

## SPC-EU Deep Sea Minerals Project

*Pacific ACP States Regional Workshop on Deep Sea Minerals  
Law and Contract Negotiations – Session 2*

### **Deep Sea Minerals: State Rights and Responsibilities**

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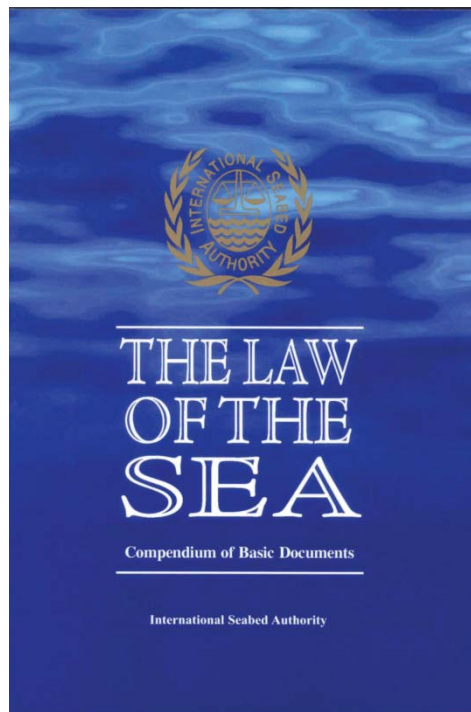
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## Session Overview

1. **The two different seabed zones:**
  - a. within national jurisdiction (EEZ / Continental Shelf)
  - b. beyond national jurisdiction (the Area)
2. **National jurisdiction:**
  - a. State rights
  - b. State responsibilities
3. **The Area [over to Gwenaelle]**

# The UN Convention on the Law of the Sea



- International treaty on the management of ocean space and resources.
- Adopted in 1982 and entered into force in December 1994.
- Called 'UNCLOS' or 'LOSC' for short
- 165 countries are now States Parties
  - Pacific Islands?
  - Famously, not the United States

• UNCLOS Preamble: objectives include establishing an order for the seas which promotes *'the equitable and efficient utilisation of their resources, the conservation of their living resources and the study, protection and preservation of the marine environment.'*

## Maritime Zones

- UNCLOS sets maritime zones for coastal states
- Different rights and responsibilities attach to each zone
- Measured in nautical miles from 'the Baseline(s)'
- The Baseline is drawn between points on the coast.
- Zones are subject to delimitation

