

COMMON HERITAGE OF HUMANKIND AS A PRINCIPLE OF ENVIRONMENTAL GOVERNANCE

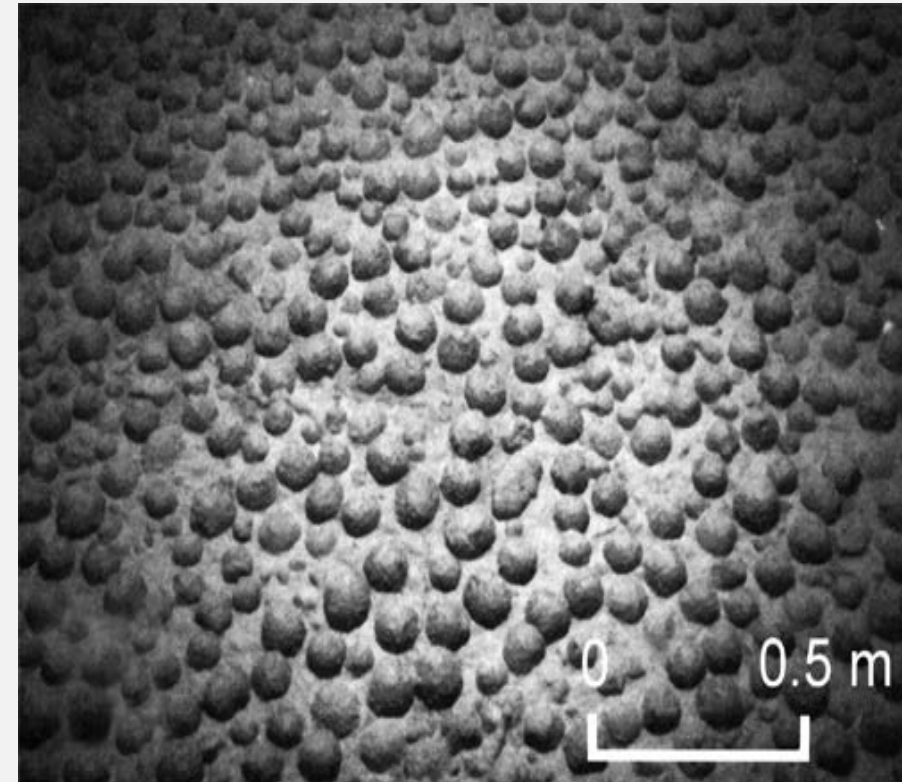
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OVERVIEW

