



INTERNATIONAL CONFERENCE ON REGIONAL COOPERATION FOR
MARINE ENVIRONMENTAL PROTECTION

LEGAL AND POLITICAL CHALLENGES AND PROSPECTS

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LEGAL AND POLITICAL CHALLENGES GENERALLY



Working through “
ASEAN Way”



Dealing with the South
China Sea Disputes



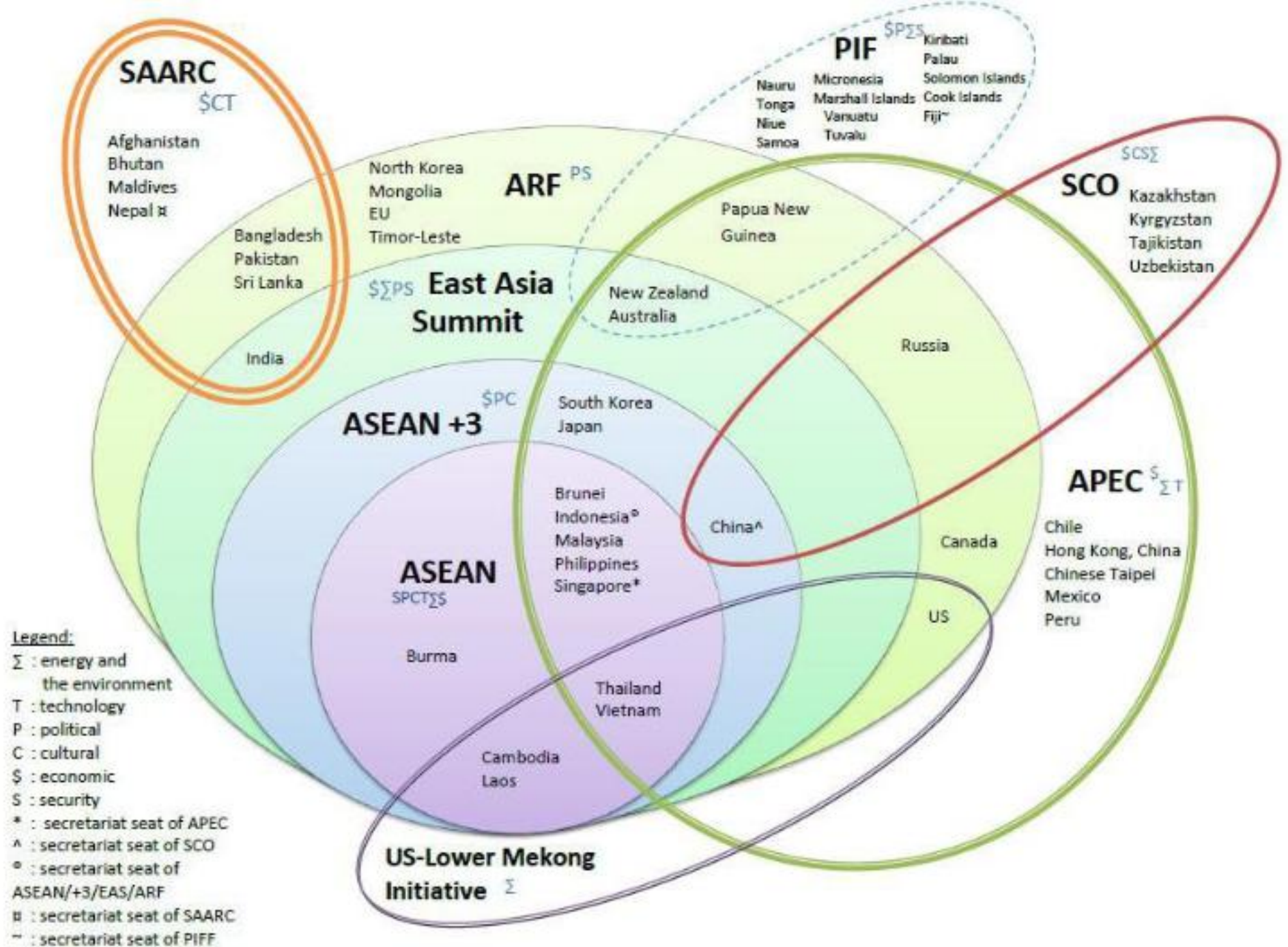
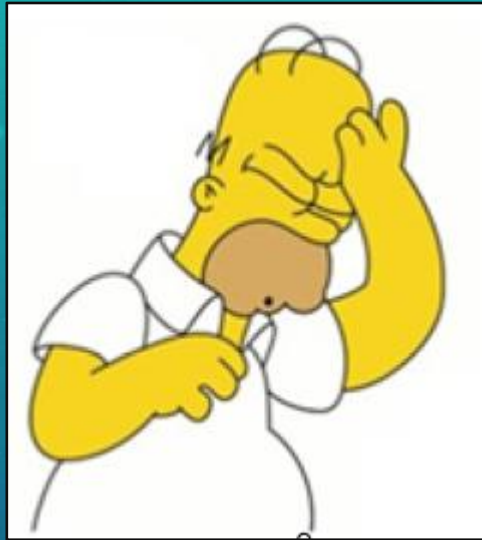
Building from the Ground
Up



WORKING THROUGH “THE ASEAN WAY”

