“Reversing Environmental Degradation Trends in the South China Sea and Gulf of Thailand”

REVIEW OF INSTRUMENTS AND MECHANISMS FOR STRENGTHENING MARINE ENVIRONMENTAL CO-OPERATION IN THE SOUTH CHINA SEA

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## ACRONYMS AND ABBREVIATIONS

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<th>Acronym</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>AMAP</td>
<td>Arctic Monitoring and Assessment Programme</td>
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<tr>
<td>APEC</td>
<td>Asia-Pacific Economic Council</td>
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<tr>
<td>ASEAMS</td>
<td>Association of South East Asian Marine Scientists</td>
</tr>
<tr>
<td>ASEAN</td>
<td>Association of Southeast Asian Nations</td>
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<tr>
<td>ASEM</td>
<td>Asia-Europe Meeting</td>
</tr>
<tr>
<td>ASOEN</td>
<td>ASEAN Senior Officials on the Environment</td>
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<tr>
<td>AWGCME</td>
<td>ASEAN Working Group on the Coastal and Marine Environment</td>
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<tr>
<td>BSERP</td>
<td>Black Sea Ecosystem Recovery Project</td>
</tr>
<tr>
<td>CEP</td>
<td>Caspian Environment Programme</td>
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<tr>
<td>CIDA</td>
<td>Canadian International Development Agency</td>
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<tr>
<td>COBSEA</td>
<td>Coordinating Body on the Seas of East Asia</td>
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<tr>
<td>COP</td>
<td>Conference of Parties</td>
</tr>
<tr>
<td>CRTC</td>
<td>Caspian Regional Thematic Centres</td>
</tr>
<tr>
<td>EAS Action Plan</td>
<td>Action Plan for the Protection and Development of the Marine and Coastal Areas of the East Asian Region</td>
</tr>
<tr>
<td>EAS</td>
<td>East Asian Seas</td>
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<tr>
<td>EAS/RCU</td>
<td>EAS Regional Coordinating Unit</td>
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<tr>
<td>EIA</td>
<td>Environmental Impact Assessment</td>
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<tr>
<td>EU</td>
<td>European Union</td>
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<tr>
<td>GoT</td>
<td>Gulf of Thailand</td>
</tr>
<tr>
<td>GPA</td>
<td>Global Programme of Action for the Protection of the Marine Environment from Land-based Activities</td>
</tr>
<tr>
<td>ICES</td>
<td>International Council for the Exploration of the Sea</td>
</tr>
<tr>
<td>ICM</td>
<td>Integrated Coastal Management</td>
</tr>
<tr>
<td>IEL</td>
<td>International Environmental Law</td>
</tr>
<tr>
<td>IMO</td>
<td>International Maritime Organisation</td>
</tr>
<tr>
<td>IUCN</td>
<td>World Conservation Union</td>
</tr>
<tr>
<td>IWAC</td>
<td>International Waters Assessment Centre</td>
</tr>
<tr>
<td>LBA</td>
<td>Land-based Activities</td>
</tr>
<tr>
<td>LME</td>
<td>Large Marine Ecosystem</td>
</tr>
<tr>
<td>LOS</td>
<td>Law of the Sea</td>
</tr>
<tr>
<td>MFA</td>
<td>Ministry of Foreign Affairs</td>
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<tr>
<td>MoUs</td>
<td>Memoranda of Understanding</td>
</tr>
<tr>
<td>MRC</td>
<td>Mekong River Commission</td>
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<tr>
<td>NGO</td>
<td>Non-governmental Organisation</td>
</tr>
<tr>
<td>NOWPAP</td>
<td>Northwest Pacific Action Plan</td>
</tr>
<tr>
<td>OSPAR</td>
<td>Oslo-Paris Commission</td>
</tr>
<tr>
<td>PAME</td>
<td>Pollution of the Arctic Marine Environment</td>
</tr>
<tr>
<td>PCU</td>
<td>Project Coordinating Unit</td>
</tr>
<tr>
<td>Acronym</td>
<td>Full Name</td>
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<tr>
<td>PEMSEA</td>
<td>Partnerships in Environmental Management for the Seas of East Asia</td>
</tr>
<tr>
<td>PERSGA</td>
<td>Regional Organization for the Conservation of the Environment of the Red Sea and Gulf of Aden</td>
</tr>
<tr>
<td>RACs</td>
<td>Regional Activity Centres</td>
</tr>
<tr>
<td>RCU</td>
<td>Regional Coordinating Unit</td>
</tr>
<tr>
<td>RIM</td>
<td>Regional Institutional Mechanism</td>
</tr>
<tr>
<td>RME</td>
<td>Regional Marine Ecosystem</td>
</tr>
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<td>RSPs</td>
<td>UNEP’s Regional Seas Programmes</td>
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<tr>
<td>SAP</td>
<td>SCS Project’s Strategic Action Programme for the South China Sea, Draft Version 3, 24 February 1999</td>
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<tr>
<td>SCS</td>
<td>South China Sea</td>
</tr>
<tr>
<td>SCS Project</td>
<td>UNEP/GEF Project “Reversing Environmental Degradation Trends in the South China Sea and Gulf of Thailand”</td>
</tr>
<tr>
<td>SDS SEA</td>
<td>PEMSEA’s Sustainable Development Strategy for the Seas of East Asia</td>
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<tr>
<td>SEAFDEC</td>
<td>Southeast Asian Fisheries Development Centre</td>
</tr>
<tr>
<td>SEAPOL</td>
<td>Southeast Asian Programme in Ocean Law, Policy and Management</td>
</tr>
<tr>
<td>SEA-START-RC</td>
<td>Southeast Asia Regional Centre for Global Change System for Analysis, Research and Training Network</td>
</tr>
<tr>
<td>SIDA</td>
<td>Swedish International Development Agency</td>
</tr>
<tr>
<td>SPREP</td>
<td>South Pacific Regional Environmental Programme</td>
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<tr>
<td>Stockholm Conference</td>
<td>1972 Stockholm Conference on the Human Environment</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNCLOS</td>
<td>1982 UN Law of the Sea Convention</td>
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<tr>
<td>UNCLOS III</td>
<td>Third UN Conference on the Law of the Sea</td>
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<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
</tr>
<tr>
<td>UNECE</td>
<td>United Nations Economic Commission for Europe</td>
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<td>UNECE Water Convention</td>
<td>1992 UNECE Convention of the Protection and Use of Transboundary Watercourses and International Lakes</td>
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<tr>
<td>UNEP</td>
<td>United Nations Environment Programme</td>
</tr>
<tr>
<td>WSSD</td>
<td>World Summit on Sustainable Development (2002)</td>
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<td>WWF</td>
<td>World Wildlife Fund</td>
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EXECUTIVE SUMMARY

Environmental sustainability of the South China Sea is critical to regional stability, economic growth and development. Scientific evidence reveals that the long-term sustainability of the South China Sea marine basin is increasingly threatened by continuing practices and activities at the community, state and regional levels. Reversing these trends of ecological degradation requires strong and effective regional cooperation.

This review focuses on possible alternative instruments and mechanisms to strengthen cooperation in the South China Sea marine basin and to implement the South China Sea Project’s Strategic Action Programme (SAP). The review encompasses consideration of the ecological need for and legal duty of states to cooperate regionally. Experience from other regions and insights most relevant to the South China Sea region are highlighted and challenges to effective regional cooperation are discussed. Finally, options for strengthening cooperation in the South China Sea region are offered and the strengths and weakness of each alternative are compared.

Regional cooperation in enclosed and semi-enclosed seas has been formalised since the early 1970s, commencing with the North Sea, the Baltic and the Mediterranean. Of the 18 regional seas, multi-lateral arrangements currently operating, 14 rely on regional conventions and supporting action plans, while the COBSEA¹ and three more recent regional arrangements rely solely on action plans as a basis for cooperation. All 18 have some form of regional institutional mechanism, ranging from small secretariats to highly structured commissions.

The Convention for the Protection and Use of Transboundary Watercourses and International Lakes (UNECE Water Convention) represents an alternate approach to largely successful regional cooperation. Its success emanates from the unique two-tier structure of the Convention with the first part reiterating the international responsibilities towards regional cooperation and the second part, which recognises variations in sub-regional priorities and needs, and encourages states to enter into relevant bi- and multi-lateral sub-regional agreements. While providing maximum flexibility to states, the second part of this convention fosters regional coordination by making recommendations for consistency among the sub-agreements.


Of the numerous significant insights, the following are the most relevant:

1. Regional conventions are seen as the most influential form of instrument, to foster regional co-operation, followed by regional action plans.
2. Ecological effectiveness and economic efficiency, require the input of sound science, strategic actions, and a process-oriented focus that are necessary to avoid the waste of valuable resources and attain environmental improvement;
3. Regional co-operative mechanisms are increasingly assuming the role of a regional interface for the domestic implementation of global instruments.
4. A strong, proactive institutional mechanism that is empowered to act effectively results in the most effective regional cooperation.
5. Regional cooperation may take many forms, but it must be appropriate to the regional ethos and culture.

¹ Co-ordinating Body on the Seas of East Asia.
Four underlying challenges must be addressed in order to facilitate effective regional cooperation, namely:

- challenges to mindset;
- institutional challenges;
- functional challenges; and,
- scientific (including ecological) challenges.

These challenges involve fundamental changes to how environmental issues are perceived and the nature of ecologically effective actions that will reverse degradation and utilise scarce human and financial resources efficiently.

Cooperation in the South China Sea takes place under the auspices of international and regional bodies and programmes, with ASEAN, COBSEA, the South China Sea Project and PEMSEA being the major actors at present. There are no legally binding regional instruments, although several action plans and numerous declarations have been adopted. There is a lack of coordination of efforts and consistency among existing instruments, resulting in overlaps, gaps in coverage, significant loss of trans-national learning opportunities and poorly utilised resources.

With respect to strengthening cooperation and implementing the SAP, the region is at a juncture that invites contemplation of the development of a regional framework for cooperation that includes regional cooperative instruments (legally and/or non-legally binding), a regional institutional mechanism and cooperative mechanisms to facilitate implementation of the instruments.

Five options for regional cooperative instruments and their respective strengths and weaknesses are discussed. Each option requires a strong, proactive regional institutional mechanism, with its’ effectiveness directly influencing the effectiveness of the cooperative instruments.

**Option 1** entails adopting the SAP as a regional cooperative instrument and establishing a proactive regional institutional mechanism to oversee its’ implementation. The effective implementation of the SAP and strengthened regional cooperation and coordination are unlikely unless there is a significant increase in regional political commitment.

**Option 2** involves a regional seas style convention, preferably adapted to address the growing emphasis on effectiveness and process-oriented issues and focusing on cooperation rather than substantive environmental commitments. Success depends on many factors, not least of which is the willingness of parties to enter into discussions regarding the possibility.

**Options 3 and 4** involve a two-tier structure modelled on the UNECE Water Convention. The difference is that Option 3 entails a regional declaration in place of a regional legally binding instrument proposed under Option 4. Thus, Option 3 relies on political will as a catalyst for cooperation, and thus may be more likely to fail if past conduct is any indication. Option 4 enjoys the benefits of a legally binding instrument, namely increased cooperation and enhanced regional stability.

**Option 5** involves a regional cooperative instrument, preferably legally binding, with a process-oriented focus, namely how to foster effective cooperation and encourage effective actions. It is a compromise between the status quo and a traditional substantive instrument. Traditional agreements do not necessarily result directly in environmental improvement, and consequently substantive issues may be better addressed in action plans or other subsidiary instruments. The de facto role of regional legally binding instruments is promoting cooperation, and the importance of facilitating effective cooperation cannot be overstated.

The states bordering the South China Sea are in a relatively unique position, able to benefit from new directions in environmental law, free of outdated conventions, and consequently in a position to design an effective regional cooperative framework appropriate to the twenty first century.
Socio-economically, culturally and aesthetically, the South China Sea (SCS), the Gulf of Thailand (GoT) and regional river basins and bays form part of the common heritage of the people of the Southeast Asian region. The region’s expanding population relies on the SCS for nutrition, recreation and economic pursuits (e.g., tourism), energy (e.g., oil and gas), aquaculture, pharmaceuticals, ornamental fish trade, construction materials and ports and shipping. The SCS region is ecologically at risk. Reversing this requires regional cooperation for long-term sustainability and regional growth.

1.1 The Need to Cooperate

There are two legal bases mandating regional cooperation for marine environmental protection: (a) natural laws governing ecosystems and (b) man-made laws pursuant to the Law of the Sea (LOS) and International Environmental Law (IEL). Additionally, the effectiveness of cooperation is determined by the laws of nature, not those of man.

1.1.1 The South China Sea: Ecological Mandate to Cooperate

The SCS is a regional marine ecosystem (RME). It comprises an inter-connected web of inter-dependent habitats, including coasts, estuaries, mangroves and other wetlands, seagrass beds, coral reefs and the open ocean. The habitats and their resident species are intricately bound together by biological, chemical and geophysical attributes, including nutrient and water cycles, temperature, salinity, water flows, currents and the annual monsoon cycle. The SCS is ecologically significant as a highly diverse shallow-water marine area. It has record numbers of mangrove, coral reef, and seagrass species. Despite the great loss of mangroves over prior decades, it houses 10% of the global inventory and just over a quarter of the planet’s mapped coral reefs.

Ecological studies, scientific research and incidents of declining fish catches, algal blooms and dying corals confirm that the ecological integrity of the SCS is at risk. The priority areas of concern identified in the Strategic Action Programme for the SCS include habitat loss and conversion (which in turn affects biological diversity), unsustainable exploitation of living aquatic resources (over-fishing and unsustainable fishing practices), land-based pollution (from numerous and diverse sources), freshwater shortage and low water quality.

These priority areas of concern are inter-connected and cannot be treated as discrete, sectoral issues. For instance, the removal of mangroves, which act as water filters, allows more sediment and contaminants from land-based activities (LBA) to enter the marine environment and degrade nursery grounds for important fish species and nearby coral reefs that require clean, clear water. Coral reefs act as breakwaters and their removal for building materials allows waves to erode onshore habitats. Fish stocks are being depleted by over-exploitation and unsustainable fishing practices. Their depletion is exacerbated by marine pollution and the loss of breeding and nursery grounds through habitat loss.

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2 Regional marine ecosystem has been chosen to describe the SCS and its composition of interdependent habitats. The term, ecosystem, as opposed to “area” was chosen as the former encourages recognition of relevant ecological and other scientific considerations, which scientists may determine on a situational basis. The SCS is sometimes described as a large marine ecosystem (LME) (see http://na.nefsc.noaa.gov/LME/text/LME36.htm) but this term as defined is often limited to biological considerations. Thus, the term of RME was chosen to encompass all aspects of the marine ecosystem. It is neither a scientific nor a policy term.


4 Ibid.
5 Ibid., p. 4.
6 Ibid., p. 11.
7 Ibid.
8 Ibid., p. 8.
RMEs recognise no political or human-imposed boundaries or delineations. Nature, not man, governs the interconnections among habitats and the free movement of living marine resources and contaminants. There are no border controls at the national boundary of the 12 mile territorial sea. The inherent ecological characteristics of RMEs render regional cooperation necessary to reverse degradation.

1.1.2 The South China Sea: Legal Mandate to Cooperate

The SCS falls within the legal definition of an enclosed or semi-enclosed sea pursuant to the 1982 UN Convention on the Law of the Sea (UNCLOS), Article 122. Additionally, Articles 123 and 197 call for regional cooperation for the protection and preservation of semi-enclosed seas. Part XII of UNCLOS (marine environmental provisions) is generally considered customary international law and, thus, even non-parties are bound by it. All SCS states have ratified or acceded to UNCLOS, with the exceptions of Cambodia and Thailand. As both states have signed it, they are morally obligated to act in accordance with UNCLOS. Other global instruments to which SCS states are members also call for regional cooperation (refer to Appendix 1 for a listing of the global instruments).

The past 30 years have witnessed the evolution of International Environmental Law (IEL) and policies from fragmented, sectoral approaches to cross-boundary, integrated themes of sustainable development, integrated coastal management (ICM), watershed management, cooperation regarding shared waters and ecosystem-friendly approaches. IEL and its instruments entrench the legal obligation to cooperate on a regional basis to protect the integrity of RMEs.

1.1.3 The South China Sea: Nature’s Mandate

The international community is slowly recasting its view of Planet Earth to embrace the scientific reality that the Earth is a single, grand ecosystem with a finite ability to assimilate the products of human activities. There is growing realisation that environmental management and decision-making processes dictated by political and socio-economic concerns, negotiated outcomes and poor understanding of the issues (despite adequate scientific knowledge largely being available) generally result in poor law and policy choices. Politicians and policy-makers should accept that unless human intervention is ecologically effective, degradation will continue as the laws of nature prevail over the laws of man. There is no negotiating with nature.

Addressing environmental issues in RMEs requires the input of sound science. Scientists are the only interpreters of natural systems and scientific information is necessary, for example, to determine priorities, clarify and reduce scientific uncertainties, consolidate consensus and assess options for effective action. Scientific input helps to ensure that actions are ecologically sound and economically efficient (e.g., no wastage of scarce financial and human resources).

In summary, reversing degradation in a RME, such as the SCS, requires ecologically effective action in accordance with the laws of nature. This requires common sense; a long-term perspective; and regional coordination, cooperation and communication among many disciplines and sectors, including information gatherers (including natural and social scientists), all relevant government ministries, project managers, communities, NGOs and other organisations.

1.2 Overview of the Paper

The objective of this paper is to review elements of existing regional cooperative arrangements, with a view to strengthening regional cooperation in the SCS and, in particular, implementing the SCS Project’s Strategic Action Programme (SAP). Section 1, above, notes the need for not only cooperation, but effective cooperation in managing regional seas. Section 2, below, provides a brief overview of UNEP’s Regional Seas Programmes (RSPs), independent RSPs, and a transboundary water programme, all outside of the SCS region. It includes insights from the review of the elements of RSPs. The review of the elements is in Appendix 2, attached herein. Section 3 draws on the review and the insights to identify underlying challenges to effective cooperation. The SCS region, including the organisations, instruments and cooperative efforts, is discussed in Section 4.
for fostering effective regional cooperation within the SCS region, including implementing the SAP, are discussed in Section 5. Conclusions follow in Section 6.

