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
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
THANK YOU

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