UNPACKING “THE ASEAN WAY”

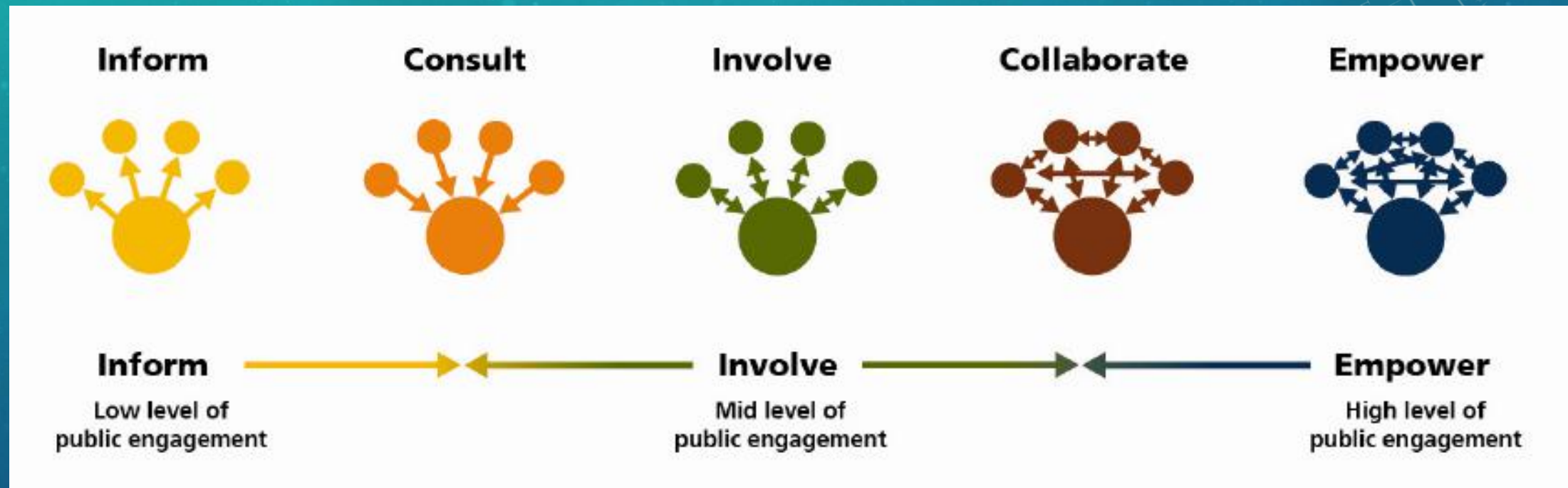
- Core principles of ASEAN: sovereignty and freedom from foreign intervention, non-interference in internal affairs, peaceful settlement of disputes, non-use of force, mutual cooperation
- ASEAN summitry as main vehicle for regional relations management
 - Discreet, *ad hoc*, deliberative, forum-centric
 - Multiple, overlapping, simultaneous, mobile participation
 - Complex, issue-based, sometimes non-linear, sometimes forum-shopping
 - Sometimes results in concrete action, but no precise regularity, consistency, and predictability
- UNDERSTANDING the ASEAN Way, how it works (or not), and how to navigate it is KEY to strategizing/planning/implementing cooperation within ASEAN



NAVIGATING ASEAN LEGAL- POLITICAL PROCESSES

- ASEAN seen as a continuing conference: a Deliberative Process
 - Need to analyze the complicated structure of ASEAN summitry and distinguish between talk-shops and “ACT-shops”
 - Separate pure discussion/deliberative forums from actual cooperative planning and decision-making bodies
- Classify the spectrum of ASEAN cooperation
 - One-off meetings/declarations – atmospherics, intentions
 - Regular exchanges, substantive discussions – consultations, exchanges
 - Policy-/decision-making discussions to guide individual actions – inputs, ideas
 - Policy-/decision-making with coordinated individual implementation – regional consistency, coordination
 - Sustained joint implementation/activities – acting in concert

THEORETICAL FRAMEWORK: SPECTRUM OF PUBLIC PARTICIPATION



UNDERSTANDING “THE ASEAN WAY” THROUGH THEORY OF PUBLIC PARTICIPATION → COMMUNITY-BUILDING AS COOPERATION

	INFORM EACH OTHER	CONSULT WITH EACH OTHER	INVOLVE WITH OTHERS	COLLABORATE WITH EACH OTHER	EMPOWER & ACT WITH EACH OTHER
GOAL	Provide each other with information on issues	Obtain feedback on analysis, issues, alternatives, decisions	Discuss with the others to address issues, but finally decide and then act individually	Decide with the others, but act individually	Decide and act as a group
MODUS OPERANDI	Initial ASEAN forums/ meetings, communications, preliminary interactions	ASEAN SOMs, MMs, Working Groups	ASEAN +/- engagements, regional forums, international organizations	ASEAN – activities (e.g. TCA), ASEAN bodies (e.g. Secretariat, SEAFDEC, ABC, ACE), Guidelines; sub-regional arrangements	Intra-ASEAN relations (e.g. visa-free policy, trade)

