

The Marine Environment, Marine Living Resources and Marine Biodiversity

{ International Environmental Law
{ JUS 5520

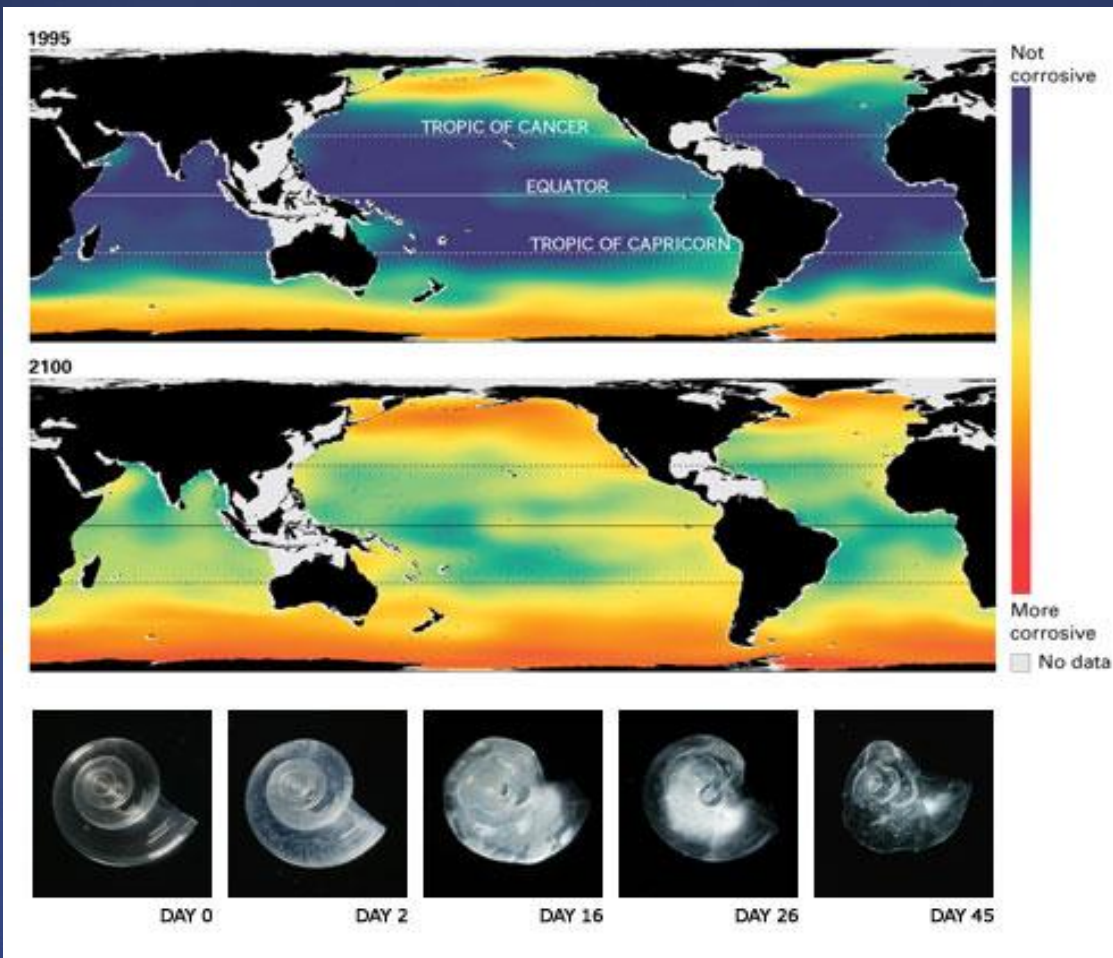


⌘ What are the **key challenges** facing the Marine Environment?

- ⌘ Pollution
- ⌘ Unsustainable fishing
- ⌘ Habitat destruction
- ⌘ Climate Change
- ⌘ Invasive species

⌘ Threats to the marine environment come from different sources:

- ⌘ Ships and the fishing industry
- ⌘ Land based pollution sources
- ⌘ Warming climate



& Ocean acidification - <https://www.youtube.com/watch?v=5cqCvcX7buo&list=PLul7zTU2HVOhgK6C8e2p5Egcry07MPNEu>

Climate change and the oceans

⌘ **QUESTION:** How do we regulate the use of resources and the protection of the environment on the high seas outside of the jurisdiction of states?

