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Offshore, Off-Limits

Legal Tools to Address the Risks and Impacts of Offshore Oil & Gas

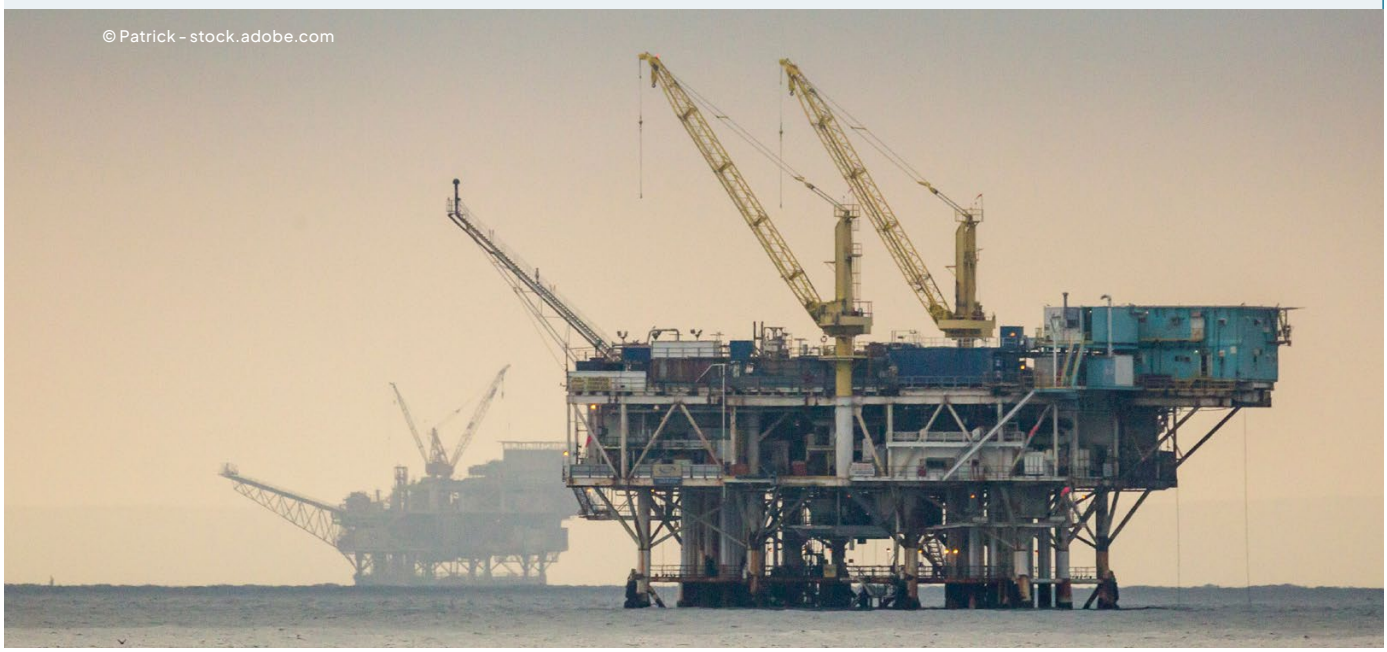
Major oil and gas projects are being developed on the coastlines and at sea on almost every continent, presenting common challenges and risks at every stage, from exploration and production to transportation and decommissioning. These shared challenges offer a unique opportunity to build movements on a regional basis, connect people working on these issues across the world, and equip affected communities with the expertise, analysis, and arguments needed to respond. Individuals, communities, and organizations can influence decision-making relating to offshore activity at many points, be that at the planning and permitting stage, while an activity is underway, or after operations have ceased. This brief discusses various legal obligations and principles relevant to the prevention, mitigation, or remediation of the risks and impacts of oil and gas activities on coastlines and at sea, as well as some of the international instruments and tools that enshrine them.

Domestic law provides a first line of defense against the risks and impacts of offshore oil and gas activity. In some countries and subnational jurisdictions, governments have prohibited new offshore oil and gas exploration and production in their waters or made commitments to phase out fossil fuel activities by a particular date.[1] Whether through agency decisions, executive orders, or legislation, such temporary or permanent bans have been enacted in several places, including Costa Rica,[2] the eastern Gulf of Mexico,[3] and New South Wales, Australia, among others.[4] Even where no such restrictions have been imposed, laws may operate to make offshore oil and gas activity impermissible in certain areas or under certain conditions, provide legal grounds to challenge licenses, or require operators to close down and clean up their sites.

Community protest against exploration activities offshore South Africa's Wild Coast

Where not prohibited, offshore fossil fuel development typically occurs in a country's territorial waters or, if further off the coast, within its exclusive economic zone (EEZ), falling under the jurisdiction of domestic legal and regulatory frameworks. Subnational and national laws and regulations pertaining to hazardous or industrial activities on coastlines and at sea, environmental impact assessment and management, and emergency response plans and operations — among others — will restrict the conditions for obtaining permits for offshore activity and impose requirements to which approved operations must adhere. In many countries, species protection, fisheries management, and biodiversity conservation frameworks limit offshore activity in certain areas or constrain the conduct of operations. Failure to comply with procedural or substantive requirements under those laws, or the failure of those laws to reflect international standards and obligations binding on the State concerned, can give rise to claims under administrative or constitutional law. Properly invoked, those laws can be leveraged to compel governments and companies to assess, consider, and disclose the risks associated with offshore activity before it is authorized or undertaken and across its phases. They can also ensure avenues for redress and accountability for adverse impacts that materialize.

International law, regulations, and principles developed to protect oceans, the environment, and human rights can be relevant in resisting offshore oil and gas expansion, accelerating its phaseout, and preventing, mitigating, and remediating its adverse impacts. These international instruments and tools, many of which are binding on States, provide standards against which to assess the adequacy of domestic regimes or evaluate decisions relating to offshore activity proposed or undertaken by States and private actors. In that sense, even where it is not directly enforceable by non-State actors, international law can inform domestic legal challenges to, and court interpretations of, the lawfulness of offshore oil and gas activity and the responsibility of operators for any resultant harms. The sections that follow provide an overview of international law and standards relevant to three categories: information and participation, prevention and protection, and responsibility and remedy.



Rights to Participation, Information, and Consultation

First and foremost, decisions about offshore activity must adhere to relevant transparency and participation requirements. Members of the public — and particularly those most directly or immediately impacted by an offshore oil and gas activity — have a right to be informed about and take part in the decision-making process around proposed oil and gas activities on coastlines and at sea. Understanding the fundamental rights at issue and the corresponding international obligations, standards, and principles to which impact assessment and public disclosure, consultation, and consent processes should adhere can strengthen community efforts to influence decisions about whether, where, and how oil and gas activities are conducted on coastlines and at sea.

Participation in Environmental Decision-Making

The right to participate in public affairs is codified in key international human rights treaties binding on virtually all States, such as the International Covenant on Civil and Political Rights (ICCPR), as well as widely ratified regional agreements like the American Convention on Human Rights.[5] Numerous international instruments enshrine the public's right to participate, specifically in the context of decision-making around environmental matters. Recognizing that "[e]nvironmental issues are best handled with the participation of all concerned citizens," the 1992 Rio Declaration provides that individuals shall have the opportunity to participate in environmental decision-making processes at the national level.[6] According to the Rio Declaration, States should pay particular attention to ensuring the participation of Indigenous Peoples and women in these processes, given their vital role in environmental management.[7] The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, commonly known as the Escazú Agreement, obligates States Parties to guarantee public participation in environmental decision-making "from the early stages so that due consideration can be given to the observations of the public, thus contributing to the process."[8] The parallel treaty in Europe — the United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, also known as the Aarhus Convention — requires the frameworks for public participation during the "preparation of plans and programmes" relating to the environment to be "transparent and fair."[9]

The right to participate in environmental decision-making is inherently linked to the right of access to environmental information, under which States are duty-bound under multiple instruments to generate, disclose, and disseminate.[10] The right of access to information "is an enabler of participation and a prerequisite that ensures the openness and transparency of, and accountability for, States' decisions,"[11] including those relating to proposed offshore oil and gas development.

The Legal Duty to Undertake EIAs

Environmental impact assessments (EIAs) are a core means of conveying information about the environmental risks of a proposed activity to the public before the activity is undertaken. EIAs are a required component of due diligence obligations whenever a proposed activity may have significant environmental effects, as they provide States and the public with a mechanism for identifying and incorporating relevant environmental information into decision-making processes. EIA processes frequently provide the most relevant avenue through which interested members of the public can challenge proposed oil and gas activities.

