

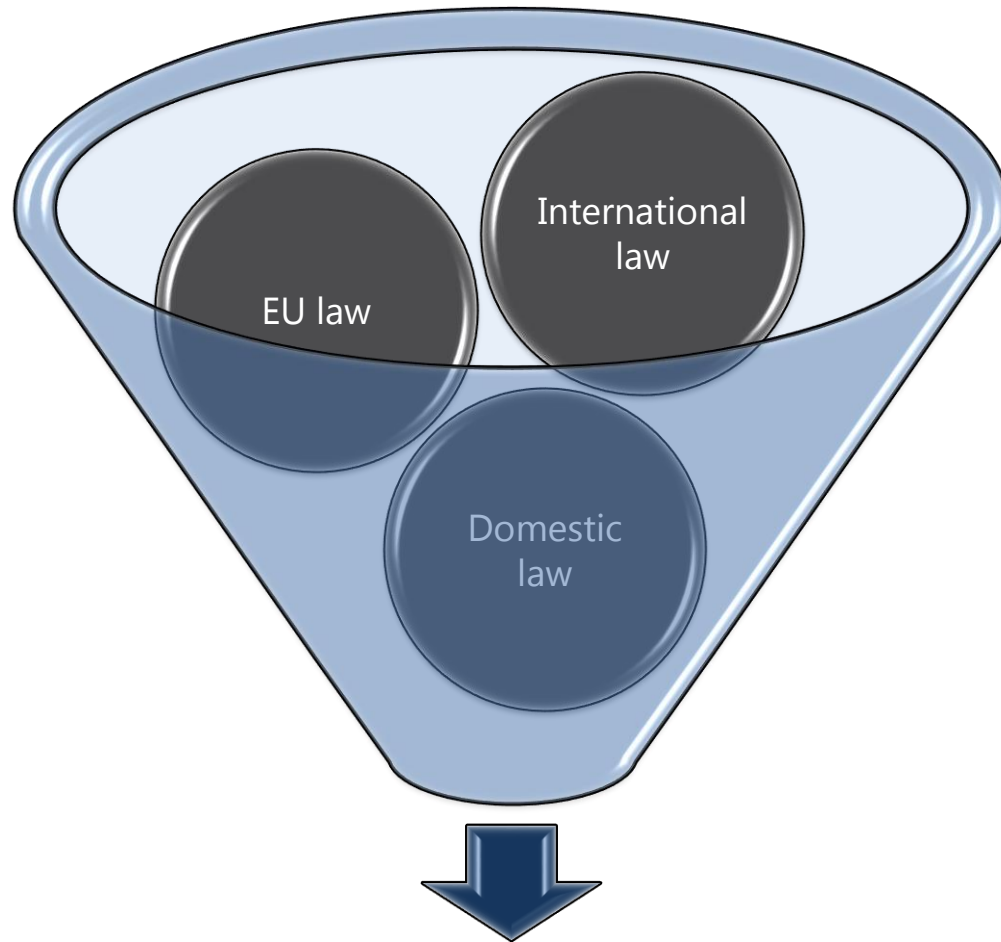
Legal challenges for cross-border CCS,

– BASREC Conference on Visions and Barriers 29-30 October 2015

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AGENDA

- CCS regulatory framework
- International law
- EU law
- Domestic law
- London Convention and Protocol
- Moving forward



CCS Regulatory Framework

THE REGULATORY FRAMEWORK FOR CCS (NO)

International law

- Conventions and protocols
 - London Convention, 1972
 - 1996 Protocol to the London Convention
 - OSPAR Convention
 - United Nations Convention on the Law of the Sea (UNCLOS)
 - United Nations Convention on Climate Change (UNFCCC)
 - Kyoto Protocol
 - ESPOO Convention

EU law

- Directives
 - Directive 2010/75/EU – Industrial Emissions Directive
 - Directive 2009/31/EC – CCS Directive
 - Directive 2009/29/EC – ETS Directive
 - Directive 2004/35/EC – Environmental Liability Directive