- ⌘ Extended jurisdiction of states?
- ⌘ Greater liability for flag states?
- ⌘ Extensive international regulation of common resources?

Regulation of the marine environment

Effective Implementation through

FLAG STATES



The flag State of a commercial vessel is the state under whose laws the vessel is registered or licensed.

Flag States are obliged to:

Carry out survey, verification and certification of ships



Carry out casualty investigation



Provide a national legal framework to ensure compliance with mandatory international standards

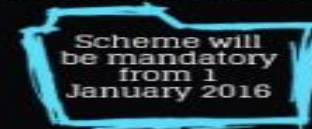


Provide for training, assessment of competence and certification of seafarers

IMO Audit Scheme seeks to:

evaluate how States meet their responsibilities under IMO Conventions

provide feedback and enhance performance



IMO has developed Codes and guidelines to support flag State implementation

IMO instruments implementation code

Casualty investigation code

Enhanced Survey Programme

Code for Recognized Organizations

How does IMO support flag States ?

Needs Assessment, fact finding missions



Capacity-Building national, regional, global training programmes



Post-Graduate training at IMLI and WMU

of maritime administrators and lawyers



Preparation and conduct of audits



Piktochart
make information beautiful

Terminology

- ⌘ As far back as 1893, an international arbitration tribunal gave an award in the Pacific Fur Seal Arbitration. This concerned a dispute between the United Kingdom and the United States as to the circumstances in which the United States - a coastal State – could interfere with British fishing activities on the high seas. This pitted interests of conservation against interests of economic exploitation.
- ⌘ 1926 – Preliminary Conference on Oil Pollution of Navigable Waters
- ⌘ 1954 – Oil Pollution Convention
- ⌘ 1958 – High Seas Fishing and Conservation Convention, Convention on the Continental Shelf, Convention on the High Seas
- ⌘ The International Maritime Organisation (IMO) came into existence as the International Maritime Consultative Organization (IMCO) on 17th March, 1958 when the Convention establishing the organisation came into force.
- ⌘ The development of marine environmental law was given impetus by the Torrey Canyon incident in 1968, the Amoco Cadiz incident in 1978 and Exxon Valdez in 1989.
- ⌘ 1992 – Convention of the Protection of the Baltic, Convention on the Protection of the Marine Environment of the North East Atlantic

A brief history

- ⌘ 1969 – Intervention Convention, 1971 – Oil Pollution Fund Convention
- ⌘ The 1972 United Nations Conference on the Human Environment held in Stockholm marked the beginning of a distinctive area of international law – international environmental law – and raised concerns about the marine environment.
- ⌘ 1972 - Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter (the London Convention), Convention on the Prevention of Marine Pollution by Dumping by Ships and Aircraft (Oslo Dumping Convention)
- ⌘ 1973 – International Convention for the Prevention of Pollution from Ships (MARPOL)
- ⌘ United Nations Convention on the Law of the Seas [UNCLOS] 10th Dec. 1982, (entered into force on 16 November 1994) – stated in its preamble that oceans are the common heritage of mankind.

A brief history continued



⌘ Law developing in response to accidents -

<https://www.youtube.com/watch?v=VaRdUHrUnBs>

⌘ Principle cause of pollution, however, is land based sources

Marine environmental law and marine accidents

- ⌘ Established in 1948
- ⌘ As a specialized agency of the United Nations, IMO is the global standard-setting authority for the safety, security and environmental performance of international shipping. Its main role is to create a regulatory framework for the shipping industry that is fair and effective, universally adopted and universally implemented.
- ⌘ Purposes of the Organization - Article 1(a) of the Convention: "to provide machinery for cooperation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade; to encourage and facilitate the general adoption of the highest practicable standards in matters concerning maritime safety, efficiency of navigation and prevention and control of marine pollution from ships." Its mission has evolved from regulation of international shipping to the current mission, described as "safe, secure, environmentally sound, efficient and sustainable shipping through cooperation."
- ⌘ [IMO and the Environment](#)
- ⌘ IMO and protected areas /-
<https://www.youtube.com/watch?v=HqOOoHXcRrk&index=11&list=UUoQbQE-aEhVBywNRB-XsHOQ>