Research for this paper was multi-faceted. Surveys were sent out to 17 regional seas programmes, from which 16 responses were received. The surveys, sent out officially under the UNEP umbrella, were a collaborative effort with the UNEP Strategic Review of the Regional Seas Programmes. E-mail and telephone contacts were made with various scientists, lawyers, managers, programme coordinators and other individuals both officially connected with and independent of the programmes in various regions. Internet research and secondary sources (primarily journal articles) provided valuable access to documents, ideas and critical commentary. The results of the surveys and other information can be found in the Appendices and Bibliography.

2. REGIONAL COOPERATIVE EFFORTS OUTSIDE OF THE SOUTH CHINA SEA

2.1 The Rise of Regional Seas Programmes and Marine Environmental Protection

The 1972 Stockholm Conference on the Human Environment (Stockholm Conference) focused the world’s attention on global environmental degradation and its interconnectedness with human conduct, and the consequent need for action. This and the third UN Conference on the Law of the Sea (UNCLOS III), which also commenced in 1972, firmly placed environmental issues on the global agenda.

The Stockholm Conference called for regional and international cooperation for the protection of the waters and resources of coastal and inshore areas and open oceans. States bordering regional seas were encouraged to cooperate and coordinate their efforts to protect the marine environment. Despite cooperative efforts, substantive agreements with concrete actions largely remained elusive and intra-regional tensions frequently impeded cooperation. Tensions among states included territorial disputes; socio-economic, political and cultural differences; diverse environmental protection objectives; opposing positions of victims and polluters; mistrust of other’s intentions; historical lack of cooperation; fears of forfeiting sovereign jurisdiction over resources and territory; and lack of funding to address issues, both domestically and regionally.

Despite such challenges, regional seas programmes (RSPs) were launched as states recognised the need for regional cooperation. Currently, there are 13 UNEP-lead and five independent regional seas programmes, with the latter five being UNEP RSP partners. The first to adopt conventions were the states bordering the North Sea, with the two conventions, the 1972 Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft (Oslo Convention) and the 1974 Convention for the Prevention of Marine Pollution from Land-based Sources (Paris Convention) and the Baltic with the 1974 Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention). In 1974, UNEP commenced its RSP, with the Mediterranean being the first region to formalise its cooperative efforts with the adoption of the Convention for the Protection of the Mediterranean Sea Against Pollution (Barcelona Convention) in 1976.

2.2 Regional Programmes for Marine Environmental Protection

Following is a brief overview of UNEP RSPs, UNEP-partner (independent) RSPs and the UNECE Convention for the Protection and Use of Transboundary Watercourses and International Lakes (UNECE Water Convention). The UNECE Water Convention focuses on transboundary waters and lakes and as such is not a RSP. However, it is topical as its structure and methods of fostering regional cooperation are unique and effective.

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13 This ultimately culminated 10 years later with the UN Convention on the Law of the Sea (UNCLOS), supra note 9.
14 See Table 1 for the listing of the RSPs.
16 29 December 1972. 1976 UKTS 43; 26 UST 2403; TIAS 8165; 11 ILM 1294 (1972). Also see Tables 1 for the parties to the RSPs and Tables 2, 3 and 4 for the regional conventions.
18 Thirty-five parties have ratified it (34 states and the EU) and it entered into force on 6 October 1996.

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### Table 1: UNEP Regional Seas Programmes and Partner Programmes

<table>
<thead>
<tr>
<th><strong>UNEPRSP</strong></th>
<th><strong>Convention</strong></th>
<th><strong>Parties</strong></th>
<th><strong>Status within UNEP</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Black Sea</td>
<td>Bucharest</td>
<td>Bulgaria, Georgia, Romania, Russian Federation, Turkey and Ukraine</td>
<td>Non-UNEP Administered</td>
</tr>
<tr>
<td>Eastern Africa</td>
<td>Nairobi</td>
<td>Comoros, France (La Reunion), Kenya, Madagascar, Mauritius, Mozambique, Seychelles, Somalia, South Africa, and Tanzania</td>
<td>UNEP-Administered</td>
</tr>
<tr>
<td>East Asian</td>
<td>*</td>
<td>Australia, Cambodia, China, Indonesia, Malaysia, Philippines, Republic of Korea, Singapore, Thailand and Vietnam</td>
<td>UNEP-Administered</td>
</tr>
<tr>
<td>Mediterranean</td>
<td>Barcelona</td>
<td>Albania, Algeria, Bosnia/Herzegovina, Croatia, Cyprus, Egypt, France, Greece, Israel, Italy, Lebanon, Libya, Malta, Monaco, Slovenia, Spain, Syria, Tunisia, Turkey and the European Union</td>
<td>UNEP-Administered</td>
</tr>
<tr>
<td>North-east Pacific</td>
<td>Antigua</td>
<td>Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, and Panama</td>
<td>Non-UNEP Administered</td>
</tr>
<tr>
<td>North-west Pacific</td>
<td>*</td>
<td>China, Japan, Republic of Korea, Russian Federation, *Democratic People’s Republic of Korea * yet to joined the Action Plan</td>
<td>UNEP-Administered</td>
</tr>
<tr>
<td>Red Sea and Gulf of Aden</td>
<td>Jeddah</td>
<td>Djibouti, Egypt, Jordan, Palestine, Saudi Arabia, Somalia, Sudan and Yemen</td>
<td>Non-UNEP Administered</td>
</tr>
<tr>
<td>ROPME Sea Area</td>
<td>Kuwait</td>
<td>Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates</td>
<td>Non-UNEP Administered</td>
</tr>
<tr>
<td>South Asian Seas</td>
<td>*</td>
<td>Bangladesh, India, Maldives, Pakistan and Sri Lanka</td>
<td>Non-UNEP Administered</td>
</tr>
<tr>
<td>South-east Pacific</td>
<td>Lima</td>
<td>Chile, Colombia, Ecuador, Panama and Peru</td>
<td>Non-UNEP Administered</td>
</tr>
<tr>
<td>South Pacific</td>
<td>Noumea and Apia</td>
<td>Australia, Cook Islands, Federated States of Micronesia, Fiji, France, Kiribati, Republic of the Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Solomon, Islands, Tonga, Tuvalu, United Kingdom, United States, Vanuatu and Western Samoa</td>
<td>Non-UNEP Administered</td>
</tr>
<tr>
<td>West and Central Africa</td>
<td>Abidjan</td>
<td>Angola, Benin, Cameroon, Cape Verde, Congo, Cote d’Ivoire, DR Congo, Equatorial Guinea, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mauritania, Namibia, Nigeria, Sao Tome and Principe, Senegal, Sierra Leone and Togo</td>
<td>UNEP-Administered</td>
</tr>
<tr>
<td>Wider Caribbean</td>
<td>Cartagena</td>
<td>Antigua and Barbuda, Bahamas, Barbados, Belize, Caribbean Territories of France, Colombia, Costa Rica, Cuba, Dominican Republic, Dominican Republic, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Netherlands, Nicaragua, Panama, St. Christopher and Nevis, St. Lucia, St. Vincent and Grenadines, Suriname, Trinidad and Tobago, United Kingdom, United States and Venezuela</td>
<td>UNEP-Administered</td>
</tr>
<tr>
<td>Antarctic</td>
<td>CCAMLR</td>
<td>Argentina, Australia, Belgium, Brazil, Bulgaria, Canada, Chile, European Community, Finland, France, Germany, Greece, India, Italy, Japan, Namibia, Netherlands, New Zealand, Norway, Peru, Poland, Republic of Korea, Russia, South Africa, Spain, Sweden, Ukraine, United Kingdom, United States, Uruguay and Vanuatu</td>
<td>UNEP-Administered</td>
</tr>
<tr>
<td>Arctic</td>
<td>*</td>
<td>Canada, Denmark (including Greenland and the Faroe Islands), Finland, Iceland, Norway, Russian Federation, Sweden and the United States</td>
<td>UNEP-Administered</td>
</tr>
<tr>
<td>Baltic Sea</td>
<td>Helsinki</td>
<td>Denmark, Estonia, European Union, Finland, Germany, Latvia, Lithuania, Poland, Russian Federation and Sweden</td>
<td>UNEP-Administered</td>
</tr>
<tr>
<td>Caspian Sea</td>
<td>Tehran</td>
<td>Azerbaijan, Islamic Republic of Iran, Kazakhstan, Russian Federation and Turkmenistan</td>
<td>UNEP-Administered</td>
</tr>
<tr>
<td>North east Atlantic</td>
<td>OSPAR</td>
<td>Belgium, Denmark, European Union, Finland, France, Germany, Iceland, Ireland, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom</td>
<td>UNEP-Administered</td>
</tr>
<tr>
<td>Europe and Central Asia</td>
<td>UNECE Water Convention</td>
<td>55 member countries of the United Nations Economic Commission for Europe (UNECE), namely all European countries, Central Asian republics, Israel, Canada and the United States</td>
<td>UNEP-Administered</td>
</tr>
</tbody>
</table>

*Action plan only and no legally-binding regional instruments.*
2.2.1 UNEP Regional Seas Programme (RSP)

The 13 RSPs launched by UNEP, which involve more than 140 states, encompass six UNEP-administered and seven non-UNEP administered RSPs. The former involve UNEP's ongoing provision of secretariat functions and administration of the trust funds. As originally intended, the non-UNEP administered RSPs have seen the member states take ownership, establish their own institutional infrastructure and manage the trust fund.

Although each region has adapted the RSP to its own needs and circumstances, a common formula was adopted by UNEP:

- **Action plan:** To date, all regions have adopted action plans for cooperation on the management and protection of the respective shared water body. Many regions have revised their action plans adopted in the 1970s and 80s to ensure their consistency with evolving IEL and, in particular, the principles endorsed at the 1992 Earth Summit. Most regions have adopted one of more action plans/programmes outside of the formal RSP, often in relation to a specific project, such as GEF Strategic Action Plans or pursuant to global instruments or sub-regional or regional organisations.

- **Framework convention:** Ten regions have adopted framework conventions that set out general principles and obligations to guide their actions and implement the action plan. Some regions, such as the Mediterranean, have revised their earlier framework conventions to ensure their consistency with developing environmental law. While each convention varies in detail, there is a consistency among the general provisions. The three regions lacking conventions are all in Asia: the North-West Pacific, South Asia and Southeast Asia. See Table 2, below.

- **Issue-specific, detailed protocols:** Most regions with conventions have adopted one or more protocols relating to issues such as LBA, dumping, pollution by oil (including oil and gas exploration and exploitation), combating pollution in cases of emergency, transboundary movement of harmful substances, specially protected areas and biodiversity.

Each RSP has established an institutional framework, comprising a Regional Coordinating Unit (RCU), secretariat, commission or a combination thereof to oversee the implementation of the adopted programmes or instruments. Integral to the success of the RSPs are mechanisms to foster implementation of the action plans, which include Regional Activity Centres (RACs), advisory groups, epistemic communities and strategic partnerships.

Initially, UNEP funded secretariat expenses and other essentials with the expectation that governments would establish trust funds to cover administrative expenses and activities within their respective regions and seek external or other funding as necessary. While most regions have established trust funds, state contributions vary. Contributions have been low or erratic where, for example, states lack political commitment or other priorities, such as poverty, health and nutrition, have otherwise focused national attention. Lack of sustainable financing remains an impediment to effective progress in many regions.

In 1998, UNEP, in a move to enhance co-operation and revitalise the RSPs, introduced the Annual Global Meeting of the RSP Members. The 2002 World Summit on Sustainable Development (WSSD) focused global attention on the need for effective implementation of existing instruments. Following this lead, the RSP Members at the 6th Annual Global Meeting in 2004 agreed that a primary role for RSPs should be facilitators for the domestic and regional implementation of global instruments. With this role in mind, the meeting endorsed “A Global Initiative to Strengthen Regional Seas Conventions and Action Plans and Enhance Co-operation: Regional Seas Strategic Directions for 2004-2007”, which includes.

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19 See www.unep.org/regionalseas/Programmes/UNEP_Administered_Programmes/default.asp.
20 The UNEP-administered RSPs are: the Caribbean, East Asian Seas, Eastern African Seas, Mediterranean, North-West Pacific and West and Central African regions.
21 The non-UNEP administered RSPs are: the Black Sea, North-east Pacific, Red Sea and Gulf of Aden, ROPME Sea Area, South Asian Seas, South East Pacific and South Pacific.
22 See the UNEP RSP website, at http://www.unep.org/regionalseas/default.asp.
23 See Appendix 3 for a listing of some of the major action plans.
24 WSSD website at http://www.johannesburgsummit.org/. Also see UNEP RSP website, supra note 22.
26 See Appendix 4 for a more complete description of the Regional Seas Strategic Directions for 2004-2007.
• Promotion of sustainable development, in accordance with the WSSD Plan of Action;
• Increased ownership by countries in RSP;
• Increased visibility by increasing political and public awareness of environmental issues;
• Promotion of knowledge-based policy-making, education, and public participation via contributions to activities such as regional and national monitoring and assessment;
• Promotion of synergies, development of common regional objectives and coordination of implementation efforts; and
• Promotion of (a) ecosystem-based, priority focused integrated management and (b) proactive, creative and innovative partnerships, networks and other tools.

Thus, drawing on lessons learned from the 30 years of RSPs, UNEP is seeking greater effectiveness in resolving environmental issues. In encouraging a strategic role for RSPs, the latter are now strategic partners with the Secretariat for the Global Programme of Action for the Protection of the Marine Environment from Land Based Activities (GPA) to facilitate coordinated national action within a region, in accordance with the global directives.27 UNEP has commissioned a strategic review of the Regional Seas Programmes with the report expected in mid-2006.28 The 7th Global Annual Meeting of the RSP members (held in late 2005) was largely devoted to exploring options for sustainable financing and the means of securing it to ensure that cooperation among and within RSPs will continue to grow.

Although indicators or measures of success have not been formally developed, the process has moral in that direction by identifying six elements of a successful regional seas programme. They are:29

• Political will and commitment of the member governments to the programme (ownership);
• A solid financial base, complete with a mechanism for mobilisation of resources, including funds from external sources and skills for the development of project proposals for funding agencies;
• A solid legal base, with a convention and related protocols;
• An effective institutional structure and internal organisation to facilitate efficient action;
• A sound, realistic, and practical programme of work for implementation regionally of global instruments and initiatives; and
• A strong and efficient secretariat with diverse resources encompassing policy, science, technical areas and administration.

To these, this author herein adds a reliable and comprehensive knowledge base to ground decision-making. The above elements provide RSPs with a basic set of indicators to assess their status and progress and to set targets to secure regional cooperative success. Establishing indicators, perhaps by further developing the above elements, could be a productive cooperative endeavour.

27 For further information, see the GPA website, http://www.gpa.unep.org/.
28 At the time of writing this paper, the review was not available.
Table 2: UNEP Regional Seas Conventions and Protocols. (listed in order of adoption of the regional convention)

<table>
<thead>
<tr>
<th>Region</th>
<th>Convention</th>
<th>Convention Status</th>
<th>Protocols</th>
<th>Protocol Status</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources (LBS Protocol); amended as the Protocol for the Protection of the Mediterranean Sea Against Pollution form Land-based Sources and Activities</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>The Protocol Concerning Mediterranean Specially Protected Areas (SPA Protocol); amended as the Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean</td>
<td>adopted 1982, in force 1986; amended 1995, not yet in force</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>The Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil (Offshore Protocol)</td>
<td>adopted 1994, not yet in force</td>
</tr>
</tbody>
</table>
Table 2 cont. UNEP Regional Seas Conventions and Protocols.

<table>
<thead>
<tr>
<th>Region</th>
<th>Convention</th>
<th>Convention Status</th>
<th>Protocols</th>
<th>Protocol Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kuwait Region (ROPME)</td>
<td>Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution (Kuwait Convention)</td>
<td>adopted 1978, in force 1979</td>
<td>Protocol Concerning Regional Co-operation in Combating Pollution by Oil and Other Harmful Substances in Cases of Emergency; Protocol for the Protection of the Marine Environment against Pollution from Land-Based Sources; Protocol on the Control of Marine Transboundary Movements and Disposal of Hazardous Wastes; Protocol concerning Marine Pollution resulting from Exploration and Exploitation of the Continental Shelf;</td>
<td>adopted 1978, in force 1979</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>adopted 1990, in force 1993</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>adopted 1998</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>adopted 1989, in force 1990</td>
</tr>
<tr>
<td>South-East Pacific</td>
<td>Convention for the Protection of the Marine Environment and Coastal Area of the South-East Pacific (Lima Convention); Agreement on Regional Cooperation in Combating Pollution of the South-East Pacific by Hydrocarbons or Other Harmful Substances in Case of Emergency;</td>
<td>adopted 1981; in force 1986; adopted 1981</td>
<td>Supplementary Protocol to the Agreement on Regional Co-Operation in Combating Pollution of the South-East Pacific by Hydrocarbons or Other Harmful Substances in Cases of Emergency; Protocol for the Protection of the South-East Pacific against Pollution from Land-based Sources; Protocol for the Conservation and Management of Protected Marine and Coastal Areas of the South-East Pacific; Protocol for the Protection of the South-East Pacific Against Radioactive Contamination; Protocol on the Programme for the Regional Study on the El Niño Phenomenon (ERFEN) in the South-East Pacific;</td>
<td>adopted 1983, in force 1987</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>adopted 1983, in force 1986;</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>adopted 1989, in force 1994</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>adopted 1989, in force 1995</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>adopted 1992</td>
</tr>
</tbody>
</table>
Table 2 cont. UNEP Regional Seas Conventions and Protocols.

<table>
<thead>
<tr>
<th>Region</th>
<th>Convention</th>
<th>Convention Status</th>
<th>Protocols</th>
<th>Protocol Status</th>
</tr>
</thead>
</table>

Reversing Environmental Degradation Trends in the South China Sea and Gulf of Thailand
Table 2 cont.  UNEP Regional Seas Conventions and Protocols.