OBSERVATIONS

- ASEAN summitry as form of bottom-up norm-making thru action from grassroots rather than by coercive top-down management
 - Traditional perspective assumes top-down approach, embedded in legal analysis
 - Need to look at things from a bottom-up perspective
 - Within ASEAN , heavy emphasis on deliberation without pre-defined procedure
 - *Ad hoc*, non-linear, non-structured norm-building process
 - Not all bodies/forums are equal; some more important, some preliminary/subordinate to others
 - Overlaps, redundancies inevitably arise
 - Continuity, institutional memory issues
 - Examples:. Liliansa's description of process of Marine Turtle MOU, Youna's description of fisheries refugia work)

OBSERVATIONS

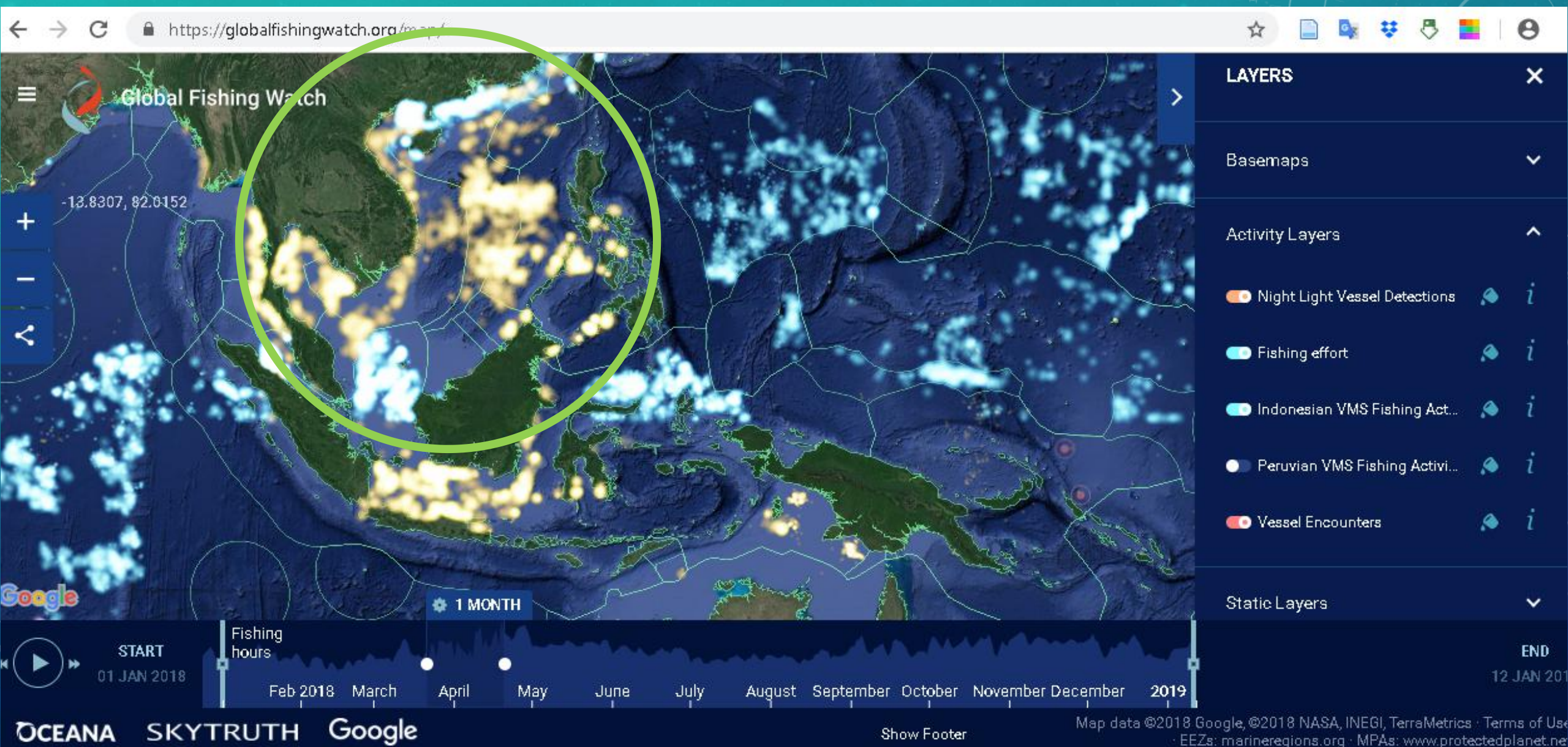
- Based on Youna's presentation of treaties ratification record, ASEANesque factors apparently correlate with adoption/ratification:
 - Extent to which State sovereignty is preserved/protected (how much of treaty compliance determined by independent national decision and least amount of "foreign intervention")
 - Socio-economic impact of decision/policy on constituencies
 - Sectoral interests directly affected within State concerned
- Parameters for observing/measuring success/failure should take account of nature of activity/place within the cooperation spectrum
 - E.g.: Do not expect an informational exercise to result in a concrete action on the ground; monitor and evaluate effort in terms of its overall character as a cooperative mode

