

INTERNATIONAL ENVIRONMENTAL LAW

Academic Course: 2022-2023



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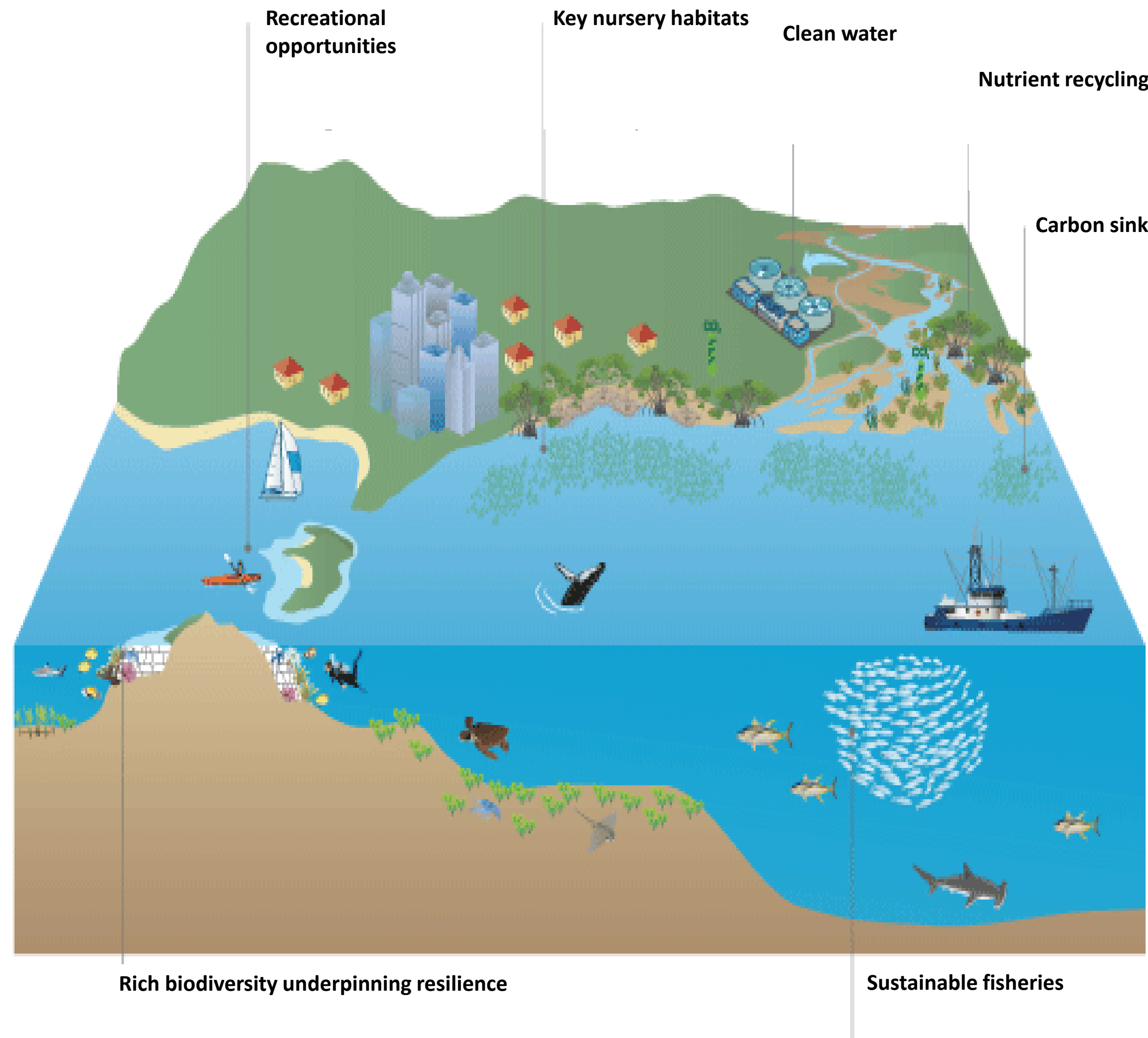
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Unit 4. The protection and preservation of the marine environment

