

# Legal Framework of Marine Environmental Protection in the South China Sea

**CIL**

CENTRE FOR INTERNATIONAL LAW  
National University of Singapore

## *ASEAN-China Workshop on Marine Environmental Protection in the SCS*

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# Outline

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- 1. International Law Governing Marine Environmental Protection**
- 2. State Jurisdiction over Marine Debris**
- 3. Prospects for Regional Cooperation on Marine Environmental Protection**
- 4. Key Recommendations**

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**Part 1.**

**International Law Governing Marine Environmental  
Protection**

# 1.1 International Environmental Law Regimes

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**Treaties** – binding on all parties

- London Convention/Protocol, MARPOL, UNCLOS, UNFCCC, CBD, OSPAR

**Customs and Principles of International Law** – binding on all states, established by state practice, applied by courts / tribunals

- The precautionary principle, the principle of cooperation, the principle of sustainable development

**Soft Law** – non-binding but used to interpret treaties, might develop into customs and principles

- Agenda 21 – CBD, LC/LP

## 1.2 United Nations Convention on the Law of the Sea

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- Universally accepted – 168 parties – China and AMS (except Cambodia) are parties to UNCLOS
- The provisions on the marine environment incorporate / include principles and rules of previous treaties; later treaties must be consistent with UNCLOS
- As a framework convention, UNCLOS creates and relies on sub-regimes for its implementation through rules and standards developed by competent international organisations (IMO, ILO, FAO) and diplomatic conferences (COP to LC/LP & CBD)

## 1.2.1 General Obligations under UNCLOS

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**Article 192** – obligation to protect and preserve the ME

**Article 193** – states have the sovereign rights to exploit their natural resources in accordance with their duty to protect and preserve the ME

**Article 194** – Obligation to take all measures necessary to prevent, reduce and control pollution of the ME from any source; to ensure that activities under their jurisdiction or control do not cause damage by pollution to other States or their environment and that such pollution does not spread beyond the areas where they exercise sovereign rights

## 1.2.2 General Obligations under UNCLOS

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**Article 195** – states shall **not to transfer** damage or hazards from one area to another **or transform** one type of pollution into another

**Article 197** – states shall **cooperate** on a global basis and, as appropriate, **on a regional basis**, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention, for the protection and preservation of the ME, taking into account characteristic regional features

## 1.2.3 General Obligations under UNCLOS

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**Article 204** – states shall endeavour to **observe, measure, evaluate and analyse the risks or effects of pollution** of the ME, in particular the effects of any activities which they permit or engage

**Article 205/206** – states **shall assess the potential effects of activities on the ME** when they have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the ME, and shall publish reports of the results or provide such reports to the competent international organizations

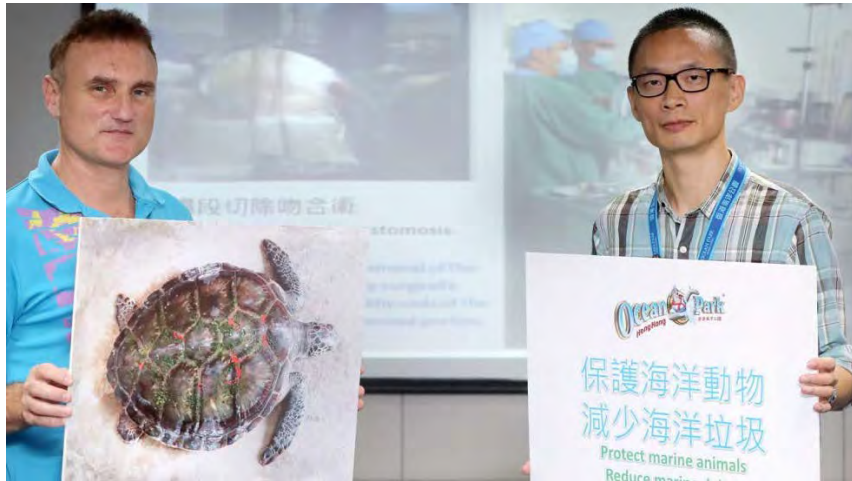


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## **Part 2.**

# **State Jurisdiction over Marine Debris**

## 2.1 Sources of Marine Debris



<http://www.scmp.com/news>



<http://www.en.netralnews.com/news>

### Land-based Pollution

– appx. **80%** of marine pollution comes from land

- Of which 90-95% is plastic
- Microplastics

### Ship-source Pollution

– appx. **20%** of marine pollution comes from ships

- Abandoned / Lost fishing gear
- Illegal discharges
- Illegal dumping

## 2.2 Land-based Pollution

### Article 207

Obligation to **adopt laws and regulations** to prevent, reduce and control pollution of the marine environment from **land-based sources** in their territory;