THE SOUTH CHINA SEA DISPUTES

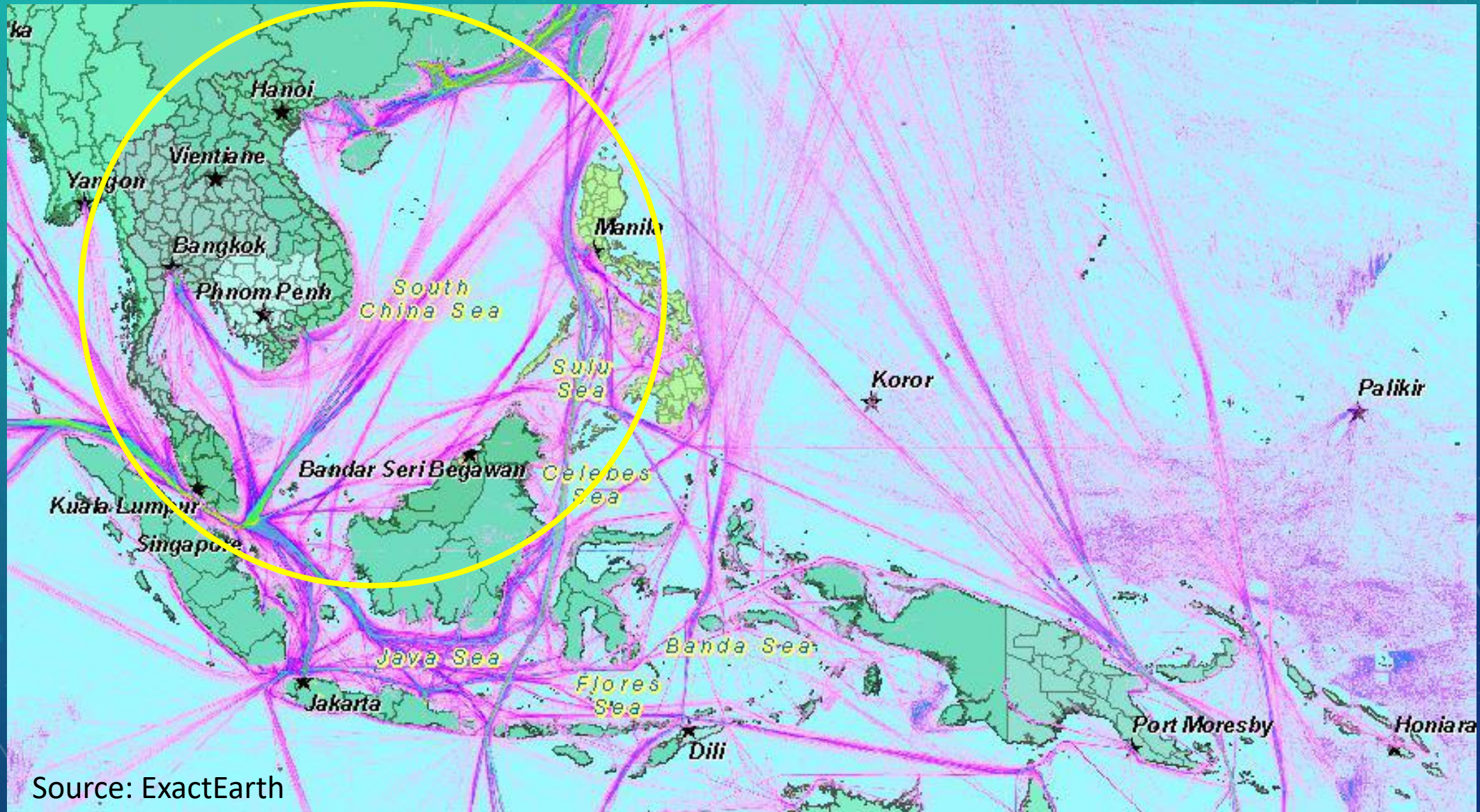
SOUTH CHINA SEA DISPUTES

- SCS is the maritime heartland of Southeast Asia
- Thus far, cooperative activities have danced around the SCS despite its being a key component of the Southeast Asian marine environmental domain
- Scientific, economic , environmental realities demonstrate that SCS is a vital component of the SEA marine environment

