

Maritime realities tell a different, and much more fragmented, story. Overfishing continues at alarming rates, marine ecosystems are under severe stress in most areas of the world, incidents and provocations at sea frequently escalate into diplomatic tensions and military confrontations, and scientific cooperation is often constrained by suspicion and geopolitical interests. These outcomes persist despite the presence of legal rules that, in principle, should address each of these challenges impartially. This discrepancy points to a structural problem, namely, that the assumption that better legislation necessarily leads to better governance does not hold true in practice.

This issue brief challenges the assumption that international law alone can improve the maritime

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environment and resolve maritime tensions. It contends that global ocean governance is constrained not primarily by deficiencies in legal design, but by the limits of international law in a domain shaped by geopolitics, strategic mistrust, and operational complexity. Law is essential, but it does not enforce itself, nor can it overcome political motivations and mistrust. Effective governance, particularly in sensitive maritime regions, depends on trust, confidence-building, and regionally embedded practices that enable cooperation even when political disagreements persist. However, international law has frequently struggled to provide the mechanisms necessary to institutionalize this level of cooperation.

The analysis proceeds through a series of regional cases selected to span the principal functional domains of ocean governance—maritime security, fisheries, environmental protection, and navigational safety—and to vary deliberately in the degree of political trust between the actors involved. Drawing on both high-trust settings, such as the Nordic and Baltic seas, and contested or low-trust regions, such as the South China Sea and the eastern Atlantic, allows the role of trust, as distinct from legal density, to be isolated as a determinant of governance outcomes. The cases are intended to be illustrative rather than exhaustive, chosen to highlight recurring mechanisms rather than to provide a comprehensive survey. The analysis moves from the geopolitical character of the maritime domain, through the limits of legalism and the practical record of fisheries and environmental governance, to the roles of trust, informal mechanisms, and regional platforms, before drawing out the implications for global reform.

The Ocean as a Geopolitical Domain

Oceans differ fundamentally from many other global commons in that they are deeply intertwined with national security, food security,

geopolitical tension, and power projection. Sea lines of communication underpin global trade and have evolved into the lifeline of many, if not most, states. This has created a reality in which disruptions in the supply chain could have a devastating impact on national and international economic security. Additionally, naval mobility and freedom of navigation remain crucial pillars of modern military strategy at a time when maritime security has emerged as a paramount global concern. On the economic side, offshore energy infrastructure and seabed resources are becoming increasingly significant components for economic security, as demonstrated by recent cable cutting incidents and provocations in the Taiwan Strait and the Baltic Sea region.³ Consequently, maritime spaces are rarely, if ever, perceived as neutral arenas governed solely by shared interests. This geopolitical reality outpaces the capacity of international law to resolve emerging disputes. In strategically important maritime areas, such as semi-enclosed seas, chokepoints, or regions with overlapping claims, states often view maritime

The 2009 **USNS Impeccable** incident in the South China Sea exemplifies how maritime law operates within geopolitical realities. Although the vessel conducted survey activities legal under the freedom of navigation regime in China's Exclusive Economic Zone (EEZ), China viewed the operation as a security threat due to its proximity to sensitive naval facilities and the dual-use nature of the data collected. Competing interpretations of UNCLOS, whether such activities constitute marine scientific research requiring consent or permissible military surveys, led to confrontation rather than legal resolution. The case illustrates that maritime activities, even when lawful, are rarely neutral and are interpreted through strategic and national security lenses.

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activity through a lens of strategic risk. Actions that appear legally permissible may nonetheless be perceived as threatening under certain conditions. This dynamic is particularly evident in the seemingly less politicized area of marine scientific research. While UNCLOS establishes a legal framework for research activities, coastal states frequently impose restrictions or require prior consent based on security considerations rather than environmental or scientific concerns.⁴ Research vessels are increasingly suspected, often on good grounds, of gathering military or dual-use data, regardless of formal legal classifications.

Such practices illustrate a broader pattern in ocean governance: legal interpretation is inseparable from geopolitical and national security considerations. Where trust is limited, states tend to adopt restrictive readings of legal provisions. Conversely, where political relationships are stable, legal ambiguity is often managed through consultation and accommodation. This variability

is not a flaw in the law itself, but a reflection of how law operates within the political realities of international politics.