Obligation to **take other measures** as may be necessary to prevent, reduce and control land-source pollution;

Obligation to endeavour to **harmonize policies** “at the appropriate regional level”;

Obligation to endeavour to **establish global and regional rules, standards and recommended practices and procedures** to prevent, reduce and control marine pollution from land-based sources

## 2.2 Land-based Pollution

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### **The Global Programme of Action for the Protection of the Marine Environment from Land-based Activities**

- Created in 1995 within UNEP (UN Environment)
- **Non-binding**
- Draft programme of work of the GPA Coordination Office for the period 2018–2022: Component B: Enhance delivery of tailored technical and policy solutions to address marine pollution from nutrient excess, wastewater, **marine litter discharges** and emerging pollutants

## 2.3 Ship-source Pollution

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### Article 210

States shall **adopt laws and regulations** to prevent, reduce and control pollution of the ME by **dumping**;

States shall endeavor to establish **global and regional** rules, standards and recommended practices and procedures

### Article 211

States shall **establish international rules and standards** to prevent, reduce and control pollution of the ME from vessels;

States **shall adopt laws and regulations** for the prevention, reduction and control of pollution of the ME from vessels flying their flag or of their registry

## 2.3 Ship-source Pollution

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### **Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (LC/LP)**

- 1972 LC: China, Philippines
- 1996 LP: China, Philippines

### **International Convention for the Prevention of Pollution from Ships (MARPOL)**

- Annex IV Sewage: Cambodia, China, Indonesia, Malaysia, Myanmar, Philippines, Singapore, Viet Nam
- Annex V Garbage: Cambodia, China, Indonesia, Malaysia, Myanmar, Philippines, Singapore, Viet Nam

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## **Part 3.**

# **Prospects for Regional Cooperation on Marine Environmental Protection**

## 3.1 Enclosed or Semi-enclosed Sea

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**Article 122** – a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States.

**Article 123** – States bordering an ESES should **cooperate** with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavour, directly or through an appropriate regional organization:

(b) to coordinate the implementation of their rights and duties with respect to **the protection and preservation of the marine environment**;



## 3.2 UNEP Regional Seas Programme

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### East Asian Seas

- 1981 The Action Plan for the Protection and Development of the Marine Environment and Coastal Areas of the East Asian Seas Region (the East Asian Seas Action Plan)
- Coordinating Body on the Seas of East Asia (COBSEA)
- Cambodia, China, Indonesia, Malaysia, Philippines, Singapore, Thailand, Viet Nam
- There is no regional convention; instead the programme promotes compliance with existing environmental treaties and is based on member country goodwill

### 3.3 UNEP / GEF South China Sea Project

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#### **Reversing Environmental Degradation Trends in the South China Sea and Gulf of Thailand**

- Funded by the Global Environment Facility (GEF) and implemented by UNEP between 2002-2008
- Cambodia, China, Indonesia, Malaysia, Philippines, Thailand, and Viet Nam
- Overall goals are to create regional collaboration and partnership in addressing environmental problems, and to enhance regional capacity
- One of the three priority areas of concern is to address land-based pollution

## 3.4 ASEAN-China Framework

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### 2002 ASEAN-China Declaration on the Conduct of Parties in the South China Sea

➤ 6. Pending a comprehensive and durable settlement of the disputes, the Parties concerned may explore or undertake cooperative activities. These may include the following:

- a. **marine environmental protection**

The modalities, scope and locations, in respect of bilateral and multilateral cooperation should be agreed upon by the Parties concerned prior to their actual implementation