Norwegian laws and regulations

- Laws
 - The Continental Shelf Act
 - The Petroleum Act
 - The Pollution Control Act
 - Greenhouse Gas Emission Trading Act
 - Act relating to CO₂ tax in the petroleum activity on the continental shelf
 - The Administration Act
 - The Planning and Building Application Act
- Regulations
 - Regulations for transport and storage of CO₂
 - The Petroleum regulations
 - The Pollution Control Regulations
 - The Greenhouse Gas Emission Trading Regulations
 - The Environmental Impact Assessment Regulations
 - The Planning and Building Application Regulations
 - The Framework Regulations
 - The Management Regulations
 - The Technical and Operational Regulations
 - The Activities Regulations
 - The Facilities Regulations

INTERNATIONAL LAW – BINDING FOR STATES

- “**States** are responsible for the fulfilment of their international obligations concerning the protection and preservation of the marine environment. They shall be liable in accordance with international law”, cf. UNCLOS Article 235
- “In accordance with the principles of international law regarding **State** responsibility for damage to the environment of other States or to any other area of the environment, the **Contracting Parties** undertake to develop procedures regarding liability arising from the dumping or incineration at sea of wastes or other matter”, cf. LP Article 15.
- “The **Contracting Parties** shall take, individually and jointly, all possible steps to prevent and eliminate pollution by dumping or incineration of wastes or other matter in accordance with the provisions of the Convention, [...]”, cf. OSPAR Article 4
- Precautionary principle, polluter pays and best available techniques, cf. LP Article 3 and OSPAR Article 2



EU LAW – BINDING FOR MEMBER STATES

- Limited or scarce regulation of transport;
 - CCS Directive Article 24: *«In cases of transboundary transport of CO₂, transboundary storage sites or transboundary storage complexes, the competent authorities of the Member States concerned shall jointly meet the requirements of this Directive and of other relevant Community legislation.»*
 - CCS Directive 21 (1): *«Member States shall take the necessary measures to ensure that potential users are able to obtain access to transport networks and to storage sites [...].»*
- Cross-border transportation may have consequences for emission allowances:
 - ETS Directive Article 12: *«1. Member States shall ensure that allowances can be transferred between: (a) persons within the Community; (b) persons within the Community and persons in third countries, where such allowances are recognised in accordance with the procedure referred to in Article 25 without restrictions other than those contained in, or adopted pursuant to, this Directive.»*
 - ETS Directive Article 25: *«1. Agreements should be concluded with third countries listed in Annex B to the Kyoto Protocol which have ratified the Protocol to provide for the mutual recognition of allowances between the Community scheme and other greenhouse gas emissions trading schemes in accordance with the rules set out in Article 300 of the Treaty. 2. [...].»*

DOMESTIC LAW – BINDING FOR THE STATE AND PRIVATE CITIZENS

- Similar basis in all the EU and EEA countries through the CCS Directive – however enabling “minimum directive”;
 - «Member States shall retain the right to determine the areas from which storage sites may be selected pursuant to the requirements of this Directive. This includes the right of Member States not to allow any storage [...]», cf. Article 4 (1)
 - «Member States shall take the necessary measures to ensure that potential users are able to obtain access to transport networks and to storage sites [...]», cf. Article 21 (1)
 - «In cases of transboundary transport of CO₂, transboundary storage sites or transboundary storage complexes, the competent authorities of the Member States concerned shall jointly meet the requirements of this Directive and of other relevant Community legislation», cf. Article 24
- Non-EU and EEA countries
 - No common basis for a regulatory framework for CCS beyond general principles of public international law



LONDON CONVENTION AND PROTOCOL

- *“Contracting Parties shall not allow the export of wastes or other matter to other countries for dumping or incineration at sea,”* cf. London Protocol Article 6

- Amendment to Annex 1 adopted in 2006

- Dumping of carbon dioxide streams from carbon dioxide capture processes for sequestration included as waste that may be considered for dumping