**Territorial Sea:** Up to 12 nm

**Contiguous Zone:** From 12nm up to 24nm

**Exclusive Economic Zone ('EEZ'):** Up to 200nm

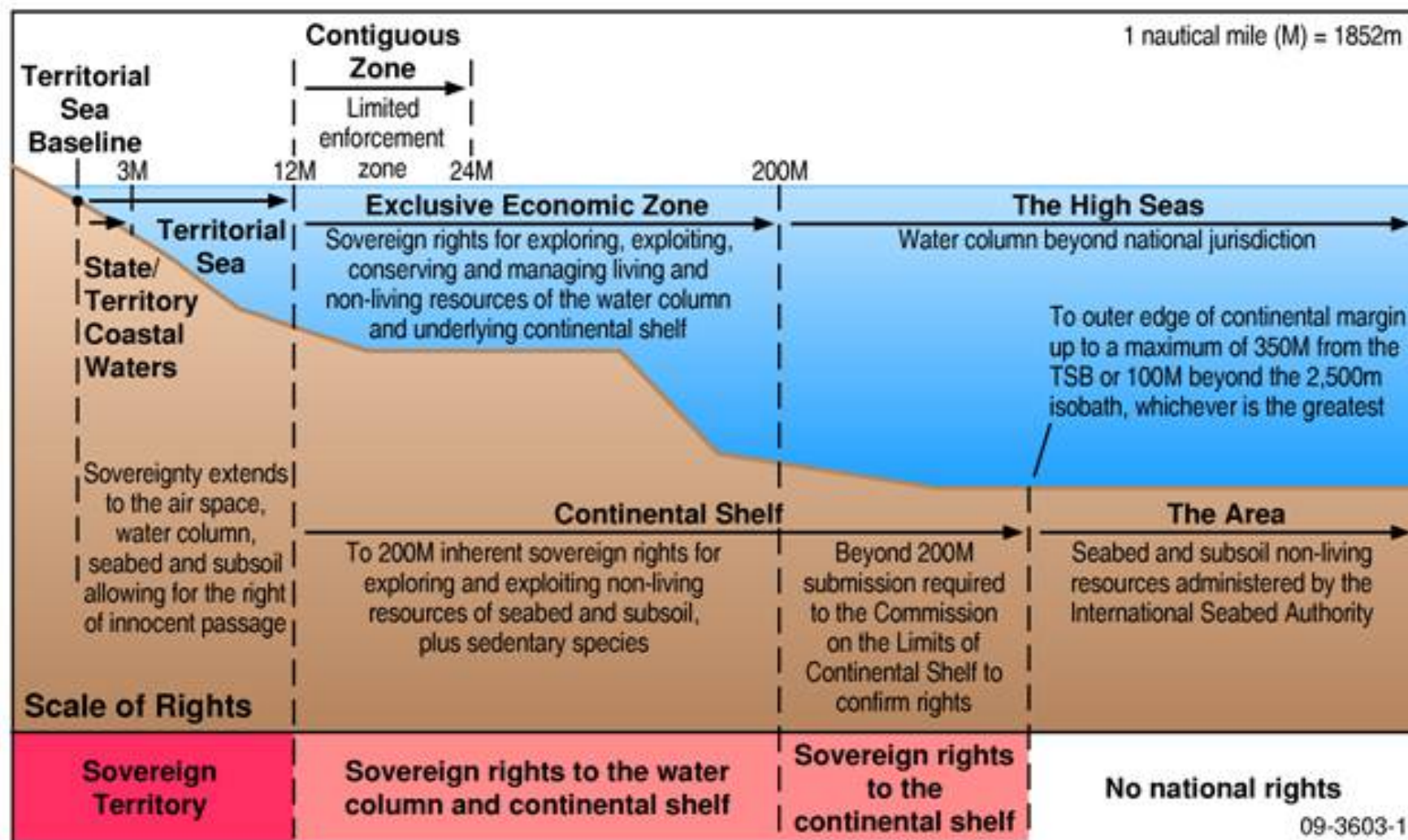
**The High Seas:** the water column beyond national jurisdiction