CONTENT

1. General aspects
2. The work of International Maritime Organization
3. Part XII UNCLOS

1. General aspects



- * Marine living resources are of vital importance for mankind because they constitute an important source of protein and so their conservation is to be considered a common interest of the international community. Marine living resources are also important for the international trade and industry of many countries. Hence, conservation is not only a pure scientific or biological conc
- * Healthy oceans provide wide-ranging products and services that underpin the daily livelihood of millions of people – both in local communities and distant cities.

The oceans and the Agenda 2030

- Healthy oceans contributes to most SDGs, for example food security, healthy lives, jobs and income, sustainable resource use and coastal resilience.



Multiple threats to the oceans

- **Direct human impacts**

- Unsustainable fisheries
- Pollution – marine litter, nutrients, wastewater, oil spills
- Coastal development (cities, ports, tourism...)
- Offshore infrastructure development
- Mining, oil and gas exploitation

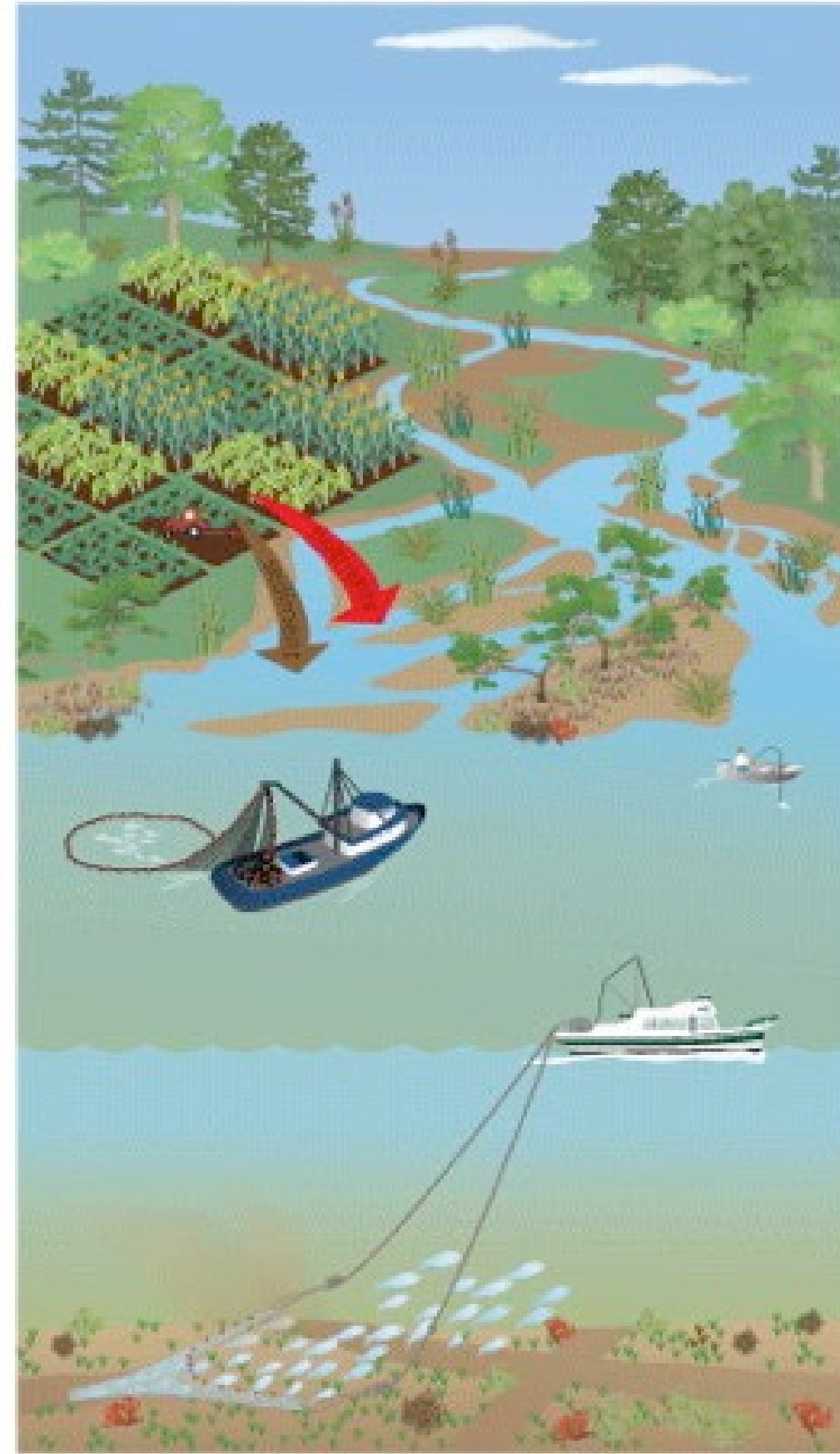
- **Climate change impacts**

- Ocean warming
- Acidification
- Sea-level rise

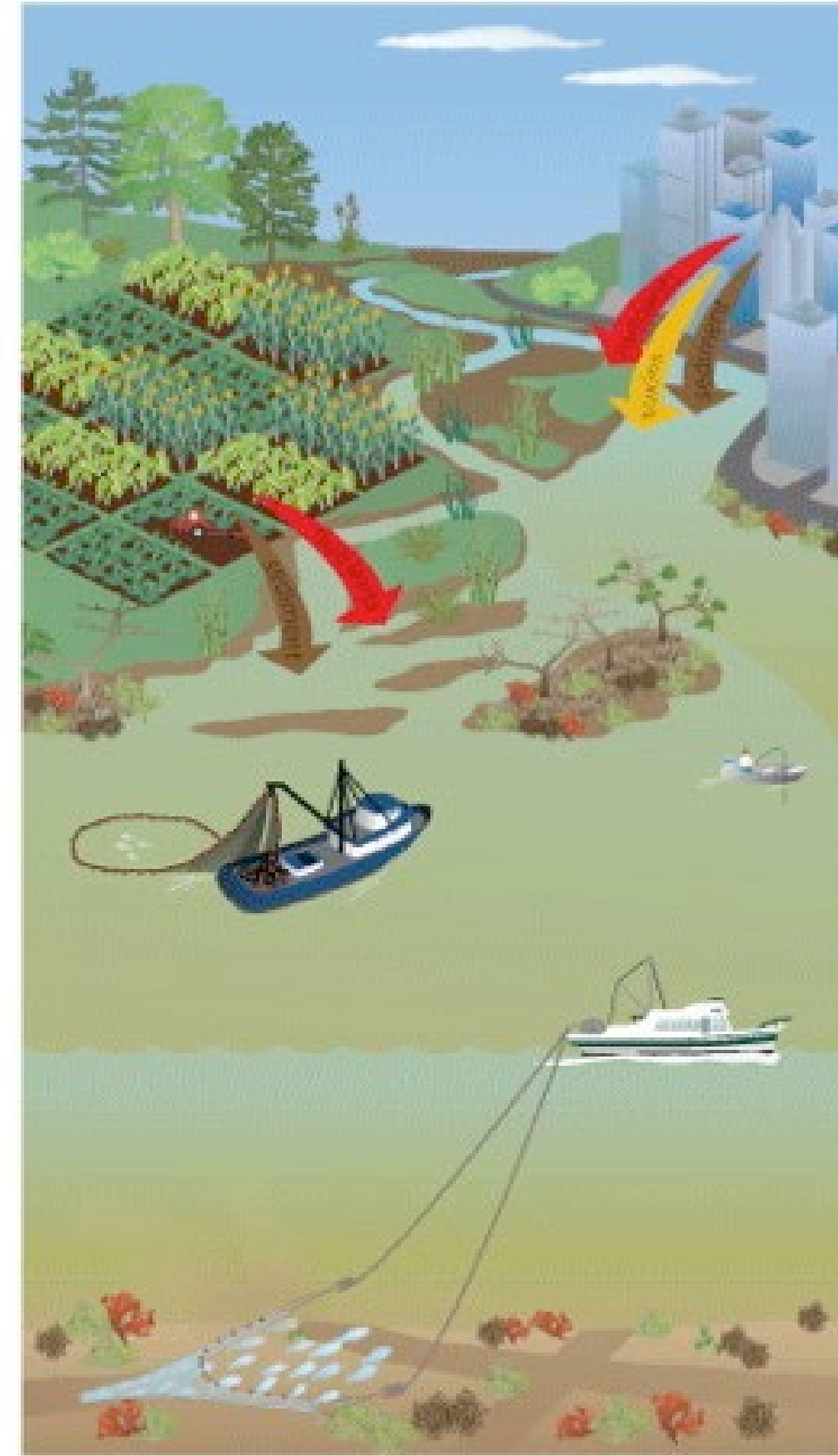
Overfishing