The requirement to conduct EIAs and the content thereof is enshrined in numerous domestic instruments across the world. Many coastal countries where offshore oil and gas activities are undertaken or proposed have environmental management statutes or other regulations that detail procedural and substantive requirements for the conduct of EIAs. These include the circumstances in which such assessments are required, how the intensity of the assessment varies with the degree of risk, and their timing, publication, dissemination, and consultation. Moreover, domestic regulatory and legal frameworks set out the right of members of the public to challenge the adequacy of an EIA or the conclusions drawn from it. While it is beyond the scope of this brief to analyze the myriad statutory and regulatory regimes applicable to EIAs for offshore activity in different countries, the following overview of international law and standards on EIAs can inform efforts to obtain information and influence decisions about offshore oil and gas operations across jurisdictions.

Under customary and treaty-based international environmental law, States must enact and implement adequate EIA regulatory frameworks. States have an obligation to conduct, or require private actors to conduct, EIAs in certain circumstances, including where a proposed activity risks causing significant adverse effects on the environment or transboundary harm,[12] as do offshore oil and gas activities. Indeed, the duty to carry out EIAs has been reaffirmed, elaborated, and operationalized by a wide range of legal instruments and authoritative sources of international environmental law.[13] According to the International Law Commission, the obligation of States to conduct EIAs for proposed activities under their jurisdiction or control requires States to "put in place the necessary legislative, regulatory and other measures" for an EIA to be conducted when it is "likely" proposed activities will cause "significant adverse impact."[14] Furthermore, "[p]rocedural safeguards such as notification and consultations are also key to such an assessment."[15] Importantly, impact assessments should inform States' analyses of whether "execution of the project is compatible with its international obligations."[16]

The Scope and Content of Required EIAs

A number of international agreements and frameworks elaborate on the required scope and content of EIAs, including for activities in and on oceans. Similarly, EU directives relating to strategic environmental assessments and EIAs contain similar provisions.[17] As the Inter-American Court clarified, EIAs must evaluate "the cumulative impact of existing and proposed projects" to accurately analyze not just the direct and immediate effects of a proposed activity but the compound impact of the activity in light of other existing and future activities in the affected area.[18] The UN Convention on the Law of the Sea (UNCLOS) expressly requires EIAs for planned activities likely to cause substantial pollution or significant and harmful changes to the marine environment.[19] In a 2024 Advisory Opinion clarifying the obligations of States in the context of the climate emergency, the International Tribunal for the Law of the Sea (ITLOS) explains that the duty extends to any planned public or private activity that may cause such harm "through anthropogenic GHG emissions," including through the cumulative effects of the activity and other GHG sources.[20] While not exclusive to sea-based activities, the ILC's Draft Guidelines on the Protection of the Atmosphere and the Kiev Protocol to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) likewise note the need for States to undertake EIAs for proposed activities that may have an adverse effect on the climate.[21] Such requirements unquestionably apply to offshore oil and gas development, which has an outsized climate impact, both through the GHG emissions generated during production and transportation and the significant quantities released when the extracted oil and gas are inevitably consumed as intended.

A human rights-based approach to impact assessments requires a holistic analysis that looks beyond direct and immediate environmental impacts. Regional human rights bodies within the African and Inter-American human rights systems have emphasized the need for States to carry out impact assessments that address the environmental as well as the social, cultural, and spiritual effects of a proposed activity on local communities prior to authorizing the activity.[22] A proper assessment, the Inter-American Court explains, serves to ensure that affected communities "are aware of the possible risks, including the environmental and health risks, so that they can evaluate, in full knowledge and voluntarily, whether or not to accept the proposed development or investment plan."[23] Accordingly, an impact assessment should ideally "include the full consideration of all alternatives" to the proposed activity.[24]

Multiple sources of international law emphasize the need for EIAs to duly assess the effects of proposed offshore activity on marine species and ecosystems. The Convention on Biological Diversity (CBD) requires States to institute domestic procedures requiring EIAs for any project "likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures."[25] In the context of oceans-based activities specifically, the CBD Voluntary Guidelines for the Consideration of Biodiversity in EIAs and Strategic Environmental Assessments (SEAs) in Marine and Coastal Areas offers several recommendations. These include, among others, making EIAs mandatory for activities taking place in ecologically or biologically significant marine areas and vulnerable marine ecosystems and for activities "resulting in emissions, effluents, and/or other means of chemical, radiation, thermal or noise emissions in areas providing key ecosystem services."[26]

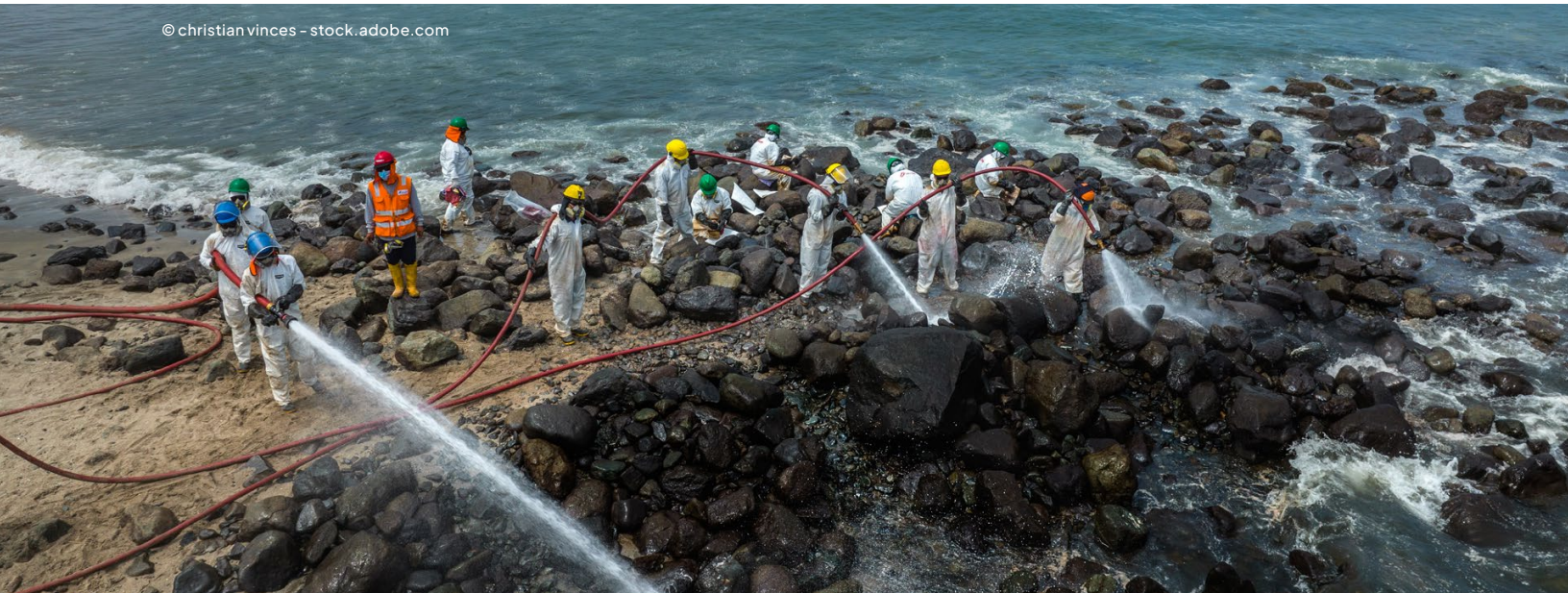
Under certain regional laws and frameworks, States may also be mandated to consider the direct and indirect impacts of a proposed activity on marine species or habitats that have been afforded special protection. Such instruments include, for instance, the Protocol for Specially Protected Areas and Wildlife (SPAW) Protocol[27] — which is an instrument under the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (Cartagena Convention) — and OSPAR Recommendation 2010/5,[28] which offers guidance to Parties to the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention).[29] As recognized by the UN Special Rapporteur on the Right to Food, assessing the biodiversity impacts of a proposed offshore oil and gas project is essential to understanding how it may infringe on the rights of local fisherfolk, whose livelihoods depend on the integrity of marine ecosystems.[30]