International Maritime Organisation (IMO)

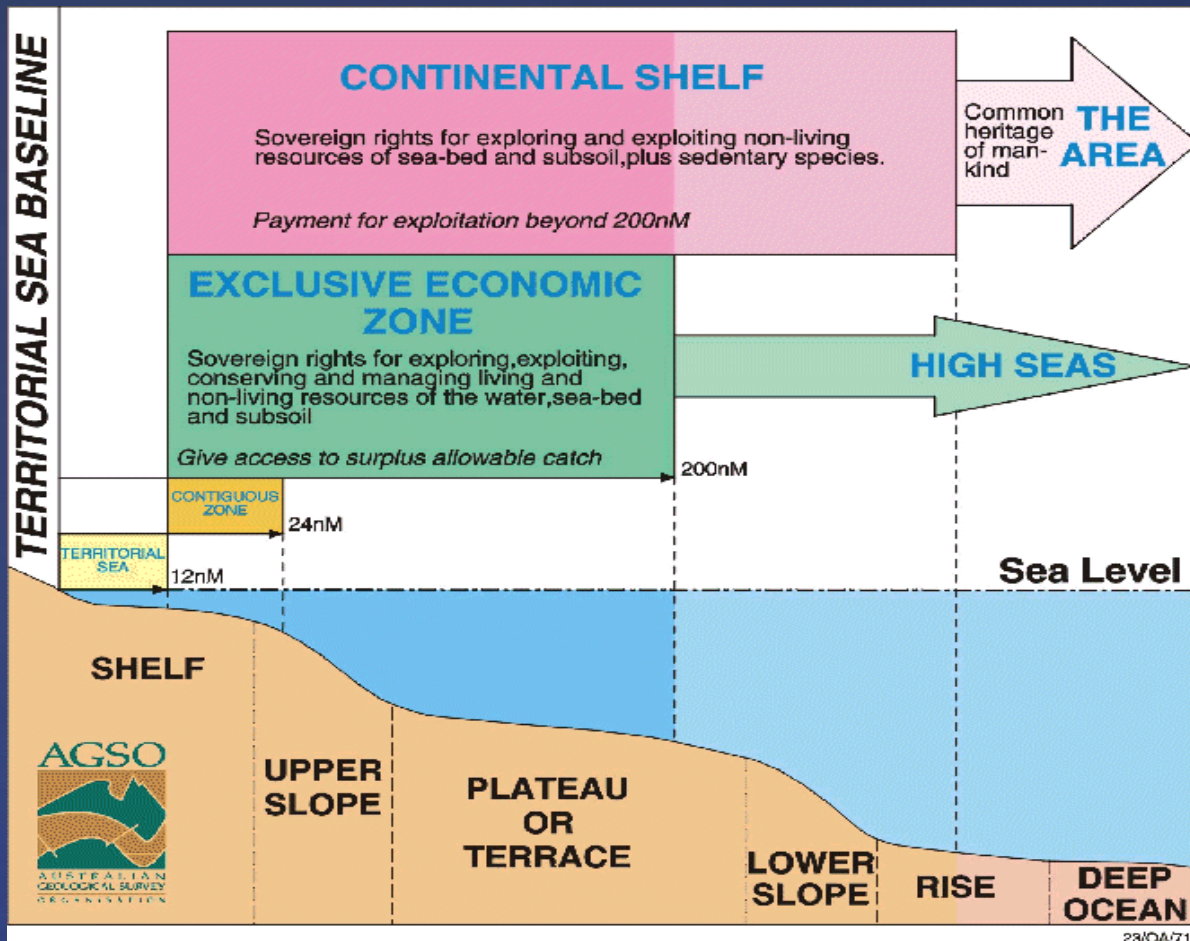
Global instruments - United Nations Convention on the Law of the Sea