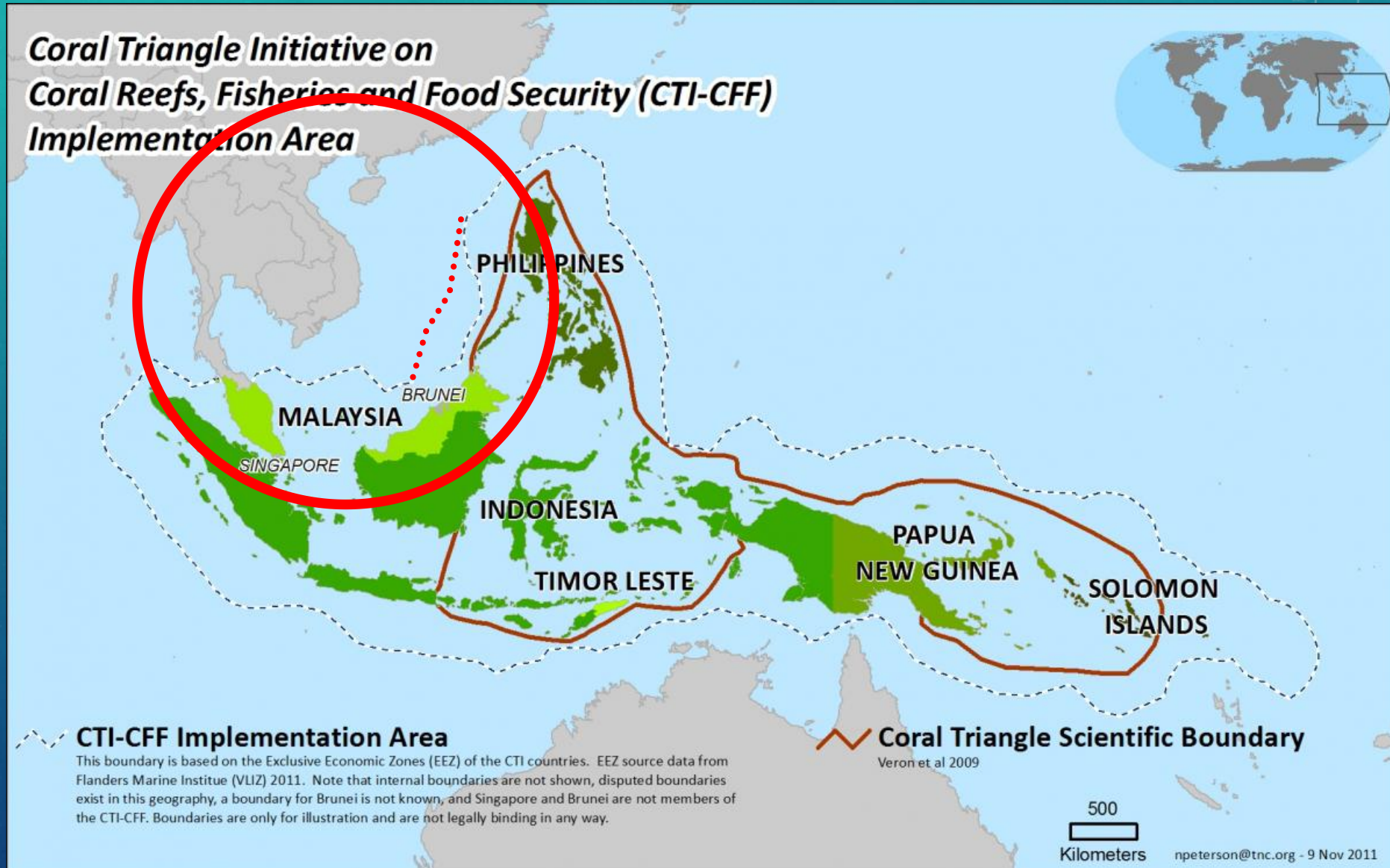
FISHING ACTIVITIES AT THEIR MOST INTENSIVE