<table>
<thead>
<tr>
<th>Region</th>
<th>Convention</th>
<th>Convention Status</th>
<th>Protocols</th>
<th>Protocol Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>East Asian Seas</td>
<td>Action plan only</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>South Asian Seas</td>
<td>Action plan only</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North-West Pacific</td>
<td>Action plan only</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
2.2.2 Independent Regional Seas Programmes

The Baltic, North-East Atlantic, Arctic, Antarctic and the Caspian regions have developed RSPs independent of UNEP. They are categorised as UNEP partner programmes. The five independent programmes are in various stages of development. The Baltic and North East Atlantic have conventions dating back to the early 1970s and both have revised their conventions in the 1990s to reflect contemporary IEL principles. These two regions experience high levels of cooperation and they have evolved beyond fostering mere cooperation to contemplating enforceable compliance mechanisms to ensure implementation of regional obligations. This is evidence of evolution of cooperation, commitment and trust as compliance is largely voluntary in earlier developmental stages. Enforceable compliance mechanisms evidence the evolution of the cooperative spirit, as RSPs intend to focus on mechanisms to enhance cooperation, rendering compliance largely voluntary.

The Antarctic is subject to numerous conventions under the auspices of the Antarctic Treaty System. Its environmental-related convention has low relevance to most RSPs, given its unique circumstances with only a few scientific communities as its only human dwellers. Further, it is largely considered a fisheries management regime, given its focus on preservation of Antarctic living resources from distant sources of pollution and distant fishing nations. At the opposite pole, the Arctic region has endorsed an action plan. Scientific research and persistent organic pollutants are among its primary foci and the GPA is an influential instrument. The Caspian region, among the newest of the RSPs, established the Caspian Environment Programme (CEP) in 1999, subsequent to the completion of a Global Environment Facility (GEF) Transboundary Diagnostic Analysis in 1998. The states signed a framework convention and endorsed a Strategic Action Plan in 2003. The convention is expected to be ratified in 2006.30

Table 3 UNEP Regional Seas Partner Programmes and Conventions.

<table>
<thead>
<tr>
<th>Region</th>
<th>Convention</th>
<th>Convention Status</th>
<th>Protocols</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antarctic Region</td>
<td>Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR)</td>
<td>in force 1982</td>
<td>The Helsinki Convention adopted 7 annexes concerning: Harmful substances, Criteria for the use of Best Environmental Practice and Best Available Technology, Criteria and measures concerning the prevention of pollution from land-based sources, Prevention of pollution from ships, Exemptions from the general prohibition of dumping of waste and other matter in the Baltic Sea Area, Prevention of pollution from offshore activities and Response to pollution incidences</td>
</tr>
<tr>
<td>Baltic</td>
<td>Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention);</td>
<td>adopted 1974, in force 1980, revised 1992, in force 2000</td>
<td>OSPAR adopted a series of Annexes in place of protocols concerning: Prevention and elimination of pollution from land-based sources; Prevention and elimination of pollution by dumping or incineration; Prevention and elimination of pollution from offshore sources; and Assessment of the quality of the marine environment</td>
</tr>
<tr>
<td>Caspian</td>
<td>Framework Convention for the Protection of the Marine Environment of the Caspian Sea (Tehran Convention);</td>
<td>adopted 2003, not yet in force</td>
<td></td>
</tr>
</tbody>
</table>

2.2.3 The UNECE Water Convention

The 1992 UNECE Water Convention, under the auspices of the United Nations Economic Commission for Europe (UNECE), entered into force in 1996, with 35 ratifications to date. Real amendments have opened the UNECE Water Convention to any state outside the UNECE region that wishes to join. Although the amendment is not yet in force, interested states are invited to attend meetings as observers. State representatives from the Mekong River Commission have attended training seminars under the auspices of the UNECE Water Convention, although they have not yet attended meetings as observers.

The framework UNECE Water Convention’s objective is sustainable use and ecologically sound management of shared water resources. Monitoring, research and development, consultations, warning and alarm systems, mutual assistance, institutional arrangements and the exchange of, and public access to, information are among the issues addressed in the UNECE Water Convention. It has two protocols, the first relating to water and health and the second to civil liability arising from transboundary issues.

The UNECE Water Convention is unique in its approach to encouraging cooperation among parties. Part I comprises general provisions applicable to all parties, setting out duties, obligations, rights and relevant principles. Part II is innovative and creative in that Article 9(1) obliges parties “on the basis of equality and reciprocity [to] enter into bilateral or multilateral agreements or other arrangements, where these do not yet exist, or adapt existing ones where necessary to eliminate the contradictions with the basic principles of the Convention, in order to define their mutual relations and conduct regarding the prevention, control and reduction of transboundary impact...”. More than 150 agreements on transboundary waters exist in the UNECE region and many agreements forged prior to the UNECE Water Convention have been updated accordingly. Parts I and II are reproduced in Appendix 5, herein.

Part II of the UNECE Water Convention recognises the unique physical and biological characteristics of sub-regions and the relevant interests of states. It encourages tailored cooperation at a sub-regional level for superior effectiveness and efficiency. Together, Parts I and II and related guidelines ensure a degree of consistency among sub-regional agreements for overall regional harmony.

Commonly, a sub-regional agreement will refer to the UNECE Water Convention as its parent agreement. A number of the sub-agreements on river basins have evolved into sophisticated regulatory systems with their own protocols and decision-making bodies. The UNECE Water Convention interfaces with other UNECE treaties, RSPs (e.g., the Caspian, Black, Baltic and North East Atlantic RSPs) and global treaties (to facilitate their implementation at the national level in a regionally cohesive fashion).

The UNECE is the secretariat for the UNECE Water Convention. Although the member states are invited to approach the secretariat and the Meeting of the Parties to request appropriate assistance, the secretariat is an active facilitator in securing agreements or establishing sub-regional bodies. Depending on the situation, facilitation may include: merely drawing attention to issues not addressed and other gaps in the sub-regional processes, providing advice in the negotiation/drafting process as an external actor (a more active role), or adopting a problem-solving and creative role as a driving force in securing agreements (highly active role). Its role as a driving force is frequently conducted though UNECE regional advisory services, largely under the auspices of the International Waters Assessment Centre (IWAC).

31 See the Tables 1 and 2 regarding the Water Convention and the parties to it. The Preamble, and Parts I and II are reproduced in Appendix 5. Also see http://www.unece.org/env/water.
34 The text of the UNECE Water Convention can be viewed on the website, supra note 32. The Preamble and Parts I and II are reproduced in Appendix 5, herein.
IWAC offers a diverse range of advice and assistance to parties on issues such as science and technology, capacity-building, implementation and harmonisation.\textsuperscript{36} The Advisory Network on Legal Instruments, also under the auspices of the IWAC, is mandated with facilitating the implementation of the legal and administrative provisions within, or consistent with, the UNECE Water Convention.\textsuperscript{37} The advisory services are inherent to the success of the UNECE Water Convention and the sub-regional agreements.

The UNECE Water Convention can be credited with harmonising national and regional approaches, building national capacity and fostering trust among members. Successes and strengths include:\textsuperscript{38}

- The creation of a region-wide legal framework that encourages issues to be addressed at various levels, e.g., regional, sub-regional and ecosystem (watercourse in this case) specific;
- The region-wide UNECE Water Convention is a catalyst for the accelerated conclusion of sub-regional agreements (largely treaties) where none existed or management was fragmented;
- The creation of an institutional infrastructure for increased co-operation within a region, including knowledge and information building and sharing, technical assistance and advice at the state and sub-regional levels, capacity building and concrete activities for effective management;
- Information gathered from monitoring, reporting, and evaluating provides a foundation to assess the overall effectiveness of the measures, ensure that ecological improvement ensues; and encourages state compliance.
- Its flexible design allows it to respond to the evolving needs of the parties and to emerging environmental issues;
- Its functional design and practical applications in resolving environmental issues has resulted in a very high level of support among the parties.

In summary, the UNECE Water Convention’s main strength has been to foster cooperative efforts and lay the groundwork for further effective cooperation on a regional and sub-regional basis.\textsuperscript{39} Of the above-noted programmes, the UNECE Water Convention is the most creative and flexible. It is widely endorsed by the parties and it has significant support from the European Union and external donors. It is an example of an instrument designed to suit the needs of the parties, rather than adopting a widely used formula and hoping it fits.

Table 4 The UNECE Water Convention.

<table>
<thead>
<tr>
<th>Region</th>
<th>Convention</th>
<th>Convention Status</th>
<th>Protocols</th>
<th>Protocol Status</th>
</tr>
</thead>
</table>

2.3 Insights from the Review of Regional Instruments and Mechanisms

A cursory review of some of the elements of RSPs is presented in Appendix 2, herein. Elements canvassed are the use of hard- and soft-law instruments, institutional arrangements and secretariat functions, cooperative mechanisms, funding and financial considerations and processes and procedural issues. While there is much to be learned from the review, some of the more relevant insights gleaned and lessons to be drawn are presented below.\textsuperscript{40}

\begin{thebibliography}{99}
\bibitem{36} Ibid.
\bibitem{38} Wouter and Vinogradov, supra note 35, p. 61.
\bibitem{39} Ibid., p. 62.
\bibitem{40} Also see Appendix 7, herein, for a synopsis of a study of regime effectiveness by Edward L. Miles, Arild Underdal, Steinar Andresen, Jørgen Wretstedt, Jon Birger Skjaerseth, and Elaine M. Carlin, entitled Environmental Regime Effectiveness: Confronting Theory with Evidence, (Boston: MIT Press) 2002.
\end{thebibliography}
2.3.1 Insights regarding Hard- and Soft-Law Instruments

The most significant insights are:

- Among all instruments at any political level, RSP coordinators rated regional conventions as the most influential instruments, followed by regional action plans.
- The primary role associated with regional conventions is fostering regional cooperation, and not the expected role of environmental improvement and protection. This is surprising and informative when considering options for the SCS.
- The combination of instruments fostering the strongest regional cooperation is a framework convention underpinned by detailed action plans.
- There is often a low correlation between a regional convention and regional environmental improvement. Actions leading to improvements are often directly correlated with global or other regional instruments and not the convention.
- Regardless of legal status (i.e. hard or soft-law) of a regional instrument, implementation, compliance and enforcement are voluntary in practice. Despite the legally-binding nature of conventions, mechanisms employed merely encourage state action. Lack of mechanisms compelling implementation and compliance/enforcement is considered by many as an inherent weakness in all RSPs.
- The moral commitment to comply with a hard-law instrument is greater than the moral commitment to comply with a soft-law instrument.
- Regardless of legal status (i.e. hard or soft-law) of a regional instrument, the level of implementation, compliance and enforcement correlates directly with the level of political will and commitment to resolve environmental issues.
- The need for ecologically effective cooperation and action is seldom addressed by regional instruments.

Other insights supported by the review include:

- Conventions promote regional stability by fostering trust, establishing expectations and establishing a sound basis for cooperation.
- Strong regional cooperation emanates from the cooperative spirit fostered by a convention and less from the substantive provisions of the convention.
- Adopting a regional convention is preferable to not adopting a convention for the reasons noted above (i.e., a convention promotes stability, influences mindset by fostering a cooperative spirit.)
- A legally-binding instrument, regardless of content and language, may be the cornerstone of cooperation. The perception that regional (and global) conventions are weakened by “watered down”, discretionary language, such as “where practicable” and “where the parties agree”, and by adopting the obligations of the “lowest common denominator” may be accurate with regard to the convention’s direct impact on environmental improvement, but such language may not weaken a convention where the objective is to foster cooperation. A detailed and practical action plan can alleviate perceived weaknesses in substantive provisions.
- Protracted negotiations should not be a deterrent to adopting a legally-binding instrument as the final product of a long process is often superior and the process itself provides benefits such as identification of relevant issues, clarity of objectives, mutual understanding and respect for national issues and challenges.
- Defined and specific regional standards, practices and commitments are seldom articulated in regional legally-binding instruments, but are more frequently specified in action plans and non-binding regional instruments. Regional commitments generally only become enforceable when translated into domestic law.

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See Appendix 8 for a comparison of legally and non-legally binding instruments.
• Soft-law instruments (usually an action plan) standing alone, without the support of a legally-binding instrument, can promote strong regional cooperation, provided they are supported by committed parties.

• IEL is maturing, focusing on the implementation of instruments. This replaces the focus on the development of environmental legal principles and norms during the 1970-90s.

• Regional programmes provide an effective interface between the global instruments and their domestic implementation.

• Foci for regional instruments are fostering cooperation, implementation and addressing processes (such as how to implement instruments), with less focus on substantive provisions that are included in global instruments and regional action plans.

• Coordination of activities and cooperation saves resources, reduces learning curves, enhances regional capacity-building, and provides efficiency, particularly in regions where skills and technology may be distributed unevenly among states. A regional umbrella instrument can foster such coordination.

• Jurisdictional disputes need not impede regional cooperation as parties to agreements rely on non-prejudicial clauses that preserve territorial claims. Parties in regions with territorial disputes have largely accepted that cooperation on environmental protection is preferable to allowing continued environmental degradation.

Table 5  Instruments Rated the Most Influential to Regional Seas Programmes*.

<table>
<thead>
<tr>
<th>UNEP RSP (Convention)</th>
<th>Instruments Rated the Most Influential to Regions</th>
</tr>
</thead>
</table>
| Black Sea (Bucharest) | 1. Regional Conventions and Protocols  
                       | 2. Regional Action Plans                       |
| Eastern Africa (Nairobi) | 1. Regional Conventions and Protocols  
                           | 2. Global Soft-law Instruments (i.e. GPA) |
| East Asian            | 1. Regional Action Plans  
                       | 2. Memoranda of Understanding |
| Mediterranean (Barcelona) | 1. Regional Conventions and Protocols  
                                   | 2. Regional Action Plans |
| North-East Pacific (Antigua) | 1. Regional Action Plans  
                                | 2. Regional Conventions and Protocols |
| North-West Pacific (NOWPAP) | 1. Regional Action Plans  
                                    | 1. Memoranda of Understanding (priority not ranked) |
| Red Sea and Gulf of Aden (Jeddah) | 1. Regional Conventions Protocols  
                                      | 2. Ministerial Declarations |
| ROPME Sea Area (Kuwait) | 1. Regional Conventions and Protocols  
                          | 2. Regional Action Plans |
| South Asian Seas      | 1. Regional Action Plans  
                       | 2. Memoranda of Understanding |
| South-East Pacific (Lima) | 1. Regional Conventions and Protocols  
                                | 2. Regional Action Plans |
| South Pacific (Noumea and Apia) | No survey received |
| West and Central Africa (Abidjan) | 1. Regional Conventions and Protocols  
                                      | 2. Global Soft-law Instruments (i.e. GPA) |
| Wider Caribbean (Cartagena) | 1. Regional Conventions and Protocols  
                                   | 2. Memoranda of Understanding |
| Partner Programmes    | No survey received |
| Antarctic (CCAMLR)     | 1. Global Conventions  
                       | 2. Ministerial Declarations |
| Arctic                | 1. Regional Conventions and Protocols  
                       | 2. Regional Action Plans |
| Baltic Sea (Helsinki) | 1. Global Conventions  
                       | 2. National Laws and Regulations |
| Caspian Sea (Tehran: not in force) | 1. Regional Conventions  
                                     | 2. Legally-binding Decisions and Non-Legally Binding Recommendations |
| North east Atlantic (OSPAR) | 1. Regional Conventions, Annexes and Protocols  
                                    | 2. National Laws and Regulations |

* Results compiled from the surveys sent to each RSP coordinator. Summary of results: All regions with regional conventions ranked their convention as the most important instrument, with the exception of the North-East Pacific, which ranked it second to regional action plans.
2.3.2 Insights regarding Institutional Arrangements and Secretariat Functions

- Institutional mechanisms vary among RSPs.
- A regional institutional mechanism to oversee and implement a regional cooperative instrument is necessary. Relying on national focal points to coordinate implementation will almost certainly result in non-action.
- The more successful regions have proactive, problem-solving secretariats to drive the states forward when necessary.
- A proactive secretariat must be seen to raise the profile of the programme, problem-solve, boost confidence, encourage and lend assistance but not pressure the parties to act. This may include providing information and options for decision-making, suggesting innovative or creative solutions for problem-solving and finding alternatives or options that alleviate objections and concerns.
- Promoting programme ownership by member countries should be a key function of the secretariat.
- Motivated, competent staff members are essential.
- A small, motivated secretariat can be very effective.
- A sufficiently staffed and funded secretariat does not ensure programme success.
- Institutional mechanisms must build trust and credibility, which may include delivery on promises and projects, transparency, honesty as to what projects can and cannot be accomplished, funds utilised responsibly and effectively and personal contact to provide updates on activities and discuss domestic challenges.
- Establishing a good institutional track record promotes a level of confidence among parties that in turn will ease their concerns and encourage further commitment (financial or in kind) and cooperation.
- Fostering a good relationship between the institutional mechanism and the parties/partners, including state and non-state actors, improves cooperation.
- A successful institutional mechanism must be able to “strategise” when and where necessary and be a facilitator. It must constantly monitor for gaps, overlapping projects, opportunities for learning; follow-up issues; learning from mistakes. A dynamic unit, creative in thought and action and responsive to new situations and problems, will carry a regional programme forward.

