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**The Protection and Preservation of the Marine Environment following the  
Common Heritage of Mankind principle.**

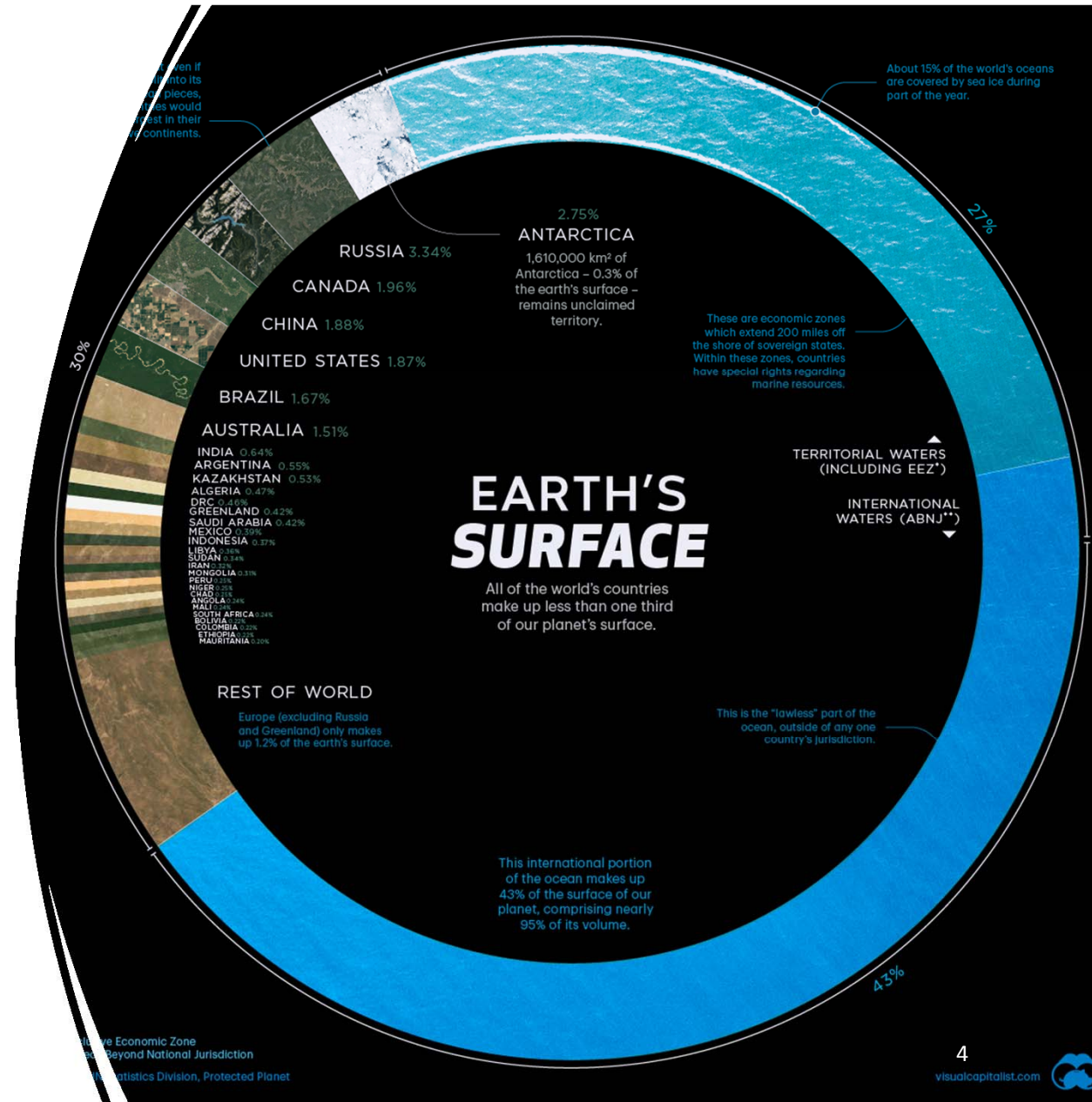
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# Relevance of the research



# The oceans cover around seventy (70) percent of the Earth's surface.[1]

The aftermath of human activity has severely altered around sixty-six (66) percent of the marine environment,[1] which has proven the weighted interconnection of life on Earth on the seas and oceans, including humankind.[2]



[1]Patrick ten Brink, ed., The Economics of Ecosystems and Biodiversity in National and International Policy Making (London and Washington: Routledge, 2011), 17.