Informed Consultation and Consent

Access to environmental information and the conduct of EIAs are crucial to protecting human rights from infringement through environmental harm. International human rights authorities, including human rights treaty bodies and UN Special Procedures, have observed that impact assessments should be independent, comprehensive, and participatory.[31] Furthermore, consistent with the human rights to participation, consultation, and consent, an EIA should be "conducted in a transparent manner, with the provision of adequate information to affected communities" and "undertaken prior to the launch of any project, rather than as a means to validate a project that has already commenced."[32]

States must guarantee that complete, objective information on the risks and impacts of a proposed activity is compiled and disseminated in order to uphold rights to consultation and consent. States are duty-bound to ensure that Indigenous Peoples, local communities, and other members of the public are consulted on decisions affecting their rights under a number of instruments, among them the Escazú Agreement,[33] the Aarhus Convention,[34] the Indigenous and Tribal Peoples Convention, 1989 (International Labour Organization Convention [ILO] No. 169),[35] and the UN Declaration on the Rights of Indigenous Peoples.[36] Further, international law firmly establishes the right of Indigenous Peoples to free, prior, and informed consent (FPIC) with respect to decisions that may affect their lands, territories, and resources.[37] To comply with FPIC duties, States must ensure that consultations are carried out in coordination with affected Indigenous Peoples through their own representative institutions prior to approving any measures that may affect them, and they must refrain from approving such measures absent their free and informed consent.[38]

Information on environmental risks and impacts must also be accessible. The "informed" requirement of FPIC obligates States to ensure that the affected Indigenous Peoples are provided with timely information regarding all aspects of the proposed activity in an easily accessible and understandable manner.[39] To ensure an inclusive, non-discriminatory process, such information — which necessarily includes any EIAs — should be communicated in the languages of the concerned communities and in a culturally appropriate format, be that oral or written.[40] The disseminated information must also address the nature, objectives, and consequences of the consultation process itself, including the "consequences of giving or withholding consent."[41] In addition, the information disclosed must be sufficiently comprehensive to ensure that the communities concerned are fully apprised of the scope and reach of the proposed project so they may discuss and evaluate all its potential impacts. This would entail, at minimum, a "preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks."[42]



Challenges to Oil and Gas Approvals on Information and Participation Grounds

A State's decision to approve, finance, or otherwise support an offshore oil and gas activity may be subject to legal challenge if it is made without due regard to the rights of the public and affected communities to informed and meaningful participation. A number of recent lawsuits challenging States' approval of offshore oil and gas activities have centered on defects in the EIA and/or public consultation processes. For instance, in a case led by Greenpeace Nordic and Natur og Ungdom (Nature and Youth) that is currently on appeal — discussed in the Production brief — the Oslo District Court invalidated permits for three new oil and gas fields in the North Sea because they were approved without consideration of the climate impacts stemming from the downstream consumption of the oil and gas produced from the fields.[43] Similarly, the UK Supreme Court held that in assessing planning applications for new oil and gas extraction wells, a local council should have considered the climate impacts from the inevitable and intended use of the produced fossil fuels, not just emissions from drilling the wells.[44]

Furthermore, several challenges to exploration activities have alleged violations of affected communities' rights to information and consultation. For example, as detailed in the Exploration brief, a legal challenge to Woodside's plans to conduct seismic blasting offshore northern Western Australia succeeded on the grounds that the company had not properly consulted the Traditional Custodians of the Burrup Peninsula,[45] as detailed in the Exploration brief. Likewise, the petitioners in the litigation against oil exploration activities off South Africa's Wild Coast, also discussed in the Exploration brief, argued that Shell, Impact Africa, and the South African government had not properly consulted coastal communities whose livelihoods and spiritual and cultural rights were at significant risk of harm.[46] On top of failing to share critical information on how the planned seismic blasting could cause adverse, irreparable damage to local fisheries and ecosystems, the lawsuit alleges that the operators had failed to provide public notice of the exploration right in the languages spoken by the majority of members of the affected communities and through communication channels that were easily accessible. Upholding these arguments, in June 2024, South Africa's Supreme Court of Appeals affirmed the High Court's judgment that the government had improperly granted Shell and Impact Africa the right to carry out seismic surveys unlawfully.[47]

Thus, while existing international law does not comprehensively address or expressly prohibit offshore oil and gas activities, it does enshrine numerous principles that must inform how decision-making processes around proposed oil and gas operations are carried out at the national level.

Duties to Prevent and Protect Against Adverse Human Rights and Environmental Impacts

The obligations to conduct EIAs and ensure public access to information and participation stem from and are central to States' duties under international law to prevent and minimize the risk of foreseeable harm to the environment and human rights. The duty to prevent informs the legal parameters for lawful activity in and on oceans and, when necessary, constrains the conduct of oil and gas operations. States and companies that fail to take adequate measures to ensure that offshore activities under their jurisdiction or control do not cause significant damage to the environment or lead to violations of fundamental human rights can incur responsibility for resulting harm or, at minimum, face legal challenges to the continuation of those activities.

Preventing Human Rights and Environmental Harm

States must take measures to ensure offshore oil and gas activities within their territories or subject to their control do not infringe on human rights. States have a preventive obligation under international human rights law to refrain from causing or contributing to, as well as protect against foreseeable violations of human rights, including those caused by environmental harm and climate change.[48] Pursuant to this obligation, States must take "all appropriate measures" to avert known or foreseeable threats to the realization of human rights posed by offshore oil and gas activity,[49] including the establishment and implementation of legislative and administrative frameworks to minimize threats to the right to life.[50] These measures must aim to effectively prevent harm not only to the environment but also to human health.[51] States are duty-bound to regulate the activities of all actors subject to their jurisdiction and control, including oil and gas companies, ensure "effective protection" against rights violations, and hold actors accountable for violations.[52]

These duties to respect and protect human rights also have extraterritorial application. The duty to respect "requires States parties to refrain from interfering directly or indirectly with the enjoyment of the Covenant rights by persons outside their territories."[53] The duty to protect, in turn, requires States to regulate any actor subject to their jurisdiction to prevent them from violating rights when operating abroad[54] or when undertaking conduct that has the foreseeable effect of infringing rights, regardless of where those infringements occur.[55] Moreover, the duty to protect also extends to protection against conduct that causes pollution as well as climate change and other forms of transboundary environmental harm, as has been widely recognized by international human rights treaty bodies and experts, as well as regional human rights systems.[56]

Because activities conducted in the oceans inherently pose transboundary risks, international laws and principles regarding the prevention of transboundary harm and protection of shared resources should constrain offshore oil and gas activities. The duty to prevent transboundary environmental harm is a central tenet of the law of nations that is, according to the International Court of Justice, "part of the corpus of international law relating to the environment."[57] Starting with the Trail Smelter arbitration,[58] the duty to prevent significant transboundary environmental harm has been reiterated time and again, including in foundational documents setting forth the principles of international environmental law such as the Stockholm Declaration[59] and the Rio Declaration,[60] as well as in multilateral agreements like the CBD,[61] UNCLOS,[62] and the UN Framework Convention on Climate Change (UNFCCC).[63] According to the transboundary harm principle, every State has a duty "not to allow knowingly its territory to be used for acts contrary to the rights of other States"[64] and must do what it can to avoid engaging in or allowing activities in its territory or an area it controls that will cause significant transboundary harm or harm to a shared resource.[65] Thus, while a State has a right to exploit its own resources — such as undersea oil and gas reserves — that right is checked and limited by the duty not to knowingly cause "damage to the environment of other States or of areas beyond the limits of national jurisdiction."[66] Notably, the transboundary harm principle encompasses not just cross-border damage between neighboring States but harm to the global commons and shared resources, including the high seas and the atmosphere.[67] Given the significant and inevitable GHG emissions generated by fossil fuel production across all phases and the consequent impacts on the climate and oceans, pursuing offshore oil and gas activity is arguably incompatible with respecting the transboundary harm principle.