2.3.3 Cooperative Mechanisms

- Mechanisms adopted to foster and enhance cooperation vary among regions.
- Cooperative mechanisms should be structured to the needs and culture of the region.
- Mechanisms require periodic assessment to ensure that they are performing effectively, and adjust accordingly.
- Advisory groups and RACs are the most common forms of cooperative mechanisms.
- Advisory groups are useful for providing information and direction for the parties, fostering knowledge-based decision-making and effective actions.
- Specialised RACs have the role and function of supporting the activities of the coordinating units. They are often integral to coordinating and implementing action plans, fostering regional capacity-building and promoting cooperation, particularly where the RAC is housed in a centre of expertise.
- Effective RACs improve the sense of ownership and pride. RACs situated in a centre of expertise become a regional asset, providing opportunities to cooperate, collaborate and capacity-build. Opportunities may include jointly developing regional experts, supporting secondments, fostering data sharing/storage functions and managing a regional database.
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2.3.4 Funding and Financial Issues

- Sustainable financing is a concern in all regions and its absence impedes the number and quality of cooperative efforts.
- Regions where member contributions are readily paid rank their levels of both cooperation and political will as high.
- Means employed to encourage laggard states to pay their annual contributions varies among the regions.
- Shaming and public pressure and/or humiliation work in some regions, but may fail in others, depending on the regional culture.
- Demonstrating that the benefits of participation exceed contribution amounts can be a successful strategy to encourage state payment where competition for funds is rife.
- Any strategy adopted to encourage compliance and/or contributions must suit the regional ethic and culture.
- External funding is necessary for projects in developing regions.
- External donors are impressed by regions that take effective action, demonstrate high levels of cooperation and political commitment, and a willingness to engage partners (e.g., civil society and NGOs) and other tangible commitments to environmental protection.
- External donors view a legally-binding regional instrument as evidence of commitment and therefore prefer funding such regions over regions with only soft-law instruments.
- Developing a reputation for producing results encourages external donors to invest.
- The appointment of a fund/financial mobilisation officer within a RSP can help secure funding.

2.3.5 Processes and Procedural Issues

- The processes and procedures adopted vary greatly among regions, but they are most successful where they reflect the regional culture.
- Processes are required for decision-making, policy-making, management, implementation, compliance, enforcement, cooperation and most other aspects of environmental protection strategies.
- A significant weakness is the lack of consideration given to how to effectively and efficiently address substantive issues and implement actions with which RSPs are tasked.
- The development and adoption of processes (e.g., for implementation) are frequently undertaken without significant consideration of issues such as the need for clarity of purpose, strong knowledge-base, sound science, feedback loops/assessment, realistic objectives, time...
frames in which to realise them, transparency, strategic partnerships, priority issues, role of the secretariat, alternative solutions and effectiveness. This frequently results in ecologically and economically unsound policies and implementation practices.

- In effect, processes employed generally lack strategy.
- The lack of indicators to measure progress fosters arbitrary process development and adoption.
- Incorporation of sound science into policy-making improves ecological effectiveness and economic efficiency.
- Science is recognised as a key component but it is often overlooked or marginalised by other issues.
- Knowledge-based decision-making is an emerging strategy for sound decision-making processes. It is at risk of becoming a "buzz word" - used frequently, but with little critical understanding of what it entails.
- "Strategic" initiatives are an emerging trend in the international environmental arena. Strategic action plans/programmes, strategic environmental impact assessments, strategic directions (UNEP and COBSEA), sustainable development strategies and strategic partnerships institutionalise consideration, pre-mediation, deliberation, calculation and planning. This infers long-term, process-oriented planning that involves how to attain the best results.
- There is a growing global consciousness regarding the need for effective actions: effective cooperation, effective implementation and ecological and economic effectiveness. The benefits include ecological improvement, economic efficiency, a basis for improved cooperation, and success (which impress funding agencies and domestic actors). "Effectiveness" focuses on process or how to proceed, and is a benchmark for performance or an indicator for success.
- The appearance of qualifiers such as "strategic", "knowledge-based" and "effective" in reports, instruments and other documents evidence a shift in mindset to embrace sound policy-making and implementation. There is recognition that implementation of substantive measures/initiatives have been insufficient. For example, strategic action plans and strategic environmental impact assessments infer greater analysis of form and substance. Knowledge-based decision-making infers a superior decision-making process compared to mere decision-making. These qualifiers herald the recognition of the need to think, plan, coordinate and cooperate in such a way as to maximise both the use of human and financial resources and ecological benefits through analytical planning for focussed actions. To draw an analogy, environmental protection is moving from games of chance to games of strategy.

2.3.6 Insights regarding Cooperation and Coordination

There are many insights into regional cooperation and coordination to be drawn from the review:

- Ecological degradation is most effectively addressed with action at the local level, but it requires cooperation at all levels, both horizontally and vertically, and particularly at the regional level.
- Cooperation can occur on many levels, from informal to the highly formalised.
- Cooperation can be functional and practical, such as joint scientific research, data sharing or establishing a website for managers and technicians to exchange experiences.
- Cooperation involving, or endorsed by, the highest levels of government, and acted on, fosters stronger cooperation at lower levels.
- Cooperation may involve mere coordination of similar activities/projects that take place on national territory by national actors and does not involve cross-border cooperation.
- Conversely, cooperation may involve full collaboration on joint activities/projects.
- The modes of cooperation are limitless where the desire to cooperate exists.
- Levels of cooperation increase where states take ownership of programmes/projects.

\[42\] See Appendix 9 for means of improving cooperation drawn from the review.
• Most importantly, any mode of cooperation must suit the regional culture and ethic.
• Cooperative efforts that are successful in one region cannot be imported to another without thought or scrutiny, as what works well in one region may fail miserably in another.
• The long-term and short-term goals of cooperation require articulation. Clarity of objectives or goals can foster uniform expectations among actors and more efficiently direct the processes and modes of cooperation. Although seldom articulated, the long-term goal is assumed to be ecological improvement. Short-term goals may include consensus, confidence or capacity-building, conversion to sustainable livelihoods, specific environmental objectives, or improving the effectiveness of actions. Strong cooperation can be a short- and long-term goal.
• Where regional cooperation stalls or slows, cooperative efforts focused on practical issues, such as building confidence or capacity or gathering information, can reduce tensions among parties and lay a foundation for cooperation on complex or difficult issues.
• Regardless of the objective or the goal of cooperation, the infusion of sound science is fundamental to ensure that cooperative efforts utilise resources wisely.
• States are frequently party to a number of global and regional instruments with domestic implementation spread across numerous domestic ministries and sectors. Poor coordination at the level of national ministries leads to poor regional cooperation.
• Poor coordination at the national level has serious repercussions domestically as they often result in fragmented, sectoral approaches and overlapping and conflicting law and policies.
• A lack of communication between those attending regional or international meetings (most often from the Ministry of Foreign Affairs) and the domestically-focused ministries (who are ultimately responsible for implementation) thwarts effective action. Commonly, neither ministry has a sufficient understanding and/or knowledge of the other’s challenges, needs or issues.
• National and regional capacity is used ineffectively and inefficiently without cooperative efforts to coordinate actions.
• Numerous global and regional bodies overseeing regional and sub-regional policies, programmes and projects may result in overlapping or duplicate efforts, which translates into wasted resources.
• Conversely, without coordination, priority issues may remain unaddressed or be haphazardly addressed.
• Contributing to poor cooperation and coordination are situations of “turf protection”, namely where actors, wishing to protect their niche, act in their own interests and overlook or ignore regional interests.
• Coordinating activities to address environmental degradation within a region should reduce individual investment of time, money and resources by engendering efficiency and effectiveness, distributing the work load and sharing information gathering, processing and analysing. Lessons learned regarding modes and means of addressing issues can be shared to prevent repetition of mistakes.
• Fear of infringement of territorial sovereignty, which once impeded cooperation, is less of an issue as environmental security is accepted as state responsibility and states more readily recognise the value of working with their neighbours to protect their common resources.

3. UNDERLYING CHALLENGES TO REGIONAL COOPERATION

Cooperation usually offers the wisest use of limited human and financial resources. However, the review of the RSPs and the above-noted insights reveal numerous challenges affecting regional cooperation for marine environmental protection. Addressing the challenges should improve the effectiveness and efficiency of regional cooperative efforts, both horizontally and vertically, and the products of such efforts. The challenges are not proper indicators of success, but they can be used to guide cooperation.

The challenges discussed below fall into four broad (and arbitrary) categories: challenges to mindset, institutional challenges, functional challenges (including processes and mechanisms for cooperation) and ecological and scientific challenges.
3.1 Challenges to Mindset

“Mindset” requires some introduction to understand its significance with regard to cooperative efforts. A mindset relates to the beliefs and perceptions that affect actions. Changing a mindset can change the fundamental perspective of an issue and a different perspective can open the mind to new solutions. The best example of a fundamental change in mindset is that from human dominion over the natural environment to acceptance of humans as a component of the global ecosystem. This changed mindset has resulted in global endorsement of environmental protection and sustainability. The conventional mindset of the region, if not most regions, is evolving, but it remains embedded in traditional LOS and IEL of the 1990s. The mindset must reflect the evolution of IEL in the new millennium. Serious consideration of the following challenges will hasten the evolution of the conventional regional mindset to keep it current with IEL development and provide sounder action and cooperation:

- Supporting ecologically effective and economically efficient resolution of environmental issues as the primary objective or goal. The current mindset largely focuses on politically and socially acceptable actions.
- Taking ownership of RSPs and responsibility for both successes and failures. Taking ownership promotes cooperation, financial support (including contributions of cash and in kind), pride and commitment. It is a challenge for secretariats and other regional actors to foster ownership and entice reluctant states to participate fully. Creative methods may be required to encourage ownership, such as demonstrating the benefits of the programme, involving the Minister of Foreign Affairs or Finance, and establishing pilot projects and demonstration sites. States need to change their mindsets from wary participation to embracing ownership.
- Building political will and committing to environmental protection, despite the presence of claims of overlapping jurisdiction. The separation of political and environmental agendas by putting aside jurisdictional claims and committing to regional cooperation fosters progress. Sufficient precedents now exist (e.g., Antarctic, Mediterranean, and Caspian) to allow states to comfortably agree that overlapping territorial claims will not be affected or prejudiced by cooperation on environmental protection. The challenge is to shift in mindset from territorial sovereignty to the favoured mindset that acknowledges that it is in all claimants’ interests to cooperate to protect the region, including disputed territory.
- Shifting away from formalistic LOS to functional IEL concepts. The global mindset, traditionally favouring sovereign jurisdiction, discourages full and open cooperation on regional environmental protection efforts. This mindset is fostered by traditional LOS tenets and remains prevalent in most Ministries of Foreign Affairs. Conversely, IEL concepts of environmental security and sustainable development call for cooperative arrangements and effective regional environmental programmes. The divergent mindsets of LOS and IEL practitioners continue to inhibit cooperation as the two approach issues from different perspectives and have different goals.
- Overcoming the inertia resulting from fear of the “collective good” mentality and apprehension that neighbours will not provide equal contributions. States are often reluctant to undertake measures for environmental protection as they fear economic detriment should their regional neighbours continue with the offending activity or fail to take equivalent action. This can be addressed by increased regional cooperation and confidence-building exercises, including helping offenders address the situation for the collective good.
- Generating political commitment among states reluctant to address environmental issues. Few states now deny the need for environmental measures but levels of commitment often remain low. States cannot be bullied into cooperation – they need to be persuaded with evidence and confidence-building exercises. They need to shift their mindset to embrace the benefits of cooperative actions.
- Focusing on implementation of instruments, and away from development of new legal principles. This is merely another shift in the evolving mindset along the continuum that four decades ago favoured economic development at all costs, to recognising environmental issues in the 1970s and 80s, to accepting their inevitability and embracing concepts of sustainable development in the 90s, and now to strategic and effective actions to achieve sustainable development.
• Thinking “outside the box”. Encourage open-mindedness and seek creative and workable environmental protection strategies. Effective implementation of existing principles is the new frontier awaiting exploration.

• Encouraging “home-grown” and region-appropriate solutions. Reviewing other jurisdictions may provide insights and regional brainstorming may draw on other regional experiences to resolve complex issues, but they must be adapted to the local context.

• Considering how to effectively address issues and incorporate necessary processes into environmental regimes. Assessments, journals, reviews and other writings consistently identify sustainable funding, a strong secretariat, a strong legal basis, capacity building; strong political commitment, institutionalisation of science and technology, cooperation, communication, greater involvement of stakeholders and NGOs, strategic partnerships, the adoption of an ecosystem-friendly approach and knowledge-based decision-making as keys to successful action. The regional mindset should shift from ambivalence as to outcome to commitment to an effective outcome.

• Thinking in terms of managing human activities and not the environment. The mindset that embraces “environmental management” is inherently inappropriate as humankind cannot control the natural world. Managing the environment will not reverse degradation. Managing human issues, such as poverty, education, alternative livelihoods, sustainable resource practices (e.g., fishing, farming, logging, etc.), and empowering women will reverse degradation

• Accepting that the laws of nature, not those of man, govern environmental impact of human activities.

• Embracing the need for effective and strategic cooperation and action.

3.2 Institutional Challenges

• Developing a proactive and problem-solving secretariat. While respecting the positions of members and others, secretariats should be encouraged to seek and recommend alternatives where appropriate and cut through issues and tensions to identify and address underlying problems.

• Employing competent and able staff members in regional and local positions. Education and training may be required. Seniority, connections, convenience and other factors often dictate who fills a position, with little thought given to the competence of the individual to perform at an optimum level.

• Relying less on foreign experts and more on local experts. The importance of nurturing and developing local talent cannot be overstated. Professional staff and project coordinators/managers and technical people should be drawn from the region wherever and whenever possible. This fosters ownership and pride in accomplishments. Local experts generally have an inherent and superior understanding of the region and an awareness of politically and culturally acceptable ways to approach issues and ease tensions. Local talent has a vested interest in success. Developing local expertise fosters regional networks, a sustainable human resource, centres of expertise, and opportunities for functional and practical cooperation on research and knowledge-building. If outside expertise is essential for addressing a particular issue, use such expertise in partnership with local experts to enhance capacity-building in the region.

• Fostering communication, transparency, honesty, clarity and trust to strengthen regional cooperation. Following through on commitments and delivering products by the secretariat is an excellent means of building good will and encouraging member support.

• Incorporating flexibility to adapt institutional conduct to changing circumstances. This is a consideration when designing the mandate and constitution of a secretariat.

• Ensuring professional staff members have knowledge or experience in more than one discipline. Competence and the ability to perform should be staffing requirements because positions come with significant responsibility for implementing projects and allocating resources.

43 As noted previously, humans cannot change the laws of nature, but only work with them. Thus, it is human conduct that must be regulated and managed.
3.3 Functional Challenges

- Establishing coordinating mechanisms at the national level to improve coordination among programmes and projects domestically and regionally.
- Utilising national and regional capacity effectively and efficiently to enhance cooperative efforts and coordinated actions.
- Tailoring processes, methods and mechanisms to the regional culture, commitment and level of cooperation. While canvassing regions for ideas, it must be remembered that what works in one region may be inappropriate for another.
- Invoking “strategic actions” to maximise effectiveness.
- Institutionalising feedback, review and assessment mechanism for effective policy and actions.
- Establishing realistic political, policy and administrative indicators against which progress and/or success can be measured.
- Institutionalising adaptive management. Adaptive management involves feedback loops, assessment, flexibility, and modification of the actions and policies/laws/decisions to reflect the emergence of new information. Adaptive management is increasingly recognised as a tool for effective management.
- Seeking means of sustainable financing. Sustainable funding sources, from both member states and external donors, must be secured. It is often easier when the members can demonstrate successful projects and commitments via a binding legal instrument or strong regional cooperation.
- Streamlining onerous reporting requirements to the secretariat, annual meetings (e.g., Conferences of Parties), funding agencies, etc. to free up valuable time and foster progress.
- Implementing effective reporting requirements to: (a) confirm the status of implementation and compliance, assess the effectiveness of the work plan and actions taken; (b) provide an opportunity for members to learn from another’s actions and the cross-fertilisation of ideas and modes of operation; (c) reduce learning curves, avoid mistakes and adapt successful methods to help reduce the wastage of scarce financial and human resources; (d) track funding and ensure that resources are not wasted; (e) foster cooperation, collaboration and harmonisation; and (f) circulate reports to other relevant actors to facilitate capacity-building, increase awareness and raise the profile of environmental issues and programmes.
- Establishing realistic compliance and enforcement mechanisms that reflect the regional sensitivities and culture.
- Establishing regional coordinating mechanisms to improve coordination among programmes and projects.
- Establishing national coordinating mechanisms to improve coordination among domestic programmes and projects.
- Establishing mechanisms for the participation by organisations, NGOs, stakeholders and other relevant actors.
- Developing mechanisms to establish strategic partnerships with or encourage participation of the private sector and to harness their resources, financial and otherwise.
- Developing and maintaining a comprehensive database and/or clearinghouse mechanism. Quality control and updating mechanisms will ensure the validity and reliability of the information.
- Coordinating data collection and storage through uniform calibration and measurement standards (ensuring data are easily compared) and ensuring accessibility to others within the region.
- Setting realistic targets, goals and timeframes to enhance regional cooperation. Meeting targets and delivery of product on time inspires further actions and builds confidence.

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• Encouraging consensus-building (e.g., on scientific, technical, political issues, etc.), particularly where actions are stalled or tensions are high.
• Tapping valuable resources through regional outreach and fact-finding missions to other institutions, actors and organisations, particularly with regard to science and technology.

3.4 Environmental and Scientific (Including Ecological) Challenges
• Avoiding ecologically and economically unsound, politically negotiated outcomes. This is a challenge to mindset and environmental sustainability.
• Measuring the ecological and economic effectiveness of projects, programmes and actions. This should foster the wise use of financial and human resources; impress actors, partners and donors; build confidence and trust; raise regional awareness of environmental issues; award accolades to the lead country or overseeing body; and, most importantly, reverse of degradation for long-term sustainability (assuming the information is acted on).
• Developing indicators to assess and measure effectiveness of actions and projects, as noted above, and monitoring the state of the environment on a regular basis.
• Institutionalising knowledge-based decision-making for effective actions, ensuring the inclusion of all relevant information and, in particular, science.
• Effectively setting and addressing ecological priorities to foster environmental integrity and wise and efficient use of resources.
• Institutionalising the use of sound science for sound processes and practices.

4. COOPERATION WITHIN THE SOUTH CHINA SEA REGION

4.1 Major Organisations and Projects in the SCS Region

The benefits of a cooperative marine environmental management scheme for the SCS and the GoT were recognised more than 20 years ago when in 1981 the five original ASEAN states, under the auspices of the UNEP RSP, approved the Action Plan for the Protection and Development of the Marine and Coastal Areas of the East Asian Region (EAS Action Plan). There is no convention in the East Asian Seas (EAS) region and the lack of unanimous support for a convention has persisted throughout.