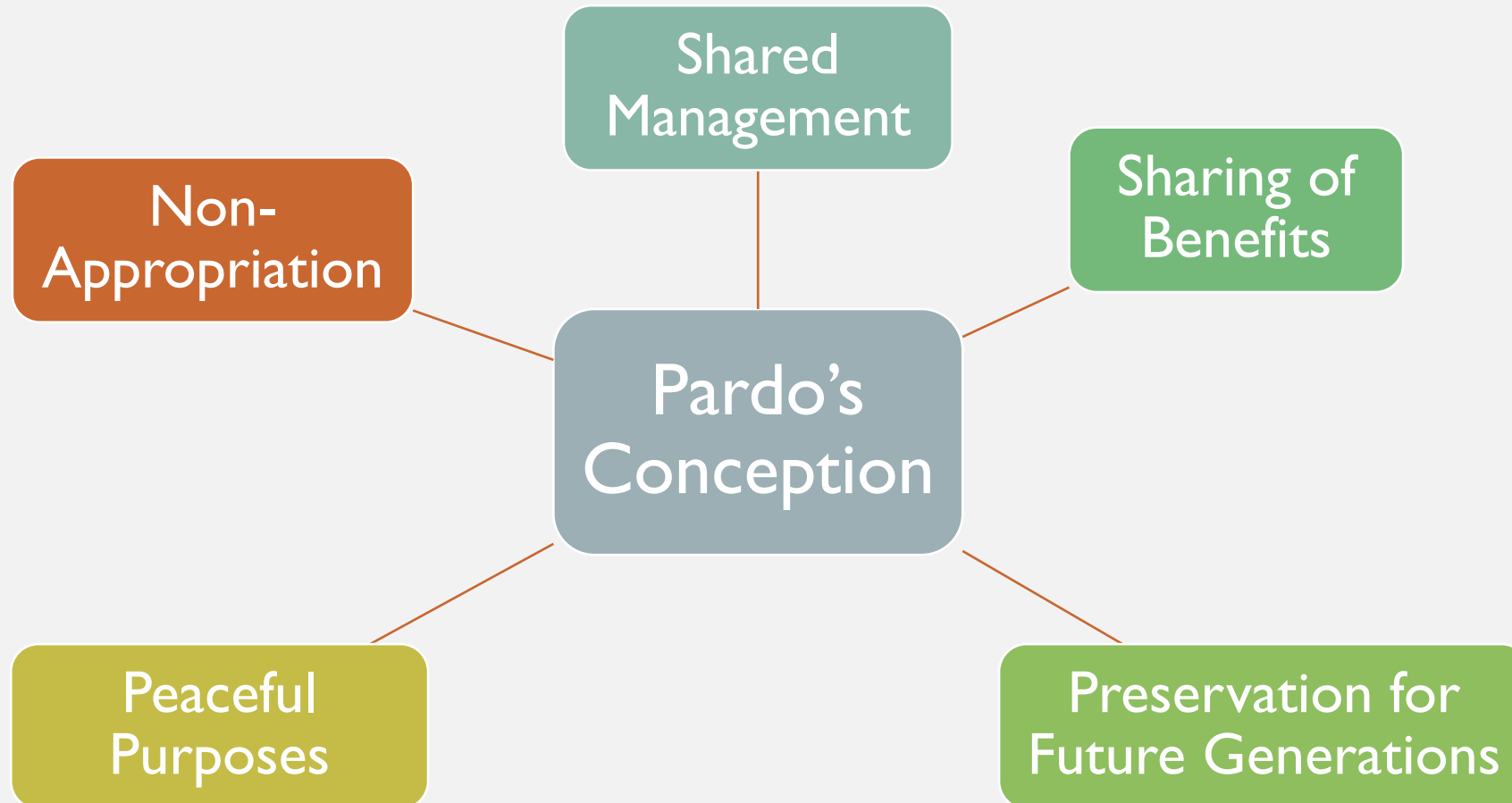
- 1) A brief history of the Common Heritage of Humankind (CHH) Principle
- 2) Implementation of the CHH Principle in UNCLOS and 1994 Agreement
- 3) CHH as a Principle of Environmental Governance

A BRIEF HISTORY OF THE COMMON HERITAGE OF HUMANKIND (CHH)

- 1960s as the crucible for the CHH Principle
 - Decolonization and newly independent states
 - Height of Cold War and clash between competing governance and property paradigms
 - International law developments: co-existence to co-operation
 - Proliferation of international organizations
 - Interest in global commons (oceans, outer space, Antarctica)
- 1965: Geologist JL Mero wrote of a bonanza of wealth at the bottom of the Pacific Ocean in the form of manganese nodules
- 1967: Malta's Ambassador Arvid Pardo made a speech to the UN General Assembly: **the seabed and ocean floor should be the common heritage of (hu)mankind**



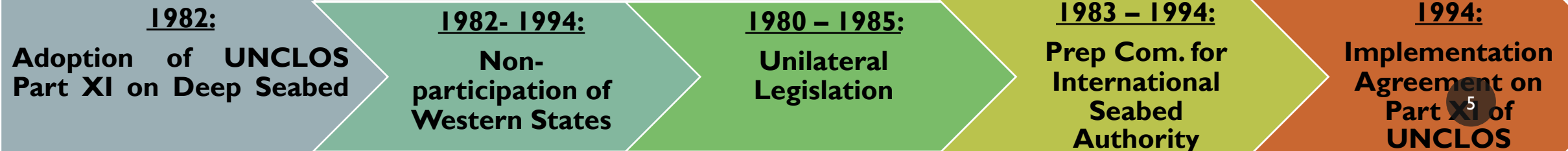
A BRIEF HISTORY OF THE COMMON HERITAGE OF HUMANKIND (CHH)



A BRIEF HISTORY OF THE COMMON HERITAGE OF HUMANKIND (CHH)

Negotiations of the 1982 UN Convention on the Law of the Sea (UNCLOS) 1972 – 1982

Developed States	Developing States
Non-Appropriation	Non-Appropriation
Freedom of the Seas (Open Access)	Common Property Owned by All Mankind
Licensing Authority with Minimal Authority	International Organization with one country / one vote
Deep seabed mining through private entities	Deep Seabed Mining through Mining Arm of the International Organization
Sharing of Monetary Benefits akin to development aid	Sharing of All Benefits
No Transfer of Technology	Transfer of Technology