Overfishing + Agriculture



Overfishing + Agriculture + Development



- The combined cumulative effect of human pressures on oceans are immense. It is essential that we reduce all the different human impacts to ensure the health of oceans -- and its overall resilience to stress from climate change.

- Land Based marine pollution includes pollution from land based activities and pollution from or through the atmosphere and it is estimated that land based pollution contributes 80 per cent of marine pollution.
- Pollutants resulting from land based activities include sewage, industrial discharges and agricultural run – off and also air pollution that contaminates oceans with dissolved copper, nickel, mercury, lead, zinc and synthetic organic compounds.
- Once emitted, these compounds stay in the air and reach the oceans. So it can be said that land based pollution is an imbalance between human population and industrial activities and the incapacity of the marine environment to contain and absorb the wastes they produce.
- Considering that 40 per cent of the world's population live within 100 km from the coasts, it is foreseeable that marine pollution from land based activities will increase.

2. Universal legal instruments: the work of the International Maritime Organization (IMO)

a) Definition

- The International Maritime Organization is the United Nations specialized agency with responsibility for the safety and security of shipping and the prevention of marine and atmospheric pollution by ships.
 - Torrey Canyon disaster?
- 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.
- Main role → to create a regulatory framework for the shipping industry that is fair and effective, universally adopted and universally implemented.

- **Key IMO Convention → IEL**

- International Convention for the Prevention of Pollution from Ships, 1973, modified by the Protocol of 1978 and by the Protocol of 1997. (MARPOL).

- **Prevention on marine pollution**

- International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (INTERVENTION), 1969
- Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter(LC), 1972 (and the 1996 London Protocol)
- International Convention on Oil Pollution Preparedness, Response and Co-operation(OPRC), 1990
- Protocol on Preparedness, Response and Co-operation to pollution Incidents by Hazardous and Noxious Substances, 2000 (OPRC-HNS Protocol)
- International Convention on the Control of Harmful Anti-fouling Systems on Ships (AFS), 2001
- International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004
- The Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009.