## 3.4 ASEAN-China Framework

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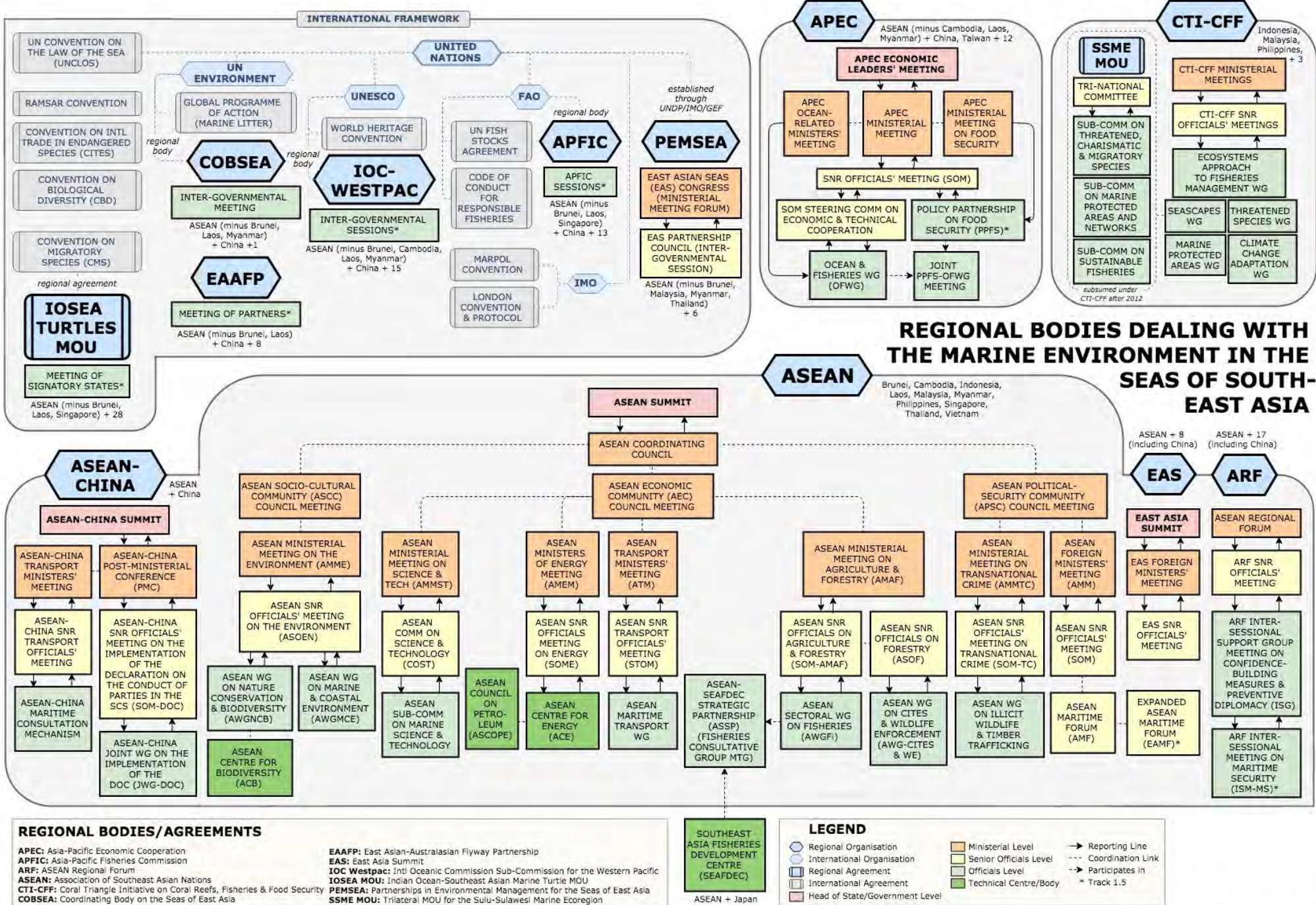
### **ASEAN-China Strategy on Environmental Cooperation 2009-2015 / 2016-2020**

- 48. (d) promoting cooperation on marine environmental protection areas such as ... **marine litter pollution control**;

### **ASEAN-China Declaration on a Decade of a Coastal and Marine Environmental Protection in the South China Sea (2017-2027)**

- Affirming the commitment of Governments under the DOC, particularly on undertaking **cooperative activities on marine environmental protection**;





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## **Part 4.**

# **Key Recommendations**



## 4.1 Geographic Area of Cooperation



Establishment and Operation of a Regional  
System of Fisheries Refugia in SCS and GOT

<https://iwlearn.net/iw-projects/5401>

The SCS and GOT have been treated as one semi-enclosed sea, or two Large Marine Ecosystems / Ecoregions for different purposes

AMS and China need to decide the geographic scope of the area for cooperation for marine debris

## 4.2 Areas of Focus

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### **National Implementation:**

- Implementing rules and standards of waste management on land and preventing plastic waste from entering the ocean
- Ensure compliance with relevant international rules and standards of ship-source pollution

### **Cooperation:**

- Formulate and elaborate regional rules, standard and recommended practice and procedures
- Share best practice, provide technical support and transfer of technology



# THANK YOU

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