- **Amendment adopted in 2009**

- **Transboundary transportation/export restriction removed**
 - **Requires ratification of 2/3 of the 45 member states**
 - **Current status: Ratified by UK and Norway**

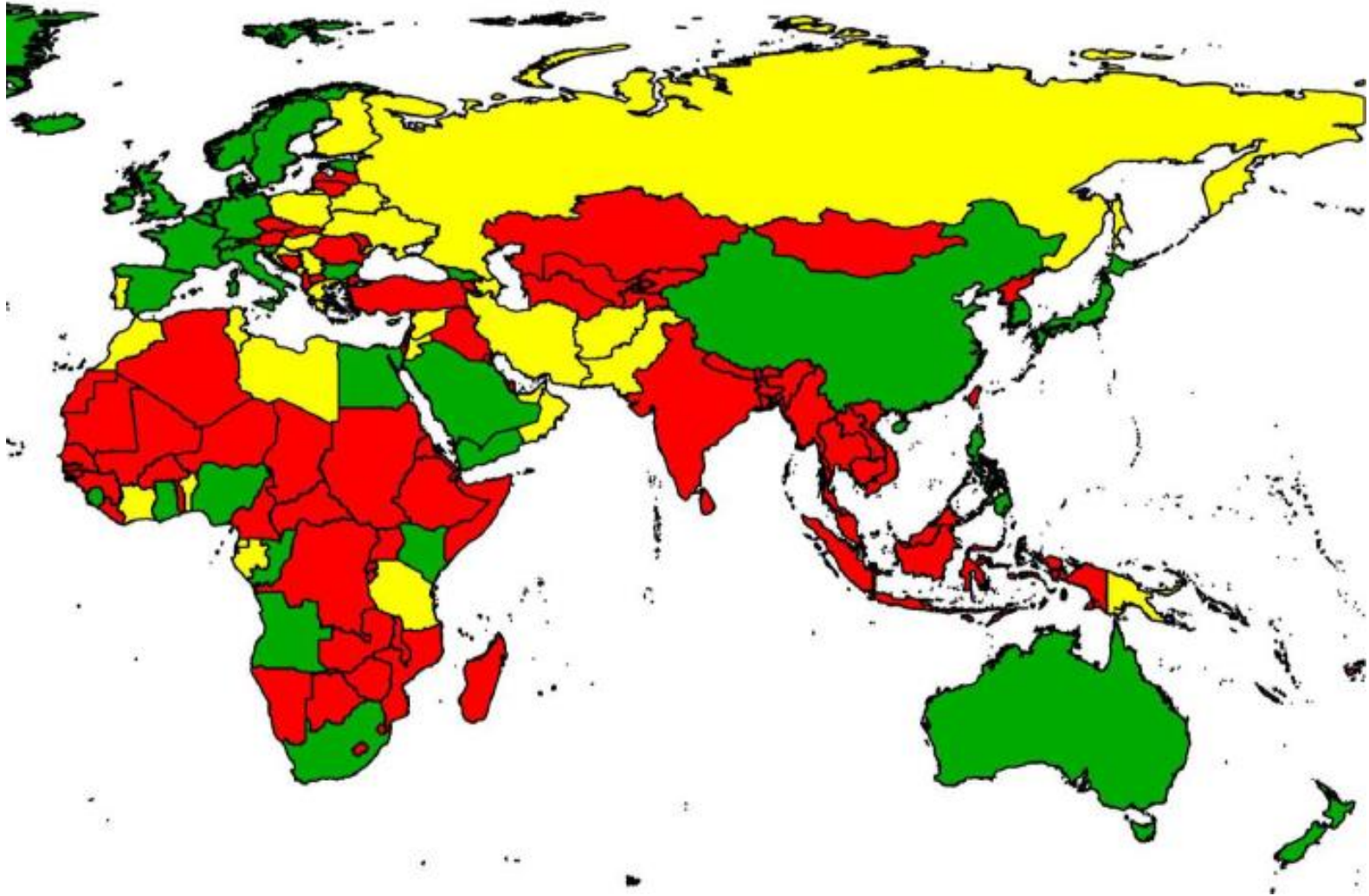
- Revised CO₂ Specific Guidelines 2012

- Transboundary storage permitted
 - Approved and adopted

- New “Guidance on Export of CO₂ Streams for Disposal”