SEA LINES OF COMMUNICATION; TRAFFIC DENSITY



CORAL TRIANGLE



CORAL ECOREGIONS

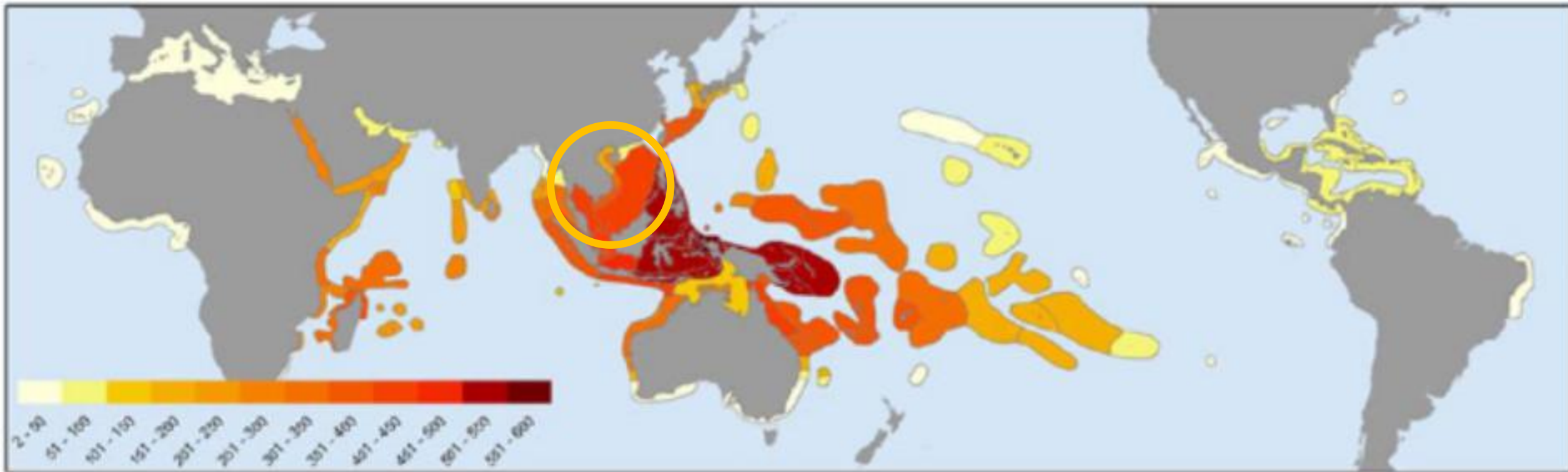
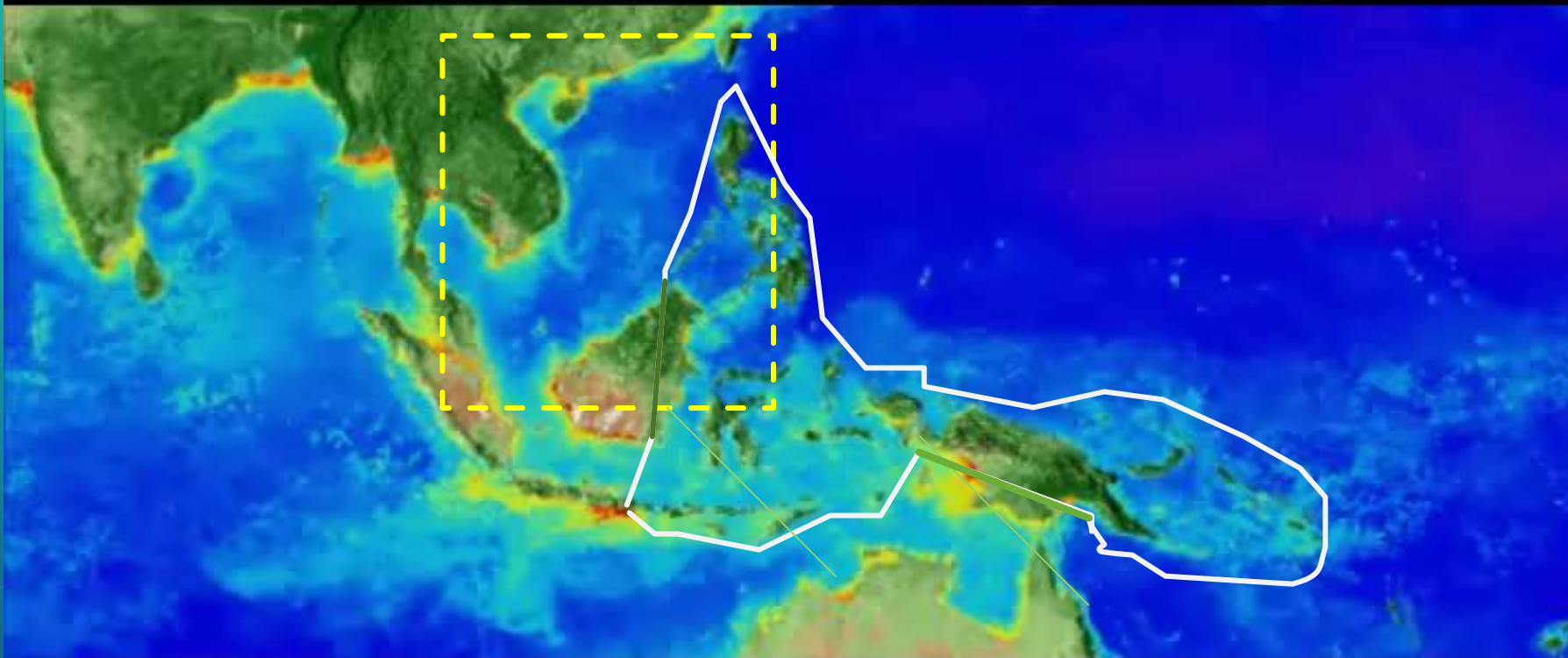


Fig. 3 Global biodiversity of zooxanthellate corals. Colours indicate total species richness of the world's 141 coral biogeographic 'ecoregions' (From the spatial database *Coral Geographic*, see text)

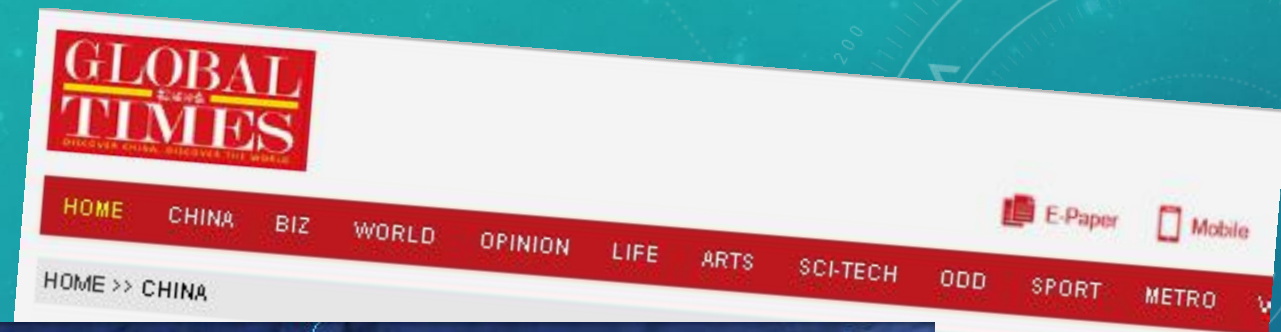


MODIS Ocean Color Data Extract
Chlorophyll Distribution in the CT, 2002-2017

OBSERVATIONS

- SCS disputes are a major deterrent to greater cooperation on the single most important area of multi-lateral interest and concern
 - Serious distrust between claimant States in SCS limiting cooperation even in scientific, conceptual aspects
 - Science and environment may be used to justify unilateral actions carried out by a State to assert/advance their claim