- ⌘ The primary instrument governing the Marine Environment in IEL - http://www.un.org/depts/los/convention_agreements/texts/unclos/UNCLOS-TOC.htm
- ⌘ Completed in 1982
- ⌘ Provides a framework – both spatial and functional
 - ⌘ Stipulates the nature of different kinds of sovereign rights
 - ⌘ Fundamental principles of ocean conservation
- ⌘ Widely supported (161 parties)
- ⌘ Criticised for its fragmented approach and failure to protect resources outside of national jurisdiction
- ⌘ Creates a framework for issues of jurisdiction, fisheries and exploitation of resources. Does it create a framework for marine protection? Marine protected areas? Incorporation of environmental principles?

↳ **The States Parties to this Convention,**

- ↳ Prompted by the desire to settle, in a spirit of mutual understanding and cooperation, all issues relating to the law of the sea ...
- ↳ 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,
- ↳ Bearing in mind that the achievement of these goals will contribute to the realization of a just and equitable international economic order which takes into account the interests and needs of mankind as a whole and, in particular, the special interests and needs of developing countries, whether coastal or land-locked,
- ↳ Desiring by this Convention to develop the principles ... that the area of the seabed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, as well as its resources, *are the common heritage of mankind*, the exploration and exploitation of which shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States,
- ↳ Believing that the codification and progressive development of the law of the sea achieved in this Convention will contribute to the strengthening of peace, security, cooperation and friendly relations among all nations in conformity with the principles of justice and equal rights and will promote the economic and social advancement of all peoples of the world

UNCLOS Preamble



Maritime zones under UNCLOS

- ⌘ Definition of pollution in Art 1 - "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.
- ⌘ Part II – Sovereignty of a coastal state extends to territorial sea – 12 nautical miles from the low water line.
 - ⌘ Article 17 – right of innocent passage – Art 21 – state can adopt laws relating to innocent passage on marine protection, management of pollution, scientific research etc
 - ⌘ (see also art 42 on transit passage)
- ⌘ Part XII – Protection and Preservation of the Marine Environment (see hand-out)
- ⌘ What about the high seas? Articles 116 – 120 (see hand out)

Environmental provision in UNCLOS

Regional arrangements

- ⌘ UNCLOS gaps to be filled by regional arrangements
- ⌘ We see in regional instruments greater incorporation of environmental principles and move away from mere pollution prevention
- ⌘ UNEP Regional Seas Programme 1974 -
<http://www.unep.org/regionalseas/>
 - ⌘ “The Regional Seas Programme aims to address the accelerating degradation of the world’s oceans 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.”
 - ⌘ “Today, more than 143 countries participate in 13 Regional Seas programmes established under the auspices of UNEP: [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](#).” – most consisting of various conventions and protocols relating to subject specific issues such as emergencies, dumping, fauna and flora etc

Regional arrangements: OSPAR Convention

- ⌘ “15 Governments of the western coasts and catchments of Europe, together with the EU, cooperate to protect the marine environment of the North-East Atlantic. It started in 1972 with the Oslo Convention against dumping. It was broadened to cover land-based sources and the offshore industry by the Paris Convention of 1974. These two conventions were unified, updated and extended by the 1992 OSPAR Convention. The new annex on biodiversity and ecosystems was adopted in 1998 to cover non-polluting human activities that can adversely affect the sea.” <http://www.ospar.org/>
- ⌘ Takes stronger measures than those envisioned by UNCLOS – such as the prohibition on dumping at sea
- ⌘ New approach - Treats:
 - ⊙ pollution from land-based sources
 - ⊙ pollution for off-shore installations
 - ⊙ pollution by dumping and incineration at sea
- ⌘ An annex and detailed rules for each of these.