- Approved to cover responsibilities for “arrangements or agreements” for export

LONDON CONVENTION AND PROTOCOL



MOVING FORWARD

- A study beyond BASTOR 2: Enabling transboundary transfer of CO₂ for storage - LC/LP
 - IEA Report – options
 - Interpretive resolution
 - Provisional application
 - Additional treaty
 - Modification of aspects of LP between two Parties
 - Suspension of aspects of LP between two Parties
 - Do CCS through non-Parties
 - Party to LP to import CO₂ from non-Parties for storage?
- Promote ratification of amendment to LP Art. 6
- Emission trading



THANK YOU!



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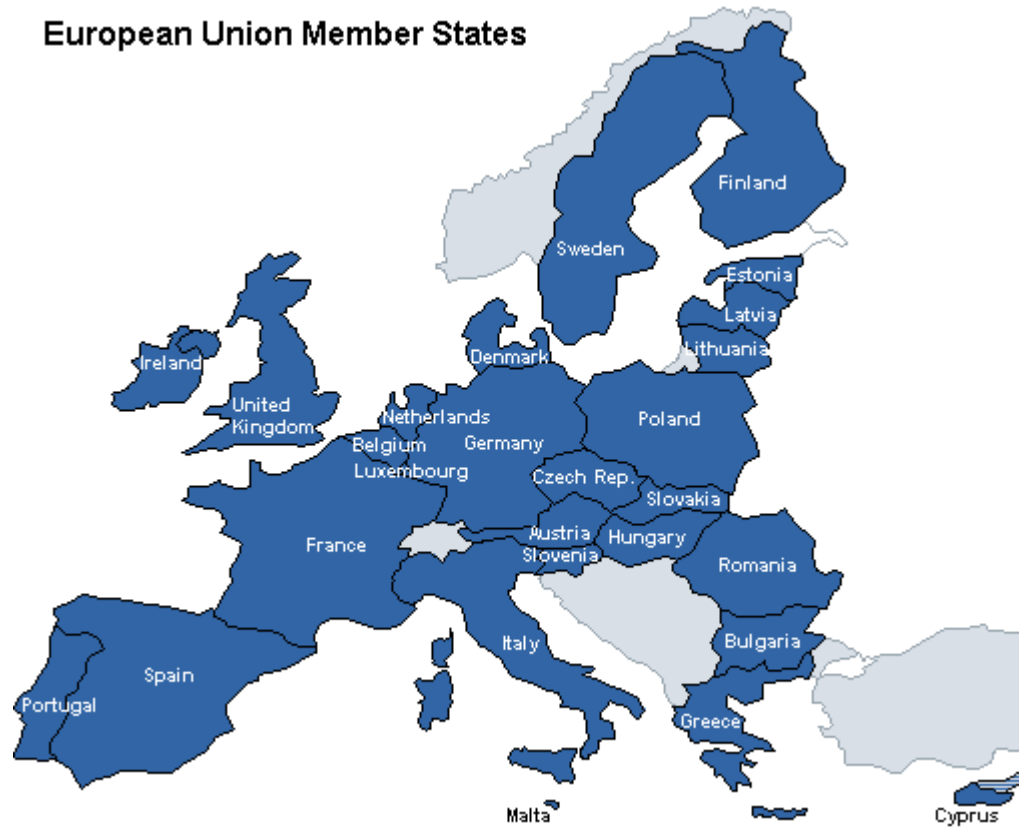
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Extras – Support Slides