Legalism and Its Discontents

The persistence of maritime disputes despite extensive legal frameworks has encouraged an increasingly legalistic approach to ocean governance. This approach emphasizes clearer rules, stronger enforcement mechanisms, and expanded dispute settlement. While these tools are valuable, overreliance on international law carries significant risks, especially as geopolitical tensions seem to be increasing rather than decreasing.

First, a strict focus on international law can harden political positions. When disputes are framed primarily in legal terms, compromise is often

“Marine environmental protection exhibits a similar pattern to that of fisheries governance. Global concern over biodiversity loss and marine pollution has translated into ambitious legal commitments. However, the most successful examples can be found among states with a high degree of trust, such as those in the Nordic region, where the legal commitments are reinforced common values, trust, and political cooperation.”

South China Sea arbitration (Philippines v. China, PCA 2016)

This case is often used as an example of how legalist solutions can weaken rather than strengthen maritime governance.

China rejected the arbitral proceedings and the ruling entirely, framing participation as a threat to sovereignty. Domestically, compromise became politically impossible once the dispute was cast in legal terms. The ruling clarified legal entitlements but did little to manage fisheries depletion, environmental damage, or incident prevention—challenges requiring adaptive, cooperative arrangements. The lack of enforcement mechanisms and China’s refusal to comply undermined the practical authority of the ruling, encouraging selective adherence to international law. Rather than resolving the dispute, the legal process arguably entrenched positions and reduced space for pragmatic, interim governance arrangements.

portrayed domestically as a concession of legal rights rather than as pragmatic problem-solving. This is largely because legal frameworks tend to produce binary outcomes rather than sustainable compromises that focus on maximizing shared interests. This dynamic is evident in maritime boundary disputes, where legal claims become proxies for broader questions of sovereignty and national identity. Even when legal avenues exist, parties may be reluctant to pursue them if outcomes are perceived as potentially politically unacceptable.⁵

Second, legalism can reduce operational flexibility. Maritime governance is inherently dynamic because weather conditions change, ecological systems evolve, and human activity fluctuates. Rigid adherence to formal rules may inhibit adaptive responses to emerging challenges, such

as shifting fish stocks or novel environmental risks.⁶ In practice, many effective governance solutions involve provisional arrangements, interim measures, or tacit understandings that lie outside formal legal instruments.

Third, legalism can obscure the importance of compliance capacity. Many coastal states lack the resources or capabilities to monitor vast maritime zones or enforce regulatory standards consistently. From a policy perspective, expanding legal obligations without addressing implementation capacity risks creating nominal compliance regimes that are ineffective or ignored in practice.

All of the above could in turn weaken international law, rather than strengthen it, by encouraging states to ignore rulings, question their legitimacy, or even assert that the application of legalist solutions in the maritime context should be considered invalid.

***“Across governance domains, trust emerges as a decisive factor in establishing effective cooperation and governance arrangements. Trust does not imply consensus on legal positions or strategic alignment. When maritime actors trust one another, they are more willing to share information, exercise restraint, and interpret rules flexibly, even in disputed or strategically sensitive areas.*”**

None of this is to deny that international adjudication can resolve maritime disputes where the underlying conditions are favorable. The delimitation of the maritime boundary between Bangladesh and Myanmar by the International Tribunal for the Law of the Sea in 2012, and the earlier arbitration between Barbados and Trinidad and Tobago, produced durable settlements that both parties accepted and implemented.⁷ What distinguishes these cases from the South China Sea arbitration is not the quality of the legal reasoning but the political context in which it operated. The parties accepted the tribunal’s jurisdiction, retained functioning bilateral relations, and treated delimitation as a technical question rather than a test of sovereignty. The decisive variable, in other words, is less the availability of binding law than the presence of sufficient trust and political acceptance to render its outcomes legitimate. Legalism succeeds where it is embedded in such conditions, and falters where it is not.

