

Development of Regional Cooperation for Protection of the Marine Environment and Current Regional Mechanisms

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Outline

1. *Origins of the regional approach for protection of the marine environment*
2. *Regional approach under the 1982 UNCLOS and the duty to cooperate*
3. *UNEP and Regional Seas Programme*
4. *Observations*

Part I. Origins of the
regional approach for
protection of the marine
environment

Origins of the regional approach for protection of the marine environment:
From exclusion to cooperation

- Lewis M. Alexander was one of the first international legal scholars to undertake defining the role of marine regionalism for the new oceans law framework that was being developed at the Third Law of the Sea Conference (UNCLOS III), and particularly its application to semi-enclosed seas
- In 1974 he published an article entitled “Lewis M Alexander, ‘Regionalism and the Law of the Sea: the Case of Semi-enclosed Seas’ (1974) 2 *Ocean Development and International Law* “

Origins of the regional approach for protection of the marine environment:
From exclusion to cooperation

- Alexander defined a semi-enclosed sea as:
- (1) One that had an area of at least 50,000 nautical miles
- (2) Was a 'primary' sea, rather than an arm of a larger semi-enclosed body of water.
- (3) At least fifty percent of its circumference had to be occupied by land and the width of the connector between the sea and the open ocean could not represent more than twenty percent of the sea's total volume.
- According to his definition there were **25 semi-enclosed seas** of the world
- **The South China Sea is included in the list of 25**

Part 2. Regional
approach under the
1982 UNCLOS and duty
to cooperate

Regional approach under the 1982 UNCLOS

- The question of whether regional seas should have a special regime was debated during the Second Committee meetings of UNCLOS III
- Several states raised the special concerns of enclosed and semi-enclosed seas in relation to protection of the marine environment and management of resources and promoted the need for a special regime for enclosed and semi-enclosed seas.
- States recognized that certain seas, because they occupy a smaller marine space, or because of their limited access to the world's oceans, or when bordered by multiple coastal states, faced special concerns.
- Part XI of UNCLOS

Regional approach under the 1982 UNCLOS

- **No definition of “marine region” under UNCLOS**
- **Part IX on Enclosed or Semi-Enclosed Seas defines enclosed or semi-enclosed seas to mean:**
- “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 122)

Cooperation and regional approach under the 1982 UNCLOS

- **Part IX on Enclosed or Semi-Enclosed Seas**
- **Article 123 Cooperation of States bordering enclosed or semi-enclosed seas**
- States bordering an enclosed or semi-enclosed sea **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:**
- (a) to coordinate the management, conservation, exploration and exploitation of the **living resources** of the sea;
- (b) to coordinate the implementation of their rights and duties with respect to the **protection and preservation of the marine environment**;
- (c) to coordinate their **scientific research policies** and undertake where appropriate joint programmes of scientific research in the area;
- (d) to invite, as appropriate, other interested States or international organizations to cooperate with them in furtherance of the provisions of this article.

Cooperation and regional approach under the 1982 UNCLOS

- **Part XII UNCLOS**
- **SECTION 2. GLOBAL AND REGIONAL COOPERATION**
- **Article 197.** Cooperation on a global or regional basis
- “ “**States shall** cooperate on a **global basis** and, as appropriate, on a **regional basis**, directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention, for the **protection and preservation of the marine environment**, taking into account characteristic regional features.”

Cooperation and regional approach under the 1982 UNCLOS

Article 199

Contingency plans against pollution

- In the cases referred to in article 198 (*duty to notify in case of imminent harm*), States in the area affected, in accordance with their capabilities, and the competent international organizations shall cooperate, to the extent possible, in eliminating the effects of pollution and preventing or minimizing the damage. To this end, States shall jointly develop and promote contingency plans for responding to pollution incidents in the marine environment.

Cooperation and regional approach under the 1982 UNCLOS

Article 200

Studies, research programmes and exchange of information and data (*about pollution*)

- States shall cooperate, directly or through competent international organizations:
- To promote studies,
- Undertake programmes of scientific research and
- Encourage exchange of information and data acquired **about pollution** of the marine environment.
- They shall endeavour to participate actively in regional and global programmes to acquire knowledge for the assessment of the nature and extent of pollution, exposure to it, and its pathways, risks and remedies.

Cooperation and regional approach under the 1982 UNCLOS

Article 201

Scientific criteria for regulations

- In the light of the information and data acquired pursuant to article 200:
- Duty of States to cooperate directly or through competent international organization to:
- establish appropriate scientific criteria for the formulation and elaboration of rules, standards and recommended practices and procedures for the **prevention, reduction and control of pollution** of the marine environment.

