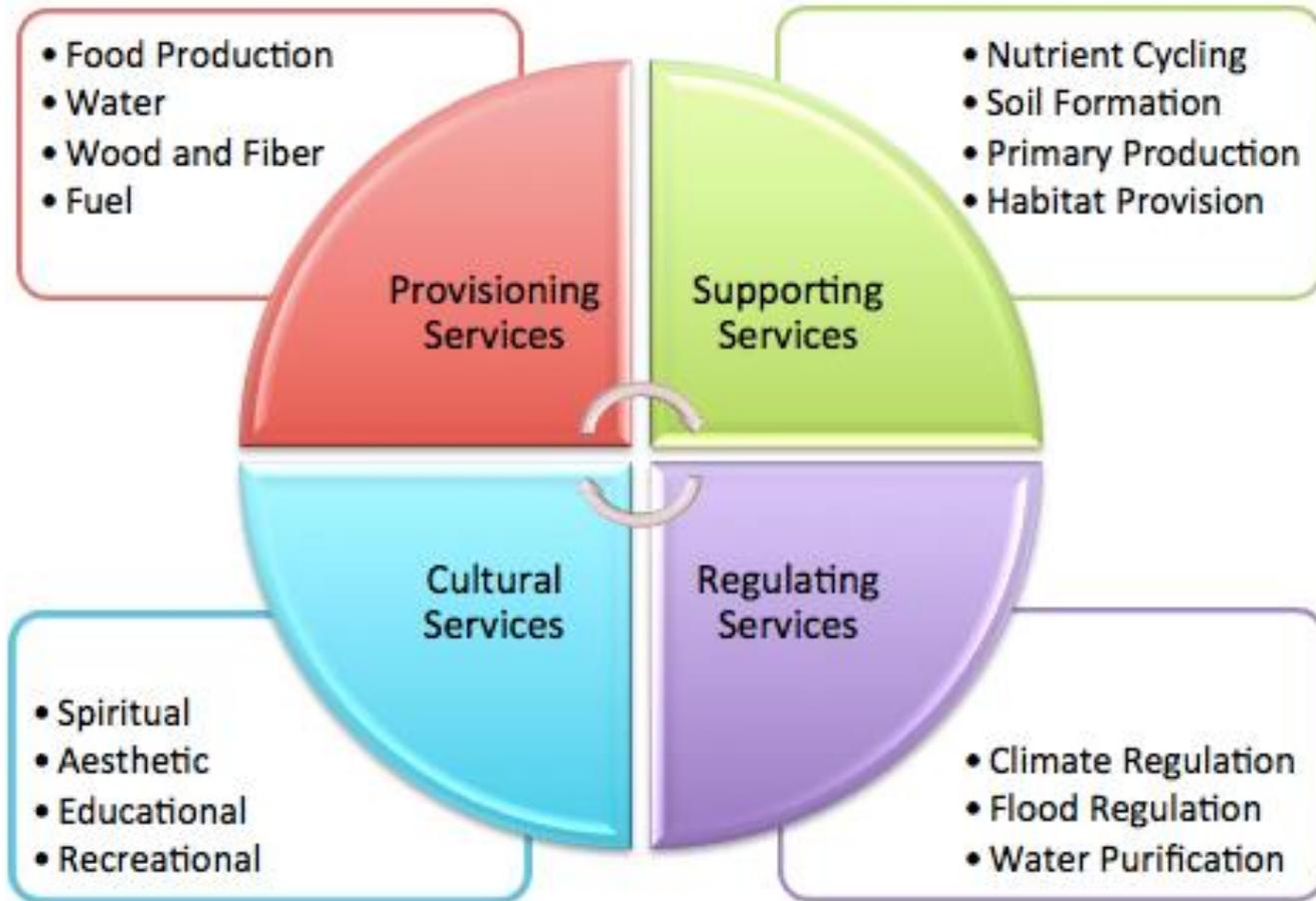
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# Oceanic services



Source: Millenium Ecosystem Assessment, 2005.

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# Need for clarity and stability

- Avoid conflicts
- Protect freedom of navigation
- Regulate resources
- Balance interests
- Accommodate new activities
- Protect and preserve the marine environment
- Foster and protect investments...

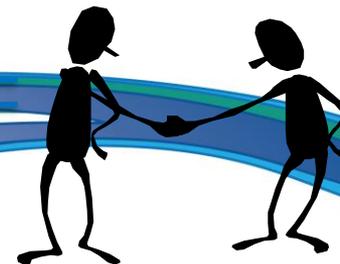
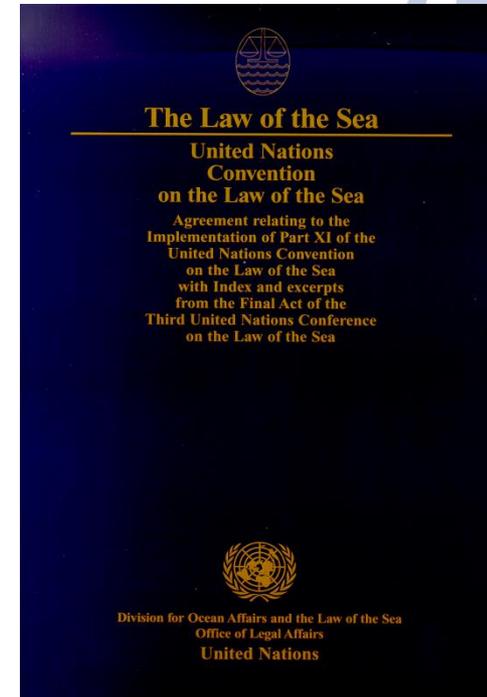


# The United Nations Convention on the Law of the Sea- Background

- 1930 Hague Conference [no outcome]
- 1958 Geneva Conferences and 4 Conventions (based on ILC draft articles)
- 1967 Ad hoc (then regular) Comm. On the Peaceful uses of the seabed/ocean floor beyond national jurisdiction (Arvid Pardo)
- 1970-73: preparatory work
- 1973-82: 11 sessions of the 3rd UN conference on the L.o.S.
- 1982 Adoption of UNCLOS (1994 entry into force)