The Coordinating Body on the Seas of East Asia (COBSEA) is the regional institutional mechanism for the EAS Action Plan. Membership to the EAS Action Plan was expanded to 10 in 1994 and the geographical coverage expanded. While COBSEA produced various documents over the years, the trend has been reviews and information rather than substantive programmes. In 2000, the 15th Meeting of the COBSEA endorsed the document, “The Vision and Plan – A Systematic Approach”, which contains a “Long-Term Plan”. COBSEA also endorsed at the same meeting the SCS Project and adopted a GPA/LBA project.

The EAS Regional Coordinating Unit (EAS/RCU) is the secretariat for the EAS Action Plan and its work includes: (a) facilitating the development and coordination of activities under the EAS Action Plan at the various levels of governance, from national to international and with relevant organisations; (b) supervision and assessment of projects and activities under the auspices of COBSEA; and (c) acting as a central repository/site for collection and dissemination of information among countries and relevant organizations.

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45 The original five countries were then-ASEAN members, Indonesia, Malaysia, Philippines, Singapore and Thailand.
46 See http://www.cobsea.org/about_eas-rcu.html.
47 The new member countries to the EAS Action Plan are Australia, Cambodia, China, Korea and Vietnam.
48 UNEP, Report of the Fifteenth Meeting of the Coordinating Body on the Seas of East Asia (COBSEA) on the East Asian Seas Action Plan; Special Session for the UNEP GEF Project on the South China Sea; and the Meeting of National Experts for the UNEP GEF Project in the South China Sea, UNEP(DEC)/EAS IG.11/3 and UNEP(DEC)/EAS/SCS-exp/3. 12 September 2000.
49 Ibid.
50 See http://www.cobsea.org/about_eas-rcu.html.
COBSEA and the EAS/RCU have focused on promoting compliance with international instruments. Challenges have included chronic funding and staff deficiencies, a large and diverse region, regional states that are not members (Brunei Darussalam, Myanmar, Papua New Guinea and Timor Leste) and the lack of country ownership of the EAS Action Plan. Political commitment and support for the programme and the EAS/RCU has been generally weak throughout. Coordination and cooperation have been problematic on many levels, across disciplines and with other regional bodies. Recently, COBSEA has been dwarfed by the two large GEF-funded projects, the SCS Project and the GEF/UNDP/IMO Regional Programme on Partnerships in Environmental Management for the Seas of East Asia (PEMSEA). The confluence of many factors has reduced its potential to play an effective coordinating role in regional cooperation.

Recognising its weaknesses and the need to keep current with IEL development, COBSEA is seeking new strategic directions. This journey commenced with an independent review in 2003.\(^\text{51}\) In May 2005, it held two meetings, the Brainstorming Meeting of the National Focal Points on New Strategic Directions of COBSEA\(^\text{52}\) and the First Regional Partners Workshop on the Regional Coordination Mechanisms in the East Asian Seas Region.\(^\text{53}\)

COBSEA recently held the 18th Meeting of COBSEA (January 2006). Unfortunately, members did not endorse new strategic directions for COBSEA, delaying such a decision until further discussions are undertaken. The general feel at the meeting was that the focus should be on capacity-building, information management and projects. While concrete decisions were not made, it is significant that members discussed directions and future strategies. COBSEA is ostensibly at a crossroad where members and UNEP are not satisfied to carry on with the status quo, but its role in the SCS is under debate. This is healthy and should be encouraged. Political support, commitment and country ownership of the programme could see the conversion of the EAS/RCU to a strong regional institutional mechanism necessary for effective regional cooperation and coordination. Conversely, it could be disbanded and replaced.

Numerous other programmes, projects, agencies, organisations and donors operate in the region. The major regional players, in addition to COBSEA and the SCS Project, are: the Association of Southeast Asian Nations (ASEAN) and its working group on Coastal and Marine Environment (AWGCME), ASEAN-China Strategic Partnership (ASEAN+1), ASEAN+3 (China, Republic of Korea and Japan), PEMSEA, the Asia-Pacific Economic Council (APEC) – Marine Resource Conservation Working Group, the Mekong River Commission (MRC), the Southeast Asian Fisheries Development Centre (SEAFDEC), the Asia-Europe Meeting (ASEM) and its Technical Working Group Meeting on the ASEM Oceans Initiative, and the World Fish Centre. Two other players of interest are the Southeast Asian Programme in Ocean Law, Policy and Management (SEAPOL) and the Southeast Asia Regional Centre for Global Change System for Analysis, Research and Training Network (SEA-START RC). Numerous institutions and organisations operate or fund projects alone or in cooperation with others, such as the International Coral Reef Action Network, the International Coral Reef Initiative, IUCN, the Asian Development Bank, the World Bank, IMO, WWF, the Canadian International Development Agency (CIDA) and the Swedish International Development Agency (SIDA). Many of the EAS member countries have national centres of excellence in science, technology or policy, with the latter as viable candidates for cooperative projects together with regional or international partners.

There are numerous action plans and programmes operating in the region, including COBSEA’s EAS Action Plan and Long-term Strategy, the SCS Projects’ Strategic Action Programme (SAP), PEMSEA’s Sustainable Development Strategy for the Seas of East Asia (SDS SEA), ASEAN’s Vientiane Action Programme 2004-2010 (Section 3.3), and APEC’s 1997 Action Plan for the Sustainability of the Marine Environment. Further, ASEM recently agreed to commence drafting an action plan pursuant to the ASEM Oceans Initiative.

\(^{51}\) Chou Loke Ming, Review of the East Asian Seas Action Plan and Strategy for Future Development, UNEP(Dec)/EAS IG.17/8, 22 October 2003. Also see Appendix 10 for the recommendations made for future directions.

\(^{52}\) UNEP, Report of the Brainstorming Meeting of the National Focal Points on New Strategic Directions of COBSEA, UNEP(DEC)/EAS 1.NFP, 25 May 2005.

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The SCS states favour sub-regional initiatives, including bi-lateral and multi-lateral programmes and instruments. Most, if not all, states have reached agreements with neighbouring or other relevant states on environmental issues of common concern. Fisheries, turtles, and marine environmental protection are a few of the topics covered. Evidence suggests that SCS states prefer sub-regional instruments over regional instruments. Sub-regional instruments are preferable for many reasons, including:

- They are often easier to negotiate and include meaningful provisions as fewer parties and common concerns encourage consensus;
- They are often perceived as more effective as they are tailored to the parties’ needs and interests;
- Cooperation and ecological effectiveness (where based on sound science) are enhanced as the parties are able to agree on concrete and specific actions, given their common interest in addressing the issue; and
- The commonality of concerns and consensus on specific actions fosters implementation and active follow-up at rates much higher than for regional instruments.

The use of sub-regional agreements provides benefits as noted above. However, the concern is the consistency of environmental protection across the region. Without a regional body to ensure sub-regionally, many gaps may occur. For example, ecological priorities may not be addressed sub-regionally where the issue is controversial, not of interest to the parties or economic or other factors discourage any action.

Various ministries, some more competent than others, may be involved in negotiating sub-regional instruments. Thus, a bi-lateral agreement may be very effective in one sub-region where the parties have competent negotiators and implementers, but another may have a scientifically unsound agreement or poor sub-regional implementation that lowers the level of regional protection. Further, as the sub-regional agreements generally operate in isolation, the opportunity for trans-national learning and sharing experiences can be reduced or lost where there is no regional institution to oversee coordination.

Overlapping geographical coverage of the above regional and sub-regional instruments, action plans, programmes and organisations highlights the need for greater regional coordination and cooperation. The First Regional Partnership Workshop in May 2005 noted the following points in relation to coordinating regional roles for existing organisations:54

- There are many different programmes / projects that lead to donor tiredness, confusion, waste of resources for all and missed opportunities.
- There is general support for COBSEA becoming an inter-governmental policy forum and assuming responsibility for high-level policy coordination of projects.
- COBSEA, AWGCME and APEC Working Group on Marine Resources Conservation are all intergovernmental bodies while PEMSEA and SCS Project are regional operational projects that deliver action-on-the-ground.
- AWGCME, COBSEA and APEC marine related working groups all have a policy mandate and, therefore, there is a need to delineate their respective roles.
- SCS Project is technically-oriented emphasising ecosystem/habitat and PEMSEA emphasises pollution management.
- Both PEMSEA and SCS Project support, in principle, a new identity for COBSEA.
- Since PEMSEA is mainly working at local/provincial government levels, perhaps COBSEA can add value by focusing at the national level.
- COBSEA can focus on the post-project activities based on the outcomes of both PEMSEA and SCS Project.
- COBSEA can focus on intra-governmental coordination at the national level.

54 UNEP, supra note 53, p. 2-3. This is an excerpt from the meeting report.
As coordinating and delineating roles of the various organisations will have enduring consequences for the region and the environment, COBSEA’s consultation with the other regional organizations and programmes is encouraging. Circumspection, strategic thinking and meaningful discussion among the members can produce an effective regime or arrangement. While some difficult issues may arise, it is best to address them rather than adopting a regime that is politically attractive, but environmentally ineffective in the long-term.

Regarding coordination of regional roles, there are a few points to note, particularly in relation to the future implementation of the SCS Project’s SAP. First, although APEC has a policy mandate for the marine environment, it is a complex organisation with diverse interests and enormous geographic coverage. Thus, it is an unlikely candidate to assume a primary role in SCS environmental sustainability. However, APEC’s role as a partner in the region should not be under-valued and perhaps lessons can be learned from its broader reach and interaction with countries in its extended jurisdiction.

Second, ASEAN has a policy mandate for marine environmental affairs. This includes the enhancement of inter-agency and inter-sectoral coordination at the national, regional and international levels with a view towards sustainable development in ASEAN’s marine and coastal areas. It has the institutional and policy framework to assume a guiding role in the region. Significantly, it has established a coordination mechanism for GEF projects in the region. This involves GEF communicating with ASEAN, the AWGCME reviewing the project for overlaps with other projects and proposals and generally assessing the project’s utility in the region. Depending on the circumstances, it can be endorsed by the ASEAN Senior Officials on the Environment (ASOEN) or it can be sent to the GEF National Focal Points, who correspond directly with ASEAN and ASEAN, in turn, liaises with GEF. ASEAN follows up with laggard states and approaches those who may need assistance.

ASEN meetings and annual Ministerial Summits which provide high-level governmental input places ASEAN as a contender for leadership in marine affairs in the region. ASEAN acts to focus attention on regional issues, tensions and priorities. The 2002 ASEAN Agreement on Transboundary Haze Pollution and the 2002 ASEAN-China Declaration of Conduct of Parties in the South China Sea are indicative of the cooperative spirit within ASEAN and its ability to persist and pursue when the issue is of regional significance. ASEAN Plus China and ASEAN Plus 3 (China, Republic of Korea and Japan) promote strong cooperation with China in particular and provide a significant forum for regional confidence-building that will enhance regional cooperation.

ASEAN’s sub-group, AWGCME has a track record of accomplishments, including the ASEAN Criteria for National Marine Protected Areas (2002), ASEAN Water Quality Criteria (2002), ASEAN Criteria for Marine Heritage Areas (2002) and ASEAN Declaration on Marine Parks (2003). AWGCME can draw on the work and experiences of the ASEAN Science and Technology Network. ASEAN is developing its environmental role with the launch of the ASEAN Centre for Biological Diversity, which is to be housed in the Philippines. Being an indigenous regional body, it respects the regional political culture and tailors its conduct to achieve maximum benefit. ASEAN’s actions to date have given it credibility and built significant confidence and regional consensus. Like most regional bodies around the globe, ASEAN could be more active in marine affairs if it were given more staff and a larger budget.

ASEAN does have weaknesses. For example, it could be more proactive and adopt a problem-solving approach. Observers note that while there are numerous declarations and outputs, implementation is very poor and follow-up lags. One has to ask if this is the result of lack of initiative on ASEAN’s behalf, lack of funding and staff to assume a stronger role or ASEAN has adopted processes consistent with the regional culture and the desires of the members. Traditionally, the SCS states have not actively encouraged pro-activity in any secretariat or organisation. In all fairness to ASEAN and other organisations, the traditional regional culture has been to tread softly and cause little offence. The best example of this is the reference to the annual thick, choking pall of smoke from Indonesian forest fires as merely haze.

Overall, ASEAN seems well placed to assume responsibility for implementing global and regional instruments. Regarding implementation of the SCS project’s SAP specifically, one potential problem may by membership in ASEAN. All of the SCS littoral states are members of ASEAN, with the exception of China. China participates in ASEAN as part of the extended 10 +1 (China) and 10+3 grouping (China, Korea, and Japan), but it is not a full member of ASEAN. Although cooperation between ASEAN and China is improving, as evidenced by the Declaration on the Conduct of Parties

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in the SCS, China may legitimately be uncomfortable with ASEAN as the SAP implementing body. As ownership and confidence are components for success, all parties must be comfortable with the institutional arrangements.

PEMSEA, like the SCS Project, has a limited lifespan, although it has funding for at least a further 10 years. Its regional coverage is much greater than the SCS as its geographical and political reach embraces 12 countries and 6 “large marine ecosystems” in the EAS region, of which the SCS is one. Its focus is primarily at the local and provincial level, although it is promoting regional coordination efforts via a regional database and its plans for a regional mechanism for sustained collective action in the EAS region and for a regional marine environmental resource facility to provide tools and services for effective marine environmental management. PEMSEA, a UNDP associated project, and COBSEA, a UNEP programme, are actively interfacing with each other and promoting a synergy between UNEP and UNDP, which should foster cooperation in the region.

PEMSEA is largely focused on the implementation of its SDS SEA. Advocating strategic partnerships, the SDS SEA offers an array of options, or platforms of actions, for various actors involved in the EAS to effectively contribute to sustainable development. To this end, PEMSEA and the State Oceanic Administration of China are co-organising the second East Asian Seas Congress, to be held December 2006 in China. The EAS/RCU is a supporting organisation. “Designed to address pressing marine environmental issues in practical formats and against a multidisciplinary setting, the various Congress components provide participants the opportunity to take active roles in sustainable development”. While PEMSEA, being a project, is not an appropriate body to assume responsibility for the SAP, it could impact on the implementation of the SAP if it continues to increase its regional influence and interface with other regional organisations.

4.2 Other Regional Organisations

The MRC is a sub-regional organisation focused on the lower Mekong River Basin. Treating the basin as an ecological unit, the MRC has developed four core programmes that interface to foster joint planning and development among the four riparian member states. It is an active organisation with a relatively long institutional history. It has a progressive mindset, as evidenced by its participation in a training programme in Europe offered through the UNECE Water Convention.

A source of pride for the MRC is MekongInfo, an interactive system for sharing information and knowledge in relation to the Lower Mekong Basin. In addition to over 2,500 documents (full-text and abstract) in the Library, Reference and Case Studies, MekongInfo includes a contacts database of individuals, projects and organisations; news and upcoming events; relevant web links; resource materials; an online discussions forum; and a free web hosting service.

Databases are integral to effective management. The review of the RSPs confirmed that more data and information is necessary for improved actions. To date, the SCS and the EAS have no comprehensive databases of scientific, technological, legal and other information. Scientists in particular are hampered in their work as they have to rely on the goodwill of other scientists and maintain active contacts to access relevant information. An option to explore for the SCS is to capitalise on the MRC’s experience with databases, contacts and data collection and storage by retaining them to host a database for the SCS region or help the SCS, or perhaps the EAS region, to establish a comprehensive database. An example of database hosting is the North-East Atlantic, which contracts with the Norwegian Air Research Institute and the International Council for the Exploration of the Sea (ICES) to provide data management services. It is an efficient mode of establishing a database in the SCS region as it is augmenting or adapting a working system that has presumably had many of the glitches and problems resolved, quality control measures worked out, and web design in place. If the MRC hosted it, the SCS States would have to pay for services rendered but value for money should be realised quickly.

SEAPOL was established in the early 1980s and was supported throughout by CIDA. It has concentrated on networking among individuals both within and across disciplines in the region. Inter-disciplinary meetings and workshops have been a hallmark of SEAPOL. The last five years have seen CIDA cutbacks and SEAPOL was not spared. It is currently in a state of flux and in the process of discerning a future role. Having built up a network of over 1000 individuals in the region, and

57 See http://www.eascongress.way.to/
58 See http://www.mrcmekong.org/programmes/progress.htm
59 See http://www.mekonginfo.org/
having a long-standing institutional presence, it is hoping to find a niche in which it can continue to foster cooperation and collaboration in the SCS region. SEAPOL may not be able to reach any conclusions about its future until COBSEA and the other major organisations in the region delineate their roles.

Other regional actors, such as SEAFDEC, SEA-START RC, the World Fish Centre and university-based regional centres for marine biology, law and other disciplines have much to offer in terms of trans-national learning and sharing databases and experiences. Currently, there is little formal coordination among the organisations and the major regional actors. These institutions and organisations could play a significant role in the region but they frequently remain untapped resources.

4.3 Major Weaknesses in the SCS Region

Every region suffers weaknesses in their quest for regional environmental sustainability. The SCS is no exception. Many weaknesses are ubiquitous throughout RSP, although some are more prevalent in this region. The list of weaknesses is long, but it should not be daunting. Many weaknesses can be addressed with stronger political commitment to effective action and with a well-reasoned, strategic plan for moving forward. Weaknesses are categorised as fundamental or functional, and include:

Fundamental Weaknesses:

- Lack of development or adoption of a comprehensive, coherent and cohesive regime or strategy, including instruments and institutions, for promoting environmental sustainability in the SCS region;
- Poor vertical and horizontal cooperation and coordination at the regional, sub-regional and domestic levels, including an abundance of soft-law instruments that have not been coordinated vertically or horizontally and are often not implemented;
- Lack of an umbrella, framework or unifying instrument to harmonise regional and domestic actions pursuant to the various action plans and programmes, implement global, regional, sub-regional and domestic instruments and coordinate actions to eliminate overlaps and identify gaps in coverage;
- Lack of a strong, effective regional institutional mechanism to coordinate various regional efforts, promote cooperation and assist with domestic implementation;
- Lack of political commitment to create and support a strong regional institutional mechanism and to support environmentally sustainable actions;
- Failure to take ownership of environmental sustainability programmes;
- Lack of understanding or acknowledgement of the economic benefits of environmental sustainability;
- Waste of scarce economic and human resources on ineffective actions, programmes and policy;
- Lack of mechanisms or processes that acknowledge that ecological improvement is largely accomplished through appropriate actions at the local and community level, in conjunction with national and regional policy, support, cooperation and coordination;
- Lack of adequate funding (failure of SCS states to contribute more to regional cooperation and failure to attract external donors);
- Propensity to adopt politically attractive or benign options over ecologically and economically effective actions;
- Poor use of sound science for grounding policy and actions;
- Lack of implementation of instruments at all levels and subsequent review of actions to maximise effectiveness; and
- Lack of ecological understanding among non-scientists, in particularly policy and law-makers and local communities.
Functional weaknesses:

- Lack of compliance and enforcement mechanism and lack of employing them if present;
- Poor communication of local and national successes and failures to relevant national and regional actors who can learn from the experiences;
- Poor translation of effective local actions, projects and solutions into national and regional policy;
- Poor coordination of trans-national learning and sharing of experiences and data;
- Lack of a comprehensive database or clearinghouse mechanism to collect and share and disseminate data, information and experiences;
- Lack of capacity (including knowledge, technology and manpower), primarily at the local and national levels; and
- Lack of infusion of local or indigenous knowledge into policy-making processes.

