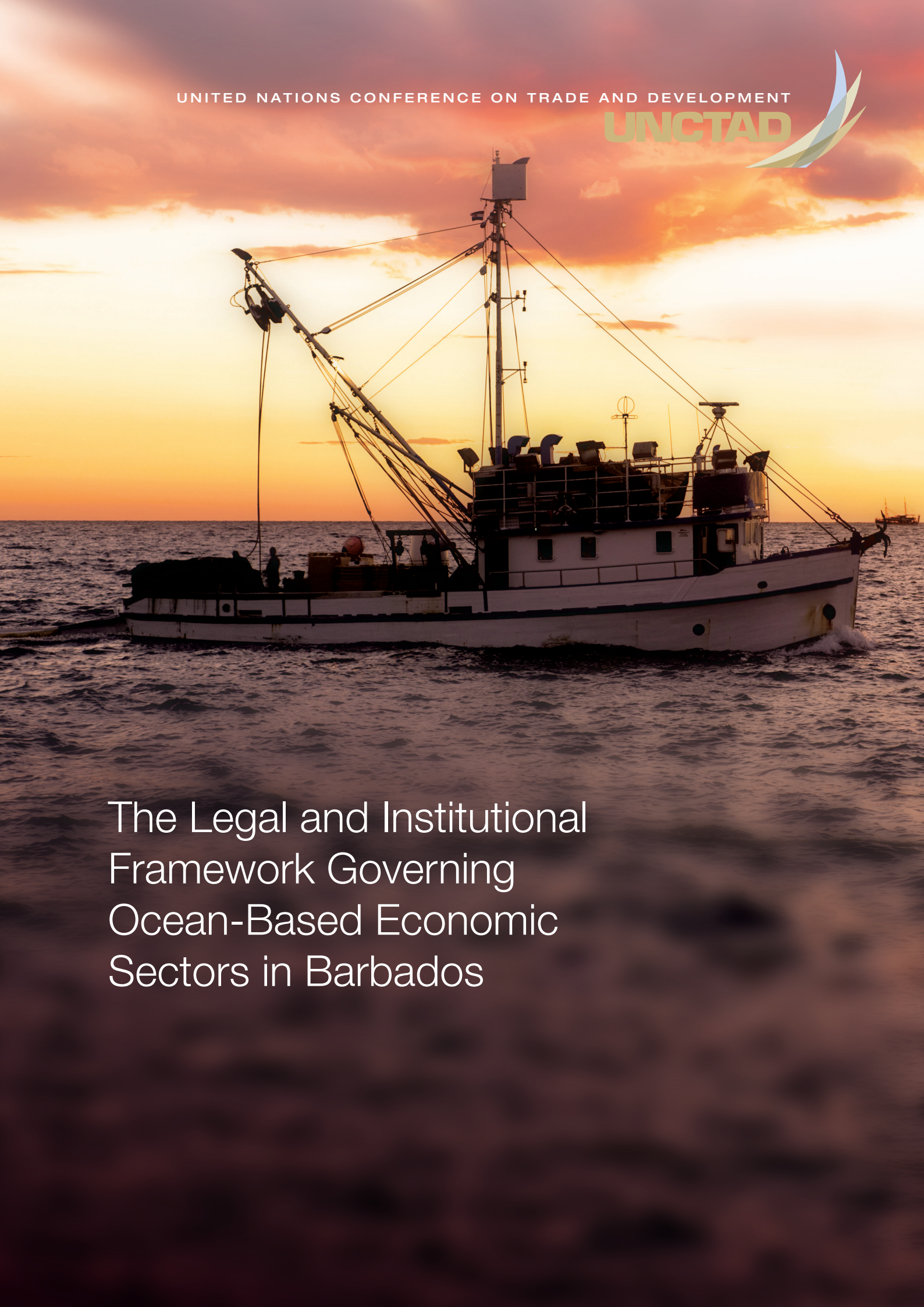


UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

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A large fishing boat is silhouetted against a vibrant sunset sky. The boat has a complex rigging system with multiple masts and ropes. The sea is dark with some whitecaps. The overall scene is dramatic and atmospheric.

# The Legal and Institutional Framework Governing Ocean-Based Economic Sectors in Barbados

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## Acronyms and abbreviations