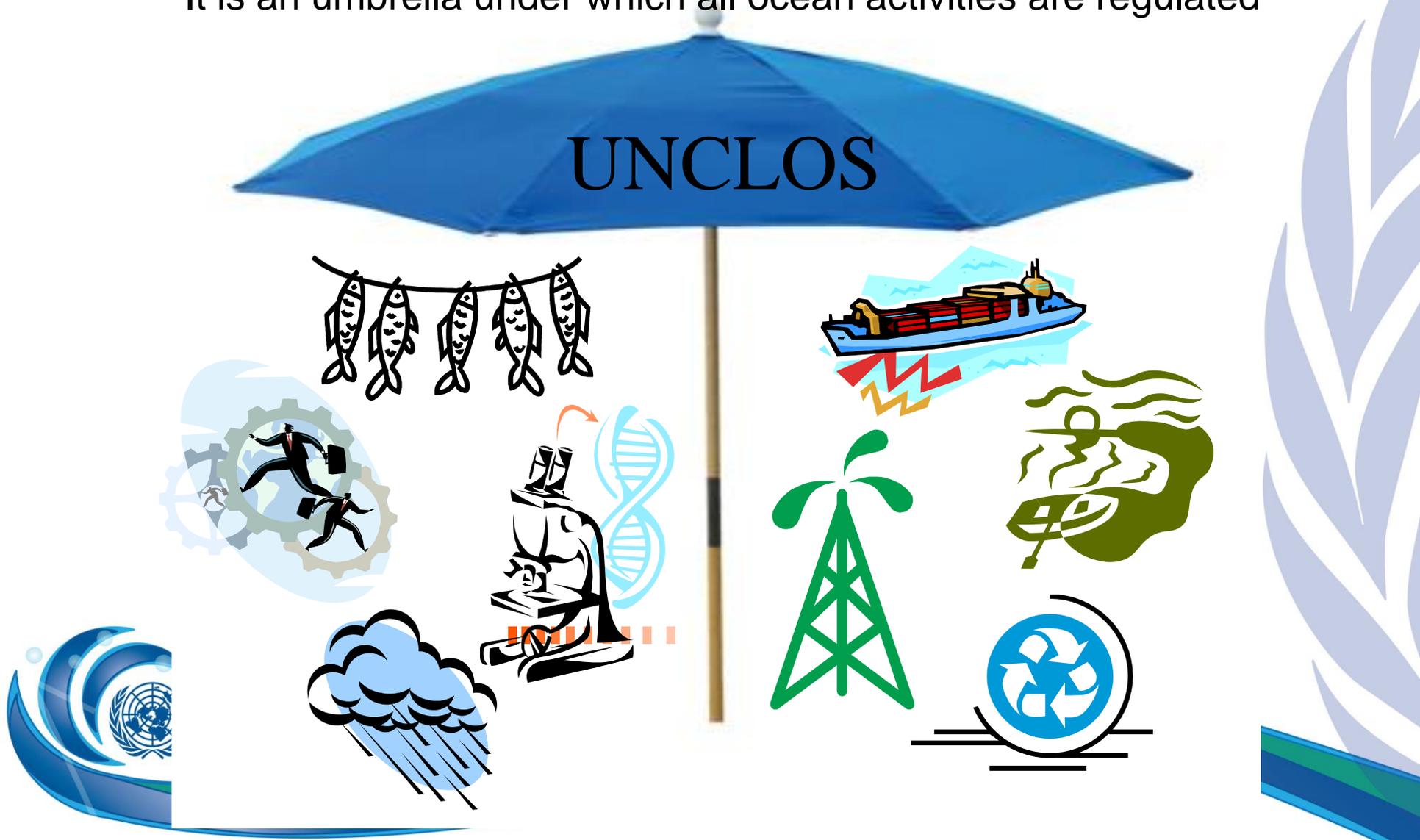
# United Nations Convention on the Law of the Sea

- ‘A constitution for the oceans’
- Comprehensive legal instrument dealing with all aspects of our interaction with the oceans
- Legal framework within which all activities in the oceans and seas must be carried out
- Incorporates agreed compromises and balances, thus constituting a ‘package’