A BRIEF HISTORY OF THE COMMON HERITAGE OF HUMANKIND (CHH)

Attempts to Implement the CHH Principle in Other Regimes

Regime	Outcome
Outer Space	1979 Moon Treaty: “Moon and its natural resources are the common heritage of humankind” but left to be developed in a subsequent regime
Antarctica	Suggestions that exploitation of resources in Antarctica be subject to CHH principle but 1988 Convention on the Regulation of Antarctic Mineral Resources in Antarctica (CRAMRA) was adopted but never entered into force and a moratorium on resource exploitation in Antarctica was implemented in 1991 Environmental Protocol
Atmosphere	1988 Maltese government proposal on “conservation of climate as part of the common heritage of humankind” but this was ultimately replaced with “common concern of mankind” in UNFCCC
Plant Genetic Resources	Developing states initially called for plant genetic resources to be subject to the CHH principle but this subsequently shifted to national sovereignty

IMPLEMENTATION OF THE CHH IN UNCLOS + 1994 AGREEMENT

The Area means “the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction” [UNCLOS, Art I (1)]



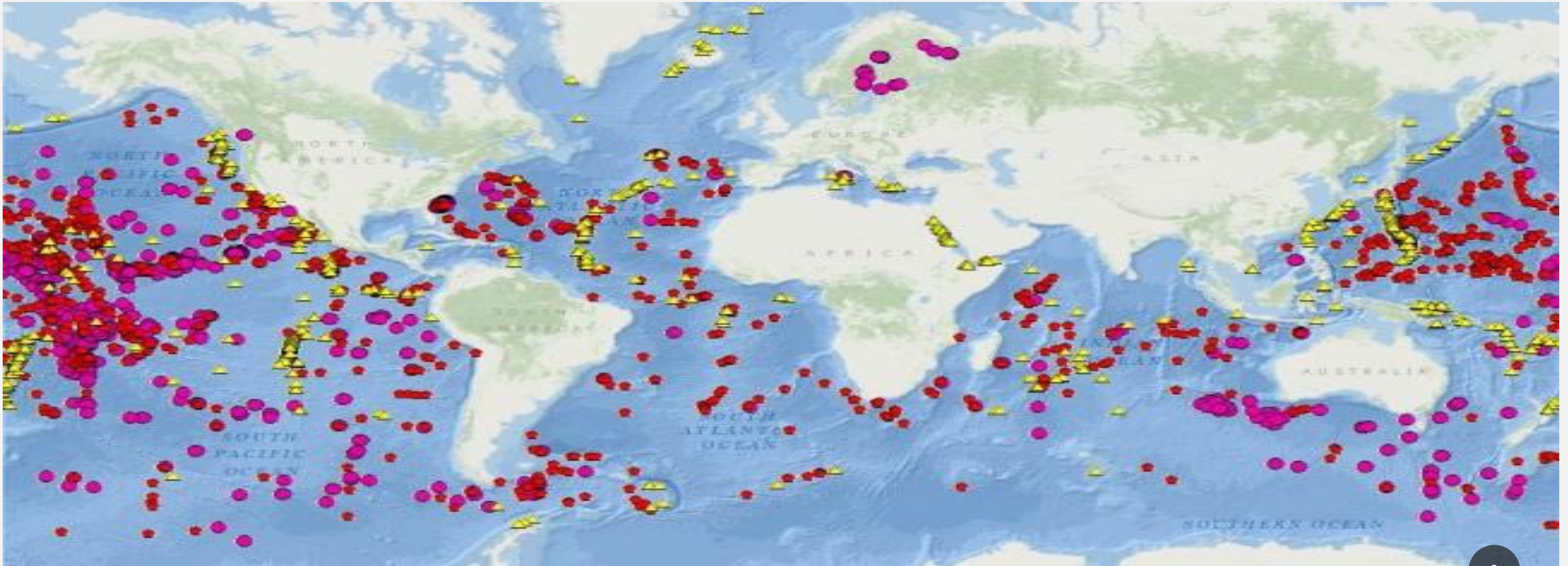
IMPLEMENTATION OF THE CHH IN UNCLOS + 1994 AGREEMENT