[2] Agnès Bardón, "A State of Emergency," The UNESCO Courier January-March, no. 1 (2021): p. 4.

[3]Noticias ONU, "Unos 850.000 Virus Desconocidos Podrían Causar Pandemias Si No Dejamos De Explotar La Naturaleza | Noticias ONU," United Nations (United Nations, October 29, 2020), <https://news.un.org/es/story/2020/10/1483222?fbclid=IwAR34eXax4KQwCpSY4DYwlgdHsrnmCqjAlbBFNZDZB8d88f1YpBxb1q6v8Ng>.

[4] Nicholas LePan, "Visualizing Countries by Share of Earth's Surface," Visual Capitalist, January 23, 2021, [https://www.visualcapitalist.com/countries-by-share-of-earths-surface/?utm\\_content=bufferdb45e&utm\\_medium=social&utm\\_source=facebook.com&utm\\_campaign=buffer&fbclid=IwAR2tW9M9k-I1ReTfSgmOuOxiedapsPGqt4knFjiKfJ3118yBWBpIixcq3LQ](https://www.visualcapitalist.com/countries-by-share-of-earths-surface/?utm_content=bufferdb45e&utm_medium=social&utm_source=facebook.com&utm_campaign=buffer&fbclid=IwAR2tW9M9k-I1ReTfSgmOuOxiedapsPGqt4knFjiKfJ3118yBWBpIixcq3LQ).



“To protect the Ocean we first need to understand it.” –Sylvia Earle.



“More than eighty percent of our ocean is unmapped, unobserved, and unexplored.” [5]

[5] National Oceanic and Atmospheric Administration US Department of Commerce, “How Much of the Ocean Have We Explored?,” NOAA’s National Ocean Service, November 7, 2018, <https://oceanservice.noaa.gov/facts/exploration.html>.

## CHM principle status quo (2) [1994~2019]

[2019]

### International Tribunal for the Law of the Sea (ITLOS)

**“125. ...sponsoring States (as well as the Authority) shall apply a precautionary approach, as reflected in Principle 15 of the Rio Declaration” in order “to ensure effective protection for the marine environment from harmful effects which may arise from activities in the Area”.**

...

127. The provisions of the aforementioned Regulations transform this non-binding statement of the precautionary approach in the Rio Declaration into a **binding obligation**. The implementation of the precautionary approach as defined in these Regulations is one of the obligations of sponsoring States.” [6]

[2020]

### Inter-American Court of Human Rights

“207. Regarding the right to a healthy environment, ... States not only have the obligation to respect this but also the obligation established ... to ensure it, and one of the ways of complying with this is by preventing violations...”

208. Nevertheless, **specifically with regard to the environment, it should be stressed that the principle of prevention of environmental harm forms part of customary international law and entails the State obligation to implement the necessary measures *ex ante* damage is caused to the environment**, taking into account that, owing to its particularities, after the damage has occurred, it will frequently not be possible to restore the previous situation. Based on the duty of prevention, ... **‘States are bound to use all the means at their disposal to avoid activities under its jurisdiction causing significant harm to the environment.’** This obligation must be fulfilled in keeping with the standard of due diligence, which must be appropriate and proportionate to the level of risk of environmental harm...” [7]

[6] *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area* (Advisory Opinion) (Seabed Disputes Chamber, Case No. 17, 1 February 2011), [https://www.itlos.org/fileadmin/itlos/documents/cases/case\\_no\\_17/17\\_adv\\_op\\_010211\\_en.pdf](https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_17/17_adv_op_010211_en.pdf), paragraphs 125 and 127 (Advisory Opinion).