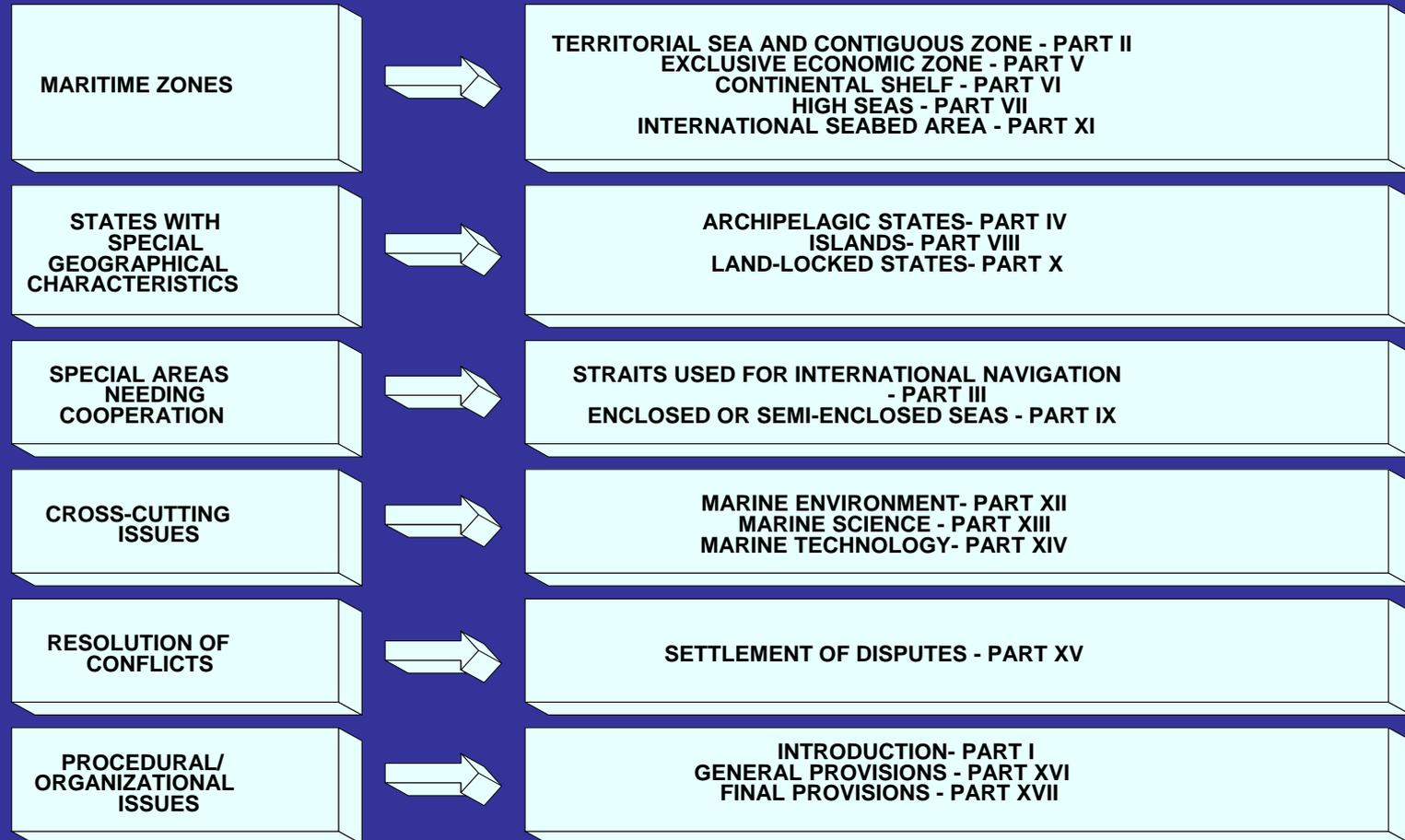


# UNCLOS is a legal framework for the oceans

It is an umbrella under which all ocean activities are regulated



# UNITED NATIONS CONVENTION ON THE LAW OF THE SEA VARIOUS PARTS



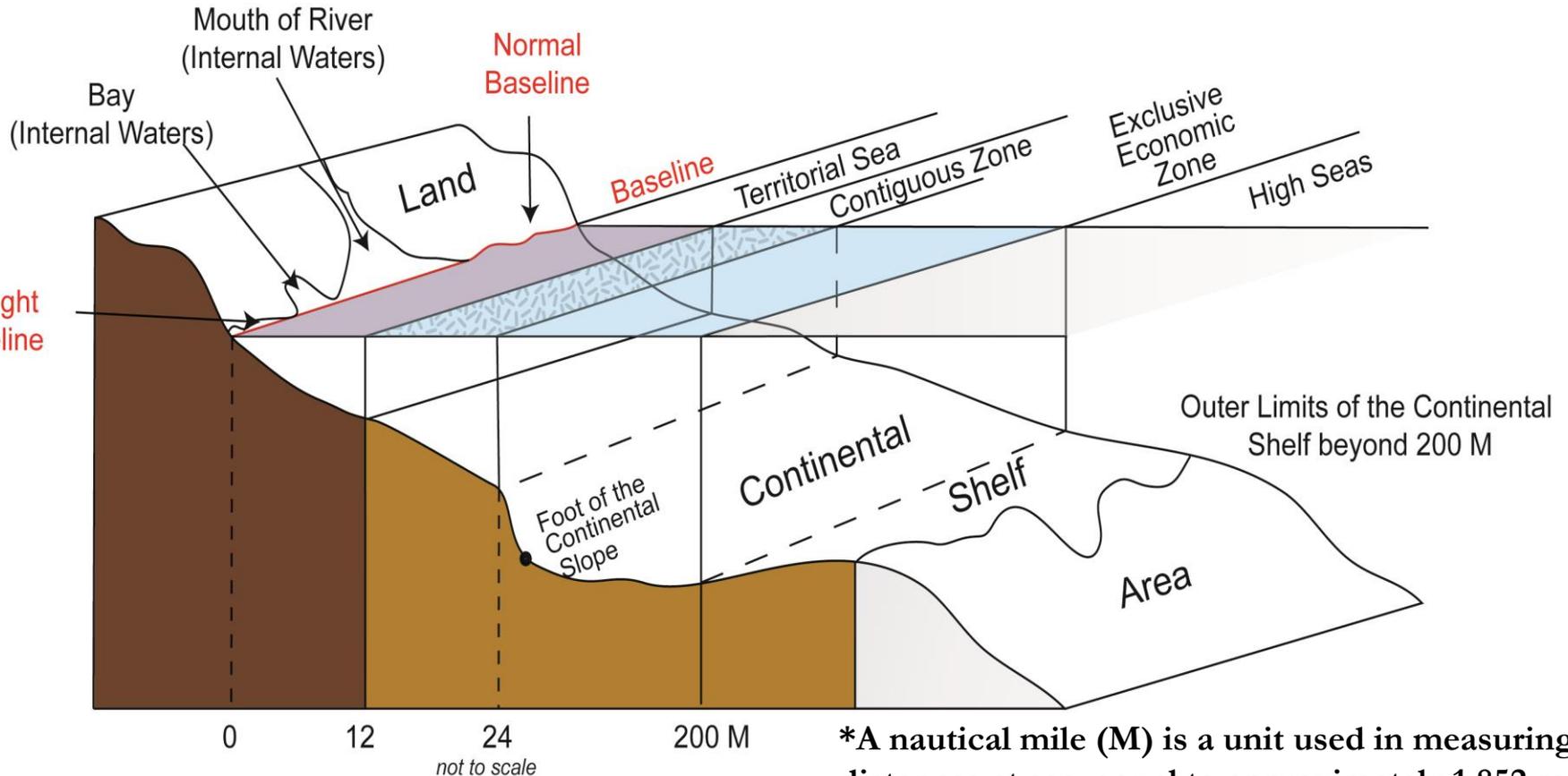
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# From freedom to a cannon

- **Mare Librum** – 1609 Hugo Grotius, Dutch legal scholar proposed that the oceans are free and non-appropriable, an international territory of sorts, free to be used by all nations for TRADE.
- **Mare Clausum** – 1633 John Seldon, British legal scholar counter-proposed that the oceans are as appropriable as land; in waters it controlled, a State could defend TRADE.
- Maritime claims based in the notion of the **extension of land**
- **De Dominio Maris** – 1702 Cornelius Bynkershoek, Dutch legal scholar proposed to limit the maritime domain of States to the reach of a CANNON.
- Maritime “territory” based on the **3-Mile cannon reach**

# Types of Maritime Spaces



\*A nautical mile (M) is a unit used in measuring distances at sea, equal to approximately 1,852 meters



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# Status of the Maritime Zones

| <b>Coastal State:<br/>Sovereignty</b> | <b>Coastal State:<br/>Sovereign rights,<br/>obligations and/or<br/>jurisdiction</b> | <b>Areas beyond<br/>national<br/>jurisdiction: rights<br/>and obligations of<br/>States as members<br/>of the international<br/>community</b> |
|---------------------------------------|---|---|
| <b>Internal waters</b>                | <b>Contiguous zone</b>  | <b>High Seas</b>  |
| <b>Archipelagic<br/>waters</b>        | <b>Exclusive economic<br/>zone</b>  | <b>The Area</b>   |
| <b>Territorial sea</b>                | <b>Continental shelf</b>  |   |