**Continental Shelf:** 'co-extensive' with the EEZ

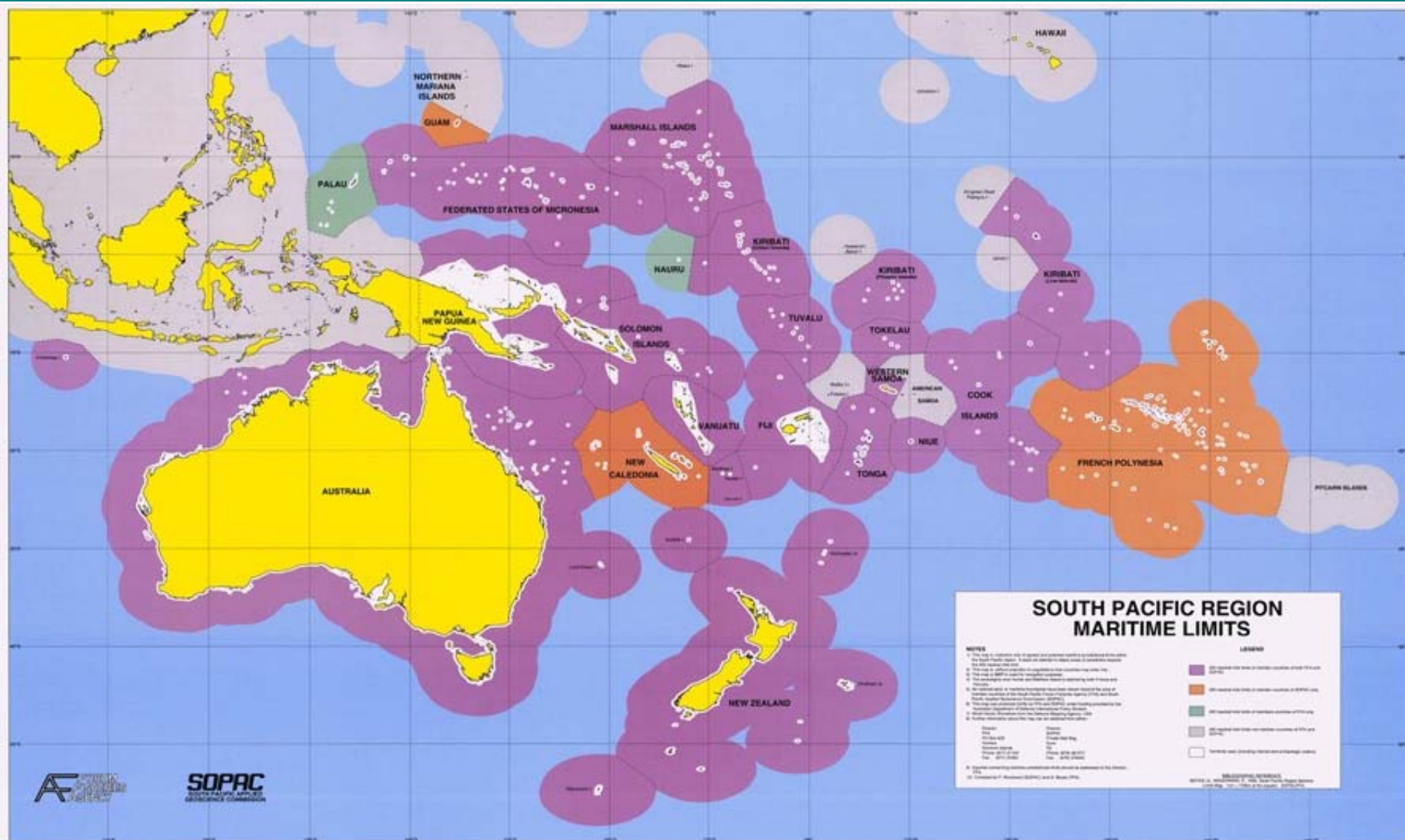
**Extended Continental Shelf:** up to 350nm