Marine Mineral Resources in the Area

Polymetallic Nodules	Polymetallic Sulphides	Cobalt-rich crusts
Lay on the Seabed	Hydrothermal vents	Seamounts & Submerged Volcanic Mountain Ranges
Manganese Copper Nickel Cobalt Iron Rare Earth Materials	Copper Zinc Silver Gold	Cobalt Rare Earth Materials



IMPLEMENTATION OF THE CHH IN UNCLOS + 1994 AGREEMENT



IMPLEMENTATION OF THE CHH IN UNCLOS + 1994 AGREEMENT

The **Area** and its **Resources** are the
Common Heritage of Humankind

UNCLOS, Art 136

The Area:

The seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction

UNCLOS, Art. I (I)

Resources:

All solids, liquid or gaseous mineral resources in situ in the Area at or beneath the surface, including polymetallic nodules

UNCLOS, Art. 133 (a)

IMPLEMENTATION OF THE CHH IN UNCLOS + 1994 AGREEMENT

The **Area** and its **Resources** are the
Common Heritage of Humankind

UNCLOS, Art 136

No State may claim or exercise sovereignty or sovereign rights over any part of the Area or its Resources

UNCLOS, Art 137 (1)

All rights in the resources of the Area are vested in mankind as a whole and are to be exercised by the International Seabed Authority

UNCLOS, Art 137 (2)

Deep Seabed Mining shall be carried out for the benefit of mankind as a whole, taking into account developing states

UNCLOS, Art 140

The Area shall be open to use exclusively for peaceful purpose by all States

UNCLOS, Art 141

IMPLEMENTATION OF THE CHH IN UNCLOS + 1994 AGREEMENT

ISA Functions

Regulate Deep Seabed Mining in the Area

Equitable Sharing of Benefits from Deep Seabed Mining

Distribute Revenues from the exploitation of outer continental shelf

Promote Marine Scientific Research

Promote Transfer of Technology to Developing Countries

Protection of the Marine Environment

REGULATION OF ACTIVITIES IN THE AREA

Activities in the Area: Exploration & Exploitation of Resources of the Area [Art. I (3)]
but also includes prospecting (See Advisory Opinion and ISA Regulations)

Prospecting:

Search for deposits of minerals including estimation of the sizes and distributions of deposits and their economic values without any exclusive rights

Exploration

Searching for Deposits in the Area with exclusive rights, the analysis of such deposits, the use and testing of recovery systems and carrying out of other relevant studies

Exploitation

Recovery for commercial purposes of minerals in the Area and the extraction of minerals therefrom, including the construction & operation of mining, processing and transportation systems for the production and marketing of metals

Exploration and Exploitation can only be carried out on the basis of a contract with the ISA, acting on behalf of mankind as a whole

The Enterprise

State Parties

State Enterprises

Private Sector

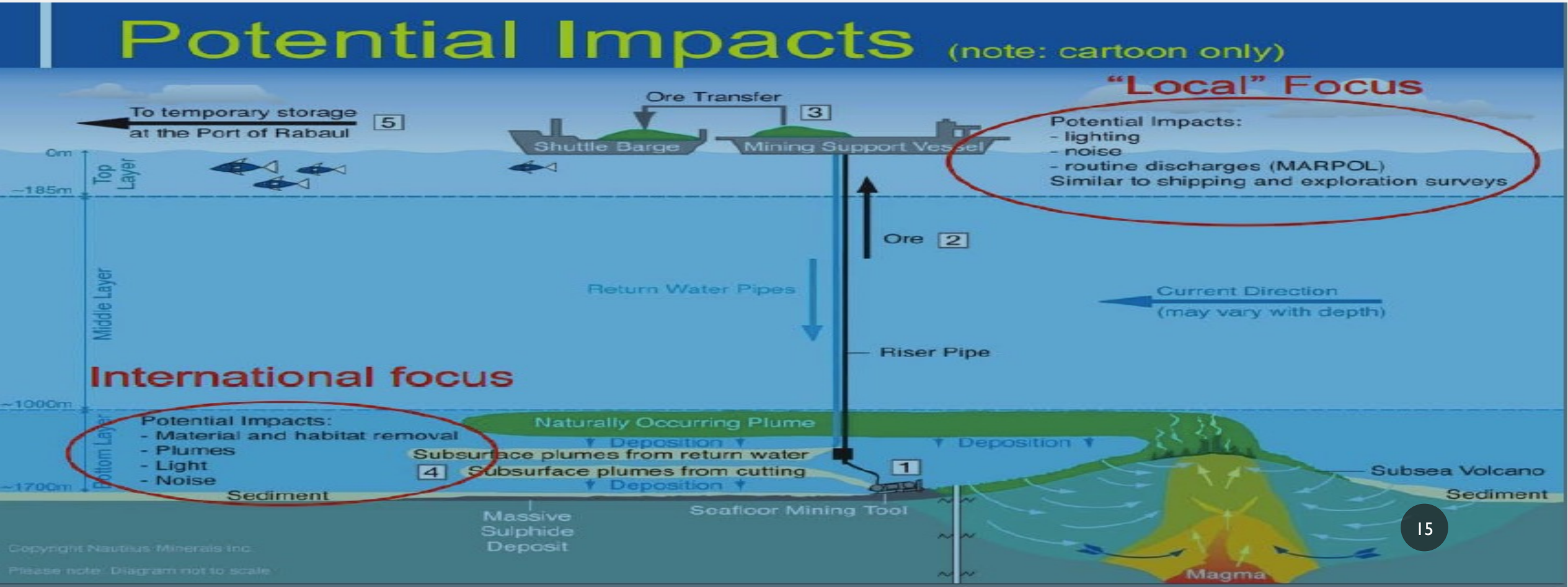
Must be sponsored by a State Party
(Sponsoring States)