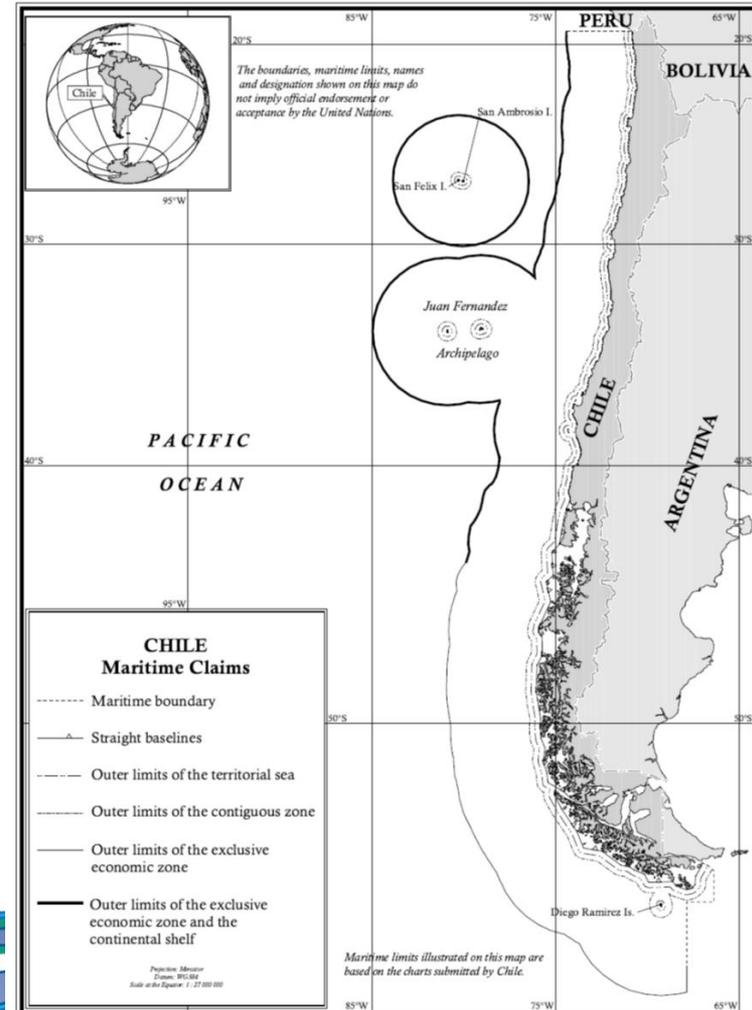


# Baselines

*Line from which breadth of maritime zones is measured*

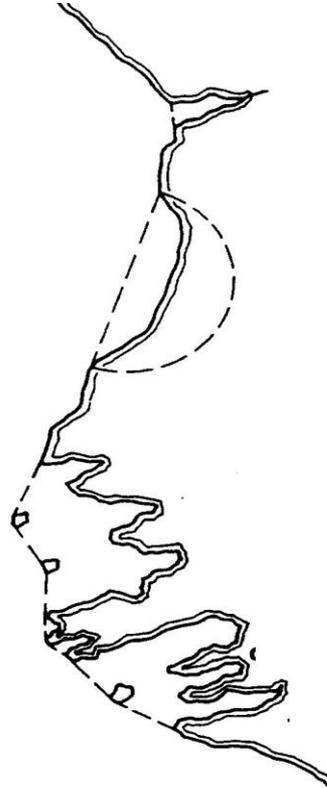
Types:

- Normal Baseline
- Straight Baseline
- Closing Baseline
- Archipelagic Baseline



# Internal Waters

- Waters on landward side of baseline
- Coastal State has full sovereignty
- No other generally enjoyed rights (some exceptions)



# Territorial Sea

- Sovereignty of a coastal State extends beyond its land territory to an adjacent belt of sea: the territorial sea.
- Breadth: up to 12 nautical miles, measured from the baselines.
- Scope: sea; air space; seabed; and subsoil.



# Contiguous Zone

- The contiguous zone is a maritime zone contiguous and seaward of the territorial sea within which coastal States have a limited degree of jurisdiction.
- Breadth: from the outer limit of the territorial sea to up to 24 nautical miles, measured from the baselines.
- Scope: sea and seabed.



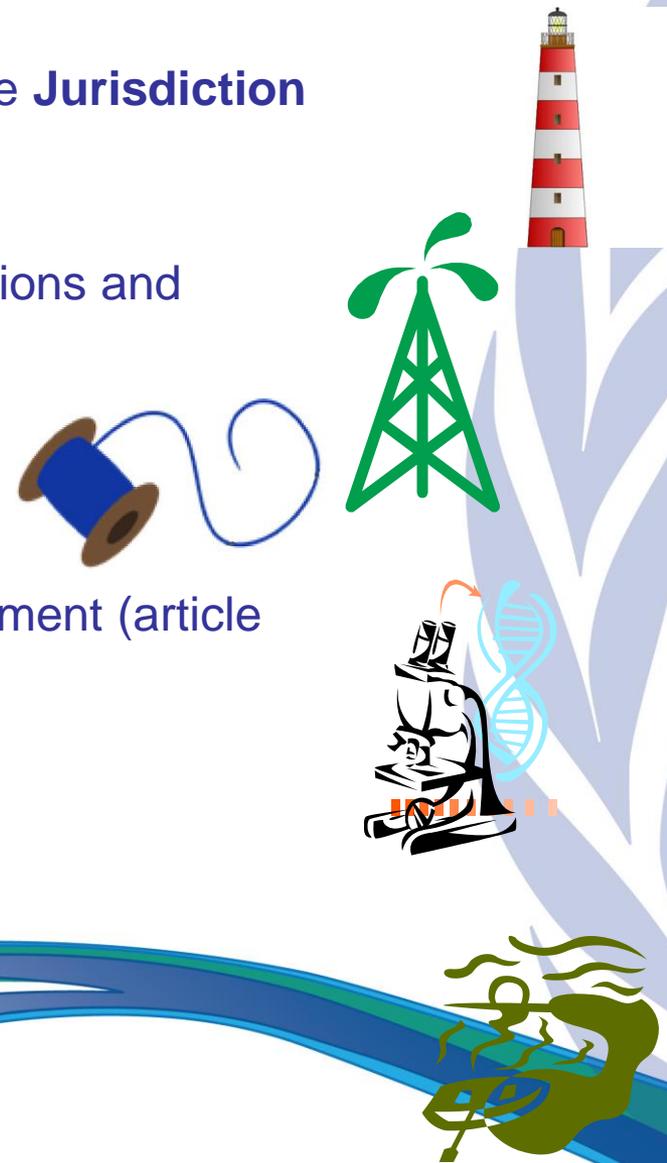


# Continental Shelf

- Breadth: Up to 200M, more in some cases but must establish if beyond 200M.
- Scope: seabed and subsoil.
- The coastal State has sovereign rights for the purpose of exploring the continental shelf and exploiting its natural resources.

# Jurisdiction in the Continental Shelf

- In addition to sovereign rights, coastal States have **Jurisdiction** with regard to the:
  - establishment/use of artificial islands, installations and structures (article 80);
  - drilling on the continental shelf (article 81);
  - cables and pipelines (article 79);
  - marine scientific research (article 246); and
  - protection and preservation of marine environment (article 208).



# Maritime Zones beyond national jurisdiction

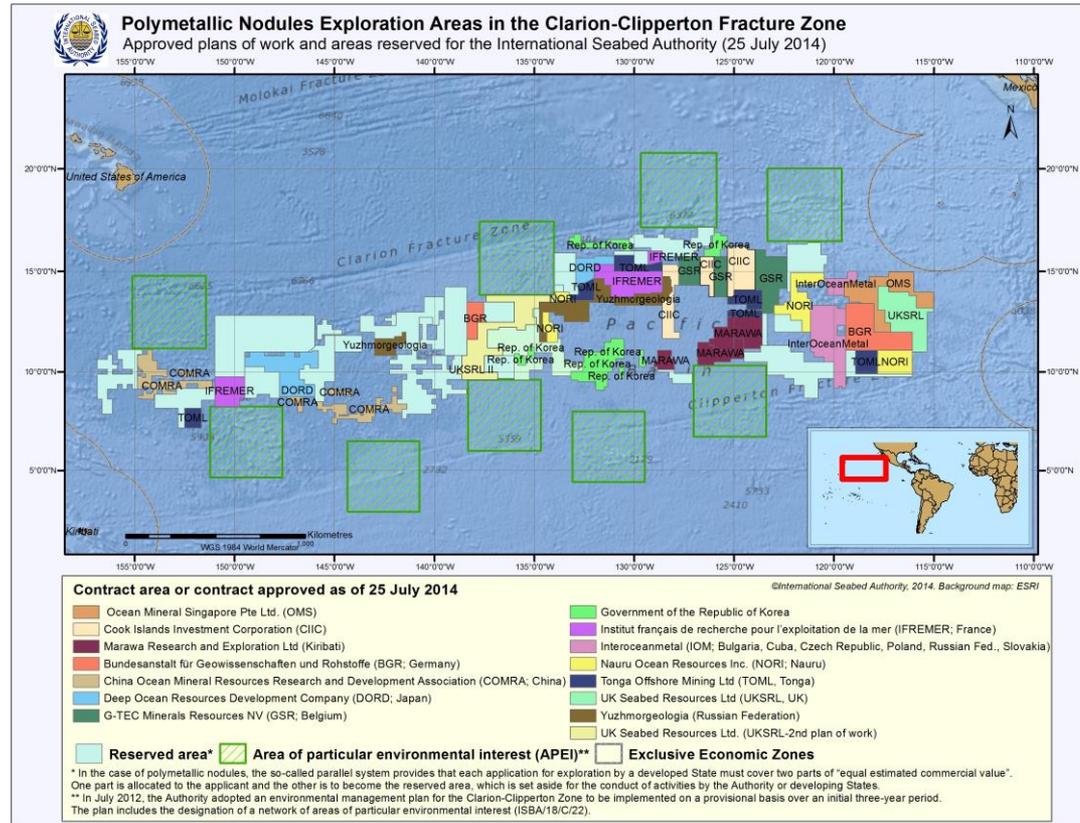
- High Seas (Articles 86-120): all parts of the sea that are not included in the EEZ, territorial sea, internal waters, archipelagic waters.
- International Seabed Area (Articles 133-191 and Part XI Agreement): “Common Heritage of Mankind”