- **Conventions covering liability and compensation**

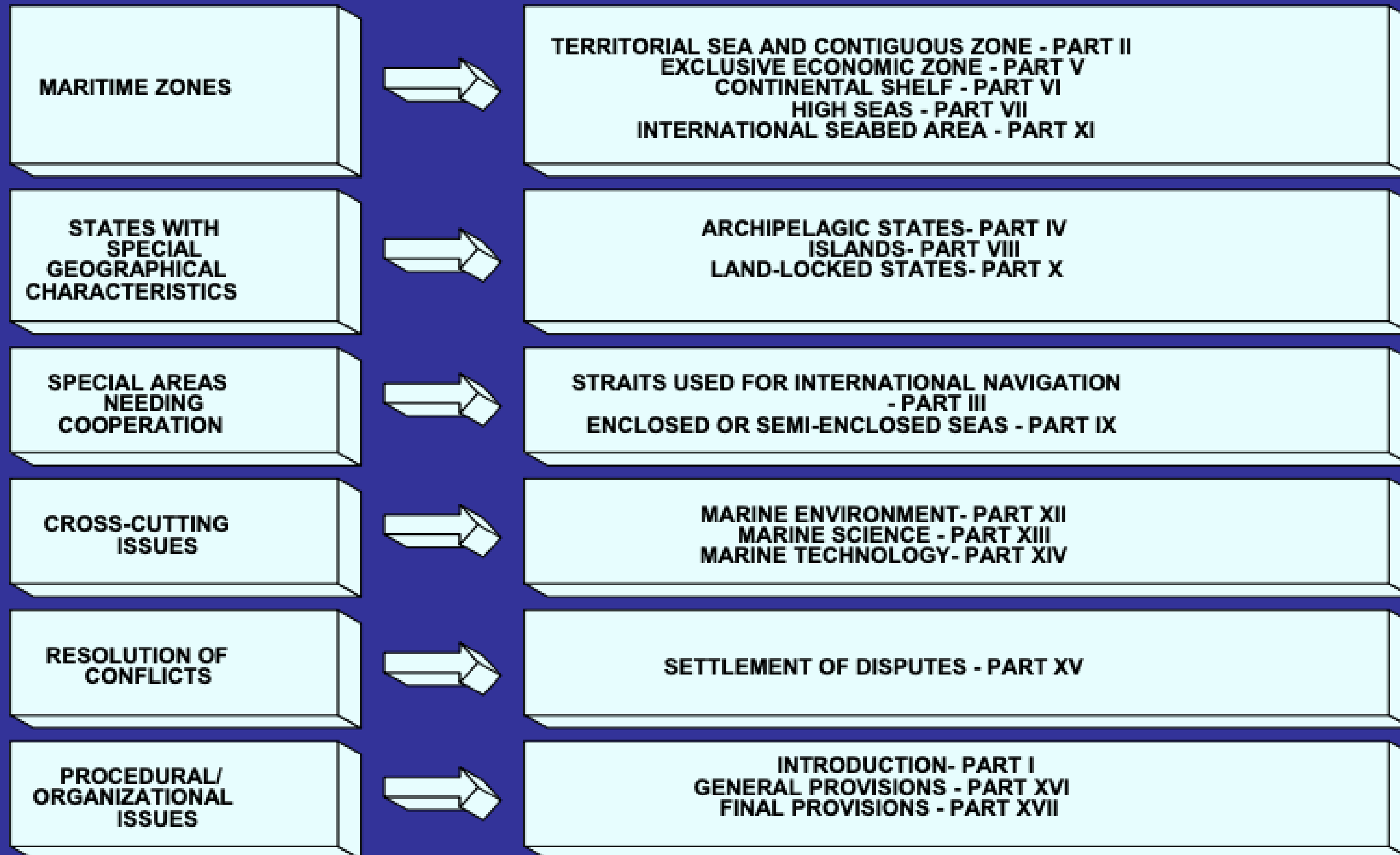
- International Convention on Civil Liability for Oil Pollution Damage(CLC), 1969
- 1992 Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND 1992)
- Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material (NUCLEAR), 1971.
- Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (PAL), 1974.
- Convention on Limitation of Liability for Maritime Claims(LLMC), 1976
- International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS), 1996 (and its 2010 Protocol).
- International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001.
- Nairobi International Convention on the Removal of Wrecks, 2007

3. Part XII United Nations Convention on the Law of the Sea (UNCLOS)



- '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'

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA VARIOUS PARTS



- The Convention ensures a balance between:
 - The different interests of States;
 - The rights of States to use the oceans and their resources, and the need and duty to protect and preserve the marine Environment.
 - Coastal States rights/duties vs. freedoms that can be exercised by other States:
 - Sovereign rights over resources vs. free access to resources;
 - Narrow margins and other geographic disadvantages vs. wide margins and other geographic advantages.