The above-mentioned weaknesses generally have common roots. An inherent and fundamental weakness impeding effective regional cooperation, which underpins many of the weaknesses noted above, is the historically uncoordinated and fragmented development and adoption of institutions, instruments and projects. The SCS states have endorsed, signed and/or ratified numerous international instruments over the past two decades. Various regional action plans and programmes noted above have been adopted, largely without coordination or discussion among the various institutions, donor agencies, and ministries. The two GEF projects are the exception to this. ASEAN has adopted numerous declarations, as have other organisations, but few are effectively and sincerely implemented. Many of the instruments contain general statements and principles without specific actions or goals. Domestic laws and policies often conflict with other domestic, regional or global instruments. Various organisations and funding agencies undertake projects pursuant to the various instruments, global and otherwise, but often fail to coordinate or harmonise content, environmental targets and implementation.

The result is a conglomeration of instruments with little or no vertical and horizontal coordination, the loss of trans-national learning opportunities, waste of resources on duplication of effort and gaps in habitat or species protection. Implementation at the regional level is poor as many organisations and projects operate largely independently and implementation at the domestic level varies among ministries and instruments, depending on factors such as clarity of actions to be undertaken, capacity and commitment. The economic inefficiency of such a fragmented approach is reason enough to rethink the regional strategy for sustainable management.

This trend towards fragmentation is reversing as the region, like most other regions, recognises the need for coordination and cooperation. Examples are the scrutiny for consistency and compatibility within the two large GEF-funded projects prior to approval of the SCS Project, COBSEA’s consultation and involvement of other organisations in its quest for new directions and the planned East Asian Seas Congress in 2007 to bring together numerous parties in the region. This new trend is welcome. It could be further promoted by an umbrella instrument acknowledging the need for regional coordination and cooperation.

Another trend has been increased state commitment of resources to domestic environmental issues. However, significantly fewer resources are made available to promote regional cooperation and coordination. Reversing this trend will encourage more effective cooperation and allow for more effective use of resources at both the regional and domestic levels as the benefits of cooperation and trans-national learning manifest.

Political commitment to resolving environmental issues within the region is mixed. Commitment to cooperation is high with respect to attendance and participation at meetings, but it is relatively low regarding the implementation of meeting outputs such as declarations, effective follow-up and cooperative action. Commitment and cooperation may be deemed low overall as states ostensibly seek ownership of projects and have genuine interest, yet they remain cautious when it comes to committing to action. Without strong political commitment, the regional cooperative processes will not move forward.

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See Appendix 1, herein, for the relevant global instruments.
Domestically, there is confusion and lack of coordination as ministries involved with the marine environment may include the domestic equivalents of environment, agriculture, forestry, fisheries, ocean affairs, and foreign affairs. Different representatives attend various regional meetings and, thus, for example, the Ministry of Environment may have little knowledge of the activities of the Ministry of Fisheries. A more troublesome scenario is the representation at regional meetings by the Ministry of Foreign Affairs delegates, who are generally far removed from other domestic ministries in mindset, knowledge and experience. Other weaknesses include the lack of coordination domestically which results in overlapping and conflicting legislation and policy and duplication of effort or gaps in coverage. Also, staff turn-over within ministries and organisations affects institutional memory and may hinder cooperative efforts.

The weaknesses above can be “packaged together” under one fundamental weakness: the lack of a long-term cohesive strategy that provides for regional coordination and cooperation, but allows for cultural and domestic differences. Currently, strong political commitment to specific actions is thwarted by the uncertainty and ambiguity resulting from the fragmentation and lack of clear direction for the region. States are concerned about committing to one project or course of action as they do not know how it will impact on other obligations or they are unprepared to commit to more actions or projects given the significant number of commitments pursuant to other initiatives. In essence, the regional states are inundated with fragmented commitments.

As an example, the SCS Project experiences high levels of cooperation, which is largely attributable to the project coordinators active encouragement and following up with laggards. Commitment by those directly involved in the projects is evident by the project outputs. However, when the SCS Project enters a phase of redrafting and adopting the SAP, the level of commitment by governments may be weakened as states raise their concerns about yet another action plan, whether they wish to fund a coordinating body or secretariat to oversee implementation given the low level of success of the existing bodies, and how an instrument to implement the SAP will interface with other action plans and programmes. Regional issues such as uncoordinated actions, COBSEA’s unknown fate, yet to be delineated roles among the major regional actors and uncertain processes of implementing the various action plans and programmes result in inertia.

In the case of the SCS Project, there is little doubt that the SAP, as conceived, will be a useful tool for promoting sustainability in the SCS region. However, its utility will only be realised if it is implemented effectively. Implementation requires commitment, and commitment will be most forthcoming if states can place the SAP within a larger context or view it as a rational component within an overall framework.

Evidence suggests that it is an appropriate time to consider regional framework for the SCS region that entails a cohesive, long-term strategy or regime for cooperation and coordination. While there are many reasons to undertake such an exercise, the potential for economic benefits should justify it. Within the region, states can invest with greater certainty of returns and less wastage of resources on piecemeal initiatives and externally, donors generally invest more readily where a region can demonstrate strong regional coordination and cooperation and a regional strategy for sustainable resource. The current approach of fragmented initiatives poorly serves the region and its people. Implementation of existing and new instruments requires a greater level of coordination and cooperation that will remain unattainable without greater coordination.

A regional umbrella instrument, with a supporting institutional mechanism, could resolve many of the fundamental weaknesses. The danger is in merely adopting without serious consideration yet another instrument, given the low implementation rates of the numerous existing soft-law instruments. Thought and discussion is required to determine what is necessary for regional environmental sustainability. The process of determining an appropriate instrument, negotiating such an instrument and designing an implementing or overseeing institutional mechanism is a valuable exercise as it will identify issues, focus attention on weaknesses, address fragmentation and coordination and confirm the need for effective actions at the regional, sub-regional and domestic levels.

The functional weaknesses noted above relate to issues that have technical or practical solutions that can be addressed largely in isolation of other issues. For example, a major functional weakness in the SCS region is the lack of a comprehensive database or clearinghouse mechanism offering links to relevant databases. There is a great deal of information on the SCS, but it is scattered and often inaccessible. Compiling reliable and comprehensive information and making it accessible to those who need it can be accomplished with funding and dedicated manpower.
A centralised database/clearinghouse mechanism for research and pilot projects and local and community experiences/lessons would allow others to tap into a valuable resource of innovative ideas and information sharing for those with, or wishing to undertake, relevant projects. Currently, there is no mechanism to access the innovative initiatives in the region for alleviating environmental and economic pressures, such as alternative livelihoods, empowering women, economic incentives (e.g., loans or protecting turtle eggs), education and sustainable environmental practices.

Reactivation of a network of scientists and scientific institutions would benefit the region. The Association of South East Asian Marine Scientists (ASEAMS), which was a regional network of scientists under the auspices of COBSEA, faded away in the mid-late 90’s and there has been little formal scientific networking since. Many of the marine scientists involved in ASEAMS have moved on or retired and the younger replacements have not formed a strong network. A formal mechanism may assist in reactivating the valuable network. As noted from the insights of the review, strong science working in conjunction with a strong secretariat result in the most effective programmes.

Functional weaknesses differ from fundamental weaknesses in that the latter relate to the overall organisation of regional cooperation and resolution requires an overhaul of the “system” to infuse vertical and horizontal coordinating mechanisms and instruments. However, fundamental and functional weaknesses are interlinked as addressing one will foster action pursuant to the other. For example, addressing the fundamental weaknesses of lack of coordinated framework should encourage external donors to invest in databases, scientific research or other projects, addressing many of the functional weaknesses. Conversely, resolved functional issues, such as improved capacity, use of sound science or reliable databases, will in turn facilitate cooperative efforts. It becomes cyclic as stronger cooperation encourages action on the functional weaknesses and success in this area encourages further cooperation.

5. OPTIONS FOR FOSTERING COOPERATION IN THE SCS

Options for fostering cooperation in the SCS, with particular regard to the implementation of the SAP, must accommodate regional and domestic concerns and suit the regional culture and ethos. In canvassing options for instruments and mechanisms for strengthening cooperation and resolving environmental issues, implementation of the SAP must be considered in the larger context of existing institutions and instruments in the SCS region. Focussing only on cooperative instruments and mechanisms exclusively dedicated to the SAP will further fragment the existing uncoordinated approach discussed above.

As noted above, evidence indicates it is an appropriate time to consider adoption of a comprehensive and coordinated region-wide framework with a view to long-term ecological effectiveness. A possible process for considering options for such a framework would be initially canvassing domestic actors and agencies to obtain an indication of national preferences, which could then be used to direct further discussions. The subsequent appointment of a regional task force of regional experts from relevant disciplines could consider viable options to carry the region forward. The taskforce’s output would stimulate serious and comprehensive region-wide discussions on the need for and desirability of a coordinated, cooperative, enduring regional framework. A well-conceptualised framework should galvanise political commitment, which translates into action.

Options for a regional framework cover a broad spectrum of possibilities and are limited only by the creativeness and willingness of the relevant parties to find such means and ways that suit the regional ethos. The term “framework” is favoured as it infers an overall plan and not isolated arrangements. A regional framework may be very elaborate with commissions and binding agreements or it may involve simple coordinating mechanisms to repair regional fragmentation and encourage cooperation. It is important to give the issues serious contemplation and make informed choices.

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Identifying and implementing any framework or other rational arrangements could involve considerable time, particularly if a legally-binding instrument is to be negotiated. In such a case, the implementation (or fate) of the SAP in the short-term would have to be considered as it should not be left to fade into oblivion. Conversely, implementation of the SAP within the existing fragmented framework without coordination within the larger regional context will most likely result in greater inertia, given the lack of a clear or rational direction.

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61 This is a recommendation emanating from the 2003 review of the EAS RSP. See Chou, supra note 51 and Appendix 10.
5.1 Requirements for Strengthening Cooperation

Strengthening cooperation and implementing the SAP requires several components, including:

- a regional institutional mechanism (RIM), such as a commission or RCU and/or a secretariat;
- regional cooperative instruments, which may include various combinations of hard- and/or soft-law instruments at the regional and sub-regional levels;
- cooperative mechanisms (e.g., RAC, advisory groups, ministerial meetings, databases, etc.);
- and
- sustainable funding, political commitment, the establishment of indicators of progress and other “functional” components.

The options for the first two requirements, a RIM and instruments, are discussed below. They must be considered as a unit as the RIM must be tailored to the needs of the relevant instruments. Cooperative mechanisms should be canvassed when discussing RIMs and instruments for an overall comprehensive approach, but the choice and design of the cooperative mechanisms must follow the choice of the RIM and any instruments to ensure consistency.

Functional components, such as sustainable funding and political commitment must be addressed as they are inherent for success, regardless of instruments and mechanisms adopted. Points to note are that external donors favour projects where the states demonstrate strong political commitment, strong cooperation and strong institutional support. As noted above, legally-binding regional agreements weigh favourably with external donors as evidence of commitment. Adopting indicators to measure progress, including efficient and effective use of resources, identification of deficiencies and effectiveness of actions demonstrate success and commitment to members and outsiders, which in turns facilitates further cooperative action and investment in the region.

Options for strengthening cooperation explored below are intended to stimulate discussion by offering a range of options. The region seems to have reached a turning point whereby the need for environmental sustainability is accepted as a priority, the desire for regional cooperation is increasing, and shortcomings in the current arrangement are recognised. Acting on this knowledge, the SCS region has an opportunity to establish an effective course for the future, capitalise on emerging trends in IEL and develop new modes and means of cooperation. It is an appropriate time for the regional actors to open their minds to new ideas, think outside the box and think “strategically”.

5.2 Requirement for a Regional Institutional Mechanism (RIM)

Implementing the SAP requires a strong institutional implementing mechanism as, otherwise, project activities and the SAP itself could slip into oblivion. The current Project Coordinating Unit (PCU) will cease to exist at the conclusion of the GEF-funded project and options for institutional support for implementing the SAP must be considered.

Evidence indicates that a strong, proactive, problem-solving RIM is most effective, but is it feasible given the history of regional institutional support? In considering options, a fundamental issue with an enduring impact on the region is whether any new RIM charged with implementing the SAP should be a part of a larger regional framework, including the primary coordinating institution, or should it be dedicated to the SAP only. As noted above, working the RIM into a comprehensive regional framework would enhance regional efficiency and effectiveness and move the region forward. Looking narrowly at the SAP only, it will promote further fragmentation and inertia.

5.2.1 Options for a Regional Institutional Mechanism (RIM)

The imminent disbanding of the PCU will leave the SAP without an institutional implementing mechanism. Options for strengthening regional cooperation and implementing the SAP range from member focal points coordinating implementation (i.e., no formal institutional implementing mechanism) to a strong RIM within a well-conceptualised regional framework. The type of regional and sub-regional instruments adopted, if any, will affect the choice of RIM and its duties, responsibilities, constitution and logistical arrangements (e.g., number and qualifications of staff).
The three basic options discussed below may be adapted as the regional actors deem appropriate. They are:

- no formal RIM, but instead appoint lead countries or focal points to implement specific issues;
- a formal RIM with staff dedicated to implementing the SAP only, with the RIM housed within an existing regional organization; and
- a formal, independent RIM that will act as the lead regional institution, preferably in conjunction with a regional framework, to implement the SAP and coordinate regional actions and any other regional instruments.

**Option 1**
A politically convenient, but the least operationally viable option entails the member states assuming direct responsibility for the SAP. For example, lead states or focal points would oversee implementation of specific issues and actions. The inherent weakness is the lack of an overarching mechanism to coordinate, follow-up, encourage action (and laggards) and render assistance to those in need. Implementation can be expected to be fragmented and success contingent on the capacity and motivation of the responsible individuals. Effective implementation requires significant investments of time and resources to organise meetings, documents, scope out plans, communicate, etc. Experience shows that it is unreasonable to expect domestic actors to find such blocks of time amid their existing domestic duties and responsibilities. Under this option, the SAP could easily fade into oblivion. The low cost of this option may be politically attractive, but there is no net benefit if the arrangement impedes effective implementation. Thus, while it is should be canvassed, it is not considered a viable option. Evidence indicates that effective implementation requires a RIM.

**Option 2**
Option 2 entails housing dedicated staff to implement the SAP within an existing organisation, such as ASEAN or the EAS/RCU. This could facilitate regional coordination, particularly where there is no move towards a regional framework, as the existing institutions most likely to assume responsibility for the SAP have other regional activities and roles. However, it would not provide comprehensive coordination. Most importantly, state actors may suffer further inertia as they will be overwhelmed by yet another action plan to support and implement within a fragmented arrangement. Financial costs would involve hiring additional and dedicated (to the SAP) staff members to handle the additional responsibilities. Any regional or sub-regional instruments adopted in relation to the SAP would fall within the auspices of the RIM as well.

Regarding existing organisations in which to house a RIM for the SAP (and related instruments, if any), ASEAN is a viable possibility given its developed infrastructure and current environmental activities. However, China is not a full member of ASEAN and this is a possible source of discomfort. The EAS/RCU is the only other logical option. Its geographical coverage is much greater but it currently has an institutional connection to the SAP and the SCS is recommended as a primary focus for the EAS/RCU. On the surface, linking to the EAS/RCU seems to offer the wisest use of resources. EAS/RCU weaknesses are budget and staff shortages, its lack of a defined regional role and its traditionally weak regional support. Housing the SAP RIM within such a weak institution may have negative repercussions for the SAP and any related instruments. Conversely, placement of the RIM within the EAS/RCU may invite an overhaul of the latter institution and generate greater regional commitment. This is a viable option providing the associated weaknesses are addressed.

**Option 3**
Option 3 recognises the need for a formal RIM to implement the SAP (and any related instruments) and the need for greater regional coordination. It involves designing a new, effective and acceptable RIM to implement the SAP (and any related instruments). Ideally, it would become the lead coordinating environmental institution for the region. Delineating, coordinating, delegating and reassigning responsibility from other institutions, such as ASEAN and EAS/RCU, will streamline current arrangements, improve efficiency and strengthen cooperation. In fact, given the weak and uncertain state of the EAS/RCU, there is merit in overhauling it to assume a strong, leading regional institutional role.

The region does not have the resources to fund several regional institutions that are inefficiently organised with overlapping jurisdiction. There are no cooperative or ecological benefits in multiple, uncoordinated institutions; only disincentives in such arrangements. The region does not need...
another institution; it needs a better and stronger institution for regional coordination. If a new and independent RIM were adopted without considering its role vis-à-vis existing regional institutions, it would be merely another organisational body to fund and fit within the loose structure of the EAS region. This could foster further fragmentation within the region, compound state inertia and discourage external donors who may be deterred by the lack of regional coordination.