Fisheries Governance: Law, Capacity, and Cooperation

Fisheries governance provides perhaps one of the clearest illustrations of the limits of international law. International law establishes exclusive economic zones, obliges states to conserve living resources, and promotes cooperation through Regional Fisheries Management Organizations (RFMOs). Despite this framework, fish stocks continue to decline in many regions, and illegal, unreported, and unregulated (IUU) fishing remains pervasive across nearly all regions.⁸

The underlying causes are primarily practical rather than legal. Enforcement at sea is costly, technologically demanding, and operationally difficult. Monitoring distant-water fleets requires satellite tracking, data analysis, coordinated inspections, and political will to enforce applicable rules and regulations.⁹ Many states

lack these capabilities, and some are reluctant to impose sanctions that could disrupt economic or political relationships. In this context, formal legal obligations often exist without effective enforcement mechanisms.

Where progress has been made, it has typically occurred through regional cooperation rather than legal adjudication. Shared vessel monitoring systems, port-state measures, and informal intelligence sharing have enhanced compliance in several regions. These initiatives often operate alongside formal RFMO structures but derive their effectiveness from trust and mutual interest rather than legal compulsion. They demonstrate that fisheries governance improves when law is embedded within cooperative operational networks.¹⁰

West African fisheries provide a clear illustration of the limits of international fisheries law. Despite UNCLOS provisions, EEZ rights, and RFMO participation, fish stocks continue to decline and IUU fishing remains widespread. The primary constraint is not legal absence but weak enforcement capacity, given the high costs of surveillance and political reluctance to sanction foreign fleets. Progress has instead emerged through regional cooperation, such as joint patrols, vessel monitoring systems, and port state measures, demonstrating that operational collaboration, rather than legal adjudication, has delivered tangible governance improvements.

Marine Environmental Protection and the Reality of Implementation

Marine environmental protection exhibits a similar pattern to that of fisheries governance. Global concern over biodiversity loss and marine

“One of the most consistent findings across regions is the effectiveness of informal and technical mechanisms in managing maritime risks. These mechanisms are rarely binding in a legal sense, yet they often deliver tangible governance outcomes. Communication hotlines between maritime authorities, for instance, allow incidents to be addressed in real time before they escalate.”

pollution has translated into ambitious legal commitments, including the rapid expansion of Marine Protected Areas (MPAs).¹¹ On paper, the growth of MPAs represents a major success for environmental governance. However, the most successful examples can be found among states with a high degree of trust, such as those in the Nordic region, where the legal commitments are reinforced common values, trust, and political cooperation.¹²

In practice, many MPAs suffer from inadequate enforcement mechanisms while surveillance resources are often limited or unevenly distributed. Economic activities such as fishing and tourism create strong incentives for non-compliance,¹³ especially in states with limited economic resources. In some cases, protected areas exist largely as symbolic gestures, with minimal impact on ecological outcomes.

More effective environmental governance tends to emerge where legal designation is coupled with

local engagement, adaptive management, and regional cooperation. For example, MPAs that involve fishing communities directly in monitoring and decision-making often achieve higher compliance rates.¹⁴ Regional agreements on pollution response, particularly oil-spill preparedness, have demonstrated that cooperation is possible even among states with broader political disagreements when shared environmental risks are evident.

These examples underscore a critical point: environmental law is necessary but insufficient without social and political embedding. Governance effectiveness depends on whether

The Kosterhavet–Ytre Hvaler Marine National Parks (Sweden/Norway)

Established in 2009, Sweden's Kosterhavet National Park, in coordination with Norway's adjacent Ytre Hvaler National Park, represents one of Scandinavia's most successful transboundary marine protection efforts. The area encompasses roughly 600 square kilometers of the Kosterfjord, one of the deepest and most biodiverse fjord systems in Scandinavia, home to over 6,000 species including several found nowhere else in Scandinavia.

What distinguishes this case is not merely the legal designation but the governance model behind it. Local fishermen, municipalities, research institutions, and national authorities were brought into a collaborative management process from the outset. High levels of public trust and a shared environmental culture meant that compliance was largely voluntary rather than enforced. Fish stocks have since recovered, and the park has become a model for how marine governance can succeed when embedded in societies with strong civic norms and institutional legitimacy.

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actors view rules as legitimate, achievable, and aligned with shared interests.

Trust as an Operational Condition

Across governance domains, trust emerges as a decisive factor in establishing effective cooperation and governance arrangements. Trust does not imply consensus on legal positions or strategic alignment. Rather, it enables predictability and communication even when interests do not fully align. When maritime actors trust one another, they are more willing to share information, exercise restraint, and interpret rules flexibly, even in disputed or strategically sensitive areas.