The Adequacy of Assessments and Regulations

States must ensure that offshore oil and gas operations — if permitted at all — are conducted with the utmost vigilance, given their large-scale and lasting impacts on oceans and the communities and ecosystems that depend on them. To satisfy their preventive obligations under international human rights law and adhere to the transboundary harm principle, States must "take all appropriate measures to prevent significant transboundary harm or at any event to minimize the risk thereof."[68] The ICJ has noted that "in the field of environmental protection, vigilance and prevention are required on account of the often irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation of this type of damage."[69]

The heightened risks posed by offshore activities trigger heightened obligations. The necessary standard of care — the "due diligence" required — varies with the nature of the risk and the means at a State's disposal. According to ITLOS, what States must do to meet their prevention and protection obligations "may change over time as measures considered sufficiently diligent at a certain moment may become not diligent enough in light, for instance, of new scientific or technological knowledge."[70] The riskier a given activity, the more stringent the standard of due diligence required.[71] Calibrating the preventive measures required to the degree of risk posed is consistent with the precautionary approach — which obligates States to act with caution in the face of uncertain and potentially harmful consequences of activity — a principle ITLOS considers "an integral part of the general obligation of due diligence."[72]

International Instruments Addressing the Prevention of Marine Pollution

International law has evolved to regulate, control, and prevent the adverse and often extraterritorial impacts of industrial activity in and on oceans. UNCLOS — which has been ratified by 170 parties — is the preeminent legal framework governing marine and maritime activity and contains detailed rules relating to the use and protection of oceans. Under the Convention, States have a general obligation to "protect and preserve the marine environment,"[73] which effectively places limitations on their "sovereign right to exploit their natural resources."[74] The obligation entails both "the positive obligation to take active measures to protect and preserve the marine environment, and ... the negative obligation not to degrade the marine environment."[75] It requires States to take all measures necessary to "prevent, reduce, and control pollution of the marine environment from any source,"[76] including seabed activities,[77] offshore installations and structures (which encompasses pipelines and rigs),[78] vessels,[79] dumping activities,[80] and from or through the atmosphere.[81] UNCLOS specifies that States "shall adopt laws and regulations to prevent, reduce and control pollution" from seabed activities, dumping, and other sources that "shall be no less effective than international rules, standards and recommended practices and procedures."[82]

A number of legal and regulatory frameworks concerning oceans provide specific guidance on the types of pollution States must prevent and regulate. Under UNCLOS, pollution encompasses not only toxic and noxious substances from vessels and offshore infrastructure but also the release of energy into the marine environment — including light, noise, and heat.[83] Other authorities, such as the European Union[84] and the International Union for Conservation of Nature (IUCN),[85] have likewise recognized that noise from seismic blasting and other offshore oil and gas activity constitutes pollution. The growing international consensus around the need to regulate ocean noise similarly to other types of environmental pollutants is demonstrated by resolutions adopted by the European Parliament,[86] International Whaling Commission (IWC),[87] UN,[88] and Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (ACCOBAMS),[89] among others.

GHG emissions are a form of marine pollution that States have a legal obligation to prevent, reduce, and control. In addition to ocean noise, anthropogenic GHG emissions also fall within UNCLOS's definition of "pollution of the marine environment" since they introduce "substances" (i.e., CO_2) and "heat" into the marine environment and cause "deleterious effects"[90] — such as ocean warming, sea level rise, and ocean acidification. As ITLOS clarified in its climate advisory opinion, States thus have a duty to take all measures necessary to "prevent, reduce, and control" pollution from GHG emissions, whether stemming from land-based sources, vessels, or aircraft.[91]

Select Instruments Governing the Prevention and Mitigation of Operational and Accidental Marine Pollution

- The **UN Convention on the Law of the Sea (UNCLOS)**, a comprehensive treaty governing all uses of the oceans and their resources, requires States to take all necessary measures to reduce, prevent, and control pollution of the marine environment. UNCLOS defines "pollution of the marine environment" as "the introduction by man, directly or indirectly, of substances or energy into the marine environment" (Article 194), which encompasses, inter alia, sound waves, greenhouse gas emissions, noxious discharges, and other matter released into the oceans via seabed activities, vessels, ocean dumping, and atmospheric discharges. As of 2024, UNCLOS has been ratified by 170 parties, which include 166 UN Member States, the European Union, and non-member observer States. Additionally, many provisions of UNCLOS codify and are thus considered to have the status of customary international law, which means that they are binding even on States not party to the regime, such as the United States.

- The International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC), as of 2024, has 115 Contracting Parties and requires States and operators to formulate emergency plans in the event of an accidental oil spill incident, establish response systems, and immediately report any spills to the nearest coastal State in the case of ships, and, in the case of "offshore units" including rigs, the nearest coastal State with jurisdiction over the unit. The Convention applies to both fixed and floating offshore installations engaged in gas or oil exploration and exploitation activities (Article 2).

- The International Convention for the Prevention of Pollution from Ships ("MARPOL 73/78"), which came into force on October 2, 1983, is the principal international agreement addressing the prevention of pollution of the marine environment by ships from operational or accidental causes. Among other things, MARPOL:
    1. Prohibits ships from releasing bilge water whose oil content exceeds 15 parts per million (ppm) (Annex 1, Regulation 9)
    2. Includes six Annexes concerning pollution by different substances, including oil, air pollution from ships, vessel sewage, and hazardous substances
    3. Provides for the designation of "special areas" of oceans in which vessels are subject to stricter controls around discharges than under generally applicable international standards (Annex 1, Regulation 10)

In addition to its provisions relating to ships, MARPOL 73/78 prohibits installations — including drilling rigs — from releasing oil or oil-based mixtures, garbage, platform drainage, and other discharges generated by engines into the ocean. However, the provisions relating to discharges do not apply to "harmful substances directly arising from the exploration, exploitation and associated offshore processing of seabed mineral resources" (Article 2(3)(b)(ii)), which may encompass drilling muds and fluids, produced water, or hydrocarbon leaks from wells.

- The Protocol Concerning Co-operation and Development in Combating Oil Spills in the Wider Caribbean Region (Oil Spills Protocol) was adopted concurrently with the Cartagena Convention in 1983. It aims to:
    1. Strengthen national and regional preparedness and response capacity of the nations and territories of the region
    2. Facilitate cooperation and mutual assistance in cases of emergency to prevent and control major oil spill incidents

- The Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from the Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil of the Barcelona Convention aims to protect the Mediterranean Sea against pollution from all phases of offshore oil and gas activities, respond to pollution incidents, and address liability and compensation when pollution occurs.

- The Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (ACCOBAMS) is a regional convention whose objective is to reduce threats to and improve scientific understanding of cetaceans in the Mediterranean Sea, Black Sea, and contiguous waters. Given the risks underwater noise pollution poses to cetaceans, the Meeting of the Parties of ACCOBAMS has passed numerous resolutions that call on States Parties to avoid the use of any human-made noise in areas inhabited or used by marine mammals. For instance, Resolution 2.16 (2004), which expressly attributes increases in marine noise levels to oil and gas exploration, urges both Parties and non-Parties to the Agreement to take "special care" and, "if appropriate, avoid any use of man-made noise in the habitat of vulnerable species." Furthermore, it urges Parties to encourage industries conducting activities known to produce underwater sound with the potential to cause adverse impacts on cetaceans, including the oil and gas industry, to exercise "extreme caution when operating in the ACCOBAMS area." According to the resolution, ideally, the most harmful of these activities would not be conducted in the area "until satisfactory guidelines are developed."

International Instruments Addressing the Protection of Marine Biodiversity

International and regional conventions concerning biodiversity and endangered species protection may require States to protect threatened marine life and habitats from offshore oil and gas activity, given the many pollutants and ecological disturbances it generates. Relevant instruments include the CBD, the Convention on Wetlands of International Importance (Ramsar Convention),[92] and the Convention on the Conservation of Migratory Species (CMS),[93] among others. The CBD, for instance, requires Parties to take measures "as far as possible and as appropriate" to "[p]romote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings" and to "regulate and manage" activities that have "significant adverse impacts on the conservation or sustainable use of biological diversity."[94] Such activities necessarily include those that generate significant GHG emissions, light pollution, ocean noise, and toxic effluents, all of which can cause substantial harm to the marine environment. Similarly, the Ramsar Convention — an intergovernmental treaty on the conservation and wise use of wetlands and their resources — could provide a basis to challenge the construction of pipelines and other offshore oil and gas infrastructure that could infringe on and disturb protected wetlands. While the CBD, Ramsar Convention, and CMS are not regulatory regimes that offer enforcement mechanisms for non-compliance, their provisions are reflected to varying degrees in the national laws of contracting States, which may provide for causes of action in the event of violations.[95]

International Instruments Addressing Prevention and Response to Ocean Contamination