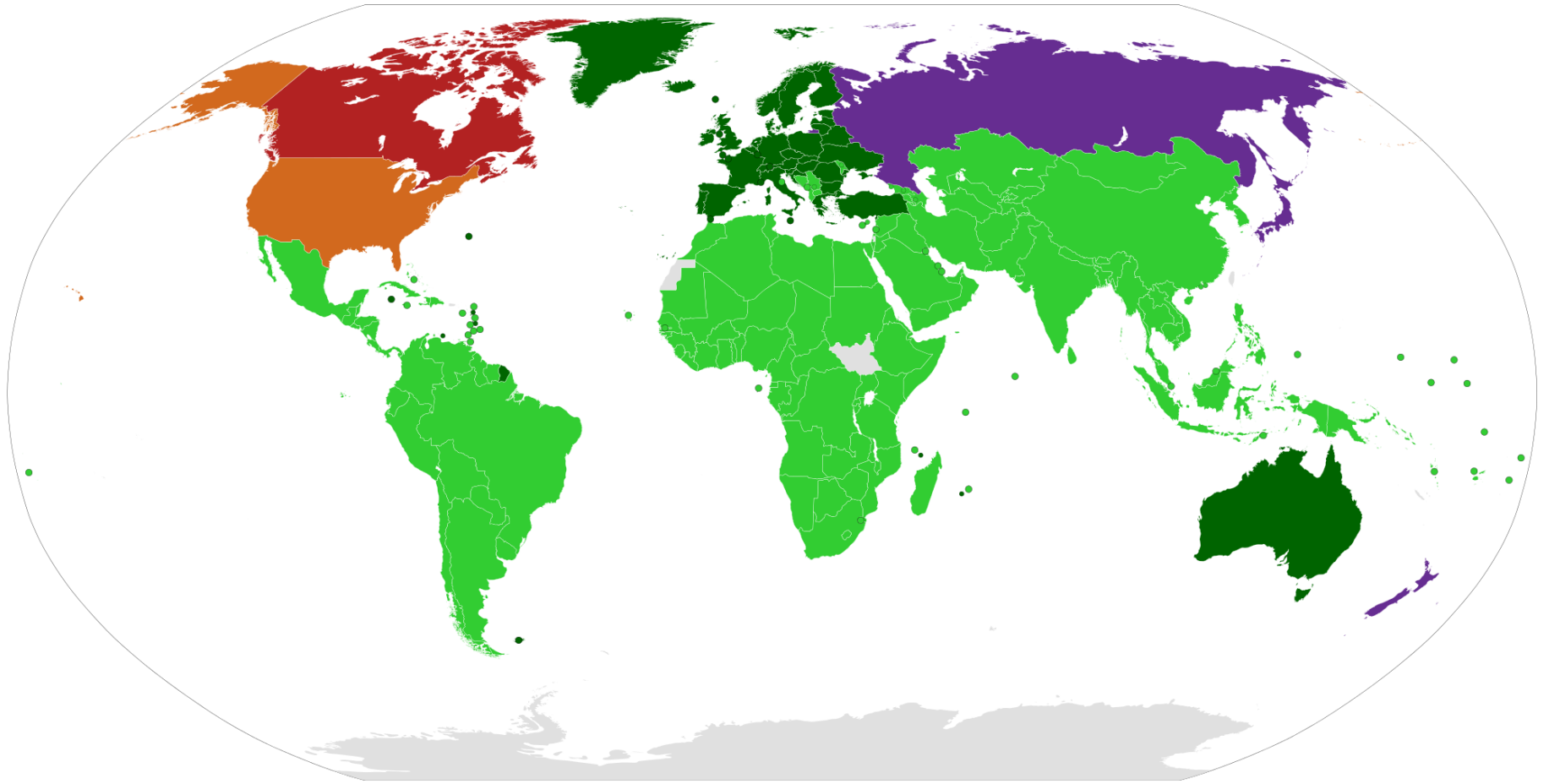


EUROPEAN UNION

