

ASLI: The Rule of Law and the Role of Law
in Asia

**REGIONAL COOPERATION AND MARINE
ENVIRONMENTAL PROTECTION IN SOUTHEAST
ASIA: CAN OTHER REGIONS PROVIDE
INSPIRATION?**

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OUTLINE OF PRESENTATION

- Duty to cooperate?
- Challenges to regional cooperation
- Work of CIL
- Regional best practices?
- Take aways for Southeast Asia

PART 1

DUTY TO COOPERATE?

UNCLOS

Environmental obligations - general

- Part XII covers “Protection and Preservation of the Marine Environment”
- Contains both substantive and framework provisions
- Art. 192 General Obligation

“States have the obligation to protect and preserve the marine environment”

- Overarching, substantive obligation that applies to all uses of ocean space, supplemented by more specific ones
- Positive obligation to take active measures, negative obligation not to degrade environment and duty to ensure activities within their jurisdiction and control do not cause damage to the marine environment of other states or areas beyond national control, especially not irreversible damage

UNCLOS

Environmental obligations - cooperation

- Art. 197 cooperation obligation
- Art. 122 states bordering enclosed or semi enclosed seas
- Art. 123 (b) cooperation of states bordering enclosed or semi-enclosed sea
- Commonly fulfilled by states inter alia through regional seas programmes (RSPs), both under the UN architecture or independently, and other regional cooperative mechanisms