There are economic, cooperative and ecological incentives for consolidating existing institutional roles into one lead institution, whether this involves overhauling the EAS/RCU or creating a new lead institution to take the region into the future. Adopting a new RIM would have to involve consolidating existing institutions, by reassigning responsibilities of existing institutions, coordinating actions and initiatives among institutions and collapsing weak and ineffective institutions. A benefit of a newly designed RIM would be its independence from existing institutions and their weaknesses. A new RIM is most feasible where it is constituted in conjunction with a regional framework, including cooperative instruments. The adoption of any new RIM would require redefining existing institutional responsibility. This option is ecologically and economically attractive and it would require bold commitments to regional change.

5.2.2 Utilising Existing Institutions

Regardless of the RIM chosen, regional coordination should be a priority. Strategic partnerships or links with existing institutions and organisations offer benefits to any RIM adopted to implement the SAP and any related instruments. A strategic partnership between the RIM and ASEAN is attractive as the latter has established the annual Ministerial Summits and the ASOEN forum to secure high-level endorsement and a system to render assistance where appropriate. ASEAN has a much better track record of fostering regional cooperation than the EAS/RCU. A weakness with ASEAN is poor implementation of its numerous instruments. However, ASEAN’s mandate, staffing levels and the regional ethos have not encouraged it to be proactive and assertive.

A relationship with the EAS/RCU is difficult to assess, given the EAS/RCU’s uncertain future directions. Its historical weakness does not inspire visions of strong cooperative ties, but the relationship to UNEP may be helpful. Links with both the EAS/RCU and ASEAN would capitalise on the strengths of each – ASEAN with its tradition of regional support and the EAS/RCU with UNEP and other UN agency support. Additionally, thought should be given to extending membership in the SAP to all SCS-interested states for comprehensive coverage and regional commitment.

Until COBSEA delineates its role in the EAS region, it is premature to speculate on the best options for establishing a RIM for implementing the SAP. Conversely, the state of flux provides an excellent opportunity to influence the restructuring of the regional institutional responsibilities by focussing on the need for regional coordination and economic efficiency. Combining these discussions with the options for cooperative instruments and strengthening cooperation can move the region forward in a productive and effective direction.

5.3 Options for Regional Cooperative Instruments

Options available for instruments to strengthen regional cooperation fall into three categories: soft-law instruments (e.g., action plans, declarations, memoranda of understanding (MoUs), etc.) at regional and/or sub-regional levels; hard-law instruments (e.g., regional convention and/or legally-binding sub-regional agreements); and various combinations of hard-law and soft-law instruments, as deemed appropriate. Combinations of instruments (legal agreements, action plans, MoUs declarations, etc.) tend to foster the greatest levels of cooperation as legally-binding instruments establish duties and soft-law instruments provide detailed and specific actions and standards. The appropriate combination of instruments for the region must suit the regional needs and ethos. As previously discussed, choosing a cooperative instrument will also entail choosing an appropriate RIM to oversee and implement the instrument(s).

As with the RIM, a fundamental question to address is the regional role of any cooperative instrument. Will it assume a role in a coordinated regional framework or will it merely provide legal or moral authority for the implementation of the SAP? Like the RIM, the most logical role is in conjunction with or as part of a regional framework, but regional actors may decide differently. Regardless of the decision, it is important to discuss the regional role openly and frankly.
The five options discussed herein are:

- The SAP remains the primary cooperative instrument;
- A regional framework convention modelled on the RSP conventions;
- A combination of hard-law and soft-law instruments;
- A regional legal agreement modelled on the UNECE Water Convention; and
- A unique process-oriented, “strategic” instrument.

The above options are intended to provide a broad range of possibilities to stimulate discussion. Permutations, combinations and other options that may be identified may prove more suitable to regional needs or acceptable to regional actors.

### 5.3.1 Choosing and Designing Instruments

Consideration should be given to various factors when determining the form of regional cooperative instruments to adopt. In addition to commonplace concerns, insights from above and other considerations may include:

- Developing a long-term strategy or coordinated regional framework for long-term environmental sustainability, with a RIM and relevant instruments. Even if it is not implemented immediately, instruments and mechanisms adopted in the short-term can be crafted for consistency with long-term plans.
- Clarifying the focus and intent of the instrument. Should it cover substantive issues (i.e., what – sustainable development, cooperation, ICM, habitat protection, sustainable fisheries, EIA, etc.) and/or process-oriented issues (i.e., how to address/implement substantive issues), or a combination thereof? There may be comfort in substantively focused instruments as they are familiar and tested. Process-oriented instruments are novel and embrace, for example, the need for sound science, knowledge-based decision-making, consensus building, capacity-building, effective coordination and cooperation, problem-solving capacity, trans-national learning, effective partnerships, feedback loops, assessment and review mechanisms, adaptive management and the need for a strong and proactive secretariat. A process-oriented instrument will promote effectiveness of actions.
- Identifying the role of any instrument. Is a regional instrument to be an interface between global instruments and domestic implementation? If yes, what form of instrument best facilitates this role?
- Does the legal obligation to cooperate, imposed by UNCLOS, form a sufficient legal basis for regional cooperation? How does the answer to this affect the form and content of regional cooperative instruments? Note that all SCS states have signed UNCLOS and all have ratified it, except Thailand and Cambodia.
- Implementation and compliance, in practice, are voluntary and rely on goodwill (and sometimes pressure tactics), but the moral duty to comply with legally-binding agreements is usually stronger than with soft-law instruments.
- A benefit conferred by regional conventions is enhanced cooperative spirit. If it is the existence of a binding agreement, and not its content, that fosters cooperation, how does this affect the choice of instrument?
- Strong political commitment to cooperation and action may compensate for a lack of strong legal basis (e.g., a convention).
- Given there is generally a low correlation between regional conventions and ecological improvement, how does this impact on the choice of instrument and the objective of such an instrument?
- Implementation and process-oriented trends, including “strategic” initiatives and “effectiveness” are an emerging focus in the global environmental arena. How can this be incorporated into a regional framework? Is it a strategy for attaining the long-term objective of ecological improvement?
5.3.2 Options for Regional Cooperative Instruments

**Option 1  SAP remains the primary cooperative instrument**

The first option entails the SCS region moving forward without a legally-binding regional instrument. The finalised SAP could remain a primary cooperative instrument, along with other action plans in the region. The attraction of the SAP, although not yet finalised, is that it is expected to be a scientifically sound instrument, grounded with the lessons learned from the demonstration sites and promoting ecologically sound actions.

Properly implemented, it should reverse degradation – its objective. Successful implementation requires a strong RIM and very strong political commitment to compensate for the lack of a legally-binding instrument, which has a strong role in strengthening cooperation. Based on regional actions to date, the probability is high that the SAP will slip into oblivion or suffer half-hearted implementation without an instrument or mechanism to generate and maintain strong political commitment. Perhaps in recognising the requirements for success as well as the weaknesses noted below, the regional actors may honestly reflect on the issues and sincerely commit to implementing the SAP, making this a viable option.

Three notable weaknesses of this option are: (a) time and funding are required to establish a well staffed and strong RIM that will generate confidence and trust among the actors and has the mandate to promote actions and follow up with laggards; (b) it relies on the current level of cooperation for implementation as there is no additional formal catalyst or impetus for strengthened cooperation or implementation; and (c) external funding may be more difficult to obtain as donors are impressed by regional legal agreements as a demonstration of strong and effective cooperation.

Each weakness could destroy the current momentum that the PCU has diligently generated, wasting financial and human resources invested in the SAP and its ultimate implementation. In summary, this option’s success is contingent on strong commitment, which does not exist at present.

**Option 2  Regional framework convention modelled on the RSP conventions**

Option 2 involves adopting a regional legal agreement typical of the RSP-style framework conventions. The SAP could be its implementing action plan, although a regional agreement would ideally include broader coverage than the current focus of the SAP. The RSP-style conventions focus generally on substantive principles, issues and measures. Many of the substantive principles are also found in global instruments to which the majority of SCS states are signatories or have ratified.

The regional conventions should facilitate implementation of global instruments and thus should be drafted accordingly. Although the SCS states have not adopted such a convention in the past, evolving circumstances, such as increasing trust in neighbours and recognition of the importance of regional environmental integrity, may favour a legally-binding agreement that suits the regional needs and ethos.

There is a strong argument that any new agreement will have to be specific and meaningful to warrant the effort. Conversely, actors often feel strongly that specifics infer significant commitment and costs, resulting in protracted negotiations where states agree to proceed or prolonged inertia where states shy away from additional obligations. The benefit of protracted negotiations is that the product is usually superior. The detriment is that is that the evolution of international law can overtake the process, leaving any agreement outdated. On the other hand, quick agreements encourage political compromise and empty or very general commitments.

The above arguments can be addressed best by asking what purposes a legally-binding agreement needs to serve. If it is detailed actions or facilitating the implementation of global instruments, these purposes may be better served via a soft-law instrument that affords more flexibility. Also, highly relevant is the information that regional conventions in other regions play their greatest role not in environmental improvement (i.e., implementing convention provisions) but in creating the cooperative atmosphere in which specific actions can be taken pursuant to other instruments (i.e., action plans). Thus, the RSP-style framework conventions could be adapted to regional needs to focus more on cooperation and ways of fostering it, including the adoption of detailed and specific instruments, such as the SAP.
The strengths and weaknesses of a RSP-style convention, discussed above in Section 2.3.1, are difficult to quantify as a weakness from one perspective may be a benefit from another perspective. For example, ambiguous language may be a weakness were the expectation is ecological improvement emanating from the convention provisions, but it may be irrelevant where strengthened cooperation is the objective, given the role conventions have in promoting cooperation. Another example, given implementation and compliance are generally voluntary, specific and detailed provisions may in reality prove little different from a generally worded convention. Given the emerging weakness of regional instruments’ lack of focus on effective processes, and in particular implementation, an effective model may be a RSP-style convention updated to reflect the developments in and maturing of IEL. Significantly, any instrument, no matter how well drafted, will only be as strong as the commitment to implement it.

**Option 3  Combination of hard-law and soft-law instruments**

This option acknowledges the historical reluctance of the SCS region to adopt a legally-binding instrument. It relies on the adoption of a regional soft-law instrument, preferably a Joint Declaration by high-level ministers from both foreign affairs and relevant domestic ministries, such as environment, natural resources, and agriculture. An alternative to a declaration is an MOU. The soft-law instrument promotes the adoption of sub-regional bi- and multi-lateral instruments, which are preferably legally-binding. This option acknowledges the present inclination of SCS states to utilise sub-regional instruments to address environmental issues.

The regional soft-law instrument should acknowledge that the SCS states are legally bound by global conventions, such as UNCLOS, to protect and preserve the marine environment and that they are legally and ecologically obligated to cooperate regionally on such matters. The contents could include a commitment to enhanced cooperation; reversing degradation via IEL principles and measures; implementation of global instruments, in part through the implementation of the SAP; and the need for effective and strategic actions. The long-term objective should be ecological improvement. This instrument would provide the impetus for cooperation in place of a regional convention. The SAP would be identified as the relevant regional action programme, in addition to taking note of other action programmes to enhance regional coordination.

The result would be a two-tiered system with flexibility for states to adopt sub-regional agreements, as encouraged by the regional soft-law instrument. The bi- and multi-lateral sub-agreements would tailor cooperative efforts and actions to suit the specific needs and concerns of the sub-region, taking into account the SAP. The amended and finalised SAP could guide the development of sub-regional agreements, action plans and strategies for regional coordination and consistency. Existing sub-regional instruments could be adapted to coordinate regional efforts. Part II of the UNECE Water Convention offers guidance for the substance and form of such sub-regional agreements.

With respect to the sub-regional instruments, legally-binding sub-regional agreements would foster the highest levels of cooperation. MOUs or other non-legally binding instruments could be utilised a state is reluctant to adopt binding sub-regional agreements. High levels of political commitment could compensate for a binding agreement. Sub-regional agreements could be multi-sectoral or issue-specific.

The greatest weakness with this option is that its success relies heavily on garnering strong political commitment. For example, political commitment is necessary to develop the requisite strong, proactive institutional infrastructure to facilitate agreement-making, render assistance to the parties adopting and subsequently implementing sub-regional agreements and tracking sub-regional progress. Second, lacking an overarching legal framework, the only impetus to act is a regional soft-law instrument. A critical assessment of the level of commitment would be necessary before adopting this option.

On the positive side, sub-regional legally-binding agreements are appealing as they offer flexibility and provide an alternative to a detailed and specific regional hard-law instrument. States can address issues relevant to them as the SCS is ecologically diverse and priority issues vary among states. The SAP could provide regional guidance to coordinate activities and address gaps in coverage. The Mekong River Commission fits well within this two-tiered strategy and it could provide lessons for other sub-regions.
This option is a compromise between the status quo (no legally-binding instrument) and adopting a regional convention. Success depends on commitment to and creativity in generating and implementing sub-regional agreements. A long-term strategy could be to transform the regional soft-law instrument into hard-law to develop a stronger regional cooperative framework.

Option 4 Regional framework agreement modelled on the UNECE Water Convention

The fourth option is similar to Option 3, with the exception that the regional cooperative instrument is a hard-law instrument. The UNECE Water Convention provides a two-tiered structure that can be adapted to the SCS region. The regional framework legal agreement provides general obligations and direction, with sub-regional instruments providing substance and detail. The contents of the regional agreement should suit the regional ethos and address long-term goals. Part I, which sets out general duties and obligations, could include a mix of substantive and process-oriented provisions (i.e., an improved RSP-style instrument), including IEL principles of sustainable development, regional cooperation, precautionary principle, ICM, best available technology, best environmental practice, etc.; regional implementation of global instruments; and promotion of effective action. Alternatively, Part I could adopt the UNECE Water Convention’s minimal commitments, a copy of which is attached in Appendix 5. Part II of the regional instrument provides the impetus to cooperate at the sub-regional level by entering into bi- and multi- sub-regional agreements, as described in Option 3, above.

The SAP could be the implementing action plan for the regional agreement, providing guidance for the sub-regional agreements as discussed in Option 3 above. The regional framework agreement fosters regional coordination and consistency among the sub-regional agreements, while the sub-regional agreements allow the parties maximum flexibility to address issues that are of concern and in ways suitable to the parties. While legally-binding sub-regional instruments are preferred, non-legally binding cooperative instruments are acceptable than under Option 3 as they are “fortified” by the regional legally-binding instrument.

A strong RIM and effective institutional arrangements are necessary to promote, assist, help implement and track the sub-regional agreements and their progress. Its role could entail encouraging stronger sub-regional cooperation and identifying gaps in coverage. It could assist in developing guidelines for sub-regional cooperation to assist actors in adopting new instruments and adapting existing instruments to foster regional coordination.

The two-tier structure facilitates regional coordination by encouraging existing bi- and multi-lateral initiatives and other sub-regional organisations, such as the MRC, to operate under the auspices of the regional convention. The MRC, given its existing infrastructure, history of cooperation and experience with training sessions under the auspices of the UNECE Water Convention, could be a strategic partner in developing sub-regional agreements. Perhaps the MRC could be a test case for a sub-regional legally-binding agreement.

The two-tier offers benefits and challenges. Forging a legal agreement at the regional level should offer the benefit of strengthened cooperation, and as mentioned previously, facilitate regional coordination. It should appeal to the SCS states as they currently pursue sub-regional agreements to address common concerns and it allows states the opportunity to focus their limited resources on their priority issues, which may differ from other states’ priorities. This strategy allows maximum flexibility under a regional umbrella instrument and RIM. However, with flexibility comes the need to exercise it responsibly as regional ecological integrity requires region-wide action. This can be addressed in part by a strong, proactive RIM, which can assist the parties in many ways and on various levels. Refer to the previous discussion on the UNECE Water Convention institutional mechanism for more discussion. Additionally, states must undertake, pursuant to the regional instrument, actions domestically in the absence of sub-regional instruments.

Additional benefits include the regional framework provided by the two-tier structure, which can take the SCS region into the future. This region can draw on the extensive experience of the UNECE Water Convention and its more than 150 sub-regional agreements. This framework should positively influence external donors and promote state ownership of the programme.

Political commitment is required for ultimate success of a two-tier structure. However, it may differ from the type of commitment required to implement a regional instrument alone. Because of the direct interest in sub-regional issues, political motivation to negotiate, conclude and implement an agreement may be more forthcoming.
A challenge is the logistics of managing the sub-regional instruments, fostering trans-national learning, sharing experiences and facilitating coordination and effectiveness. This is the role of the RIM. Encouraging the states to support a strong, proactive RIM may be the greatest challenge. Other benefits and challenges associated with a two-tier structure noted under Option 3 also apply here.

In summary, the two-tiers of legal instruments offer the benefits of a regional convention with flexibility to adapt the various instruments and mechanisms to regional needs and sensitivities. It is a viable model for a region committed to marine environmental protection and it is particularly relevant to this region given the existing interest in addressing environmental degradation at the sub-regional level.

Option 5 Unique process-oriented, “strategic” agreement

The fifth option involves a common sense strategy for ensuring effective processes to implement substantive measures/provisions found in global and domestic instruments. It is novel, and, as such, it may be rated low as a viable option. It is presented regardless as it can be integrated with any of the above options and the prevalence of ineffective laws, policies and actions justify the address of process-oriented issues.

This option entails the states adopting an instrument that focuses on cooperation and how to cooperate effectively, including a coordinated approach to making and implementing decisions. In essence, it largely addresses the functional weaknesses described above, which lead to unsound ecological initiatives. The parties merely agree to institutionalise effectiveness and common sense. It is a very basic premise that on the surface seems unworthy of attention, but evidence indicates that ignoring it is undermining efforts to reverse trends of degradation and improve the environment. Provisions could include: (a) institutionalising sound science, knowledge-based decision-making, feedback loops, assessment and review mechanisms, flexibility and adaptive management; (b) compiling a comprehensive, quality-controlled database; (c) building consensus, capacity and problem-solving ability; (d) strengthening coordination, cooperation and communication; (e) developing a strong and proactive secretariat; and (f) promoting trans-national learning and strategic partnerships and other strategies to improve effectiveness.

It is process-oriented as it focuses on how to make sound decisions on substantive issues and take effective action. It is educational as many policy-makers, lawyers and non-scientists are unaware of the ecological ineffectiveness and the resulting economic inefficiency of laws, policies and initiatives. It could foster effective cooperation, which in turn, should foster more cooperation as successes become evident. It fosters the emerging regional cooperative role in domestic implementation of global obligations.

