

Annex 1 - Fragmented Ocean Governance: Positioning UN Environment within the Ecosystem of Ocean Management Arrangements

The Ecosystem of Ocean Governance

The membership of UN Oceans¹, the UN inter-agency coordination mechanism for ocean issues, provides a sense of the diversity and complexity of ocean governance arrangements, most of which do not have conservation, let alone ocean conservation, as a primary objective:

- Convention on Biological Diversity (CBD)
- Security Council Counter-Terrorism Committee (CTED)
- Economic & Social Commission for the Pacific (ESCAP)
- UN Food & Agriculture Organization (FAO)
- International Atomic Energy Agency (IAEA)
- International Labour Organization (ILO)
- International Maritime Organization (IMO)
- International Oceanographic Commission (IOC)
- International Seabed Authority (ISA)
- Department of Economic & Social Affairs (DESA)
- Division of Ocean Affairs and the Law of the Sea (DOALOS)
- UN Office for Disarmament Affairs (ODA)
- UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLLS)
- UN conference on Trade and Development (UNCTAD)
- UN Development Programme (UNDP)
- UN Environment Programme (UN Environment, UNEP)
- UN Educational, Scientific and Cultural Organization (UNESCO)
- UN High Commission for Refugees (UNHCR)
- UN Industrial Development Organization (UNIDO)
- UN Institute for Training & Research (UNITAR)
- UN University (UNU)
- UN World Tourism Organization (UNWTO)
- World Meteorological Organization (WMO)
- The World Bank

¹ "UN-Oceans is an inter-agency mechanism that seeks to enhance the coordination, coherence and effectiveness of competent organizations of the United Nations system and the International Seabed Authority, in conformity with the United Nations Convention on the Law of the Sea, the respective competences of each of its participating organizations and the mandates and priorities approved by their respective governing bodies." <http://www.unoceans.org/>

Ocean Governance Bodies with a Conservation Mandate

The overview below is grouped according to the UN agencies which have chief responsibility or oversight, or under whose auspice is the agreements were negotiated.

UN Environment

Regional Seas Conventions and Action Plans

The Regional Seas Programme was one of the first initiatives of UNEP shortly after the establishment of the organization in the 1970s. It aims to address the accelerating degradation of the world's ocean, seas and coastal areas through the sustainable management and use of the marine and coastal environment, by engaging neighbouring countries in comprehensive and specific actions to protect their shared marine environment. The first UNEP Regional Seas Programme was established in the Mediterranean with the adoption of the Barcelona Convention in February 1976.

Today, more than 140 countries participate in 18 Regional Seas programmes: Black Sea, Wider Caribbean, East Asian Seas, Eastern Africa, South Asian Seas, ROPME Sea Area, Mediterranean, North-East Pacific, Northwest Pacific, Red Sea and Gulf of Aden, South-East Pacific, Pacific, and Western Africa. Seven of these programmes, are directly administered by UN Environment.

Regional Seas have long been considered the flagship programme of UN Environment, bringing together countries with shared interests in protecting their shared seas.

The Global Programme of Action for the Protection of the Marine Environment from Land-Based Activities (GPA)

Established in 1995 to comply with the mandate laid down in Chapter 17 of Rio 92 Agenda 21, the Global Programme of Action has been administered by UN Environment out Den Haag and later out of Nairobi. It has contributed to the development of several international conventions and frameworks, including the Stockholm Convention on Persistent Organic Pollutants (adopted in 2001 and entered into force in 2004), the Minamata Convention on mercury (adopted in 2013 and entered into force in 2017), and efforts to curb ocean eutrophication caused by discharges of excess nutrients from agriculture and other sources. The operation of this program is currently under review by the UN Environment Assembly.

Convention on Biological Diversity (CBD)

The Convention on Biological Diversity (CBD) works on ocean through the Sustainable Ocean Initiative to “provide a global platform to build partnerships and enhance capacity to conserve and sustainably use marine and coastal biodiversity in a holistic manner.” To this end, it has an action plan covering the period 2010-2020, linked to the Aichi biodiversity targets, including Aichi Target 11 consisting of establishing marine Protected Areas in 10% of the ocean cover. By 2020 it is expected that Aichi Targets, including Target 11 will not have been reached, and discussions are currently underway for the establishment of a different set of targets – possibly modelled on the Paris Agreement and its Nationally Determined Contributions (NDCs) which would be adopted by CBD COP15 in Beijing in 2020.

Convention on International Trade of Endangered Species (CITES)

CITES has been at the forefront of efforts to protect threatened and endangered marine species, regulating trade in – amongst others – whales, sea turtles, dolphins, corals, sharks and rays. CITES is legally binding on Parties, but does not supersede national law. Parties must adopt national legislation – including penalties for noncompliance – to implement CITES decisions. In practice, not all States follow through, and penalties have not always been sufficient to deter illegal trade.