# High Seas

- Freedom of high seas comprises, inter alia:
  - freedom of navigation;
  - freedom of overflight;
  - freedom to lay submarine cables and pipelines;
  - freedom to construct artificial islands and other installations
  - freedom of fishing, subject to certain conditions;
  - freedom of scientific research.
- Reserved for peaceful purposes
- Combat universal crimes and preserve environment



# International Seabed Area



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# Rights in Each Zone

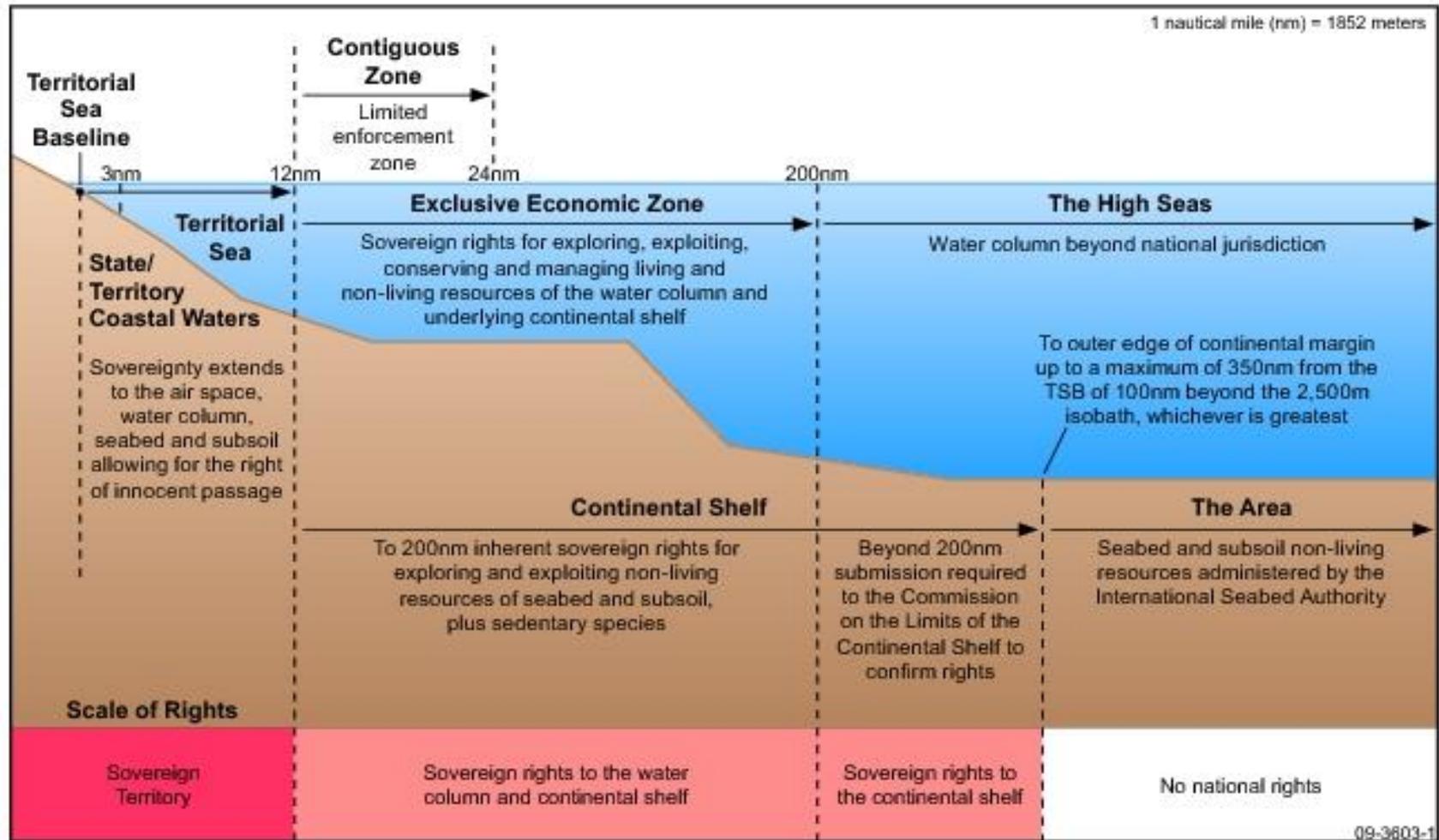


Figure 1: Offshore extent of the maritime zones recognized under international law



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# Cross-Cutting Issues

- Marine Environment



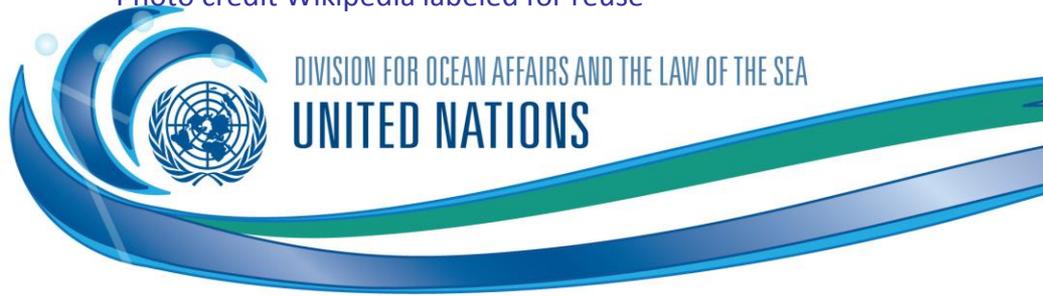
- Marine Science

Photo credit Wikipedia labeled for reuse



- Marine Technology

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# Institutions under UNCLOS

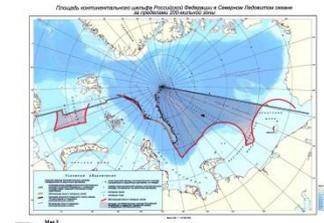
- International Seabed Authority (ISA, ISBA or the Authority)



- International Tribunal for the Law of the Sea (ITLOS)



- Commission on the Limits of the Continental Shelf (CLCS)



- Meeting of States Parties (MSP or SPLOS)



# International Seabed Authority

(ISA, ISBA or the Authority)



The Authority regulates deep seabed mining in the Area, regulates the protection of the marine environment and promotes scientific research



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# International Tribunal for the Law of the Sea

(ITLOS or the Tribunal)



ITLOS is an independent body to resolve disputes from interpreting and applying UNCLOS.