The Authority is responsible for issuing comprehensive rules, regulations and procedures to regulate prospecting, exploration and exploitation of marine minerals in the Area

The ISA Mining Code	
Regulations on prospecting and exploration for polymetallic nodules (2000)	Recommendations for guidance of contractors on the assessment of environmental impacts (issued 2001, revised 2010 and 2013)
Regulations on prospecting and exploration for polymetallic sulphides (2010)	
Regulations on prospecting and exploration for cobalt-rich ferromanganese crusts(2012)	

- **No regulatory regime exists as yet for exploitation (currently under discussion but deadline for it to be completed by July 2023**
- **Part XI contained a detailed regime covering the financial terms for exploitation but these were eliminated in the 1994 Implementation Agreement**
- **1994 Agreement contains a set of general principles to guide the future financial terms of seabed mining**

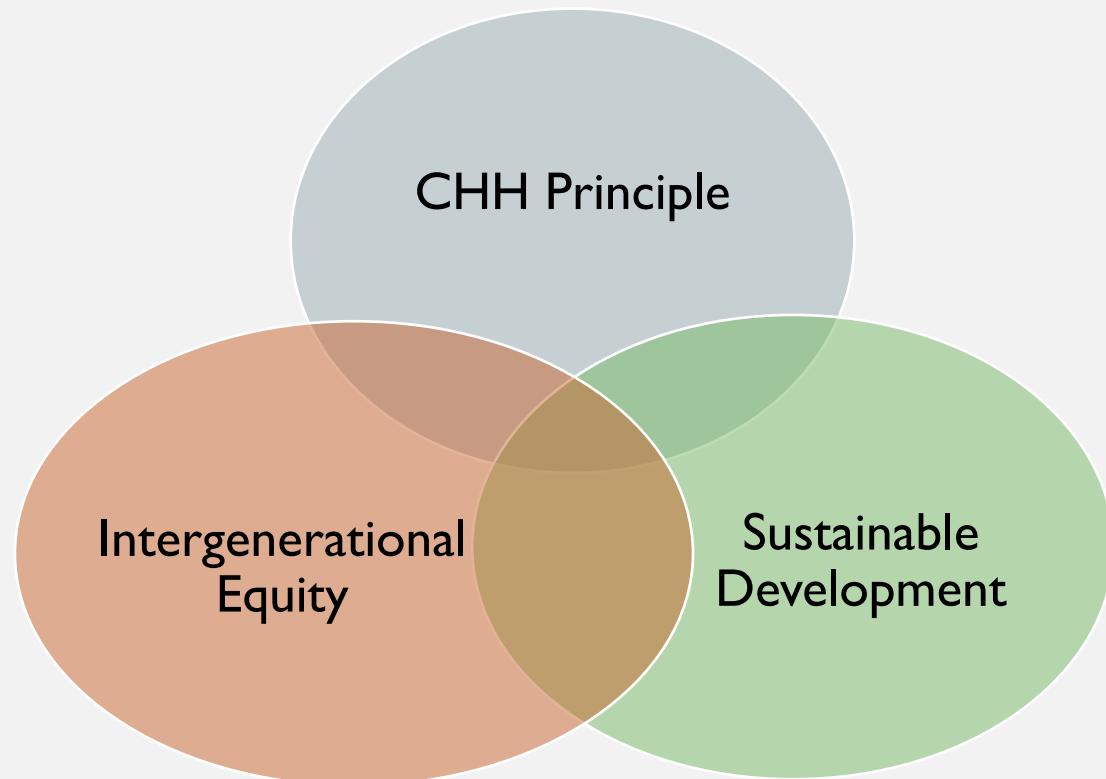
IMPLEMENTATION OF THE CHH IN UNCLOS + 1994 AGREEMENT