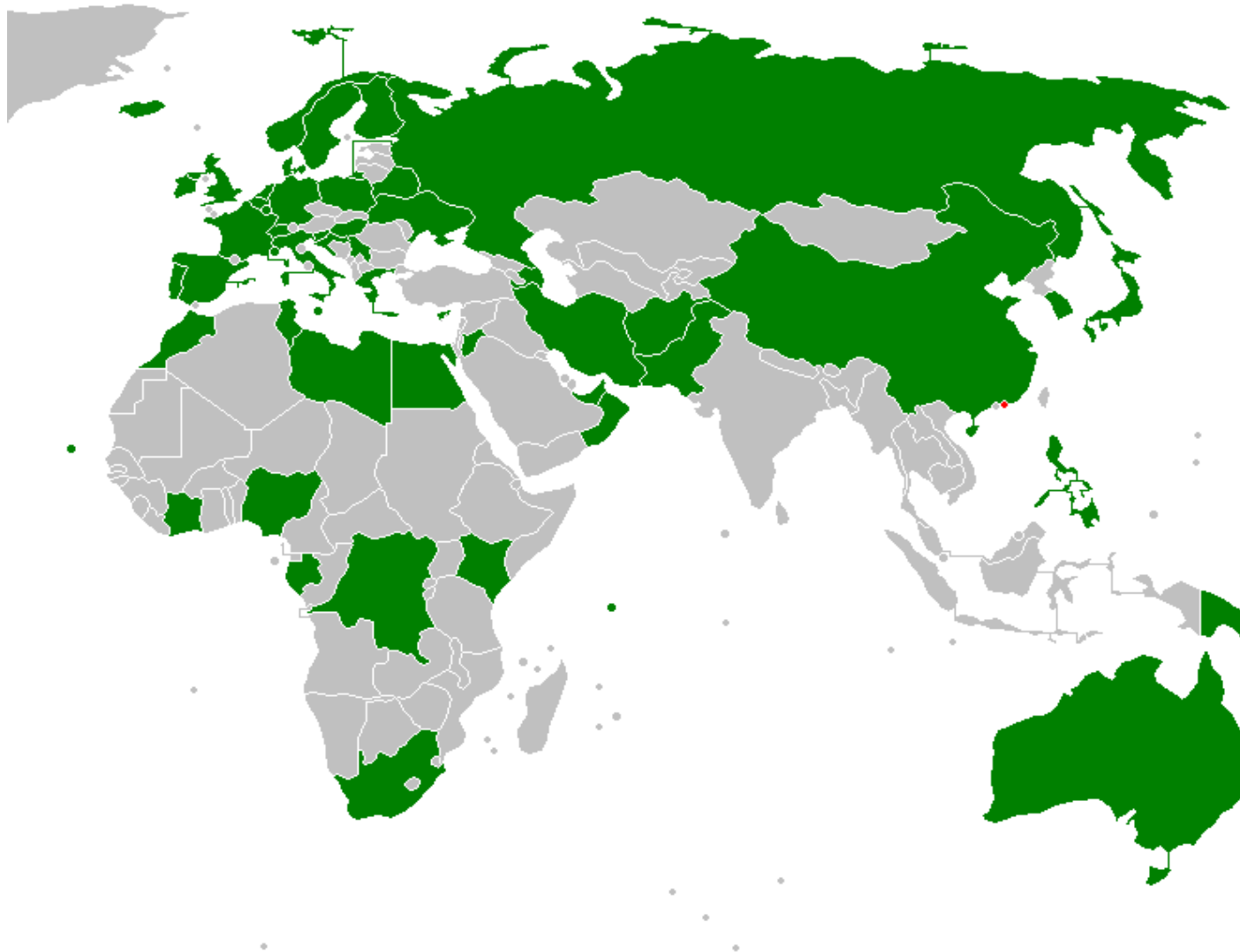
European Union Member States



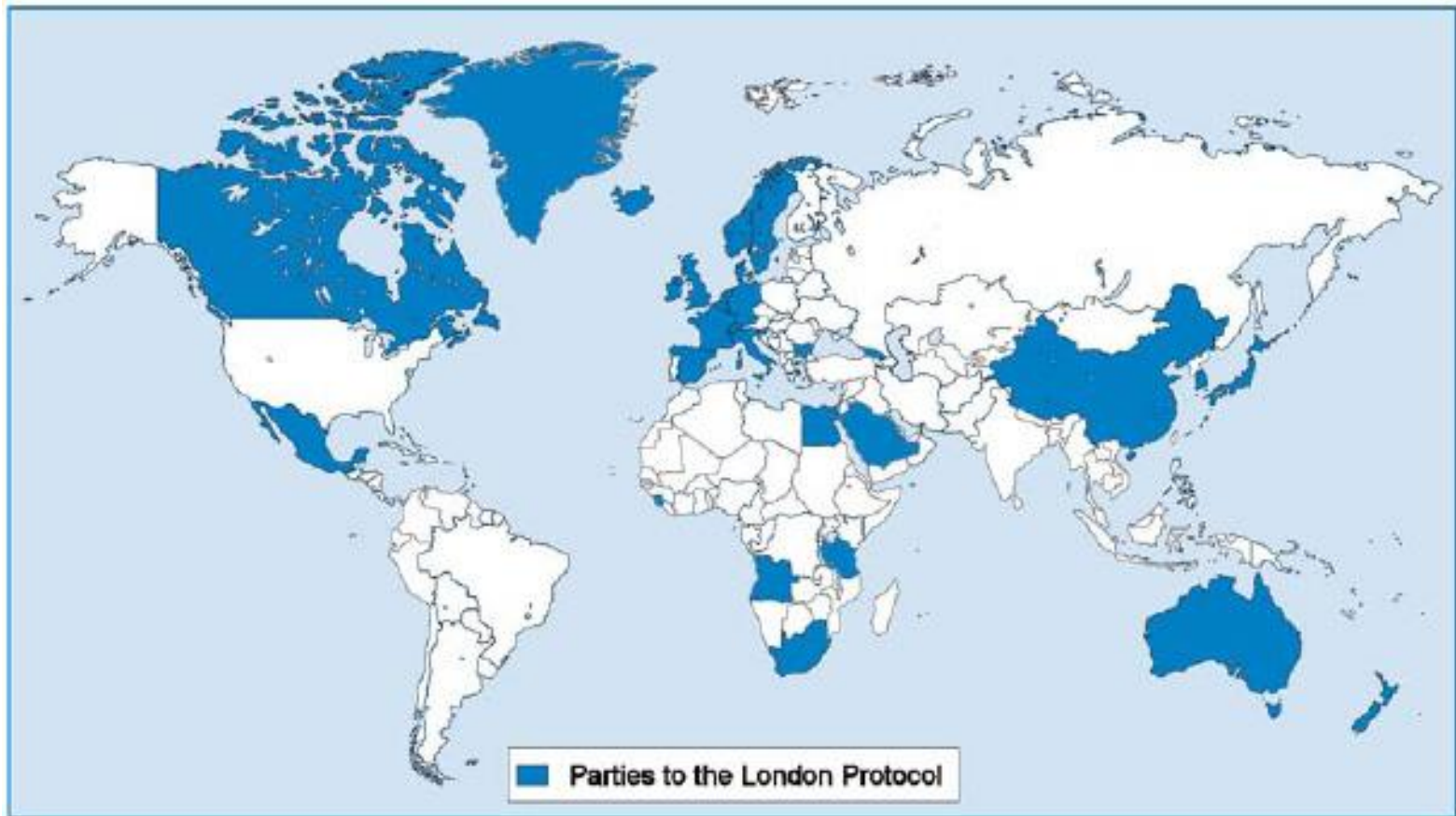