Conversely, environments characterized by deep mistrust often experience escalation arising from routine incidents. A minor collision between fishing vessels or an unannounced research operation can rapidly acquire political significance, not because the rules are unclear, but because intentions are viewed with suspicion. In some cases, and occasionally with good reason, fishing vessels and research activities are suspected of serving dual-use purposes when operating in disputed waters.¹⁵ In such contexts, formal

compliance with legal obligations may coexist with deteriorating stability.

From a policy perspective, trust functions as an invisible infrastructure supporting governance systems. It reduces transaction costs, enables coordination, and mitigates the effects of legal ambiguity. Importantly, trust is cumulative and relational, developing through repeated interaction and practical cooperation rather than declaratory commitments. This is not to suggest that trust is always a prerequisite for cooperation; actors are capable of functioning in low-trust environments when common interests or shared risks are significant. However, trust and constructive engagement substantially increase the likelihood of positive outcomes.

Swedish–Finnish icebreaking cooperation in the Gulf of Bothnia.

Each winter, both Sweden and Finland routinely deploy icebreakers to assist commercial vessels, often operating in each other's waters under flexible arrangements. Minor incidents, groundings, delays, or deviations from traffic schemes, are treated as technical issues rather than sovereignty concerns. This stability rests on long-standing trust between maritime authorities, shared professional standards, and continuous operational contact. The rules are clear, but it is mutual confidence and predictability that prevent routine navigational problems from becoming political disputes.

Informal Mechanisms and Risk Management

One of the most consistent findings across regions is the effectiveness of informal and technical mechanisms in managing maritime risks. These mechanisms are rarely binding in a legal sense, yet

The **Code for Unplanned Encounters at Sea (CUES)** was adopted by Western Pacific navies in 2014. CUES is not legally binding and does not address sovereignty disputes in the South China Sea. Instead, it provides standardized communication signals, maneuvering instructions, and safety practices for unexpected naval encounters. By focusing on conduct rather than claims, CUES has reduced the risk of collisions and escalation during close encounters among rival forces, including U.S. and Chinese vessels. It functions as a practical risk-management tool, allowing daily operations to continue despite deep strategic mistrust.

they often deliver tangible governance outcomes.¹⁶ This has been seen in a variety of cases, both in military and civilian functions. However, as they often are non-legal and informal, they do require either trust or a level of shared risk sufficient enough to create incentives for cooperation.

Communication hotlines between maritime authorities, for instance, allow incidents to be addressed in real time before they escalate. Informally agreed rules of behavior for encounters at sea establish de facto mechanisms that reduce miscalculation, particularly in congested waters. Joint search-and-rescue exercises build familiarity and interoperability among agencies that may otherwise have limited contact is one example of such behavior.

Such arrangements are politically valuable because they do not require resolution of underlying disputes and could function without formal acceptance or even in some cases without the knowledge of national capitals. They focus on behavior rather than rights, and on prevention

rather than adjudication. From a governance perspective, they function as shock absorbers, allowing cooperation to persist amid strategic rivalry.

Regional Platforms as Governance Laboratories

When international rules and regulations fail or are unable to resolve disputes effectively, particularly in a period marked by weakening multilateralism, regional or minilateral platforms can provide more effective mechanisms for managing disputes and encouraging regional maritime cooperation. Regional governance frameworks play a critical intermediary role between global law and local practice. They provide spaces where technical experts, coast guard officials, environmental managers, and policymakers can address practical issues without the pressure of formal legal negotiation.

These platforms often facilitate confidence-building by enabling sustained interaction at the working level. Over time, shared professional norms

ReCAAP (Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships)

The ReCAAP framework in Southeast Asia illustrates regional platforms as governance laboratories. When global maritime law struggled to curb piracy, ReCAAP created practical, information-sharing mechanisms among regional coast guards and navies. Through joint reporting systems, capacity-building, and regular working-level interaction, it reduced incidents and built trust despite political tensions. Its adaptive, operational approach later informed broader international best practices on maritime security cooperation.

and informal networks develop, creating channels of communication during crises. Even when political relations fluctuate, these relationships can maintain a baseline of cooperation.