PART 2

CHALLENGES TO

REGIONAL COOPERATION

IN SOUTHEAST ASIA



South China Sea

Gulf of Thailand

Gulf of Tonkin

Straits of Malacca and
Singapore

Celebes Sea

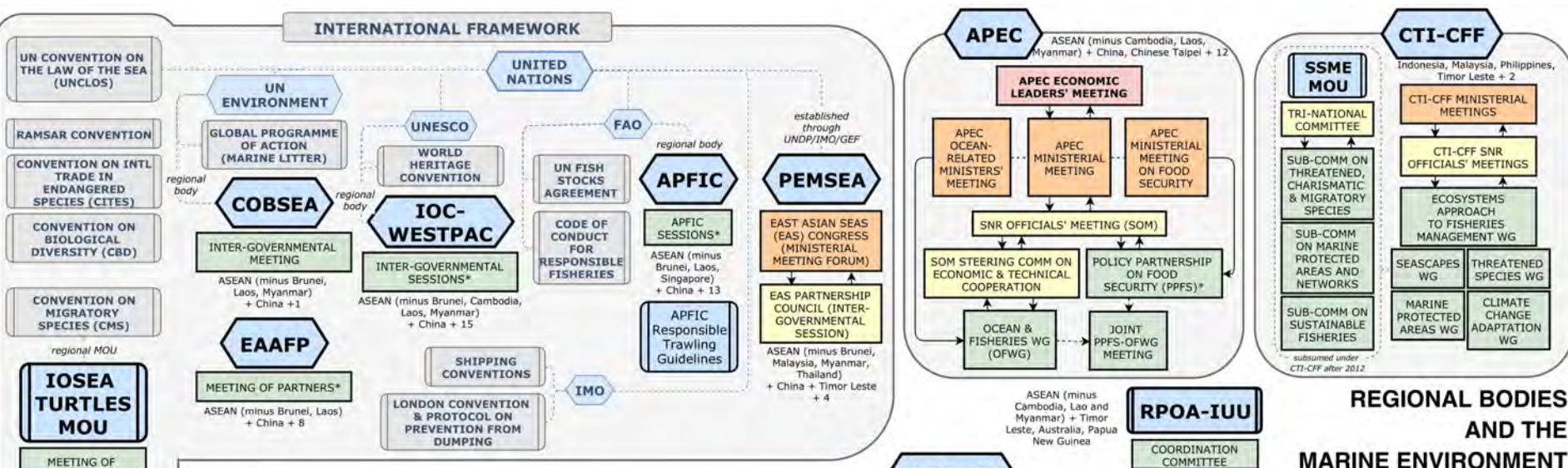
Sulu Sea

Arafura Sea

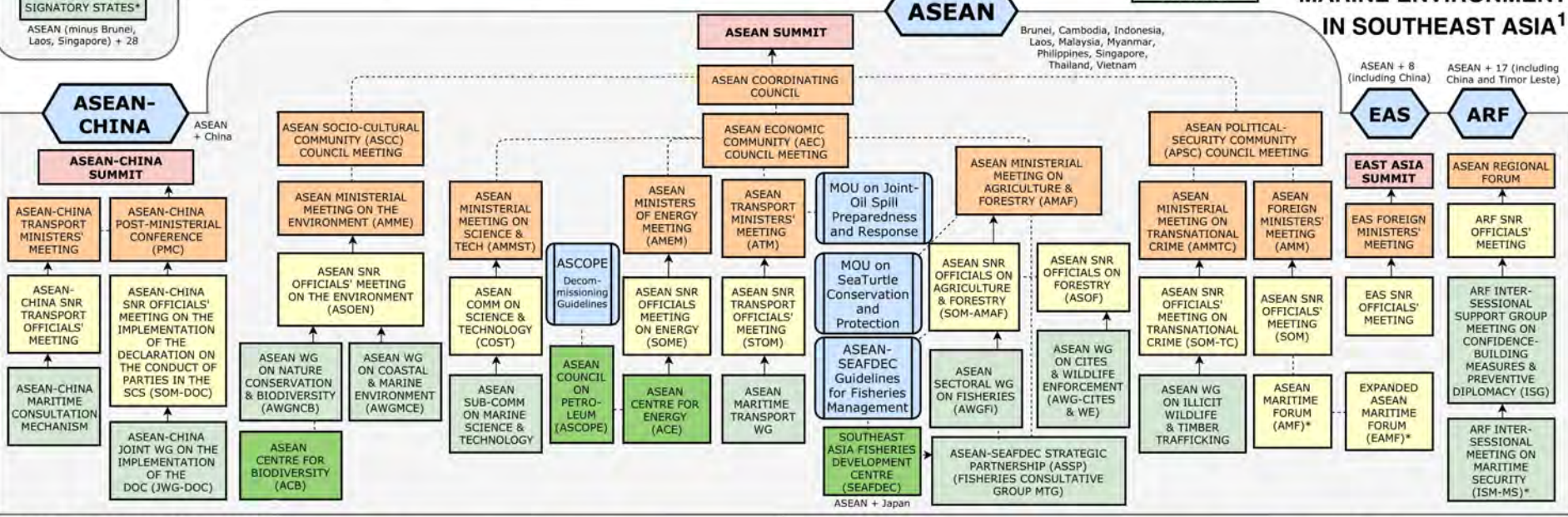
Eastern Andaman Sea

Timor Sea

[Torres Strait]



REGIONAL BODIES AND THE MARINE ENVIRONMENT IN SOUTHEAST ASIA¹



REGIONAL BODIES/AGREEMENTS

- APEC:** Asia-Pacific Economic Cooperation
- APFIC:** Asia-Pacific Fisheries Commission
- ARF:** ASEAN Regional Forum
- ASEAN:** Association of Southeast Asian Nations
- CTI-CFF:** Coral Triangle Initiative on Coral Reefs, Fisheries & Food Security
- COBSEA:** Coordinating Body on the Seas of East Asia
- EASFP:** East Asian-Australasian Flyway Partnership
- EAS:** East Asia Summit
- IOC Westpac:** Int'l Oceanic Commission Sub-Commission for the Western Pacific
- IOSEA MOU:** Indian Ocean-Southeast Asian Marine Turtle MOU
- PEMSEA:** Partnerships in Environmental Management for the Seas of East Asia
- RPOA-IUU:** Regional Plan of Action to promote responsible fishing practices including combatting IUU Fishing in the region
- SSME MOU:** Trilateral MOU for the Sulu-Sulawesi Marine Ecoregion

LEGEND

- Regional Organisation
- International Organisation
- Regional Agreement/Declaration
- International Agreement
- Head of State/Government Level
- Ministerial Level
- Senior Officials Level
- Officials Level
- Technical Centre/Body
- Reporting Line
- Coordination/Adoption Link
- Participates in
- Possibly Track 1.5

Footnote 1 The geographical scope of this map is the seas of Southeast Asia and especially the coastal States: Brunei, Cambodia, China, Indonesia, Malaysia, Philippines, Singapore, Thailand, Timor Leste and Vietnam. Involvement of these States is identified as ASEAN or individually for China and Timor Leste



CHALLENGES

- What is the region?
- Complex cooperation landscape
- The ASEAN way
- Soft law arrangements
- Development focus
- Maritime and sovereignty disputes

PART 3
WORK OF CIL
CONFERENCE IN JANUARY
2019 – ‘REGIONAL
COOPERATION FOR
PROTECTION OF THE
MARINE ENVIRONMENT’

KEY CHALLENGES

- Bodies and agencies working in silos
- Need to establish institutional memory
- How to assess effectiveness?
- Financing

PART 4 REGIONAL BEST PRACTICES?

ARCTIC

- No traditional regional seas programme
- Ilulissat Declaration by Arctic 5
- Arctic Council – mix of hard and soft law agreements
- Central Arctic Ocean Fisheries Agreement – issue specific solution
- OSPAR – higher protection, coordination with Arctic Council

BALTIC

- HELCOM regional seas programme
- Preference for hard law
- Some soft law – including issue specific HELCOM Nutrient Reduction Scheme

CARIBBEAN

- Caribbean Environment Programme RSP
- CARICOM regional governance
- UNDP/GEF CLME+ Project
- Similar challenges to SEA regarding funding, capacity and engagement

MEDITERRANEAN

- Barcelona Convention RSP
- 22 parties – different stages of development
- Ongoing disputes, lack of recognition
- Still a successful RSP

PART 5

TAKE AWAYS FOR

SOUTHEAST ASIA

TAKE AWAYS FOR SOUTHEAST ASIA

- Hard vs soft law
- Issue specific solutions
- Cooperation despite disputes
- Coordination of efforts
- Development focus

TAKE AWAYS FOR SOUTHEAST ASIA

- Perceived 'weakness' in Southeast Asia linked to regional particularities
- No blueprint example but other regions do face similar issues
- Requires more focus from scholarship, political will and greater coordination of efforts

TAKE AWAYS FOR SOUTHEAST ASIA

- Rule of law also includes soft law arrangements
- Role of law clearly central in cooperation but political will is required to meet soft law commitments

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THANK YOU

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