KYOTO PROTOCOL



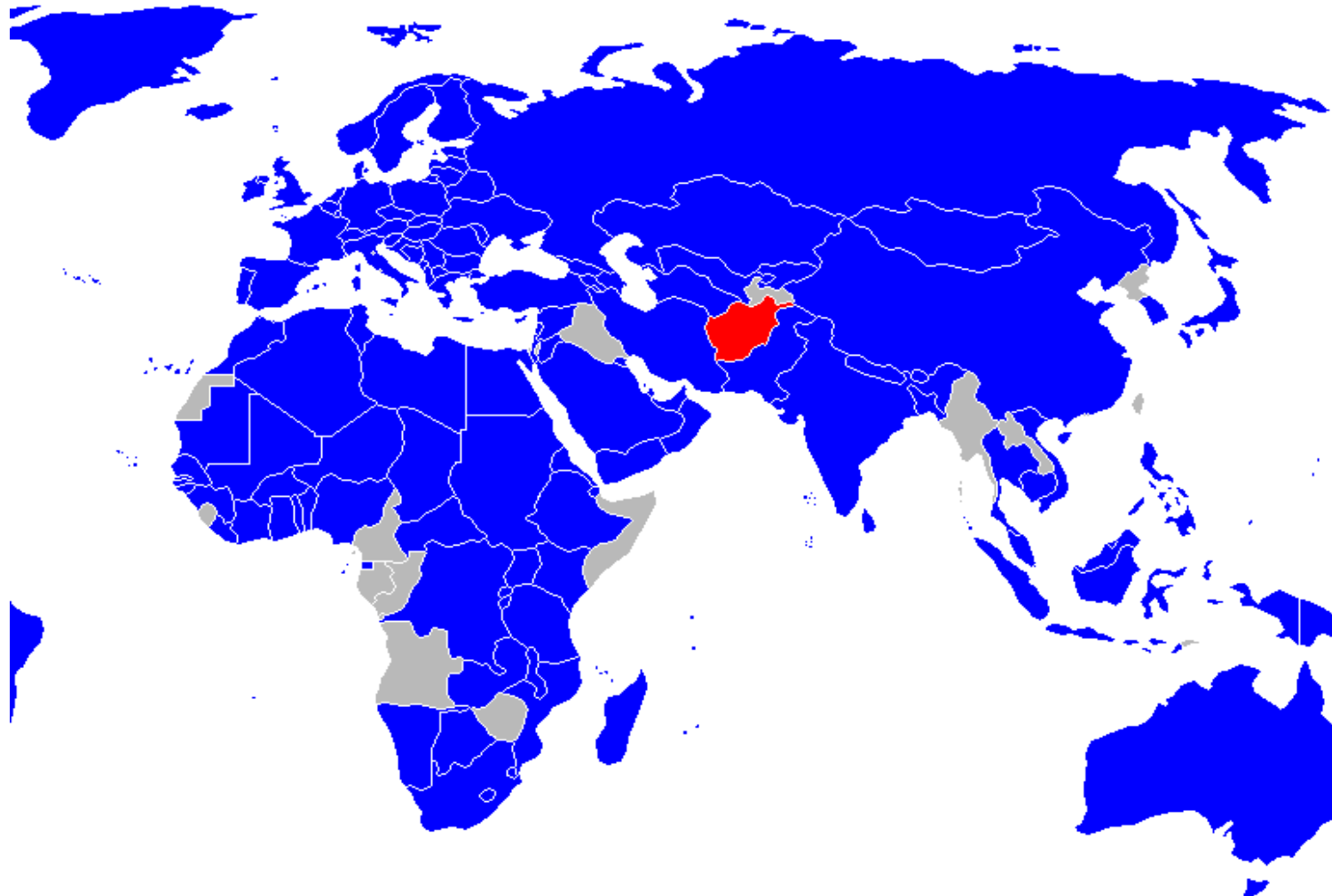
LONDON CONVENTION



LONDON PROTOCOL



BASEL CONVENTION



ESPOO CONVENTION