ITLOS on the Duty to Cooperate for the Marine Environment

1. THE MOX PLANT CASE (IRELAND v. UNITED KINGDOM) Request for provisional measures (ITLOS, 2001)

“duty to cooperate is a fundamental principle in the prevention of pollution of the marine environment under Part XII of the Convention and general international law ..”

2. CASE CONCERNING LAND RECLAMATION BY SINGAPORE IN AND AROUND THE STRAITS OF JOHOR (MALAYSIA v. SINGAPORE) Request for provisional measures (ITLOS, 2003)

- Restated the duty to cooperate under the *Mox Plant* case

Part 3. UNEP and the Regional Seas Programme



Development of the UN Environment (ex UNEP) Regional Seas Programme

- UNEP/UN Environment is an outcome of the 1972 United Nations Conference on the Human Environment (Stockholm Conference)
- **Principle 24 of the Stockholm Declaration**
- “International matters concerning the protection and improvement of the environment should be handled in a cooperative spirit by all countries, big and small, on an equal footing. Cooperation through multilateral or bilateral arrangements or other appropriate means is essential to effectively control, prevent, reduce and eliminate adverse environmental effects resulting from activities conducted in all spheres, in such a way that due account is taken of the sovereignty and interests of all States.”



Development of the UN Environment (ex UNEP) Regional Seas Programme

- UNEP Regional Sea Programme is **45 years** in operation
- In 2014 for its 40th anniversary a visioning workshop was held and identified four key themes for its the future work:
- (1) Pollution (2) Climate Change and Ocean Acidification (3) Extraction (living and non-living resources) and (4) Governance.



Development of the UN Environment (ex UNEP) Regional Seas Programme

2017-2020 Strategic Directions (since 2004)

- Strategy 1. Reduce marine pollution of all kinds in line with the SDG Goal 14.1. (By 2025, prevent and significantly reduce marine pollution of all kinds, in particular from land-based activities, including marine debris and nutrient pollution)
- Strategy 2. Create increased resilience of people, marine and coastal ecosystems, and their health and productivity, in line with the SDG Goal 13 (climate change) and decisions made at the UNFCCC COP21 (Paris).
- Strategy 3. Develop integrated, **ecosystem-based regional ocean policies** and strategies for sustainable use of marine and coastal resources, paying close attention to blue growth.
- Strategy 4. Enhance **effectiveness** of Regional Seas Conventions and Action Plans as regional platforms for supporting integrated ocean policies and management.



Development of the UN Environment (ex UNEP) Regional Seas Programme

- 18 RSP covering 146 countries

(1) the partner/independent programmes ([Antarctic](#), [Arctic](#), [Baltic Sea](#), [Caspian Sea](#) and [North-East Atlantic](#));

(2) UNEP administered programmes ([Caribbean Region](#), [East Asian Seas](#), [Eastern Africa Region](#), [Mediterranean Region](#), [North-West Pacific Region](#), [Western Africa Region](#)); and

(3) Non-UNEP administered programmes ([Black Sea Region](#), [North-East Pacific Region](#), [Red Sea and Gulf of Aden](#), the Regional Organization for the Protection of the Marine Environment (ROPME), [South Asian Seas](#), [South-East Pacific Region](#), [Pacific Region](#)).



Development of the UN Environment (ex UNEP) Regional Seas Programme

Mechanisms for implementation

- 1. Scientific assessment**
- 2. Legal instruments**
- 3. Institutional**



Development of the UN Environment (ex UNEP) Regional Seas Programme

1. Scientific assessment

- Establishing a RSP usually begins with a 'transboundary diagnostic analysis' (TDA) of the state of environmental degradation of the sea.
- A strategic action plan (SAP) is then adopted based on the findings of the TDA.
- The SAP outlines the environmental problems and actions necessary to address the issues identified by the TDA.
- The SAP should be followed with the adoption of a framework convention and implementing protocols.



Development of the UN Environment (ex UNEP) Regional Seas Programme

2. Legal instruments

- Framework Convention and Protocols

Example: Mediterranean Sea:

(1) Dumping (2) Emergency Response (3) Land-based Sources of Pollution (4) Specially Protected Areas and Biodiversity Protocol (SPAMI Protocol) (5) Offshore Protocol (6) Hazardous Wastes Protocol and (7) ICZM Protocol.