## Resolution of Conflicts



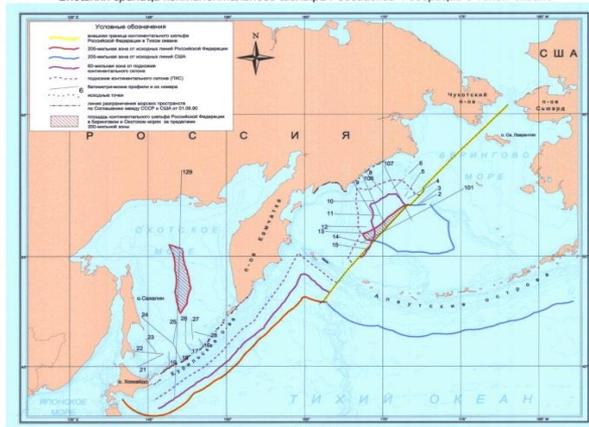
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# Commission on the Limits of the Continental Shelf

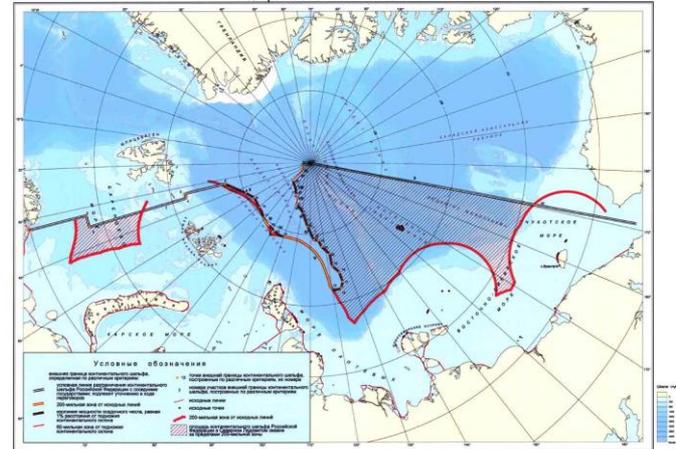
## (CLCS or the Commission)



Внешняя граница континентального шельфа Российской Федерации в Тихом океане



Площадь континентального шельфа Российской Федерации в Северном Ледовитом океане за пределами 200-мильной зоны



Map 2

The CLCS considers submissions and makes recommendations thereupon. The outer limits established ON THE BASIS of the recommendations are FINAL and BINDING



# Meeting of States Parties

(MSP or SPLOS)



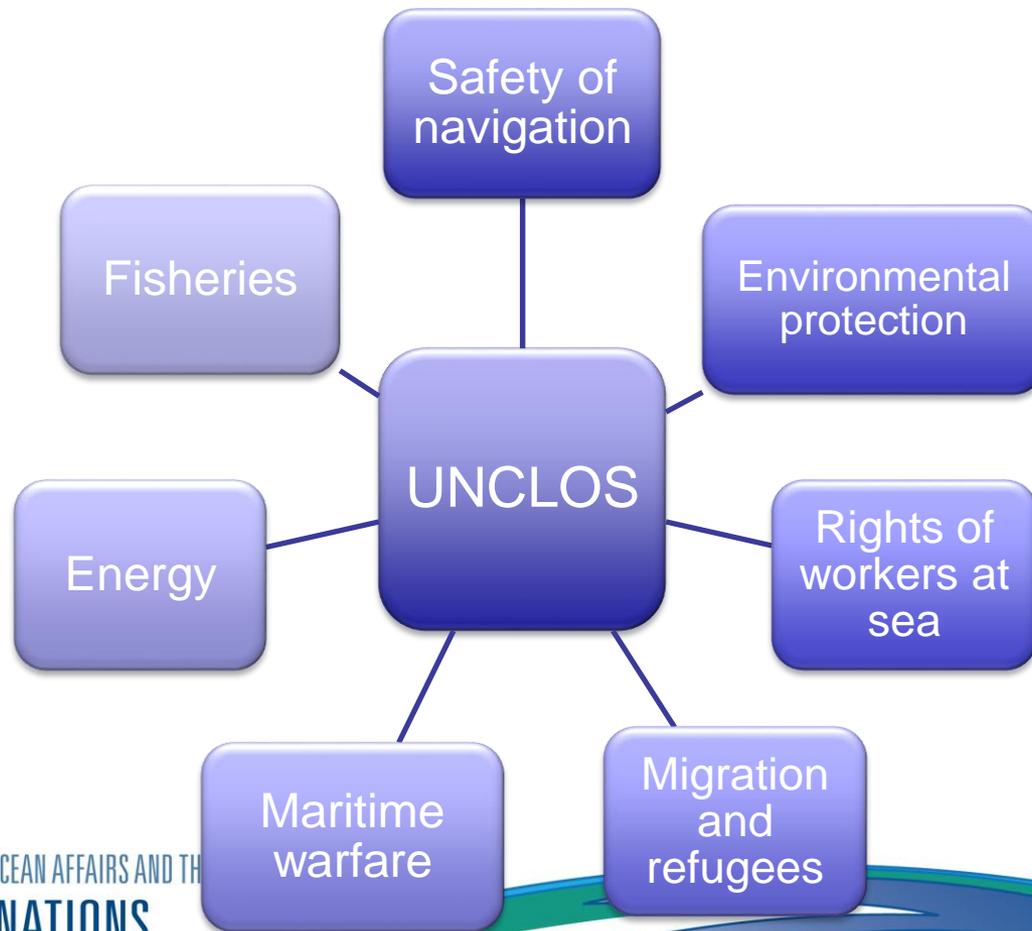
The Meeting elects ITLOS and CLCS members, considers reports, and deals with budgetary and administrative matters.

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# UNCLOS and other international law instruments



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# UNCLOS and other international bodies



- As a framework convention, UNCLOS provides for further development in specific areas of the law of the sea
- Duty on States to cooperate at global, regional and subregional levels
- “Competent” or “appropriate” international organizations, “International organizations” “Specialized agencies”



IMO



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# Frameworks for implementation

- ocean affairs
- marine affairs
- ocean and coastal management
- integrated coastal zone management
- ocean governance...

What is:

➤ Ocean?

➤ Governance?



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# Elements of ocean governance

There is no comprehensive operational definition, but elements can be broadly grouped into these categories:

- Political / Diplomatic
- Legal / Policy
- Institutional / Operational
- Levels of Implementation
  - Global, regional, national, local
- Cross-cutting: participatory, integrated and ecosystem-based...



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# Levels of Implementation

- Linkages are necessary
- between all relevant levels:
  - ✓ Local
  - ✓ National
  - ✓ Regional
  - ✓ International

Linkages must be established within (participatory) and across sectors (integration) taking into consideration the ecosystem context (ecosystem approach) and the best available science (science-policy interface)



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# Political/Diplomatic

- The national political processes, and the pursuit of national interests at the multilateral level.