OBSERVATIONS

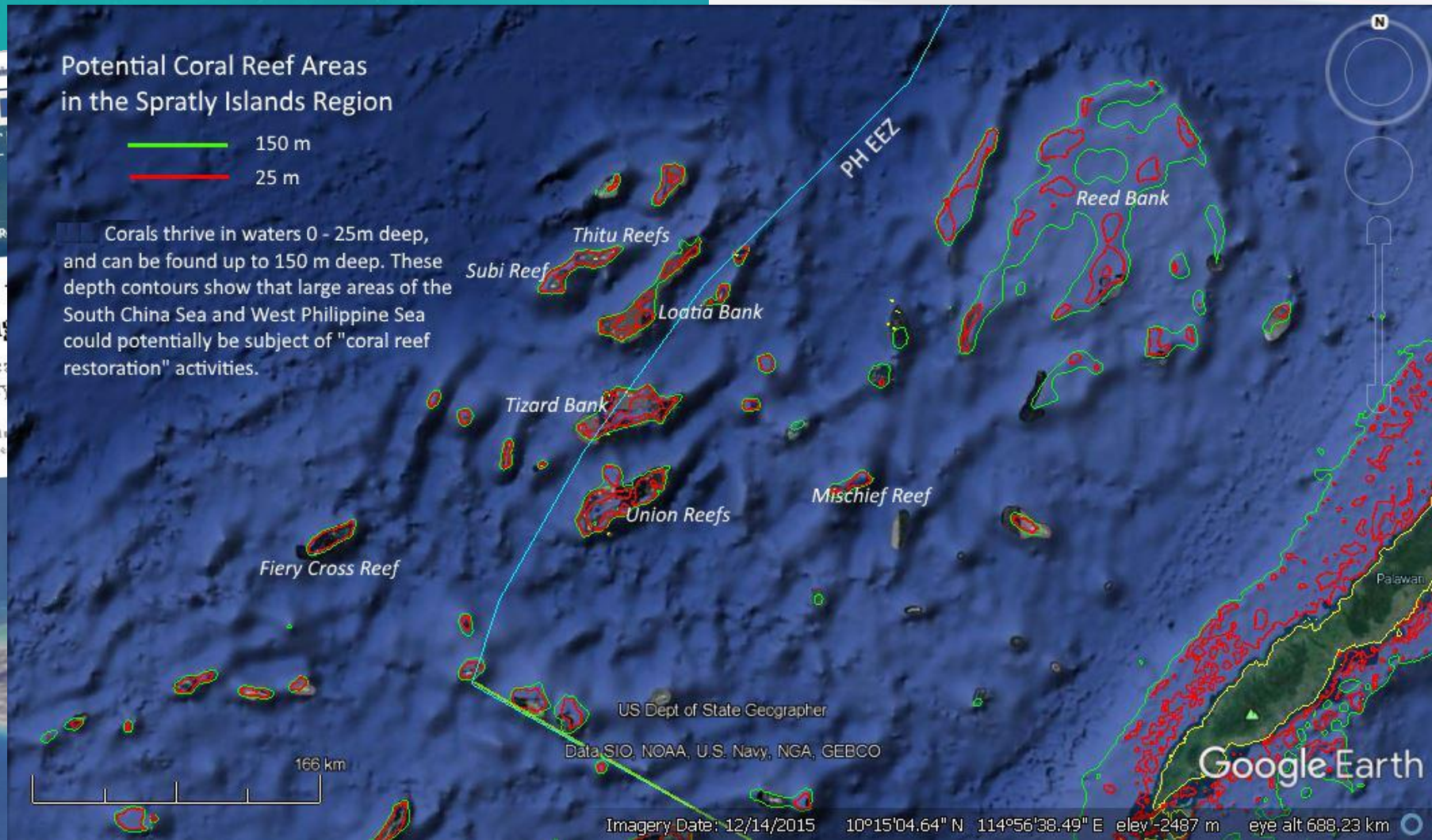


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- China s
- Ministry

PUBLISHED : Wed
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responsibility of
reported the Xinhua

OBSERVATIONS

- Absence of an acceptable legal formula for non-prejudicial cooperation
- Potential for lip-service?
 - ASEAN-China Declaration of the Decade of Coastal and Marine Environment Protection, 2017
 - Ongoing COC negotiations include general items on intention to cooperate on protection of marine ecosystem and biodiversity



