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**LEGAL AND INSTITUTIONAL MECHANISMS TO MANAGE
THE MARINE ENVIRONMENT IN THE SEAS OF SOUTHEAST
ASIA: PRINCIPLES AND RULES OF INTERNATIONAL
MARINE LAW APPLICABLE TO THE SEAS OF SOUTHEAST
ASIA**

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OUTLINE OF PRESENTATION

1. Principles and rules of international marine law applicable to the seas of Southeast Asia
2. 1982 United Nations Convention on the Law of the Sea
3. 1971 Ramsar Convention
4. 1979 Convention on Migratory Species
5. 1992 Convention on Biological Diversity
6. The Asia-Pacific Fisheries commission
7. SDGs

PART 1

PRINCIPLES AND RULES OF INTERNATIONAL MARINE LAW APPLICABLE TO THE SEAS OF 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]

PRINCIPLES AND RULES

- Seas of Southeast Asia: vast and diverse area, not covered by one regional agreement or mechanism
- International law provides framework, supplemented by regional hard and soft law agreements and instruments
- International law includes treaty and customary rules
- Law of the sea and international environmental law provide relevant rules
- Many treaties and rules can apply concurrently

PART 2

1982 UNITED NATIONS

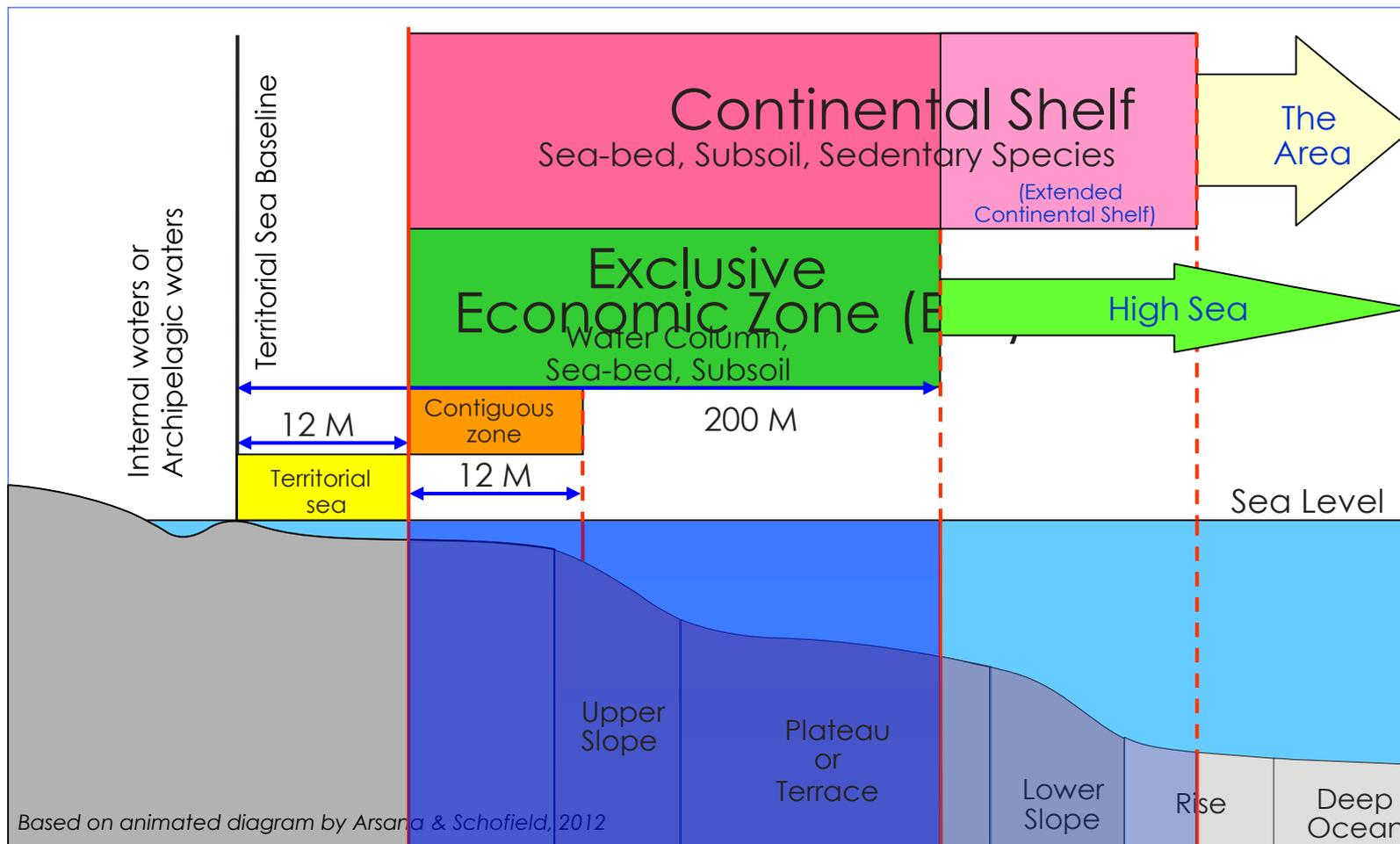
CONVENTION ON THE LAW OF

THE SEA

UNCLOS

General observations

- Global, comprehensive treaty regulating all ocean space and activities
- Also a framework treaty that provides for more specific obligations
- Currently 168 parties
- All SE Asian states with exception of Cambodia
- Many provisions also reflect rules of customary international law, meaning non-parties are also bound
- Sectoral in nature, providing for rights and obligations of coastal, flag, port and landlocked states in different maritime zones