Convention on Migratory Species (CMS)

The CMS (also known as the Bonn Convention) is an intergovernmental instrument with the aim of conserving migratory species throughout their range. CMS acts as a framework convention, with additional arrangements adopted that range from legally binding treaties (Agreements) to less formal instruments, such as Memoranda of Understanding. The development of models tailored according to the conservation needs throughout the migratory range is a capacity unique to CMS. Several agreements related to marine species have been concluded to date including sharks, cetaceans, seals, and other marine mammals.

UN Department of Economic and Social Affairs (DESA)

DESA is the lead department in charge of coordinating action on sustainable development, including organizing major related summits. It has oversight responsibility for the 2030 UN Agenda and Sustainable Development Goals (SDGs) adopted in 2015, including the ocean SDG (SDG14).

While UN Environment has a special task to promote the environmental pillar of sustainable development, DESA oversees all three pillars (economic, social and environmental).

United Nations Convention on the Law of the Sea (UNCLOS)

Often referred to as “the constitution of the ocean” UNCLOS is the international agreement that defines the rights and responsibilities of nations in their use of the world's ocean, establishing guidelines for businesses, the environment, and the management of marine natural resources. UNCLOS also addresses such other matters as sovereignty, rights of usage in maritime zones, and navigational rights. The Convention, concluded in 1982, replaced four 1958 treaties, and came into force in 1994.

Division of Ocean Affairs and Law of the Sea (DOALOS)

DOALOS is part of the UN Secretariat, sitting within the UN Office of Legal Affairs. It performs the functions assigned to the Secretary-General under UNCLOS. It provides States and intergovernmental organisations with a range of legal and technical services related to UNCLOS and its two “implementing agreements” (deep seabed mining and the UN Fish Stocks Agreement).

DOALOS conducts the United Nations Open-Ended Informal Consultative Process (ICP) and facilitates the annual review by the General Assembly of developments in ocean affairs (the annual “omnibus Resolution” which has often played a critical role in setting the agenda on a number of important environmental issues). It is also the lead agency responsible for the negotiation of an implementing agreement on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (BBNJ).

DOALOS also serves as the Secretariat of the “Regular Process” for assessing the state of the ocean. The first World Ocean Assessment “provides a picture of the state of the oceans, including

socioeconomic aspects, and also identifies where more information is needed and supports capacity-building efforts to generate, share and act upon that information.” The first report was about establishing a baseline. The second cycle will cover 2016-2020 and will extend to evaluating trends and identifying gaps.

International Tribunal for the Law of the Sea (ITLOS)

Headquartered in Hamburg, Germany ITLOS was established by UNCLOS as an independent judicial body to adjudicate disputes arising out of the interpretation and application of the Convention. It is composed of 21 independent members elected on the basis of their reputation for fairness, integrity and recognised competence in the Law of the Sea. Judgements by ITLOS can be instrumental in securing the effective implementation of measures for the protection of the marine environment.

UN Fish Stocks Agreement

Adopted in 1995 the UN Fish Stocks Agreement (or Agreement for the implementation of the Provisions of UNCLOS relating to the Conservation and management of Straddling Fish Stocks and Highly migratory Fish Stocks) entered into force in 2001. It is an implementing agreement which complements and strengthens several provisions of UNCLOS, seeking to ensure the harmonious development of coherent conservation and management measures for exclusive economic zones (EEZs) and the high seas. It is understood that the effective implementation of the agreement is dependent on a high degree of cooperation on a range of technical issues between coastal States, high seas fishing nations and fishing entities. It recognizes the central role of appropriate Regional Fisheries Management Organizations (RFMOs, see below under FAO) as the mechanism through which States Parties to the Agreement should act to meet their obligations and exercise their rights.

The Food and Agriculture Organization of the United Nations (FAO)

FAO is the specialised UN agency leading international efforts on food security. The FAO Fisheries and Aquaculture Department administers and supports 44 Regional Fisheries Management Organizations (RFMOs) and as such has a critical responsibility to achieve sustainable fisheries, particularly where international cooperation is required. There is a patchwork of fisheries management organizations covering all regions of the global ocean.

Several important FAO agreements have been adopted to promote sustainable fishing practices. These include:

FAO Code of Conduct for Responsible Fisheries

A voluntary code adopted in 1995 by 170 governments establishing principles and international standards of behaviour to ensure the effective conservation, management and development of living aquatic resources, with respect to ecosystem and biodiversity conservation. Despite its voluntary nature, its provisions have been used to develop national policy or legislation.

FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (FAO 1993 Compliance Agreement)

The FAO 1993 Compliance Agreement encourages countries to take effective action to prevent illegal, unreported, and unregulated (IUU) fishing and to deter the reflagging of vessels by their nationals as a means of avoiding compliance with applicable conservation and management rules for fishing activities on the high seas.

FAO Agreement on Port State Measures (PSMA)

Signed in 2009 and entered into force in 2016, the PSMA is the first binding international agreement to specifically address IUU fishing. Its provisions apply to any fishing vessel seeking entry into a designated port of a State which is not the flag State. In this way the PSMA works to prevent vessels engaged in IUU fishing from using ports and landing catches.

The International Maritime Organization (IMO)

The IMO is the UN specialized agency regulating shipping worldwide, including in the light of environmental challenges and concerns affecting the shipping sector. Its work is conducted through five committees (including the Marine Environment Protection Committee, MEPC) which in turn are supported by technical subcommittees. The International Convention for the Prevention of Pollution from Ships (MARPOL), adopted in 1973 and amended in 1978, addresses both accidental and operational losses and discharges; it contains six technical annexes covering: oil pollution (Annex I, in force 1983), noxious liquid substances (Annex II, in force 1983), harmful substances in packaged form (Annex III, in force 1992), sewage from ships (Annex IV, in force 2003), garbage from ships (Annex V, in force 1998), and air pollution from ships (Annex VI, in force 2005). In addition, the London Convention 1972 on ocean dumping and its 1996 Protocol are administered under the aegis of the IMO.

The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention)

The London Convention was the first global treaty regulating marine pollution worldwide, adopted in 1972 shortly after the UN Conference on the Human Environment took place in Stockholm. Since 1993, it has prohibited the dumping and incineration at sea of industrial wastes, including radioactive wastes, from ships, aircraft and other man-made structures at sea.

A 1996 Protocol to the Convention represented a sea change in the use of the ocean as a repository for waste materials. In line with the precautionary approach, in order to effectively shift the burden of proof, the Protocol prohibits all dumping, except for possibly acceptable wastes on a so-called "reverse list" which is found in an annex to the Protocol. In addition, the dumping of wastes included on the "reverse list" is subject to a waste prevention audit with a methodology to assist Parties to implement a waste prevention path.

Binding on both London Convention and UNCLOS Parties, the London Convention represents a universally recognized landmark regime for marine pollution and waste prevention.

UNESCO – International Oceanographic Commission (IOC)

The UN Educational, Scientific and Cultural Organization, UNESCO's mandate consists in creating the conditions for dialogue among civilisations, cultures and peoples based upon respect for commonly shared values, including sustainable development. It is the host of IOC, the UN body concerned with ocean science, ocean observatories, ocean data and information exchange, and ocean services such as Tsunami warning systems. Its mission is to promote international cooperation and to coordinate programmes in research, services and capacity building to increase and disseminate knowledge about the nature, role and resources of the ocean and coastal areas, and to apply this knowledge to improved management, sustainable development and protection of the marine environment.

The IOC is currently coordinating the UN Decade on Ocean Science for Sustainable Development (2021-2030) designated by UN General Assembly resolution in 2016.

International Seabed Authority (ISA)

The ISA is the international organisation established under UNCLOS and the 1994 implementing agreement on seabed mining. Headquartered in Kingston, Jamaica, its primary purpose is to establish rules governing the exploitation of mineral resources in areas beyond national jurisdiction and to administer the sharing of the benefits thereof, considered to be part of the common heritage of humankind under UNCLOS. As seabed mining in areas beyond national jurisdiction is an emerging issue, the ISA is currently defining rules for conducting environmental impact assessments.

International Whaling Commission (IWC)

Created in 1949, the IWC is mandated to ensure the conservation of whales. Its main duty is to keep under review and revise measures – including many conservation measures – laid down in the Schedule to the Convention for the Regulation of Whaling (1946) which governs the conduct of whaling.

In 1982, the IWC adopted a moratorium on commercial whaling, effective since 1986. However, whaling by indigenous people, as well as catches for scientific purposes are not covered by the moratorium, and two countries (Iceland and Norway) also maintain objections to the moratorium on commercial whaling. As a result of these provisions, several hundred whales continue to be killed every year.

In recent years, through its Conservation Committee, the IWC has expanded its mandate beyond the regulation of whaling, covering issues concerning the conservation of whales, such as the promotion of sustainable whale watching, the prevention of collisions from ships, underwater noise, and the impact of pollution on whale populations. Whether and to what extent the IWC has responsibility for the conservation or management of small cetaceans remains an issue that has been debated for several decades with no clear resolution.