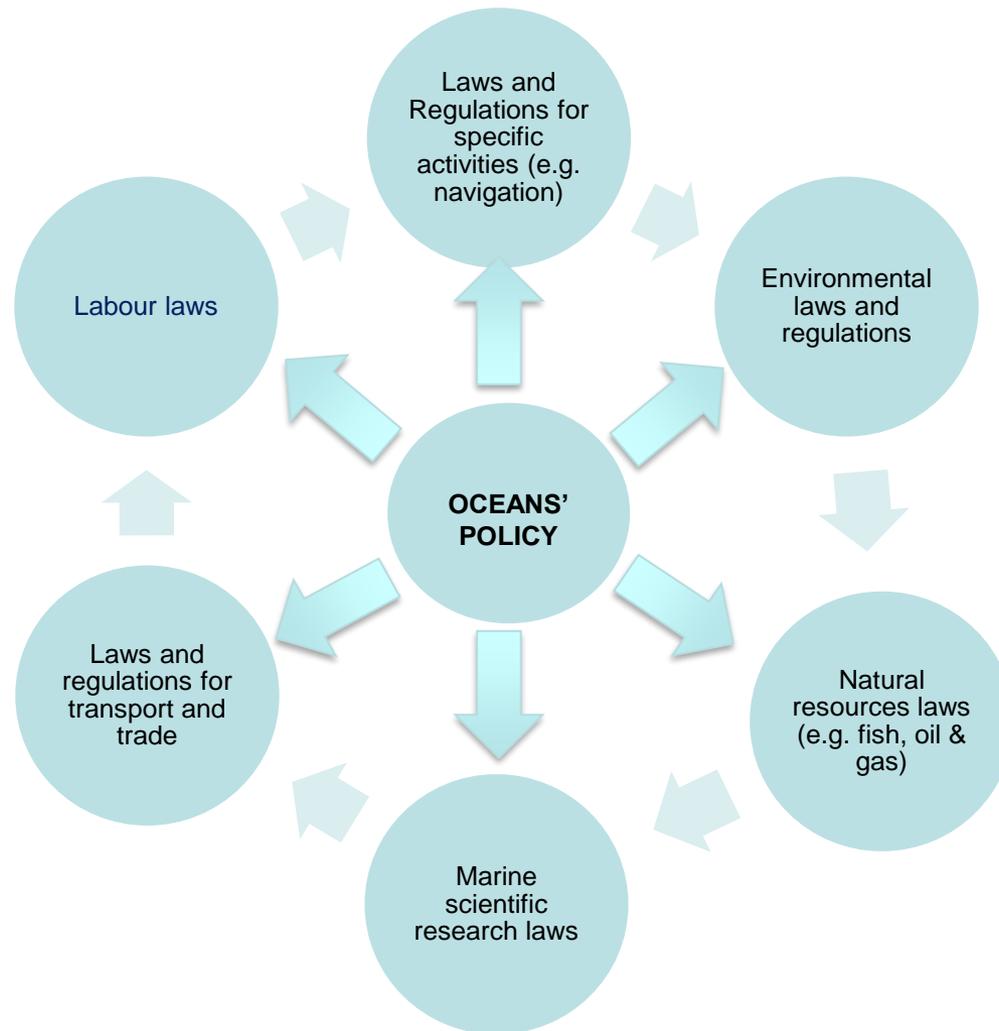
# Legal/Policy Framework

- Legislative, regulatory and policy arrangements related to management of marine and coastal activities and the environment



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# Legal/Policy Framework (National)



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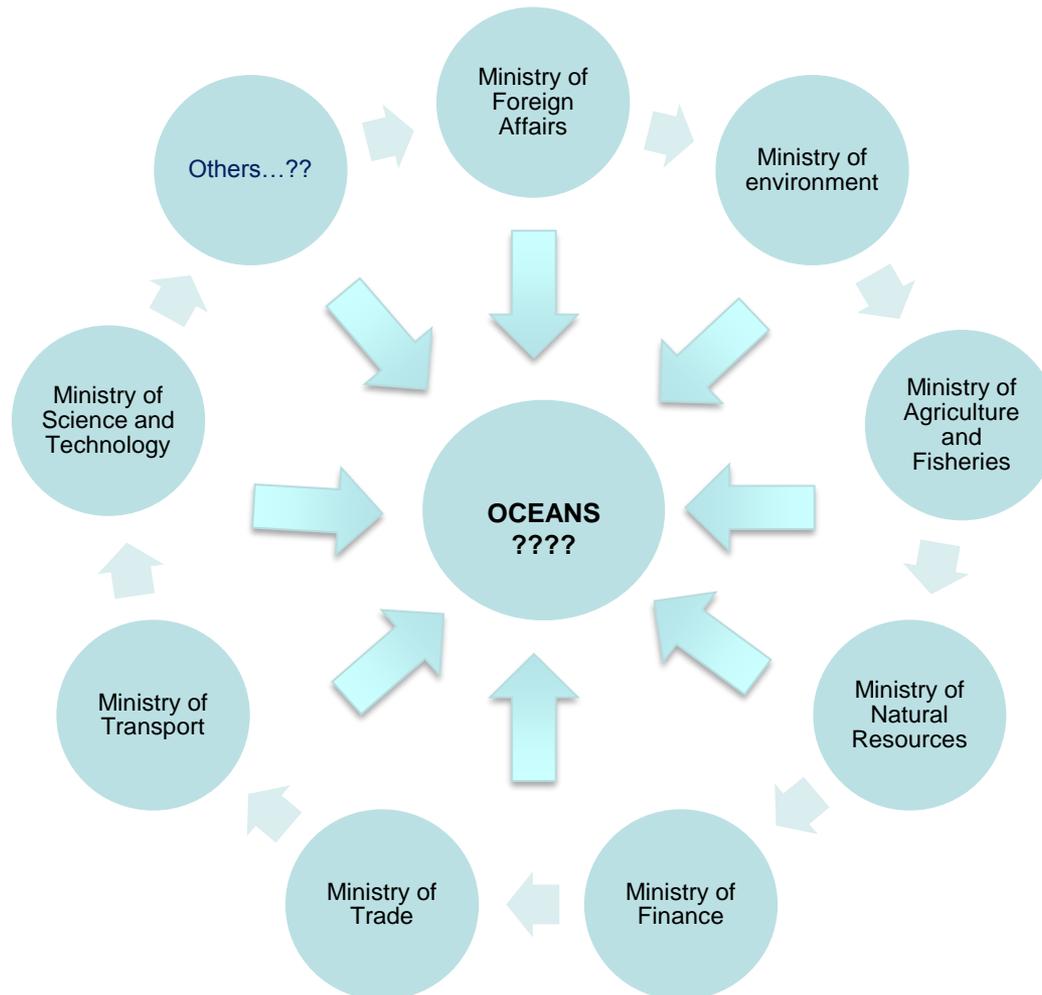
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# Institutional

- Institutional frameworks that enable effective regulation, management and co-ordination of activities in the marine and coastal zone



# Institutional Framework (National)



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# Institutional Framework (Regional)