Given their transboundary consequences, accidental blowouts and oil spills caused by offshore oil and gas activities require cross-jurisdictional prevention, preparedness, and response, as recognized by multiple agreements and frameworks. A number of legal instruments exist specifically to promote and facilitate States' cooperation and coordination in responding to transboundary environmental catastrophes at sea. The International Convention on Oil Pollution Preparedness, Response, and Co-operation (OPRC), which was drafted within the framework of the International Maritime Organization (IMO) and, as of 2024, has 115 Contracting Parties, applies to both fixed and floating offshore installations engaged in gas or oil exploration and exploitation activities.[96] While OPRC does not set standards or requirements for the design of offshore installations or safety protocols, it requires both States and offshore oil and gas operators to formulate emergency plans in the event of an accidental oil spill incident, establish response systems, and immediately report any spills to the coastal authorities of the nearest State.[97] OPRC obligates States to establish national systems for responding promptly and effectively to oil spills[98] and encourages international and regional coordination and planning.[99] Similarly, the Protocol Concerning Co-operation and Development in Combating Oil Spills in the Wider Caribbean Region (Oil Spills Protocol) of the Cartagena Convention aims to strengthen national and regional preparedness and response capacity in the Caribbean region and facilitate cooperation and mutual assistance both to prevent and control major oil spill incidents.[100]

Select Instruments that Obligate Polluters to Pay for Harm Caused by Offshore Activity

- The International Convention on Civil Liability for Oil Pollution (CLC) imposes strict liability for damage caused by oil pollution from oil-carrying ships on the shipowners. Under the Convention, owners of ships carrying over 2,000 metric tons of oil as cargo are required to maintain insurance or other financial security to cover liability for pollution damage. The Convention does not place a limit on liability when it is proven that damage resulted from the shipowner's "personal act or omission, committed with the intent to cause such damage, or recklessly and with the knowledge that such damage would probably result" (Article V(2)). The 1969 Convention was replaced by the 1992 Protocol, which increased the amount of compensation available for major incidents as well as the scope of the regime.

- The 1992 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage provides compensation to States and persons who suffer pollution damage if they are unable to obtain compensation from the shipowner or if the compensation due isn't enough to cover the damage suffered. The Fund is supplementary to compensation provided through the CLC, though liability under the Fund is limited to damage from pollution occurring in the territories, territorial seas, and EEZs of the 120 Member States. The 2003 Protocol to the Convention establishes an International Oil Pollution Compensation Supplementary Fund, to which only 32 States are party. The Supplementary Fund effectively increases five-fold the maximum amount of potential compensation available to victims.

- The 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage seeks to provide compensation for damage caused by contamination resulting from the escape or discharge of bunker (fuel) oil from ships. The Convention, which was modeled after the CLC, requires vessel owners to maintain insurance coverage or other financial security to cover liability for pollution damage. Under the Convention, claims for compensation are permitted to be brought directly against an insurer (Article 7).

Other legal instruments also establish standards relating to accidental and operational pollution from offshore infrastructure and vessels, applicable to rigs, oil and gas tankers, and LNG carriers. For instance, the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78 or MARPOL Convention) — which has 161 Contracting States and applies to "fixed and floating platforms"[101] — prohibits installations from releasing oil or oil-based mixtures, garbage, platform drainage, and other discharges generated by engines into the ocean. Moreover, it requires that drilling rigs and other platforms be equipped with pollution control devices.[102] The Convention also addresses the intentional release of contaminants into oceans by barring ships from discharging dirty water that contains oil concentrations exceeding 15 ppm.[103] A State Party to the Convention enforces MARPOL regulations through the adoption of national laws and designates a law enforcement agency to arrest and detain those who violate the regulations within the maritime borders of the State.[104] Violators may then face civil, criminal liability — or both — in national courts.[105]

When vessel-based spills occur in spite of pollution control devices and regulations, numerous international agreements that address liability and compensation regimes can inform responsive measures: the International Convention on Civil Liability for Oil Pollution Damage,[106] the 1992 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage and its 1992 and 2003 Protocols,[107] and the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage.[108] Additionally, regional instruments such as the Oil Spills Protocol of the Cartagena Convention offer frameworks to facilitate interstate cooperation and assistance in cases of emergency to prevent and control major oil spill incidents.[109]

Despite an abundance of legal and regulatory frameworks specifically designed to prevent and mitigate the harms to oceans, gaps in protection remain. For example, in spite of existing regulations under the MARPOL Convention relating to bilge dumping, vessels often circumvent the costs associated with equipment used to treat wastewater and illegally dump oily bilge into oceans, with harmful results. Enforcement is not the only concern; carve-outs from regulations leave some threats unaddressed. The MARPOL Convention explicitly omits from its coverage "harmful substances directly arising from the exploration, exploitation and associated offshore processing of seabed mineral resources,"[110] including drilling muds and fluids, produced water, and well leaks. Likewise, the 1972 London Dumping Convention and its 1996 Protocol, which set out important standards applicable to the decommissioning of offshore oil and gas facilities, expressly do not apply to wastes directly stemming from exploration, exploitation, and the associated offshore processing of seabed mineral resources.[111]

The persistent regulatory gaps at the international level underscore the primary importance of domestic laws in comprehensively addressing the risks and impacts posed by the offshore oil and gas industry, ensuring that those laws meet and exceed international standards, and enforcing compliance through monitoring and accountability when harms materialize.

Polluter Pays Principle and the Right to Remedy

Under international law, States and corporations have duties to ensure that oil and gas infrastructure is properly shut down and that polluters pay — not only for routine closure and cleanup but for damages caused by operations and their toxic legacy. As primary duty-bearers, States have duties to respect human rights and protect against foreseeable harm arising from the conduct of private parties, including hazardous offshore activity. Compliance with those duties requires States to ensure access to effective remedy when violations of human rights arise.[112] In the context of offshore oil and gas development, States have a duty to prevent operators from improperly decommissioning or abandoning offshore sites and to compel operators to redress resulting environmental and health hazards when they arise.

Several multilateral treaties oblige States to ensure the proper decommissioning of offshore oil and gas wells and the platforms to which they are attached in a manner that protects ecosystems and reduces hazards to the public.[113] UNCLOS, for example, requires States to ensure that disused and abandoned offshore installations or structures are removed in accordance with "generally accepted international standards" and that any such removal "shall also have due regard to fishing, the protection of the marine environment and the rights and duties of the other States."[114] Whereas the 1996 Protocol of the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention) allows Parties to dispose of vessels and offshore platforms at sea in certain circumstances and with formal permits, such dumping cannot pose undue risks to human health or the environment and should not be pursued if there are more feasible and environmentally preferable alternatives.[115] Decision 98/3 under the OSPAR Convention, which guides international cooperation on the protection of the marine environment of the North-East Atlantic, prohibits the dumping and leaving, wholly or partly in place, of disused offshore installations within the OSPAR Maritime Area.[116] Some regional instruments, like the Offshore Protocol of the Convention for the Protection of the Mediterranean Sea Against Pollution (known as the Barcelona Convention), create similar obligations and go a step further by requiring States to ensure that the responsible oil and gas operators carry out and pay for the decommissioning operations.[117]