BUILDING FROM THE GROUND UP

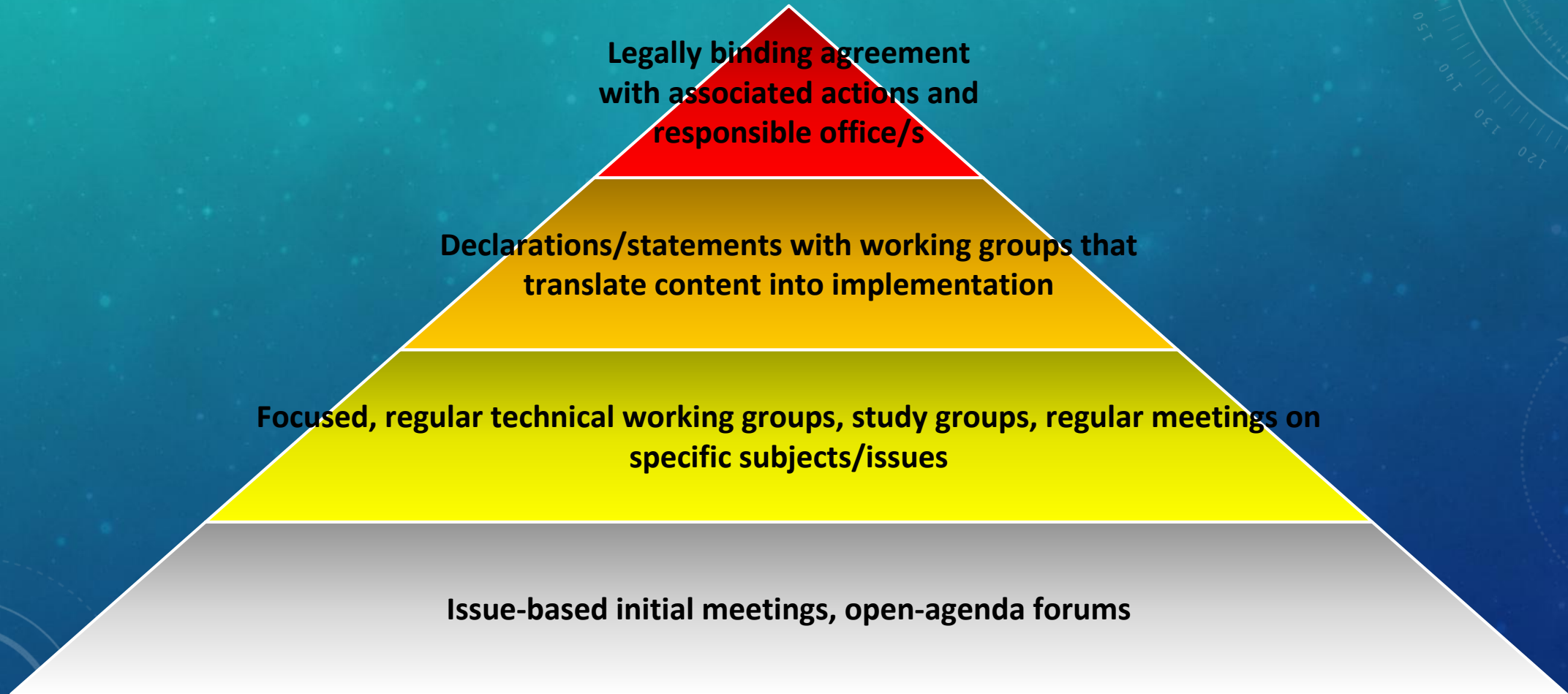
BUILDING FROM THE GROUND UP: SOME EXAMPLES

- ASEAN Working Group on Coastal and Marine Environment (AWGCME)
 - ASEAN Conference on Reducing Marine Debris in ASEAN Region, 22-23 Nov 2017
 - ASEAN-ROK Training Course for First Responders(Level 1) and Supervisors/On Scene Commanders (Level 2) on Oil Spill Response, 14-18 Mar 2016 (Level 1) and 23-27 May 2016 (Level 2)
 - ASEAN –ROK Environmental Cooperation Project Phase VI: Restoration of Degraded Terrestrial and Mangrove Ecosystems and Conservation of Biodiversity in the ASEAN Region, implemented 2013-2014
 - ASEAN Mechanism to Enhance Surveillance vs. Illegal Desludging and Disposal of Tanker Sludge at Sea, adopted 29 Oct 2009 at 11th AMME
 - ASEAN Marine Water Quality Criteria, adopted 2002
 - Marine Protected Areas in Southeast Asia, developed & published by ASEAN Centre for Biodiversity

BUILDING FROM THE GROUND UP: SOME EXAMPLES

- Various ASEAN Declarations, statements on environment
- Production of studies, reports
 - Conference on Building Resilience for Sustainable ASEAN from Water-Related Disasters, Apr 2018
 - 5th ASEAN State of the Environment Report, Jan 2018
 - ASEAN Biodiversity Outlook 2, Nov 2017
 - ASEAN Program on Sustainable Management of Peatland Ecosystems 2014-2020, Nov 2016
- Regional and sub-regional cooperation
 - ASEAN Agreement on Transboundary Haze Pollution
 - ASEAN Regional Oil Spill Contingency Plan
 - Trilateral Cooperation Agreement

BUILDING FROM THE GROUND UP: SOME EXAMPLES



OBSERVATIONS

- Most activities currently involve technical cooperation and capacity-building (including information-sharing and dissemination)
- ASEAN summitry does not necessarily have to lead to pan-ASEAN cooperation; sub-regional cooperation may also result
- Actual mutual cooperation with joint action by ASEAN States seem to be more likely when
 - There is an actual or imminent crisis
 - There is a common perception of the nature of the problem to be addressed, and the need/advantages for direct cooperation with joint action
 - Parties are satisfied that they have addressed any perceived threats to their national sovereignty

The background is a gradient of teal and blue, featuring faint, stylized circular patterns and a field of small, glowing particles. On the right side, there are more prominent circular elements, including a large one with a scale from 0 to 200 and several smaller concentric circles with arrows indicating motion.

THANK YOU VERY MUCH!

END OF PRESENTATION