**The Area:** the seabed beyond national jurisdiction

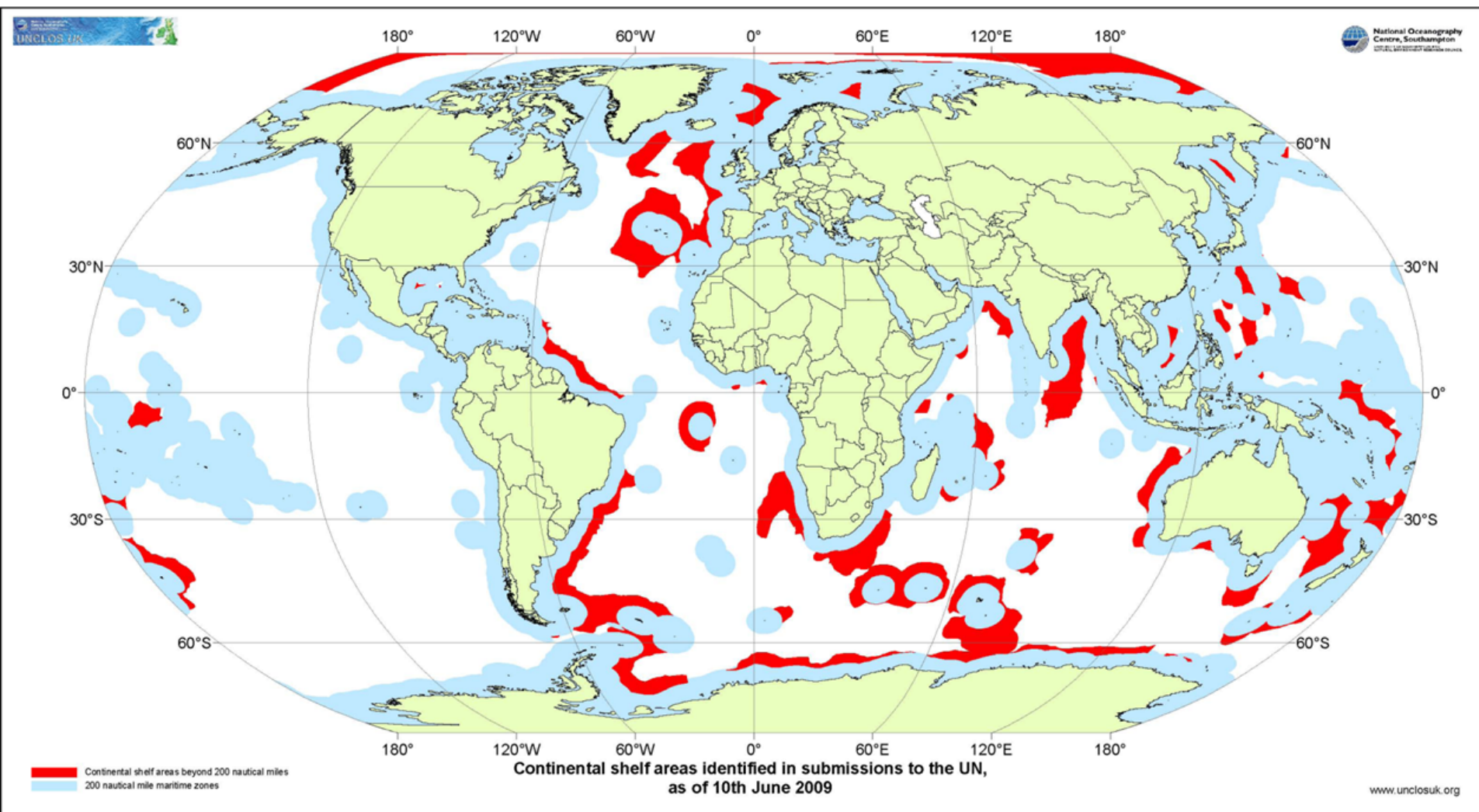
# Maritime Zones (and State Rights)



# EEZs



# Continental Shelf and the Area



## National Jurisdiction: State Rights

- Coastal States have sovereign rights to explore and exploit their own natural resources (Articles 56 and 77 UNCLOS)
- ‘Sovereign right’: exclusive, unrestricted, no requirement to share access or benefit.
- This gives the State clear legal title to the seabed and subsoil of the EEZ / CS, and any minerals found therein.
- Coastal States also have exclusive right to authorise structures for economic purposes in the EEZ, or drilling on the CS (Articles 60, 80 and 81 UNCLOS)
- Therefore State can access the minerals, or permit someone else to – and if the State does not do so, the minerals cannot be accessed (Article 77).

## National Jurisdiction: State Rights

- Coastal States have an obligation to citizens for the proper utilization – and preservation – of fish stocks (Art. 61 and 62 UNCLOS)
- Compare with minerals: no requirement to utilise, nor to conserve or manage sustainably seabed mineral resources.
- But States have the sovereign right to exploit the minerals resources of the EEZ / CS at their discretion except....
  - with due regard to the rights and duties of other States (e.g. Navigation, overflight, the laying of submarine cables and pipelines (Art.56, 58, 78-79 UNCLOS). Also MSR.
  - pursuant to their environmental policies and in accordance with the duty to protect and preserve the marine environment .