- ⌘ Plays a major role in reducing marine pollution by hazardous substances.
- ⌘ General obligation: States “shall ... take all possible steps to prevent and eliminate pollution”.
- ⌘ Principles:
 - ⌘ the precautionary principle
 - ⌘ the polluter pays principle
 - ⌘ “sustainable management”
 - ⌘ “latest technological developments and practices”
- ⌘ Minimum regulation: States can take stricter measures than agreed pursuant to the convention.
- ⌘ Creation of the OSPAR Commission – powers to take legally binding decisions, assess compliance

OSPAR cont



Marine Living Resources and Marine Biodiversity



⌘ The problem of overfishing -

<http://vimeo.com/42619545>

⌘ FAO statistics and monitoring -

<http://www.fao.org/docrep/015/i2389e/i2389e.pdf>

⌘ Challenges of fish stock management:

⌘ Migratory stocks

⌘ High seas

⌘ Lack of incentive to limit fishing

⌘ Problem of communication between science and policy

Marine Living Resources

- **1958 Convention on the Territorial Sea and the Contiguous Zone and Convention on the Continental Shelf** – sovereignty of the coastal state over rights to living resources in the territorial sea and continental shelf
- **1958 Convention of the High Seas** – Freedom of the high seas including freedom of fishing “to be exercised with reasonable regard to the interests of other states”
- **1958 High Seas Fishing and Conservation Convention** – requires states to adopt measures for the conservation of marine resources

Marine Living Resources cont

- **1982 UNCLOS** - Primary instrument.
 - Maritime zones governing marine living resources in and beyond national jurisdiction.
 - Extended rights of coastal states by formalising legal status of the EEZ (Art 56).
 - TAC must not result in endangerment of living resources “taking into account best scientific evidence available.” (Art 61)
 - Provisions on management of fisheries broadly reflect customary international law.
 - Some protection for migratory species and marine mammals, specifically through requirements of co-operation.
 - High seas – maintains freedom of all states to fish (Art 87) limited by treaty obligations, rights of coastal states must be respected, provisions concerning conservation must be respected (Art 116).

Marine Living Resources cont

- **1993 Compliance Agreement**
 - Seeks to address the problem of “flags of convenience”
 - Details the obligations of flag states including not undermining conservation measures
 - Excludes vessels less than 24 metres
 - Has only received limited support
- **1995 Fish Stock Agreement**
 - Applies to straddling fish stocks and highly migratory fish beyond areas of national jurisdiction (with limited provision to conservation within areas of national jurisdiction)
 - Primary responsibility still falls on the flag state
 - Increased international conservation obligations including:
 - Obligations to adopt measures to ensure long term sustainability and promote optimum utilization
 - Use of best scientific evidence to maintain maximum sustainable yield
 - Apply precautionary approach
 - Assess impacts of fishing and other human activities and environmental factor
 - Protect biodiversity
 - Monitoring and surveillance
 - Emphasis on regional and sub-regional arrangements – limiting the right to fish in some instances by requiring participation in regional organisations.
- **1995 Code of Conduct for Responsible Fisheries and 1999 Rome Declaration on the Implementation of the Code of Conduct**
- **Johannesburg Plan of Implementation 2002** – restore stock levels by 2015
- Important role of the FAO and the Committee of Fisheries
- Regional Instruments

Marine Living Resources cont

Case law – marine living resources

- ⌘ **Pacific Fur Seal Arbitration 1893** – limits of jurisdiction to protect marine animals and the absolute freedom to fish. Limitations of the ‘flag state’ approach.
- ⌘ **1972 Fisheries Jurisdiction case (ICJ)** – Iceland decided to extend its exclusive fishing zone to 50 nautical miles. Court denied Iceland’s right to do so but said that Iceland had preferential fishing rights. ICJ found the states must have respect the other’s rights and needs and must have due regard for conservation needs.
- ⌘ The WTO Appellate Body’s decision in the **Shrimp Turtle case**, concerning the circumstances in which the United States was able to impose conservation measures under its laws on shrimping activities taking place in four Asian countries (October 1998)

⌘ International Tribunal for the Law of the Sea's provisional measures order in the **Southern Blue-Fin Tuna** case brought by Australia and New Zealand against Japan, addressing Japan's unilateral scientific experimental fishing (August 1999). ITLOS prescribed provisional measures pending the decision of an arbitral tribunal setting the annual allocation at the level last agreed and stopping experimental fishing, applying a precautionary approach. The arbitral tribunal decided that it did not have jurisdiction to hear the claim. One of the advantages of UNCLOS is the compulsory jurisdiction provision. This provision was seen to be undermined by the decision in the Southern Blue Fin Tuna Case.