Note: Mediterranean Sea is the only RSP to have a formal compliance mechanism



Development of the UN Environment (ex UNEP) Regional Seas Programme

3. Institutional

- Institutional structure of the various individual RSPs usually consists of:
 - **Permanent secretariat or Regional Coordinating Unit** (RCU), which is responsible for carrying out the activities in the programme of work (PW).
 - Many RSPs the contracting parties have established **Regional Activity Centers** (RACs) to support the work of the programme including implementation of SAPs and protocols.
 - There are also **national focal** points for the protocols.



Black Sea Regional Seas Programme Activity Centers

AC ESAS	AC PMA	AC LBS	AC ICZM	AC CBD	AC FOMLR	AC IDM
Environmental and Safety Aspects of Shipping, Varna Bulgaria	Pollution Monitoring and Assessment, Odessa, Ukraine	Control of Pollution from Land Based Sources, Istanbul, Turkey	Development of Common Methodologies for Integrated Coastal Zone Management, Krassnodar, Russian Federation	Conservation of Biological Diversity, Batumi, Georgia	Environmental Aspects of Fisheries and Other Marine Living Resources, Constanta, Romania	Information and Data Management, Permanent Secretariat, Istanbul, Turkey

Caribbean Sea Regional Seas Programme Activity Centers

- **Oil Spills Protocol**: The Regional Marine Pollution Emergency Information and Training Center for the Wider Caribbean (REMPEITC-Caribe) in Curacao. For more information, visit their [website](#).
- **Pollution/LBS Protocol**: The Centre of Engineering and Environmental Management of Coasts and Bays in Cuba. For more information visit their [website](#).
- **Pollution/LBS Protocol**: [The Institute of Marine Affairs](#) in Trinidad and Tobago; and
- **SPAW Protocol**: The Regional Activity Centre for [Specially Protected Areas and Wildlife \(SPAW-RAC\)](#) in Guadeloupe.





Mediterranean Sea Regional Seas Programme Activity Centers

- The Regional Activity Centre for the Blue Plan/Plan Bleu - [RAC/BP](#) (France)
- The Regional Activity Centre for the Priority Actions Programme - [RAC/PAP](#) (Croatia)
- The Mediterranean Regional Centre for Emergency Action against Accidental Pollution - [REMPEC](#) (Malta)
- The Regional Activity Centre for Information and Communication - [RAC/INFO](#) (Italia)
- The Regional Activity Centre for Cleaner Production - [RAC/CP](#) (Spain)
- The Regional Activity Centre for Specially Protected Areas - RAC/SPA (Tunisia)



Problem: Uneven Landscape of Regional Cooperation

UNEP RSP with legal instruments and institutional mechanisms (differing levels)

1. Mediterranean (7 protocols)
2. Black Sea (5 protocols)
3. Northeast Atlantic Ocean (5 Annexes)
4. Baltic Sea (7 Annexes)
5. West Africa Region (1 protocol)
6. East Africa Region (3 protocols)
7. Caribbean Sea (3 protocols)
8. Red Sea (3 protocols)
9. ROPME (5 protocols)
10. Pacific Region (2 protocols)
11. Southeast Pacific (3 protocols)
12. Antarctic (1 + 6 annexes)
13. Caspian (no protocol)
14. Northeast Pacific (no protocol)

UNEP RSP only with institutional cooperation and Action Plans (no Conventions or protocols)

East Asian Seas

1. COBSEA (Cambodia, China, Indonesia, Korea, Malaysia, Philippines, Singapore, Thailand and Singapore)
2. South Asian Seas Programme (Maldives, Sri Lanka, Bangladesh, India and Pakistan)
3. North-west Pacific Programme (NOWPAP) (China, Japan, Korea and Russia)
4. Arctic (Canada, Denmark (including Greenland and Faroe Islands), Finland, Iceland, Norway, Russia, Sweden and the United States)

Part IV. Observations



1. Regional approach to protection and preservation of the marine environment was for the first time codified under UNCLOS
2. Clear duty to cooperate for States to cooperate under UNCLOS either directly or through competent international organizations
3. UNEP is one of the key competent international organizations
4. South China Sea is a regional sea where the coastal States have an obligation to cooperate
5. UNCLOS and UNEP provide the legal, policy, scientific and governance framework for such regional cooperation.
6. Ultimate question is one of “regime effectiveness”? Which one is actually working? What are the lessons to be taken from the different regional seas?