## National Jurisdiction: State Responsibilities

- States have a general obligation to protect and preserve the marine environment (Art. 192 UNCLOS).
- States must also generally take all measures necessary to:
  - prevent, reduce and control pollution of the marine environment from any source, using best practicable means at their disposal and in accordance with their capabilities;
  - ensure that activities under their control do not to cause transboundary pollution or damage to other States, and
  - protect and preserve rare or fragile ecosystems and marine life habitats (Art. 194 UNCLOS)

## National Jurisdiction: State Responsibilities

- States are also required to:
  - take measures to prevent pollution within its EEZ, including pollution caused by seabed activities (Art. 208), dumping of waste from vessels (Art. 210) and incidental pollution from vessels (Art. 211 UNCLOS).
  - monitor risks / impact / pollution to the marine environment arising from their activities; and where there are reasonable grounds for believing that planned activities may cause substantial pollution or significant and harmful changes to the marine environment, these effects must be assessed (EIA), and reports of those assessments must be made publicly available. (Art. 204-206 UNCLOS)

## National Jurisdiction: State Responsibilities

- UNCLOS is clear that a Coastal State takes primary responsibility to protect and preserve the marine environment within its own EEZ (Art. 56 UNCLOS).
- States failing to fulfil their obligations concerning the protection and preservation of the marine environment shall be liable in accordance with international law (Art. 235 UNCLOS).
- States shall also ensure recourse is available in their legal system for prompt and adequate compensation in respect of damage caused by pollution of the marine environment by persons under their jurisdiction (Art. 235 UNCLOS).

## National Jurisdiction: State Responsibilities

- How do States fulfil this duty?
- Coastal States must adopt laws and regulations to prevent, reduce and control pollution of the marine environment arising from seabed activities subject to their jurisdiction.
- These laws are to be no less effective than international rules, standards and recommended practices and procedures (e.g. ISA's regulations) (Art. 208-210 UNCLOS)
- Enacting laws is not enough: Art. 214 UNCLOS requires enforcement of those laws - by measures which are reasonably appropriate for securing compliance by persons under that State's jurisdiction.

## Other State Obligations

- Not only UNCLOS
- Other international / regional treaties:
  - The Rio Declaration
    - non-binding,
    - but Principle 15: 'the precautionary approach' appears binding for seabed mineral activities
  - The IMO Conventions (International Maritime Organisation)
  - The Noumea Convention,
  - The Convention on Biological Diversity

## Convention on Biological Diversity

- All PICs are Parties.
- Objectives: (i) conservation of biological diversity, (ii) sustainable use of its components, and (iii) fair and equitable sharing of benefits arising out utilisation of genetic resources.
- Requires States to protect *in situ* ecosystems and habitats within their EEZ, including via a system of marine protected areas.
- Particular focus focus on enhanced protection of ecologically or biologically significant areas ('EBSA'), which includes hydrothermal vents.



## The Noumea Convention

- Convention for the Protection of Natural Resources and the Environment of the South Pacific Region.
- Parties are the Cook Islands, Fiji, FSM, Nauru, PNG, RMI, Samoa and Solomon Islands
- Focuses on pollution prevention and sound environmental practices (e.g. EIAs) within Parties' EEZs.
- Refers specifically to pollution resulting directly or indirectly from exploration and exploitation of the sea-bed and its subsoil.
- SPREP acts as Secretariat of the Noumea Convention



**SPREP**

Secretariat of the Pacific Regional  
Environment Programme

### **EITI:**

- Global standard that promotes revenue transparency.
- Companies publish what they pay, and Governments disclose what they receive.
- A multi-stakeholder working group engages auditors to reconcile the two.
- Timor Leste is a member State
- Solomon Islands are in the process

### **IMMS Code 2001:**

- For Environmental Management of Marine Mining
- Industry-led: initiative of Nautilus.
- ISA endorsed.
- Prioritises and integrates environmental management.
- Principles: (i) Proactivity, (ii) Transparency, (ii) Community Partnership

### **Madang Guidelines**

- Expert working party convened 1999
- 19 recommendations to Pacific Island governments.
- basis upon which to formulate policy and legislation to govern offshore mineral development.
- Precursor to current SOPAC Project

### **Equator Principles**

- intended to improve social and environmental impacts of project financing
- adopted by 70 major international financing institutions
- a copy is included in your workshop files