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

Environmental obligations- fragile ecosystems and habitat of threatened species

- Art. 194 obligates states to take measures to prevent, reduce and control pollution of marine environment from any source
- Includes taking measures
 - *‘necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life’*
(Art. 194 (5))

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

Environmental obligations – EIA and monitoring

Supplementary obligations in Part XII

- Art. 204 monitoring of the risks or effects of pollution
- Art. 205 publication of reports
- Art. 206 Assessment of potential effects of activities (environmental impact assessment)

UNCLOS

Environmental obligations- incorporation by reference

International Rules and National Legislation

- Other articles in S. 5 of Part XII require states to **adopt national laws** and **establish global and regional rules** to further concretise the general obligations regarding:
 - Pollution from land-based sources (Art. 207)
 - Pollution from seabed activities under national jurisdiction (Art. 208)
 - Pollution from activities in the Area (Art. 209)
 - Pollution by dumping (Art. 210)
 - Pollution from vessels (Art. 211)
 - Pollution from or through the atmosphere (Art. 212)

Environmental obligations – incorporation by reference

Pollution by dumping

- Dumping means
 - *‘(i) any deliberate disposal of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea; (ii) any deliberate disposal of vessels, aircraft, platforms or other man-made structures at sea’*
- Art. 210 (4) – *‘endeavour to establish global [...] rules’*
- Regulated internationally by the: The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 and its 1996 Protocol

PART 3

1971 THE RAMSAR CONVENTION ON WETLANDS OF INTERNATIONAL IMPORTANCE ESPECIALLY AS WATERFOWL HABITAT

RAMSAR

General observations

- Global convention that provides the framework for the conservation and wise use of wetlands and their resources
- 170 contracting parties and 2200+ designated sites – Singapore, Timor-Leste and Brunei are not parties
- Mission is *“the conservation and wise use of all wetlands through local and national actions and international cooperation, as a contribution towards achieving sustainable development throughout the world”*

PART 4

1979 CONVENTION ON MIGRATORY SPECIES

General observations

Global convention specializing in the conservation of migratory species, their habitats and migration routes

- 126 Parties but only Philippines in SE and E Asia
- Some states party to subsidiary agreements and Memoranda of Understanding (for example China, Malaysia, Myanmar, Thailand and Viet Nam) and thus 'Range States'

Environmental obligation

- Article II Fundamental Principles

1. The Parties acknowledge the importance of migratory species being conserved and of Range States agreeing to take action to this end whenever possible and appropriate, paying special attention to migratory species the conservation status of which is unfavourable, and taking individually or in co-operation appropriate and necessary steps to conserve such species and their habitat.

2. The Parties acknowledge the need to take action to avoid any migratory species becoming endangered.[...]

PART 5

1992 CONVENTION ON BIODIVERSITY

General observations

- Global convention with 196 states parties
- Objectives
 - *‘the conservation of biological diversity. the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding’ (Art. 1)*

CBD

Scope

- Does not distinguish between terrestrial and marine biodiversity
- New treaty currently being negotiated at the UN on biodiversity beyond national jurisdiction (BBNJ)

PART 6

THE ASIA-PACIFIC FISHERIES COMMISSION

APFIC

General observations

- Originally established in 1948 by Food and Agriculture Organization of the United Nations
- Statutory Body established under Article XIV of the FAO Constitution
- Current membership: Australia, Bangladesh, Cambodia, China, France, India, Indonesia, Japan, Malaysia, Myanmar, Nepal, New Zealand, Pakistan, Philippines, Republic of Korea, Sri Lanka, Timor Leste, Thailand, United Kingdom, United States of America, Viet Nam.
- Singapore is not a member, although a member of the FAO

Environmental obligation

Article IV

Functions and responsibilities of states include:

‘(b) to formulate and recommend measures and to initiate and carry out programmes or projects to:

(i) increase the efficiency and sustainable productivity of fisheries and aquaculture;

(ii) conserve and manage resources;

(iii) protect resources from pollution; [...]’

PART 7

SUSTAINABLE DEVELOPMENT GOALS

17 Goals adopted on 25 Sept 2015 to end poverty, protect the planet and ensure prosperity for all as part of a new SD agenda. Each goal has specific targets to be achieved over the next 15 years.



- **Goal 14: Conserve and sustainably use the oceans, seas and marine resources**

SDG 14: Seven Targets

- 14.1 - Marine pollution (incl. land based)
- 14.2 - Manage and protect marine and coastal ecosystems
- 14.3 - Address ocean acidification
- 14.4 - Restore fish stocks to produce maximum sustainable yield
- 14.5 - Conserve at least 10% of coastal and marine areas
- 14.6 - Eliminate fisheries subsidies that contribute to overcapacity and overfishing
- 14.7 - Increase economic benefits of SIDS

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THANK YOU

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