Select Instruments that Govern the Closure and Cleanup of Offshore Structures

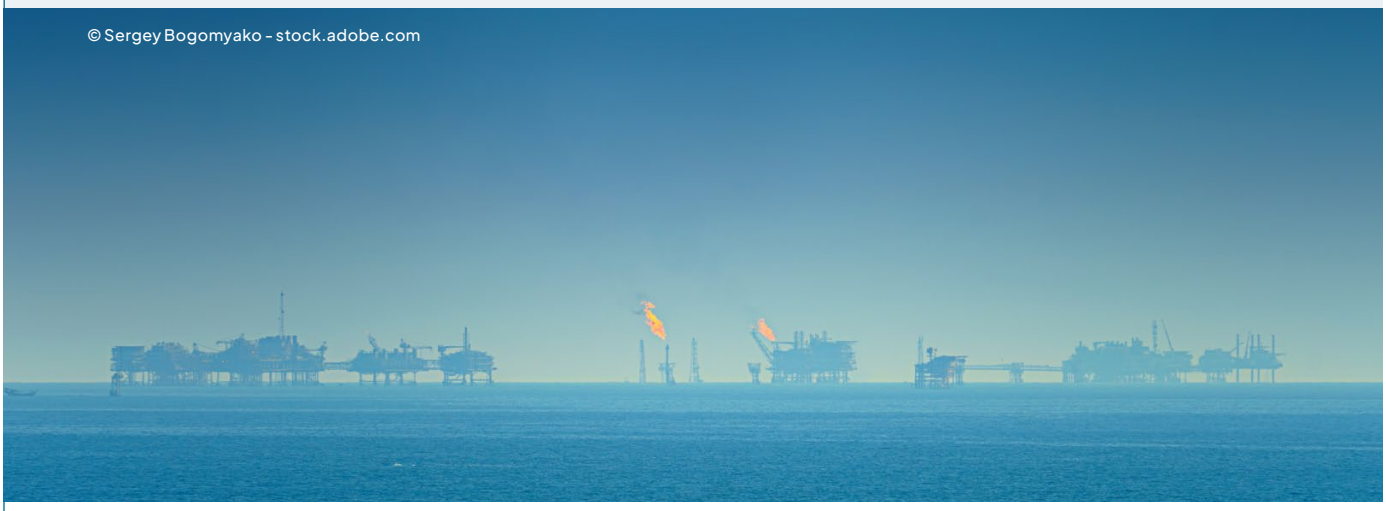
- The UN Convention on the Law of the Sea (UNCLOS), described above, addresses the proper shutdown of oil and gas infrastructure. It requires States to remove disused and abandoned offshore installations or structures with due regard to the "protection of the marine environment" (Article 60(3)). Moreover, it requires States to adopt laws, regulations, and other measures to prevent, reduce, and control pollution of the marine environment by "dumping," which it defines as the "deliberate disposal of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea" (Article 210).

- The 1958 Geneva Convention on the Continental Shelf defines and delimits the rights of States to explore and exploit the natural resources of the continental shelf. With regard to decommissioning, the Convention requires offshore installations used for the exploration or exploitation of resources on the continental shelf to be "entirely removed" when abandoned or no longer in use (Article 5(5)).

- The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 (London Convention) and its 1996 Protocol (London Protocol) promote the effective control of all sources of marine pollution and take practicable steps to prevent pollution of the sea by the dumping of wastes and other matter. Previously, the London Convention prohibited States from deliberately dumping any platforms or other human-made structures, whether totally or partially, including by "abandonment and toppling at site" (Articles 1 (4) and 4(1.1)). The London Protocol, which expanded and effectively replaced the Convention, potentially allows for the dumping of vessels and offshore rigs, but only if such dumping does not pose undue risks to human health or the environment. However, any dumping requires formal permitting and should not be pursued if there are more feasible and environmentally preferable alternatives (Article 3(1), Article 4(1.2), Annex 1–2).

- The OSPAR Decision 98/3 on the Disposal of Disused Offshore Installations is under the framework of the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention), which coordinates the activities of 15 Governments and the European Union to protect the marine environment of the North-East Atlantic from the offshore industry as well as land-based sources of marine pollution. Passed in 1998, Decision 98/3 prohibits the dumping and leaving, wholly or partly in place, of disused offshore installations within the OSPAR Maritime Area, which encompasses the North-East Atlantic and adjacent seas.

- The Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from the Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil of the Barcelona Convention, referenced above, requires States to ensure that the responsible oil and gas operators carry out the decommissioning operations (Article 20).



The polluter pays principle requires that the operator of offshore oil and gas infrastructure should pay for closure and cleanup when the time comes. In its canonical form in the Rio Declaration, the principle states that polluters should "internalize" the costs of their pollution to the environment and society.[118] States, in turn, are expected to adopt measures to ensure that polluters bear the costs of pollution control and prevention. The UN Working Group on Business and Human Rights has linked restitution measures with the polluter pays principle, noting that "if an enterprise caused pollution, it should be required to restore the environment as part of the 'polluter pays' principle."[119]

Requiring oil and gas operators to adequately decommission their operations and cover the costs of remediating associated pollution is also consistent with the right to remedy, guaranteed under international human rights law.[120] When rights are violated, as they are when foreseeable risks of harm from environmental contamination materialize due to the insufficiency of preventive measures, the right to remedy entitles victims to reparation in the form of restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.[121] Ensuring that the actors responsible for pollution pay not only furthers reparatory aims but also serves as a deterrent to future violations, helping to guarantee non-recurrence.[122]

While the implementation of regulations and standards around decommissioning occurs at the domestic level, the quality and application of domestic laws vary widely. As detailed in the Decommissioning brief, structural weaknesses in regulatory regimes all too often let private oil and gas companies dodge responsibility for their damages. As a result, the public pays for these costs through taxes and long-term impacts on public health and the environment.

However, some States are taking steps to hold oil and gas companies accountable. For instance, in 2021, Australia passed a law that makes former owners of oil and gas fields legally responsible for the costs of dismantling facilities if later owners fail.[123] Then, in April 2022, the Australian parliament passed legislation that slaps a levy on oil and gas producers to cover the costs of cleaning up an abandoned oil field in the Timor Sea.[124] Additionally, as discussed in the Decommissioning brief, in the US, a rule recently passed by the Bureau of Ocean Energy Management that increases the financial assurance requirements for offshore oil and gas operators aims to help ensure that American taxpayers are not bearing the brunt of the decommissioning costs for offshore platforms.[125] These and other examples demonstrate that the days of allowing fossil fuel companies to externalize the costs of their polluting offshore operations are numbered.

Conclusion

International and domestic laws that restrict the types of activities that can be conducted in and on oceans and the manner in which they are carried out apply to the oil and gas sector. These laws and the norms and principles they enshrine can be leveraged at different stages of decision-making to:

1. Prevent risks and impacts from oil and gas activities on coastlines and at sea, including by prohibiting those activities and/or phasing them out
2. Challenge States and corporations authorizing, supporting, or engaging in those activities
3. Hold these parties accountable when oil and gas activities violate legal duties and result in harm

International instruments may impose binding obligations on States and/or inform domestic law and industry practice through minimum standards and legal principles against which the permissibility of proposed activities and the adequacy of safeguards can be assessed. The growing number of lawsuits opposing oil and gas operations and holding polluters accountable continue to clarify and strengthen the legal regime applicable to industrial activities on coastlines and offshore. Together, international and domestic frameworks provide a crucial and growing set of legal tools for protecting people and the environment from the threats posed by oil and gas.

Endnotes

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9. Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, art. 7, *opened for signature* June 25, 1998, 2161 UNTS 447, 38 ILM 517 (1999) [hereinafter Aarhus Convention].
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11. UN Office of the High Commissioner for Human Rights (OHCHR), *Guidelines for States on the Effective Implementation of the Right to Participate in Public Affairs* (Geneva: OHCHR, 2018), https://www.ohchr.org/sites/default/files/2021-12/GuidelinesRightParticipatePublicAffairs_web.pdf.
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13. Examples include: Rio Declaration, prin. 17; Convention on Environmental Impact Assessment in a Transboundary Context, art. 2(2), *adopted* February 25, 1991, *entered into force* September 10, 1997, 1989 UNTS 309; 30 ILM 800 (1991) [hereinafter Espoo Convention]; Convention on Biological Diversity, art. 14, *opened for signature* June 5, 1992, *entered into force* December 29, 1993, 1760 UNTS 79, 143; 31 ILM 818 (1992) [hereinafter CBD]; United Nations Framework Convention on Climate Change, art. 4(f), *adopted* May 9, 1992, *entered into force* March 21, 1994, 1771 UNTS 107, 165; S. Treaty Doc No. 102–38 (1992), UN Doc. A/AC.237.18 (Part II)/Add. 1; 31 ILM 849)1992) [hereinafter UNFCCC]; United Nations Convention on the Law of the Sea, *adopted and opened for signature* December 10, 1982, *entered into force* November 16, 1994, 1833 UNTS 397; 21 ILM 1261 (1982), arts. 204, 205, 206 [hereinafter UNCLOS].
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54. CEDAW, General Recommendation No. 34, para. 13; CESCR General Comment No. 24, paras. 30–32.