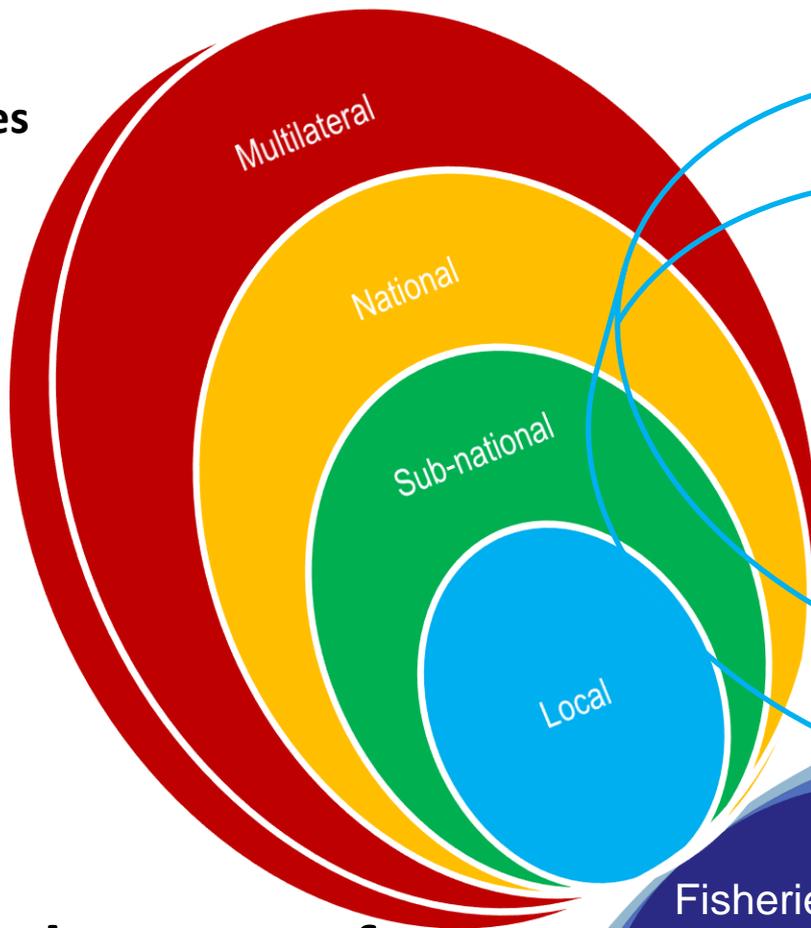
## Scope:

- Regional scales essential for cooperation, development and implementation
- Supports commonalities of interests above conflict
- Political space and ecological space do not coincide (need to reconcile)

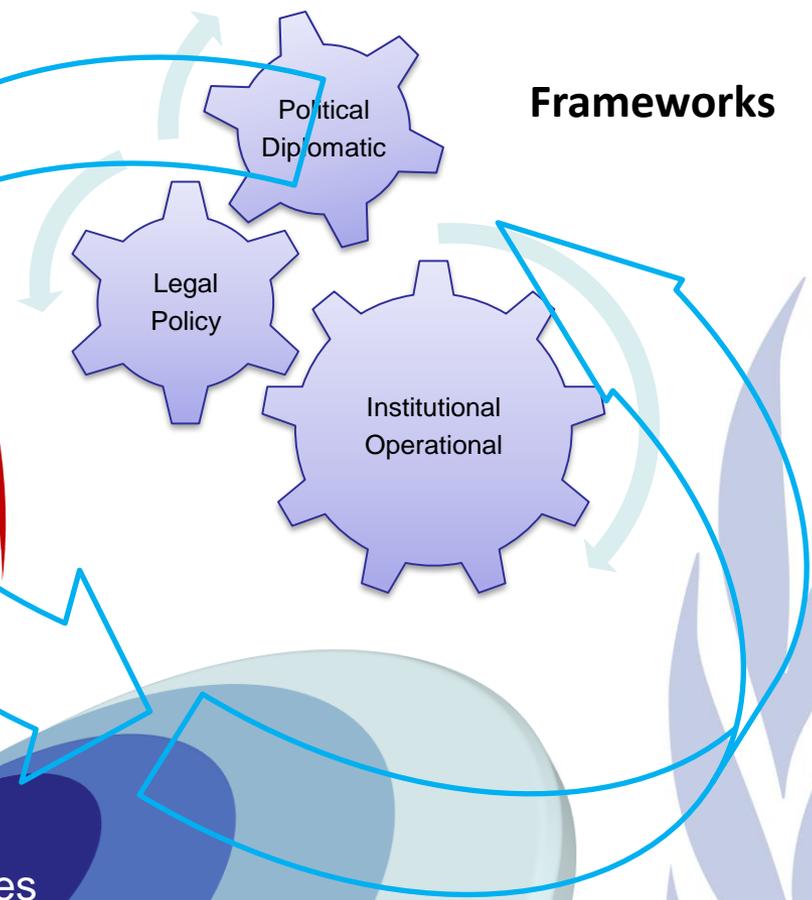
## Some examples:

- Regional Seas Conventions (environmental)
- Regional Fisheries Management Organizations (RFMOs)
- Large Marine Ecosystems (LMEs)
- Regional Political/Security Organizations

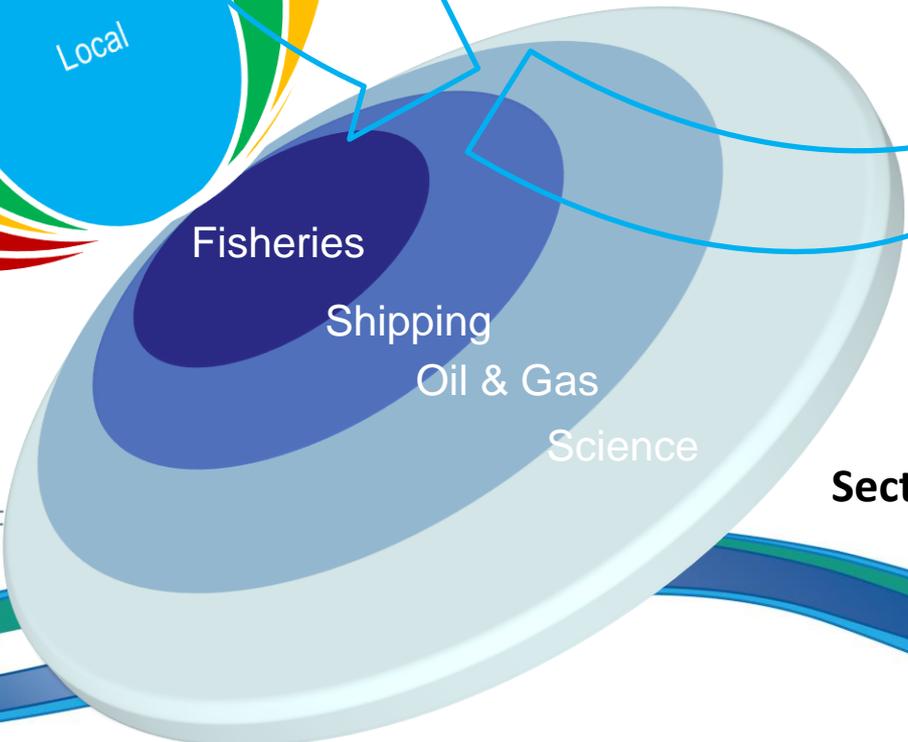
**Scales**



**Frameworks**



# The 3 elements of Ocean Governance



**Sectors**



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A photograph of a person splashing in the water at sunset. The sun is low on the horizon, creating a golden glow on the water's surface. The person is in the foreground, with their arms raised and water splashing around them. The background shows a calm body of water extending to the horizon under a dark sky.

**Thank you  
for the  
opportunity to  
contribute  
to your  
important  
discussions**

The United Nations logo, featuring a map of the world surrounded by olive branches, is positioned to the left of the text.

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**UN Photo Marco Dormino**



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