CHH AS A PRINCIPLE OF ENVIRONMENTAL GOVERNANCE

- While Pardo's original conception of the CHH principle included inter-generational equity, his primary focus was on intra-generational equity / wealth redistribution through the sharing of benefits and international management
- Main concern of states during UNCLOS negotiations was to access resources rather than a genuine interest in its protection
- Was conceived during the nascent environmental movement in the 1970s and was not one of the most important components of the CHH
- However, the CHH principle must be interpreted in an evolutionary manner

CHH AS A PRINCIPLE OF ENVIRONMENTAL GOVERNANCE



2011 Seabed Disputes Chamber Advisory Opinion

Equality of treatment between developed and developing sponsoring states is consistent with the need to prevent commercial enterprises based in developed states from setting up companies in developing states, acquiring their nationality and obtaining their sponsorship in the hope of being subjected to less burdensome regulations and controls.

The spread of sponsoring states 'of convenience' would jeopardize uniform application of the highest standards of protection of the marine environment, the safe development of activities in the Area and the protection of the common heritage of [hu]mankind.

Necessary Measures shall be taken to ensure effective protection for the marine environment from harmful effects which may arise from such activities

<p>ISA UNCLOS, Art 145</p>	<p>The ISA shall adopt rules, regulations and procedures for:</p> <p>(a) the prevention, reduction and control of pollution and other hazards to the marine environment, including the coastline, and of interference with the ecological balance of the marine environment, particular attention being paid to the need for protection from harmful effects of such activities as drilling, dredging, excavation, disposal of waste, construction and operation or maintenance of installations, pipelines and other devices related to such activities;</p> <p>(b) the protection and conservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the marine environment.</p>
<p>Sponsoring States UNCLOS, Art 209</p>	<p>States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment from activities in the Area undertaken by vessels, installations, structures and other devices flying their flag or of their registry or operating under their authority, as the case may be. The requirements of such laws and regulations shall be no less effective than the international rules, regulations and procedures adopted</p>
<p>Contractors [Exploration Regulations]</p>	<p>Contractors have general obligations to ensure protection and preservation of the marine environment</p>

CHH AS A PRINCIPLE OF ENVIRONMENTAL GOVERNANCE

Precautionary Approach & Best Environmental Practices

Environmental Impact Assessment

Monitoring and Assessment of Environmental Effects of Activities in the Area

Area-Based Management Tools (Areas of Particular Environmental Interest)

Responding to Environmental Incidents

Reporting, Compliance and Enforcement

Development of Liability Rules

CHH AS A PRINCIPLE OF ENVIRONMENTAL GOVERNANCE

- Both the ISA organs and states alike are using the fact that the subject of regulation is the common heritage of humankind, the development of which must be for the benefit of all humankind, as a legal justification to strengthen environmental protection
 - EG: States such as Germany, Italy and Costa Rica have called for the financial model to ensure that any royalty rates and returns provide genuine and fair compensation for damage to the common heritage of humankind
- The CHH Principle while not initially intended to be a principle for the governance of the environment when adopted in UNCLOS but clearly incorporates intergenerational equity and provides a basis for sustainable development to be the basis of decision-making for the exploitation of CHH resources
- The narrative shift from wealth distribution to marine environment protection is part of the larger shift in our traditional view of the oceans as a transformative economy to an ecological view of the oceans that recognizes the oceans as serving vital ecological functions
- We still need better articulation of the benefits to mankind provided by the CHH principle and that it goes beyond wealth distribution to important ecosystem services