55. Human Rights Committee, General Comment No. 36, para. 22 (iterating that "[States] must also take appropriate legislative and other measures to ensure that all activities taking place in whole or in part within their territory and in other places subject to their jurisdiction, but having a direct and reasonably foreseeable impact on the right to life of individuals outside their territory, including activities undertaken by corporate entities based in their territory or subject to their jurisdiction…"); CESCR, General Comment No. 24, paras. 25–37 (laying out extraterritorial obligations and stating in para. 26 that "States parties' obligations under the Covenant did not stop at their territorial borders. States parties were required to take the steps necessary to prevent human rights violations abroad by corporations domiciled in their territory and/or jurisdiction," and in para. 29 that "[t]he extraterritorial obligation to respect requires States parties to refrain from interfering directly with the enjoyment of Covenant rights by persons outside their territories").

56. For example: Advisory Opinion OC-23/17, paras. 141–142, 152; *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, Judgment, Inter-Am. Ct. HR (ser. C) (February 6, 2020), paras. 207, 208; *Marcelino Díaz Sánchez and others v. Mexico*, Case 1498-18, Inter-Am. Comm'n HR, Resolution 24/2019, Precautionary Measures (April 23, 2019), paras. 24, 26, 27; Human Rights Committee, General Comment No. 36, paras. 62; HRTBs Joint Statement on Human Rights and Climate Change, para 10; Ian Fry (UN Special Rapporteurs on Human Rights and Climate Change)et al. as Amicus Curiae, Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law, Case No. 31, May 30, 2023, ITLOS Rep. 2023, to be published.

57. Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 ICJ 226 (July 8), para. 29 [hereinafter Nuclear Weapons Advisory Opinion].

58. Trail Smelter (US v. Can.), 3 RIAA 1905 (1938 and 1941), 1905–82.

59. Declaration of the United Nations Conference on the Human Environment, prin. 21, *adopted* June 16, 1972, UN Doc. A/Conf.48/14/Rev. 1 (1973); 11 ILM 1416 (1972) [hereinafter Stockholm Declaration] ("States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction").

60. Rio Declaration, prin. 2.

61. CBD, art. 3.

62. UNCLOS, art. 194 ("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.").

63. UNFCCC, pmbl.

64. Corfu Channel Case (UK v. Alb.), Judgment, 1949 ICJ Rep. 4, 22 (April 9, 1949).

65. Dispute over the Status and Use of the Waters of the Silala (Chile v. Bol.), Judgment, 2002 ICJ Rep. 614, para. 99 (December 1, 2002); Costa Rica v. Nicar. paras. 104, 118; Pulp Mills para. 101; Gabčíkovo-Nagymaros Project, (Hung./Slovak.), Judgment, 1997 ICJ Rep. 7, para. 53 (September 25 [hereinafter Gabčíkovo-Nagymaros Project Judgment]; Nuclear Weapons Advisory Opinion, para. 29.

66. Stockholm Declaration, prin. 21; Rio Declaration, prin. 2.

67. ILC, Draft Articles on Prevention of Transboundary Harm from Hazardous Activities with Commentaries, *Yearbook of the International Law Commission*, 2001, vol. II, part II, A/CN.4/SER.A/2001/Add.1 (Part 2), art. 2(c) & corresponding commentary; Advisory Opinion OC-23/17, para. 96 (identifying climate change as transboundary harm: "Many environmental problems involve transboundary damage or harm. 'One country's pollution can become another country's human and environmental rights problem, particularly where the polluting media, like air and water, are capable of easily crossing boundaries.' The prevention and regulation of transboundary environmental pollution has resulted in much of international environmental law, through bilateral, regional or multilateral agreements that deal with global environmental problems such as ozone depletion and climate change."); UNEP Division of Environmental Law and Conventions, "IEG of the Global Commons," accessed July 17, 2024, archived at https://cil.nus.edu.sg/wp-content/uploads/2015/12/Ses4-7.-UNEP-Division-of-Environmental-Law-and-Conventions-Global-Commons.pdf ("The 'Global Commons' refers to resource domains or areas that lie outside of the political reach of any one nation State. Thus international law identifies four global commons namely: the High Seas; the Atmosphere; Antarctica; and, Outer Space."); IUCN, *World Conservation Strategy: Living Resource Conservation for Sustainable Development* (IUCN, 1980), 58, https://portals.iucn.org/library/efiles/documents/WCS-004.pdf.

68. ILC, Draft Articles on Prevention of Transboundary Harm from Hazardous Activities with Commentaries, art. 3. See also: Costa Rica v. Nicar. para. 104; Pulp Mills para. 101 (stating that a State "is thus obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State.").

69. Gabčíkovo-Nagymaros Project Judgment, para. 140.

70. ITLOS Seabed Chamber Advisory Opinion, para. 117.

71. ITLOS Seabed Chamber Advisory Opinion, para. 117; ITLOS Climate Change Advisory Opinion, para. 239.

72. ITLOS Seabed Chamber Advisory Opinion, para. 131.

73. UNCLOS, art. 192.

74. UNCLOS, art. 193.

75. South China Sea Arbitration (Phil. v. China), PCA Case No. 2013-19, Arbitral Award, ICGJ 495 (PCA 2016) (July 12, 2016), para. 941 (Arbitral Tribunal constituted under Annex VII of UNCLOS, 2016).

76. UNCLOS, art. 194(1) (emphasis added).

77. UNCLOS, art. 208 (1).

78. UNCLOS, art. 208 (1).

79. UNCLOS, art. 211.

80. UNCLOS, arts. 210(1), 210(2).

81. UNCLOS, art. 212.

82. UNCLOS, arts. 208(3), 209(2), 210(6).

83. UNCLOS, art. 1(1)(4) (defining "pollution of the marine environment" as "the introduction by man, directly or indirectly, of substances or *energy* into the marine environment") (emphasis added).

84. Directive 2008/56/EC, of the European Parliament and of the Council of June 17, 2008 on Establishing a Framework for Community Action in the Field of Marine Environmental Policy (Marine Strategy Framework Directive) 2008 OJ (L 164/19) art. 3(8) (explaining that "pollution" means "the direct or indirect introduction into the marine environment, as a result of human activity, of substances or energy, including human-induced marine underwater noise…").

85. International Union for Conservation of Nature (IUCN) World Conservation Congress, Resolution 3.068, Undersea Noise Pollution, IUCN Doc. No. WCC 2004 RES 068 (2004), 79–81, https://portals.iucn.org/library/node/44354.

86. Resolution on the Environmental Effects of High-intensity Active Naval Sonars, *adopted* October 28, 2004, Eur. Parl. Doc. 2005 OJ (C 174 E/186) (adopting UNCLOS's interpretation that underwater noise constitutes a form of marine pollution).

87. International Whaling Commission (IWC), Resolution 2018-4 on Anthropogenic Underwater Noise, IWC Doc. No. 2018-4 (2018), https://crm.iwc.int/data/node/8639.

88. UNGA, Resolution 61/222, Oceans and the Law of the Sea, A/RES/61/222 (March 16, 2007), para. 107, undocs.org/A/RES/61/222.

89. For example: Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (ACCOBAMS), Resolution 2.16, Assessment and Impact Assessment of Man-Made Noise, ACCOBAMS-MOP2/2004/Res.2.16 (2004); ACCOBAMS, Resolution 3.10, Guidelines to Address the Impact of Anthropogenic Noise on Marine Mammals in the ACCOBAMS Area (2007); ACCOBAMS Resolution 6.17, Anthropogenic Noise (2016).

90. UNCLOS, art. 1(1)(4).

91. ITLOS Climate Change Advisory Opinion, para. 264.

92. Convention on Wetlands of International Importance Especially as Waterfowl Habitat, *adopted* February 2, 1971, 996 UNTS 245.

93. Convention on the Conservation of Migratory Species of Wild Animals, *adopted* June 23, 1979, 1651 UNTS 333 [Bonn Convention].

94. CBD, arts. 7(c), 8(d), 8(l).

95. For example, in 2023, the National Green Tribunal — a judicial body tasked with adjudicating environmental cases in India — fined the government of Kerala INR 10 CR (roughly $1.2 million) for failing to protect Ramsar sites from pollution by illegal waste dumping. G. Krishnakumar, "NGT Slaps ₹10 Crore Penalty on Kerala Government for Failure to Protect Ramsar Sites," *The Hindu*, March 24, 2023, https://www.thehindu.com/sci-tech/energy-and-environment/ngts-principal-bench-slaps-10-cr-penalty-on-govt-for-failure-to-protect-ramsar-sites/article66657114.ece.

96. 1990 International Convention on Oil Pollution Preparedness, Response and Co-operation, *adopted* November 30, 1990, *entered into force* May 13, 1995, 191 UNTS 51; 30 ILM 733 (1990), 733, art. 2(4) [hereinafter OPRC].