BTWA	Barbados Territorial Waters Act
CARICOM	Caribbean Community
CCCFP	Caribbean Community Common Fisheries Policy
CERMES	Centre for Resource Management and Environmental Studies
CLCS	Commission on the Limits of the Continental Shelf
CRFM	Caribbean Regional Fisheries Mechanism
CZI	Coastal Zone Inspector
CZMA	Coastal Zone Management Act
CZMP	Coastal Zone Management Plan
CZMU	Coastal Zone Management Unit
ECS	Extended Continental Shelf
EEZ	Exclusive Economic Zone
EPD	Environmental Protection Department
FAC	Fisheries Advisory Committee
FAO	Food and Agriculture Organization of the United Nations
HSA	Health Services Act
ICCAT	International Commission for the Conservation of Atlantic Tuna
IMO	International Maritime Organisation
IUU fishing	Illegal, unregulated and unreported fishing
MABE	Ministry of Maritime Affairs and the Blue Economy
MARPOL	International Convention for the Prevention of Pollution from Ships 1973 as modified by the Protocol of 1978 relating thereto and by the Protocol of 1997
MBJA	Marine Boundaries and Jurisdiction Act
MCO	Marine Conservation Officer
MENB	Ministry of Environment and National Beautification
MPCA	Marine Pollution Control Act
MPCI	Marine Pollution Control Inspector
MSR	Marine Scientific Research
NCC	National Conservation Commission
NCCA	National Conservation Commission Act
OETS	Oceans Economy and Trade Strategy
PDA	Planning and Development Act
PDP	Physical Development Plan
PSMA	Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unregulated and Unreported fishing
RFMO	Regional Fisheries Management Organisation
SDG	Sustainable Development Goals
SOLAS	International Convention for the Safety of Life at Sea
SOPA	Shipping Oil Pollution Act
TAC	Total Allowable Catch
TCPA	Town and Country Planning Act
UNCLOS	United Nations Convention on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
UWI	University of the West Indies
WECAFC	Western Central Atlantic Fishery Commission
WTO	World Trade Organisation

## INTRODUCTION

The United Nations Convention on the Law of the Sea of 10 December 1982 (hereafter called UNCLOS) sets out a comprehensive legal framework for all activities in the oceans and seas and has often been referred to as “a constitution for the oceans”.<sup>1</sup>

Other international ocean-related instruments as well as State Parties’ national laws, regulations, policies and institutional operations should be compliant with the provisions of UNCLOS and facilitative of its general aims and objectives. In many ways UNCLOS was ahead of its time as, at the time of its adoption, it established legal frameworks for the operation of then burgeoning areas of ocean affairs and law of the sea, namely, protection and preservation of the marine environment, development of the resources of the Area and sustainable development.

Therefore, at the advent of the 2030 Agenda for Sustainable Development,<sup>2</sup> a further agenda continuing and building on the work of the Millennium Development Goals and setting out 17 Sustainable Development Goals (SDGs) with 169 related targets, there was already in place a legal framework for the operation of Sustainable Development Goal (SDG) 14 “to conserve and sustainably use the oceans, seas and marine resources for sustainable development”.<sup>3</sup>

The Evidence-based and Policy-coherent Oceans Economy and Trade Strategy (OETS) project aims to support coastal developing countries, including Small-Island Developing States, in deriving economic benefit from the sustainable use of marine resources within the framework of UNCLOS through the sustainable trade of products and services in selected ocean-based economic sectors. In Barbados the selected ocean-based economic sectors are as follows:

1. Sustainable marine fisheries,
2. Sustainable marine aquaculture,
3. Seafood processing, and
4. Coastal and marine environmental services.

In this regard, this report aims to provide an overview of the national legal and institutional frameworks in Barbados that are applicable to the sectors, as well as a description of relevant provisions in UNCLOS and other marine-related international instruments.

Subsequent sections will also identify cross-cutting areas among the legal, institutional and policy frameworks affecting the sectors.

# 1. UNCLOS AND OTHER OCEANS-RELATED INSTRUMENTS

## 1.1. UNCLOS as a constitution for the seas

As a framework Convention, UNCLOS covers a vast range of oceans issues. Organised into seventeen parts and nine annexes, it provides for the rights and obligations of states regarding (1) the territorial sea and contiguous zone, (2) straits used for international navigation, (3) archipelagic states, (4) the exclusive economic zone, (5) the continental shelf, (6) the high seas, (7) the regime of islands, (8) enclosed or semi-enclosed seas, (9) the right of access of landlocked states to and from the sea and freedom of transit, (10) the Area or seabed, (11) protection and preservation of the marine environment, (12) marine and scientific research, (13) the development and transfer of marine technology, and (14) the settlement of disputes. .

UNCLOS opened for signature on December 10, 1982 and entered in to force on 16 November 1994. The following two implementation agreements were subsequently concluded:

- The *Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea 1982* which was adopted in 1994 and entered into force on 28<sup>th</sup> July 1996; and
- The *United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* (United Nations Fish Stocks Agreement) which was adopted in 1995 and entered into force on 11<sup>th</sup> December 2001.

### 1.1.1. The objectives and provisions of UNCLOS

#### 1.1.1.1. Maritime zones and sovereignty, rights and obligations of states

UNCLOS provides for the rights of each coastal State to establish the breadth of its territorial sea, contiguous zone, and exclusive economic zone (EEZ) up to prescribed breadths and subject to conditions set out in UNCLOS. All other parts of the water column (excluding internal and archipelagic waters) comprise the high seas.<sup>4</sup>