[7] I/A Court H.R., *Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina*, Judgment of February 6, 2020. Series C No. 400

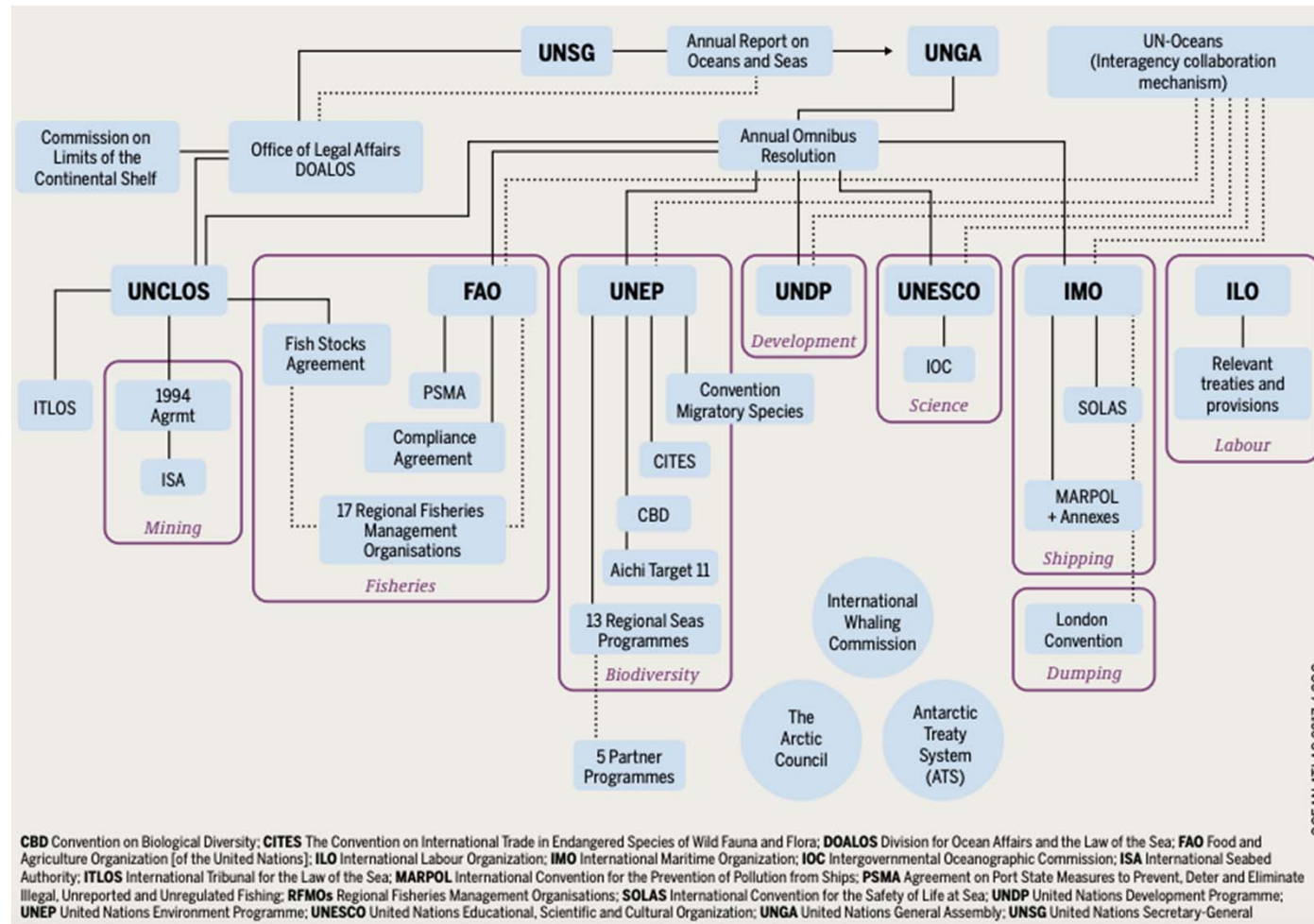
Indigenous people make up around five percent of the global population.

They sustain the healthiest ecosystems and protect about eighty percent of the Earth's biodiversity. [8]

[8] Juan Manuel Santos, "Colombia's Former President Says COVID-19 Shows the Importance of Listening to Indigenous Peoples on How We Treat the Planet," World Economic Forum, May 7, 2020, <https://www.weforum.org/agenda/2020/05/juan-manuel-santos-colombia-indigenous-peoples-coronavirus-pandemic-climate-change-environment-nature?fbclid=IwA%E2%80%A6>.



# Systematic interpretation of the CHM principle. [9]



[10]

[9] Vienna Convention on the Law of Treaties (Vienna, 23 May 1969, in force 27 January 1980), Article 31, paragraph 3, lit. c.

[10] Ulrich Bähr, ed., "The Ocean Atlas: Heinrich Böll Stiftung," Heinrich-Böll-Stiftung, May 2017, <https://www.boell.de/en/oceanatlas>, 45.



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