97. OPRC, art. 4.

98. OPRC, art. 6(1).

99. OPRC, arts. 7.

100. Protocol Concerning Co-operation in Combating Oil Spills in the Wider Caribbean Region, Convention for The Protection and Development of the Marine Environment of the Wider Caribbean Region, *adopted* March 24, 1983, *entered into force* October 1, 1986) 1506 UNTS 224, 22 ILM 240 [hereinafter Oil Spills Protocol of the Cartagena Convention].

101. Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, art. 2(4), 1340 UNTS 61, 1341 UNTS 3) [hereinafter MARPOL 73/18].

102. MARPOL 73/18, Annex I (Requirements for the Prevention of Pollution by Oil), Regulation 39 (Special requirements for fixed or floating platforms).

103. MARPOL 73/18, Annex I, Regulation 15 (2.3).

104. MARPOL 73/18, art. 6; Maritime Industry Authority (Philippines), *Frequently Asked Questions on MARPOL 73/78 Convention*, 14, https://marina.gov.ph/wp-content/uploads/2020/10/MARPOL-73_78.pdf.

105. For instance, when a violation occurs in Singapore, owners and operators may be subject to civil penalties even if unaware of the crew's actions, whereas individual crewmembers who knowingly violate the convention may face criminal liability in addition to fines. Maritime & Port Authority of Singapore, "Violations of MARPOL," https://www.mpa.gov.sg/staticfile/Cwp/assets/SRS/Issue24/case-studies/violations-of-MARPOL.html.

106. International Convention on Civil Liability for Oil Pollution Damage, *adopted* November 29, 1969, 973 UNTS 3, 9 ILM 45 (1970); Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969, *adopted* November 27, 1992, 1956 UNTS 285.

107. International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, *adopted* December 18, 1971, 1110 UNTS 57, 11 ILM 284 (1972) (amended by Protocol of Nov. 27, 1992) (requiring the payment of compensation to States and persons that are harmed by oil pollution damage States if they are unable to obtain compensation from the owner of the polluting ship or if compensation from the owner is not sufficient to cover the damage); Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, *opened for signature* May 16, 2003 (providing a third tier of compensation by establishing an International Oil Pollution Compensation Supplementary Fund, whose membership is optional and is open to any State which is a Member of 1992 Fund).

108. International Convention on Civil Liability for Bunker Oil Pollution Damage, *adopted* March 23, 2001, IMO Doc. LEG/CONF.12/19 (2001), 40 ILM 1493 (2001).

109. Oil Spills Protocol of the Cartagena Convention, pmbl., arts. 3, 4, 5, 6.

110. MARPOL 73/18, art. 2(3)(b)(ii).

111. 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, art. 1(4.3), *opened for signature* November 7, 1997, *entered into force* March 24, 2006, 36 ILM 7 [hereinafter London Protocol].

112. For example: ICCPR, art. 2(3)(b)–(c); Human Rights Committee, General Comment No. 31 [80], The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 18 Sess., *adopted* March 29, 2004, CCPR/C/21/Rev.1/Add.13, undocs.org/CCPR/C/21/Rev.1/Add.13, paras. 16–18 [hereinafter Human Rights Committee, General Comment No. 31]; Committee on the Rights of the Child, General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights, CRC/C/GC/16 (2013) (April 18, 2013), paras 30, 44, undocs.org/CRC/C/GC/16; CEDAW, General Recommendation No. 28 on the core obligations of States parties under article 2, CEDAW/C/GC/28 (December 16, 2010), undocs.org/CEDAW/C/GC/28, para. 32. An effective remedy includes a right to reparations, which can include compensation, restitution, rehabilitation and measures of satisfaction, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.

113. Instruments like the 1958 Convention on the Continental Shelf and International Maritime Organisation (IMO) Resolution A.672(16), for instance, create obligations on States to ensure the full or partial removal of offshore oil and gas infrastructure. Convention of the Continental Shelf, *adopted* April 29, 1958, 499 UNTS 311, arts. 5(1)(5)(6)(7); Int'l Maritime Org., Guidelines and Standards for the Removal of Offshore Installations and Structures on the Continental Shelf and in the Exclusive Economic Zone, *adopted* October 19, 1989, IMO Res. A.672(16) (setting forth non-binding guidelines).

114. UNCLOS, art. 60(3).

115. London Protocol, art. 2, 3, 4(1.1), Annex 1, Annex 2. Previously, under the London Convention, Parties were prohibited from deliberately disposing of at sea (or "dumping") any platforms or other human-made structures, whether totally or partially, including by "abandonment and toppling at site." Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, arts. 1(4.13), 2, 3(a)(ii), *adopted* December 29, 1972, 1046 UNTS 120; 11 ILM 1294 (1972).

116. 1998 OSPAR Decision 98/3 on the Disposal Of Disused Offshore Installations, *adopted* July 23, 1998. However, exceptions may be permitted if there are "significant reasons why an alternative disposal mentioned below is preferable to reuse or recycling or final disposal on land," such as in the case of "exceptional and unforeseen circumstances resulting from structural damage or deterioration."

117. 1994 Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil, art. 20, *adopted* October 14, 1994, 2742 UNTS 77; Convention on the Protection of the Marine Environment of the Baltic Sea Area, Annex VI Reg. 8, *entered into force* May 3, 1980, 1507 UNTS 166 [Helsinki Convention].

118. Rio Declaration, prin. 16.

119. UNGA, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, A/72/162 (July 18, 2017), para. 13, undocs.org/A/72/162. The polluter pays principle has been recognized by many other authoritative bodies and experts in international law.

120. Numerous international and regional human rights instruments codify the right to remedy, including the following: UNGA, Resolution 217 (III) A, Universal Declaration of Human Rights, A/RES/217(III) (December 10, 1948), art. 8, undocs.org/A/RES/217(III); ICCPR, art. 2(3); International Convention on the Elimination of All Forms of Racial Discrimination, art. 6, *adopted* December 21, 1965, 660 UNTS 195; Convention on the Rights of the Child, art. 39, *adopted* November 20, 1989, 1577 UNTS 3; American Convention on Human Rights, art. 25; [European] Convention for the Protection of Human Rights and Fundamental Freedoms, art. 13, *entered into force* September 3, 1953, as amended by Protocols Nos. 3, 5, 8, and 11, which *entered into force* September 21, 1970, December 20, 1971, January 1, 1990, and November 1, 1998, respectively, 213 UNTS 221; ETS No. 5. According to the Permanent Court of International Justice, the predecessor of the ICJ, "[it] is a principle of international law, and even a general conception of law, that any breach of an engagement involves an obligation to make reparation." Factory at Chorzów (Ger. v. Pol.), Claim for Indemnity, Judgment, 1927 PCIJ (ser. A) No. 9, para. 29 (July 26, 1927).

121. UNGA, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147, (March 21, 2006), Part IX, paras. 18–24, undocs.org/A/RES/60/147 (describing "full and effective reparation," as including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition); Human Rights Committee, General Comment No. 31, para. 16; CESCR, General Comment No. 24, para. 41.

122. For example: UNGA, Resolution 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation, A/RES/60/147 (March 21, 2006), para. 15, undocs.org/A/RES/60/147 ("In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.").

123. Sonali Paul, "Asia Eyes Australia Blueprint as $100 Bln Oil, Gas Clean-up Looms," Reuters, September 7, 2021, https://www.reuters.com/business/energy/asia-eyes-australia-blueprint-100-bln-oil-gas-clean-up-looms-2021-09-07/.

124. Sonali Paul, "Australia Slaps Tax on Oil Industry to Pay for Field Clean-up," Reuters, April 1, 2022, https://www.reuters.com/business/energy/australia-imposes-levy-oil-industry-pay-abandoned-oil-field-clean-up-2022-03-31/.

125. US Bureau of Ocean Energy Management, *Risk Management and Financial Assurance for OCS Lease and Grant Obligations*, Federal Register 89, FR 31544, April 24, 2023, https://www.federalregister.gov/d/2024-08309; US Department of the Interior, "Interior Department Takes Action to Protect Taxpayers from Offshore Oil and Gas Decommissioning Costs," April 15, 2024, https://www.doi.gov/pressreleases/interior-department-takes-action-protect-taxpayers-offshore-oil-and-gas.

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