Thus, the outer limits of the territorial sea may extend up to 12 nautical miles from the baseline of the coastal State as determined in accordance with UNCLOS;<sup>5</sup> the contiguous zone up to 24 miles from the baselines from which the territorial sea is measured;<sup>6</sup> and the EEZ up to 200 miles from the baselines from which the territorial sea is measured. UNCLOS also provides for delimitation of these zones between States with opposite or adjacent coasts.<sup>7</sup> UNCLOS further provides that coastal States' sovereignty extends to the territorial sea, the seabed thereunder and the airspace above, while prescribing limited sovereign rights and/or jurisdiction exercisable in the contiguous and exclusive economic zones. The rights of foreign ships and States in these zones are also provided for, namely, the right of innocent passage in the territorial sea, rights and duties of other States in the EEZ, and the obligation of coastal and other States to cooperate in respect of conservation and use of, *inter alia*, highly migratory marine species.<sup>8</sup> By contrast, the high seas are open to all States and freedom of the high seas for all States is the general rule subject to the provisions of UNCLOS as set out in Part VII thereof.<sup>9</sup>

UNCLOS also defines the continental shelf as comprising the seabed and subsoil of the submarine area of a coastal State beyond the territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin or to 200 miles from the baselines from which the territorial sea is measured.<sup>10</sup> It also provides for the establishment of the outer limit of the continental shelf beyond 200 miles from the baselines from which the territorial sea which shall be determined by a set of formulas but not exceed 350 miles from the baselines or 100 miles from the 2,500 metre isobath.<sup>11</sup> Provision is also made in relation to the rights of the coastal State over the continental shelf,<sup>12</sup> the legal status of superjacent waters and airspace and the rights and freedoms of other States in respect thereof,<sup>13</sup> and, the right of all States to lay cables and pipelines on the continental shelf subject to duties owed to and rights of the coastal State.<sup>14</sup>

Under UNCLOS delimitation of the EEZ and of the continental shelf between States with opposite and adjacent coasts must be effected by agreement or Part XV procedures for settlement of disputes as the case may be.<sup>15</sup> However, pending such agreement States with opposite or adjacent coasts are required to make every effort to enter into provisional arrangements of a practical nature, and during that transitional period, to

refrain from jeopardising or hampering the reaching of a final agreement.<sup>16</sup>

### 1.1.1.2. *Protection and preservation of the marine environment*

While States are entitled to exploit their natural marine resources according to their national policies, States are also obligated to take measures to preserve and protect the marine environment.<sup>17</sup> UNCLOS provides that States shall take, individually or jointly as appropriate, all measures within their capabilities and consistent with the provisions of UNCLOS that are necessary to prevent, reduce and control pollution of the marine environment from any source; to ensure that activities under their jurisdiction or control are conducted so as not to cause damage by pollution to other States and their environment and that any pollution arising in their jurisdiction and under their control does not spread beyond their control or jurisdiction.<sup>18</sup> States shall also take measures necessary to prevent, reduce and control pollution resulting from the use of technologies under their jurisdiction or control.<sup>19</sup> UNCLOS also imposes a duty upon states to refrain from transferring damage or hazards from one area to another, or transforming one type of pollution to another.<sup>20</sup>

UNCLOS also makes provision for:

1. Global and regional cooperation either directly or through international organisations to formulate international rules, standards and recommended practices and procedures consistent with UNCLOS to protect and preserve the marine environment;<sup>21</sup>
2. The provision of technical assistance to developing States for the protection and preservation of the marine environment in accordance with UNCLOS;<sup>22</sup>
3. States to take measures to monitor and assess by recognised scientific methods<sup>23</sup> as well as report<sup>24</sup> on the risks or effects of pollution on the marine

atmosphere applicable to their airspace and to vessels flying their flags, or vessels or aircraft of their registry.<sup>32</sup>

### *Enforcement*

Section 6 of UNCLOS sets out enforcement provisions in respect of pollution from land-based sources,<sup>33</sup> from seabed activities,<sup>34</sup> from activities in the Area,<sup>35</sup> by way of dumping<sup>36</sup> and regarding pollution from or through the atmosphere.<sup>37</sup> This section also sets out the respective enforcement obligations of flag,<sup>38</sup> port<sup>39</sup> and coastal<sup>40</sup> States; measures relating to vessel seaworthiness in order to avoid pollution of the marine environment;<sup>41</sup> and measures to avoid pollution arising from maritime casualties.<sup>42</sup> Accordingly, States must enforce national laws and regulations adopted in accordance with articles 207, 208, 210 and Part XII of UNCLOS, as well as adopt laws and regulations, and take other measures necessary to implement applicable international rules and standards established through competent international organisations or diplomatic conference in order to prevent, reduce and control pollution arising from land-based sources, seabed activities, activities in the Area and dumping.<sup>43</sup>

In general, where its pollution laws and regulations adopted in accordance with UNCLOS and international rules and standards have been breached, a coastal State, subject to safeguards at section 7 of UNCLOS, may effect enforcement against an offending vessel in the territorial sea and/ or the EEZ or within one of the coastal State's ports or at an offshore terminal, as the case may be.<sup>44</sup> Even then, the coastal state may only take certain action as prescribed by UNCLOS according to the zone in which the vessel is found navigating, the zone in which the breach is believed to have occurred, the level of damage or potential damage, and the cogency of evidence in all the circumstances.<sup>45</sup> Flag states, on the other hand,

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