WHAT IS... Marine Pollution?

- The definition of marine pollution in UNCLOS (article 1(4)) is:
“...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 hazard 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.”

- Article 192 UNCLOS: **General obligation**

“States have the obligation to protect and preserve the marine Environment”.

- Article 193 UNCLOS: **Sovereign right of States to exploit their natural resources**

“States have the sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine Environment”.

- **Article 194 UNCLOS: Measures to prevent, reduce and control pollution of the marine environment**

1. States shall take, **individually or jointly** as appropriate, all measures consistent with this Convention that are necessary to **prevent, reduce and control pollution of the marine environment from any source**, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection.

2. States shall take all measures necessary **to ensure that activities under their jurisdiction or control are so conducted as not to 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 beyond the areas where they exercise sovereign rights in accordance with This Convention.

- The measures taken pursuant to this Part shall deal with all sources of pollution of the marine environment. These measures shall include, inter alia, those designed to minimize to the fullest possible extent:
- **(a) the release of toxic, harmful or noxious substances**, especially those which are persistent, from land-based sources, from or through the atmosphere or by dumping;
- **(b) pollution from vessels**, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, preventing intentional and unintentional discharges, and regulating the design, construction, equipment, operation and manning of vessels;
- **(c) pollution from installations and devices** used in exploration or exploitation of the natural resources of the seabed and subsoil, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices;
- **(d) pollution from other installations and devices operating in the marine environment**, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices.

- **Article 195 UNCLOS: Duty not to transfer damage or hazards or transform one type of pollution into another**
 - In taking measures to prevent, reduce and control pollution of the marine environment, States shall act so as not to transfer, directly or indirectly, damage or hazards from one area to another or transform one type of pollution into another.
- **Article 196 UNCLOS: Use of technologies or introduction of alien or new species**
 - 1. “States shall take **all measures necessary to prevent, reduce and control pollution of the marine environment resulting from the use of technologies under their jurisdiction or control**, or the intentional or accidental introduction of species, alien or new, to a particular part of the marine environment, which may cause significant and harmful changes thereto”.

- Other important aspects of **UNCLOS** include:
 - **Article 198** requiring states to immediately notify others deemed likely to be affected by any form of threatening pollution, whether it emanates from activities or areas under the jurisdiction of the notifying state or not;
 - **Article 202** requiring states to cooperate in scientific research and information exchange, and to jointly conduct the research necessary to establish appropriate scientific criteria for the formulation of rules to protect the Environment
 - **Article 203** obligating states to provide scientific and technical assistance to developing states to enhance their capacity to protect the marine environment, specifically including the preparation of environmental assessments and assistance in minimizing the effects of major pollution incidents;
 - **Article 204** mandating that states keep under particular surveillance the effects of any 150

SECTION 5. INTERNATIONAL RULES AND NATIONAL LEGISLATION TO PREVENT, REDUCE AND CONTROL POLLUTION OF THE MARINE ENVIRONMENT

- **Article 207 UNCLOS: Pollution from land-based sources**

- 1. States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment from land-based sources, including rivers, estuaries, pipelines and outfall structures, taking into account internationally agreed rules, standards and recommended practices and procedures.
- 2. States shall take other measures as may be necessary to prevent, reduce and control such pollution.
- 3. States shall endeavour to harmonize their policies in this connection at the appropriate regional level.
- 4. States, acting especially through competent international organizations or diplomatic conference, shall endeavour to **establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control pollution of the marine environment from land-based sources**, taking into account characteristic regional features, the economic capacity of developing States and their need for economic development. Such rules, standards and recommended practices and procedures shall be re-examined from time to time as necessary.
- 5. Laws, regulations, measures, rules, standards and recommended practices and procedures referred to in paragraphs 1, 2 and 4 **shall include those designed to minimize, to the fullest extent possible, the release of toxic, harmful or noxious substances, especially those which are persistent, into the marine environment.**