Case law – marine living resources



Marine biodiversity

- ⌘ **UNCLOS** – Part XII (see handout)
- ⌘ **Convention on Biological Diversity (CBD)**
 - ⌘ relationship between the CBD and UNCLOS?
 - ⌘ Responsibility on states to ensure activities within their jurisdiction do not cause damage to other states or areas beyond their jurisdiction (Art 3)
 - ⌘ Jakarta Mandate on Marine and Coastal Biological Diversity 1995 – area management, protected areas etc
- ⌘ Regional measures and some species specific interventions

= A piecemeal approach to marine biodiversity

Marine biodiversity

Marine Protected Areas in the High Seas

- ⌘ UNCLOS – no legal impediment to establishing MPAs in the high seas given the freedoms of the high seas.
- ⌘ Some pioneering work to establish MPAs under the OSPAR Convention – identified 8 potential MPA sites – various barriers to this process.
- ⌘ IWC Whale sanctuary and other examples of limited MPAs

Marine Protected Areas

- ⌘ World Database on Protected Areas - <http://www.protectedplanet.net/>
- ⌘ Less than 1 percent of the oceans are protected by MPAs
- ⌘ No single definition of MPA (although see the CBD) and little international regulation
- ⌘ UNCLOS and MPAs in the EEZ –
 - ⌘ Case of Chagos Archipelago – The British Government established a MPA around the Chagos Islands known as the *Chagos Marine Protected Area* in 2010. It is the world's largest fully protected reserve, twice the size of Great Britain.
 - ⌘ On December 1, 2010, WikiLeaks release a leaked US Embassy London diplomatic cable dating back to 2009 which exposed British and US calculations in creating the marine nature reserve. The cable relays exchanges between US Political Counselor Richard Mills and British Director of the Foreign and Commonwealth Office Colin Roberts, in which Roberts "asserted that establishing a marine park would, in effect, put paid to resettlement claims of the archipelago's former residents." Richard Mills concludes: "Establishing a marine reserve might, indeed, as the FCO's Roberts stated, be the most effective long-term way to prevent any of the Chagos Islands' former inhabitants or their descendants from resettling in the [British Indian Ocean Territory]."
 - ⌘ The Government of Mauritius initiated proceedings on 20 December 2010 against the UK Government under the United Nations Convention on the Law of the Sea (UNCLOS) to challenge the legality of the 'marine protected area'. Mauritius argues that Britain breached a UN resolution when it separated Chagos from the rest of the colony of Mauritius in the 1960s, before the country became independent, and that Britain therefore doesn't have the right to declare the area a marine reserve and that the MPA was not compatible with the rights of the Chagossians – ongoing <http://www.theguardian.com/world/2014/apr/21/chagos-islands-diego-garcia-base-court-ruling>
 - ⌘ On 11 December 2012, the European Court of Human Rights rejected Application Chagos Islanders v. The United Kingdom, lodged originally in 2004, on the grounds that it was inadmissible. The case concerns complaints made by the Chagos Islanders arising from their eviction from the islands between 1967 and 1973.

Summing up: Key questions

- ⌘ How are we regulating the marine environment in the high seas? Is this regulation adequate? How could it be regulated better?
- ⌘ How are we enforcing state obligations in the high seas? Are courts effective? Do we need more and better enforcement mechanisms?
- ⌘ Are states co-operating in the management of marine resources and in the preservation of the marine environment? Are the co-operative mechanisms effective?

- ⌘ <http://www.jus.uio.no/english/services/library/treaties/06/6-05/>
- ⌘ IMO - <http://www.imo.org/Pages/home.aspx>
- ⌘ FAO - <http://www.fao.org/fishery/en>
- ⌘ UN Treaties – (for example Intervention Convention - <https://treaties.un.org/doc/Publication/UNTS/Volume%20970/volume-970-I-14049-English.pdf>)

Resources