Importantly, regional governance arrangements allow for adaptation. As ecological conditions quickly change or new risks emerge, regional actors possess the agility to adjust practices more rapidly than global institutions constrained by formal treaty processes. In this sense, regions serve as laboratories for governance innovation, developing and testing approaches that may later inform global norms.

Rethinking Global Ocean Governance

The experiences discussed in this paper suggest several implications for global governance reform.

First, legal frameworks should be viewed as enabling structures rather than comprehensive solutions. Law provides predictability and legitimacy, but its effectiveness depends on political context and implementation capacity.

Second, trust-building should be explicitly recognized as a governance objective. Investment in dialogue mechanisms, technical cooperation, and joint training is not peripheral to governance; it is central to making legal norms operational. This is especially important in relationships characterized by strategic rivalry or persistent political disagreement.

Third, regional diversity should be embraced rather than suppressed. Uniform implementation of global rules is neither realistic nor desirable in a domain characterized by ecological, economic, and political variation. Strengthening regional capacity enhances, rather than undermines, global governance and can provide a foundation for more effective international rules.



Figure 1. Maritime governance outcomes as a function of trust between parties and reliance on formal legalism. The high-trust cases (Nordic marine parks, Swedish-Finnish icebreaking) achieve durable compliance with comparatively light legal machinery. The low-trust, high-legalism case (South China Sea arbitration) produced a clarifying ruling but comparatively little improvement in governance outcomes. By contrast, low-trust cases that rely on informal, operational instruments (CUES, ReCAAP, West African maritime patrols) have succeeded in managing risk without resolving underlying disputes. Figure created using Claude Opus 4.8.

In practical terms, these principles translate into several concrete steps. Donors and regional organizations could ring-fence sustained funding for confidence-building platforms modeled on ReCAAP, treating them as core governance infrastructure rather than discretionary projects. States operating in contested or congested waters, such as the Baltic, the Arctic, and the Taiwan Strait, could promote the adoption of non-binding operational codes modelled on CUES,

reducing the risk of escalation without requiring agreement on underlying claims. Where disputes appear suitable for adjudication, parties could also sequence legal processes so that interim cooperative arrangements and confidence-building measures precede, rather than follow, any binding settlement. Such an approach would reduce the likelihood that recourse to law hardens positions. These measures would not displace international law; rather they would provide the

Table 1. Synthesis of the regional cases discussed in this paper

(Table compiled using Claude Opus 4.8)

Case / region	Legal framework available	Principal constraint	What delivered results
USNS Impeccable (South China Sea)	UNCLOS freedom-of-navigation / EEZ regime	Competing legal interpretations read through a security lens	Illustrative of the limits of legality absent trust
SCS arbitration (Philippines v. China, 2016)	Binding UNCLOS Annex VII arbitration	No enforcement; non-compliance; positions hardened	Legal clarity only; governance gains minimal
West African fisheries	UNCLOS, EEZ rights, RFMO participation	Weak enforcement capacity, not legal absence	Joint patrols, VMS, port-state measures
Kosterhavet–Ytre Hvaler parks (Sweden/Norway)	National MPA law + bilateral coordination	Low (high baseline trust and shared norms)	Co-management, voluntary compliance, civic legitimacy
Swedish–Finnish icebreaking (Gulf of Bothnia)	Clear rules; mostly operational arrangements	Low (high mutual confidence)	Trust treats incidents as technical, not sovereign
CUES (Western Pacific navies)	Non-binding code of conduct	Deep strategic mistrust among rival forces	Standardized signals reduce collision/escalation risk
ReCAAP (Southeast Asia)	Regional info-sharing agreement	Political tension; global law slow to curb piracy	Working-level reporting builds trust over time

political and operational scaffolding on which its effectiveness ultimately depends.

Global ocean governance stands at a critical juncture. The legal architecture is robust, yet governance outcomes remain inconsistent. This paper has argued that the central challenge lies not in the absence of rules, but rather in the limits of legalism when confronted with geopolitical realities and operational constraints.

Effective governance emerges where law is integrated with trust-building, informal coordination, and regional practice. It succeeds not when legal consensus is absolute, but when mechanisms exist to manage risk, prevent escalation, and sustain cooperation under conditions of disagreement. Recognizing and institutionalizing this insight is essential if global ocean governance is to move from normative ambition to practical effectiveness.

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Endnotes

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