- Article 208 UNCLOS: **Pollution from seabed activities subject to national jurisdiction**
 - 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 and from artificial islands, installations and structures under their jurisdiction, pursuant to articles 60 and 80.
 - 2. States shall take other measures as may be necessary to prevent, reduce and control such pollution.
 - 3. Such laws, regulations and measures shall be **no less effective than international rules**, standards and recommended practices and procedures.
 - 4. States shall endeavour to harmonize their policies in this connection at the appropriate regional level.
 - 5. States, acting especially through **competent international organizations 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 referred to in paragraph 1**. Such rules, standards and recommended practices and procedures shall be re-examined **from time to time** as necessary.

- Article 210 UNCLOS: **Pollution by dumping**
 - 1. States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment by **dumping**.
 - 2. States shall take other measures as may be necessary to **prevent, reduce and control such pollution**.
 - 3. Such laws, regulations and measures shall ensure that dumping is not carried out without the permission of the competent authorities of States.
 - 4. States, acting especially through competent international organizations or diplomatic conference, shall endeavour to establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control such pollution. Such rules, standards and recommended practices and procedures shall be re-examined from time to time as necessary.
 - 5. **Dumping within the territorial sea and the exclusive economic zone or onto the continental shelf shall not be carried out without the express prior approval of the coastal State**, which has the right to permit, regulate and control such dumping after due consideration of the matter with other States which by reason of their geographical situation may be adversely affected thereby.
 - 6. National laws, regulations and measures shall be no less effective in preventing, reducing and controlling such pollution than the global rules and standards.

- Article 211 UNCLOS: **Pollution from vessels**
 - 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 routing 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. Whenever such requirements are established in identical form by two or more coastal States in an endeavour to harmonize policy, the communication shall indicate which States are participating in such cooperative arrangements. **Every State shall require the master of a vessel flying its flag or of its registry, when navigating within the territorial sea of a State participating in such cooperative arrangements, to furnish, upon the request of that State, information as to whether it is proceeding to a State of the same region participating in such cooperative arrangements and, if so, to indicate whether it complies with the port entry requirements of that State.**

- Article 212 UNCLOS: **Pollution from or through the atmosphere**
 - 1. States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment **from or through the atmosphere**, applicable to the air space under their sovereignty and to vessels flying their flag or vessels or aircraft of their registry, taking into account internationally agreed rules, standards and recommended practices and procedures and the safety of air navigation.
 - 2. States shall take other measures as may be necessary to prevent, reduce and control such pollution.
 - 3. States, acting especially through competent international organizations or diplomatic conference, shall endeavour to establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control such pollution.

Disputes resolution procedure

- In case any disputes arise as a result of the interpretation or implementation of the provisions of the Convention, they are to be resolved in the manner provided for by the Convention. Parties have an obligation under part XV to settle all their disputes by peaceful means. Part XV sets out a compulsory procedure for binding dispute resolution that is unique among environment protection treaties. First, parties are obliged to conciliate. If conciliation fails, they must resolve the dispute by means of a binding decision handed down by their choice of either the International Tribunal for the Law of the Sea (“ITLOS”), the International Court of Justice (“ICJ”) or by an arbitral panel. Either a general panel (Annex VII) or a specialist environmental panel (Annex VIII) can arbitrate the dispute.

SOURCES

- UNEP training manual on International Environmental Law.
- Zambrano, K. Teaching materials for International Environmental Law.