A process-oriented instrument addressing the functional weaknesses complements existing global and regional instruments that focus primarily on substantive issues, rights and duties, as it offers practical and functional guidance for implementation and enhancing cooperation. It is a strategic instrument as its objective is not merely implementing IEL principles, but improving their effectiveness when implemented. For example, when designating a marine park, the location must be ecologically sensible, not merely politically expedient. Regenerating or replanting mangroves must utilise species that are ecologically suitable to the intended area and not merely a species that was successful elsewhere. Measures to protect coral reefs must in fact be reviewed to ensure they do offer protection – it is not enough that all parties agree to a specific measure if that measure is ineffective. The waste of financial and other resources due to scientifically unsound initiatives is significant globally and in this region.

The form and content of the instrument may vary in accordance with the interests of the parties. It can be general and in declaratory format, agreeing to foster effectiveness when addressing environmental issues. This would be the least contentious form. It could be developed with more detail, focussing on how and not what, identifying criteria for (ecologically and economically) effective environmental action. The SAP could be designated the implementing instrument. In fact, the SAP, with its sound scientific basis and focus on ecological priorities, currently embraces the spirit of such a strategic instrument.
Benefits include:

- It embraces a common-sense strategy for ensuring the effectiveness of processes to implement substantive measures.
- It offers benefits of a convention - strengthened cooperation.
- Focusing on common-sense issues and the promotion of effectiveness, it may be less contentious than a substantive agreement, which generates fears of financial burdens.
- It is cost-efficient as it dictates rational and wise use of regional resources (financial and human).
- It can be crafted to suit regional needs, sensitivities and culture.
- It fosters maximum flexibility in design and content (for instance, it could encourage substantive sub-regional agreements as discussed above providing they are consistent with the process-oriented provisions of the parent agreement).
- It addresses issues that have impeded sound and effective cooperation, decision-making and management of environmental issues globally, regionally and domestically.

Such an instrument has associated weaknesses. Lawyers and policy-makers are likely to discount its relevance as the need for ecological effectiveness is severely under-appreciated by most non-scientists as a result of traditional educational systems. Poor scientific understanding outside of scientific circles has resulted in the lack of review mechanisms to ensure initiatives are ecologically effective. The irony is that an instrument that addresses ecological effectiveness, although very much justified, is unlikely to receive serious consideration until the lack of ecological effectiveness is widely recognised as a problem. Overlooking common sense logic such as the need for effectiveness results in an unnecessary waste of human and financial resources, not to mention continued degradation of the marine environment.

It is a topical option and appropriate at this junction in IEL. The 1972 Stockholm Conference’s global calls for protection and preservation of the environment transformed over time into calls for sustainable development, application of the precautionary concept, ICM, and other principles and norms. Emerging evidence indicates that the IEL principles have not been implemented effectively. This option takes environmental protection to the next rational level, namely elaborating on the underlying logistical aspects of how to attain effective implementation of the substantive strategies. It is wholly consistent with existing global instruments, the SAP and UNEP’s Strategic Directions for the Regional Seas Programme, 2004-2007.62

A perceived weakness of this option is that it does not provide sufficient substantive regional guidance for the implementation of global instruments. While this is a legitimate observation, it is intended as an alternative to a more substantive instrument should the regional actors reject the latter as a viable option at this time. As a stand-alone instrument, it would be a compromise between the status quo and a substantive instrument. Ideally, any new regional instrument would address both substantive and process-oriented issues. The focus on effectiveness can be incorporated into any instrument.

A multi-disciplinary body will be required to draft such an agreement as it entails a strong science basis to ensure effectiveness. Negotiation should not be as controversial as with a substantive instrument as it does not require financial commitment to implement environmental standards or adopt technology. It is inexpensive to implement as it is essentially calling on states to invoke common sense and promote effectiveness and, in the long-term, financial benefits would accrue as state expenditure on unsound actions would decrease allowing available resources to be dedicated to effective initiatives. In summary, its impact is on streamlining processes to achieve the greatest return on investment (of time, money, resources, etc.).

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62 See Appendix 4, herein, for the Strategic Directions.
### Table 6 Options for Cooperative Instruments for the South China Sea+

<table>
<thead>
<tr>
<th>Policy Level</th>
<th>Option 1</th>
<th>Option 2</th>
<th>Option 3</th>
<th>Option 4</th>
<th>Option 5</th>
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</thead>
<tbody>
<tr>
<td>Global</td>
<td>Existing agreements (binding and non-binding)</td>
<td>Existing agreements (binding and non-binding)</td>
<td>Existing agreements (binding and non-binding)</td>
<td>Existing agreements (binding and non-binding)</td>
<td>Existing agreements (binding and non-binding)</td>
</tr>
<tr>
<td>Regional</td>
<td>Strategic Action Programme (SAP) (legally non-binding)</td>
<td>Legally-binding agreement similar to existing regional seas conventions*</td>
<td>Declaration, MoU or other legally non-binding instrument modelled on the UNECE Water Convention*</td>
<td><em>Legally-binding agreement on HOW to soundly implement actions</em></td>
<td><em>Legally-binding agreement on HOW to soundly implement actions</em></td>
</tr>
<tr>
<td>Sub-regional</td>
<td>Bi- and multi-lateral instruments (preferably legally-binding)*</td>
<td>Bi- and multi-lateral instruments (preferably legally-binding)*</td>
<td>Bi- and multi-lateral instruments (preferably legally-binding)*</td>
<td>Bi- and multi-lateral instruments (preferably legally-binding)*</td>
<td>Bi- and multi-lateral instruments (preferably legally-binding)*</td>
</tr>
<tr>
<td>Domestic</td>
<td>Implementing legislation, policies, action plans, programmes and projects</td>
<td>Implementing legislation, policies, action plans, programmes and projects</td>
<td>Implementing legislation, policies, action plans, programmes and projects</td>
<td>Implementing legislation, policies, action plans, programmes and projects</td>
<td>Implementing legislation, policies, action plans, programmes and projects</td>
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</table>

+ The options offer a range of instruments. Many combinations and permutations are possible and should be determined by the needs and desires of the regional states.

All options require a strong, pro-active RIM

* The Strategic Action Programme (SAP) is the implementing instrument. The legal instruments can embrace the implementation of other regional action plans and programmes for regional consistency and coordination.

* Existing bi- and multi-lateral agreements (including legally-binding and non-binding) can become sub-agreements under the new regional umbrella instrument. Alternatively, any regional instrument adopted should refer to sub-agreements to enhance regional coordination.

### 5.4 Ecological and Political Viability of the Options

In considering the options for a RIM and regional cooperative instruments, the actors should reflect on a few fundamental issues. First, what is the motivation to act: Is it a political exercise to be seen to be cooperating regardless of the ecological soundness of the decision or is there a genuine intent and commitment to reverse degradation or somewhere between these two extremes? Related to motivation, the actors should determine whether they are interested in a long-term framework or a short-term initiative. If the latter, it would be beneficial to consider short-term action in light of the need for long-term sustainability and chose options that serve that purpose. Inherent in these questions is the regional priority to be given to scientifically sound choices and effective cooperation. Reaching a regional consensus on expectations and objectives will simplify the exercising of choosing an option. Further, the options above are not exhaustive. Reflection on the above may identify a variation or a new option.

Each of the above-noted options offers benefits and challenges, as discussed above. The viability of each option varies in accordance with many factors, with the primary factor being the level of commitment to cooperate effectively. Each option can be assessed for ecological and political viability. Past regional actions suggest that there may be a dichotomy between ecological and political viability of the options. This is primarily because the commitment to regional cooperation and coordination and ecological effectiveness has been low, resulting in actions that have been chosen for their political attractiveness or poor implementation of and compliance with substantive instruments and initiatives. Ecologically attractive options have been ignored in favour of other factors and priorities (e.g., socio-economic concerns) as little regard was given to measuring effectiveness and non-scientists failed to discern among sound and unsound actions. A commitment to sound ecological actions now can bring ecological and political viability of the options into alignment.
The ecological and political viability of the options is discussed below.

With respect to a RIM, the most ecologically viable option entails a strong, proactive, competent RIM that can act as a regional coordinator. A strong RIM, supported by the states, can facilitate efficient use of resources and effective actions. The political viability is lower if the regional history is an accurate indicator. For example, the support offered COBSEA and the EAS/RCU has always been lukewarm at best and ASEAN has been supported primarily with words and less so with actions. Overhauling COBSEA and the EAS/RCU to assume a greater regional role or transferring its existing responsibilities to a new institution closely aligned with ASEAN to capitalise on their ministerial meetings is more politically viable now as states appreciate the need for cooperation and coordination. Committing to a single regional institution is ecologically attractive and perhaps will be seen as politically attractive, considering the ecological and economic benefits. Conversely, a weak RIM, while less ecologically viable, may be more politically attractive as it requires less commitment and promotes the status quo. The status quo allows states to remain within their current comfort zone, but this promotes ecological ineffectiveness and economic inefficiencies, particularly in the long-term.

Of the five options relating to instruments, Option 1 is the least viable from an ecological perspective unless the states can generate high-level political commitment to implement the SAP and related instruments and support an associated RIM. Politically, it may be attractive as it does not involve a legal agreement, but actors are encouraged to consider the reality of garnering the requisite commitment without an additional impetus to cooperate.

Option 2, a RSP-style convention adapted to reflect the evolution of IEL, is an ecologically viable option. Politically, it may be less attractive given the substantive commitments that usually generate concerns about implementation costs. The anticipated protracted negotiating period to conclude such an agreement should not be a deterrent to embarking on such a course, although the need for action in the interim should not be ignored.

Options 3 and 4 are similar with the exception that Option 3 anticipates a regional soft-law instrument and Option 4 entails a regional hard-law instrument. Ecological viability as between these two options is difficult to determine. Much depends on the sub-regional instruments and the level of political commitment that is required to compensate for the lack of a legally-binding instrument in Option 3. Politically, both options are viable, although the regional hard-law instrument should encourage a stronger moral obligation to implement and comply with the instrument and the fact of the existence of a hard-law instrument should foster greater cooperation. Political attractiveness will depend on the answer to the fundamental questions of motivation and expectations.

Option 5, entailing a process-oriented instrument that resembles a “code of conduct”, is ecologically viable if the actors recognise and accept that many initiatives are scientifically unsound and resources are wasted or inefficiently utilised and, as a result, they commit to “effectiveness” and “strategic” actions, essentially addressing the functional weaknesses noted in the SCS region. Politically, this option may not be viable as the issues it remedies are not widely understood by non-scientists. Conversely, it may be politically attractive to some as it largely avoids substantive issues. Ideally, Option 5 would be most effective if it were incorporated into a regional agreement such as under Options 2, 3 and 4.

Comparing the options, the two-tier structure may prove the most ecologically effective providing states conclude and implement sub-regional instruments, efforts are made to address gaps in coverage and efforts are made domestically to address issues not covered by sub-regional instruments. Including Option 5 concerns would strengthen the instrument. The options involving the two-tier structure (Options 3 and 4) may be politically more attractive than Options 2 and 5 as the parties are offered flexibility within a regional framework. Commitment to the two-tier structure should be stronger as states can tailor actions in accordance with their priorities and they are likely to “buy into” sub-regional actions more readily than into regional actions. Option 5 may be the best option if states agree that a binding agreement fosters the cooperative spirit, but they are not prepared to enter into a substantive instrument.

Reversing Environmental Degradation Trends in the South China Sea and Gulf of Thailand
<table>
<thead>
<tr>
<th>Options</th>
<th>Strengths</th>
<th>Weaknesses</th>
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<tbody>
<tr>
<td><strong>Option 1</strong>&lt;br&gt;Regional soft-law only</td>
<td>- Ecologically viable if strong political will exists to implement it&lt;br&gt;- Politically attractive if a legally-binding instrument is rejected</td>
<td>- Difficult to garner requisite political commitment for successful implementation&lt;br&gt;- No catalyst to implement SAP&lt;br&gt;- Little impact on facilitating regional coordination&lt;br&gt;- Challenge to develop a strong, proactive RIM in the short-term&lt;br&gt;- Failure to facilitate a long-term regional framework&lt;br&gt;- External donors deterred by lack of binding agreement</td>
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<tr>
<td><strong>Option 2</strong>&lt;br&gt;RSP-style legally-binding instrument</td>
<td>- Ecologically viable if well drafted and implemented&lt;br&gt;- Accrues the benefits of a legally-binding agreement: Facilitates regional cooperation&lt;br&gt;Increases regional stability&lt;br&gt;Attract external donors&lt;br&gt;- Contributes to a regional framework&lt;br&gt;- Adapting the model to the needs of the region can result in a strong and valuable instrument</td>
<td>- Existing RSP-style instruments often have little correlation with environmental improvement&lt;br&gt;- Implementation of existing instruments is often unsound (this is related more with political will to seek effective implementation than the instrument)&lt;br&gt;- Substantive focus and commitments may be a deterrent to some parties</td>
</tr>
<tr>
<td><strong>Option 3</strong>&lt;br&gt;Regional soft-law and sub-regional instruments</td>
<td>- Ecologically viable if effective sub-regional instruments are adopted&lt;br&gt;- Politically attractive if states opt for non-legally binding instrument&lt;br&gt;- If strong commitment, structure can enhance regional coordination&lt;br&gt;- Structure encourages state ownership of programmes&lt;br&gt;- Maximum flexibility for states as substantive issues are in sub-regional instruments</td>
<td>- External donors may be deterred by non-legally binding regional instrument, although sub-regional agreements may attract donors.&lt;br&gt;- More logistically complex to track the development and implementation of sub-regional agreements&lt;br&gt;- If poor regional commitment, may have little impact on regional coordination and cooperation&lt;br&gt;- Success relies on a strong RIM to encourage sub-regional instrument development and implementation&lt;br&gt;- May be gaps in ecological coverage, unless parties committed to regional coordination</td>
</tr>
<tr>
<td><strong>Option 4</strong>&lt;br&gt;Regional hard-law and sub-regional instruments</td>
<td>- Ecologically viable if well drafted and implemented&lt;br&gt;- Politically attractive as states currently favour sub-regional cooperative instruments&lt;br&gt;- Benefits of legally-binding agreements accrue (as noted under Option 2)&lt;br&gt;- Structure encourages state ownership of programmes&lt;br&gt;- Maximum flexibility for states as substantive issues are in sub-regional instruments</td>
<td>- Logistically complex to track development and implementation of many sub-regional instruments, Relies on a strong RIM to foster and assist with the sub-regional instruments and foster coordinated action&lt;br&gt;- Must address domestic concerns unrelated to sub-regional cooperative instruments&lt;br&gt;- May be gaps in ecological coverage, unless parties committed to regional coordination</td>
</tr>
<tr>
<td><strong>Option 5</strong>&lt;br&gt;Process-oriented regional legally-binding instrument</td>
<td>- Ecologically attractive as will improve ecological effectiveness of decisions and actions&lt;br&gt;- Enhances domestic implementation of global instruments&lt;br&gt;- Politically attractive if substantive instrument is rejected&lt;br&gt;- Offers benefits of a legally-binding instrument (noted under Option 2)</td>
<td>- Politically unattractive as current ecological unsoundness is poorly recognised and need to address how to effect sound actions is not appreciated by non-scientists&lt;br&gt;- Lack of substantive provisions may be misunderstood as not providing enough guidance and of little utility to regional cooperation&lt;br&gt;- The optimal scenario would be to incorporate process-oriented issues into instruments under Options 2, 3 or 4.</td>
</tr>
<tr>
<td><strong>Common to all options</strong></td>
<td>- All are ecologically viable, but success relies on effective implementation&lt;br&gt;- Exercise of negotiating a regional instrument will focus attention on the strengths and weaknesses in the region and clarify state positions&lt;br&gt;- Success is available if strong political commitment to regional cooperation and resolving environmental issues</td>
<td>- Challenges to develop a strong, proactive RIM that is required for successful regional cooperation&lt;br&gt;- Lack of political commitment to effectively implement regional instruments</td>
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</table>
6. CONCLUSIONS

There are lessons to be learned from other regions. The most significant lesson regarding strengthening cooperation is that the primary benefit of a regional convention is its role in promoting a regional cooperative spirit and, thus, enhancing cooperation. This is revealing as the reasonable assumption is that benefits of a regional convention would relate to regional ecological improvements. Evidence indicates that environmental improvements are generally related to other instruments, which is a sound reason for ensuring that regional action plans and other instruments and initiatives are comprehensive, coordinated, and scientifically sound.

Regional cooperation is essential for addressing regional sea issues and, consequently, cooperation should be strengthened. Evidence suggests that cooperation is strongest in regions that have adopted a legally-binding agreement. However, it is the existence of a legally-binding agreement that enhances cooperation, with the form and substance of the agreement being less influential. This broadens the range of options available for viable regional cooperative instruments. For example, the UNECE Water Convention, with its unique two-tier design and deviation from the standard RSP-style convention is very successful at fostering cooperation and reversing trends of degradation.

Lessons learned from the global community and regional programmes indicate a growing emphasis on the domestic implementation of global instruments via regional cooperative initiatives and on maximising effectiveness. An emerging trend is the proliferation of calls to “strategically” address these two needs.

The above suggests that an appropriate course of action for a region seeking to strengthen cooperation would be forging a legal agreement that suits regional needs and interests and, in so doing, incorporates “effectiveness” into the design. The agreement should fit within a regional coordinating framework. Finding an ecologically and politically attractive framework, RIM and instrument may require “thinking outside of the box” or identifying creative options. As SCS states favour sub-regional cooperation, regional coordination of sub-regional instruments may be a creative starting point for discussions.

The SCS region is in a unique and enviable position. Unlike most other regions, it has never adopted a legally-binding instrument and, consequently, it is free of precedent and other legal baggage. Regional cooperation is gaining momentum and SCS states are indicating a greater concern for environmental sustainability. There is growing recognition that the inefficient use of resources to address issues will only worsen without horizontal and vertical coordination and regional cooperation. It seems an appropriate time to consider an effective and region-appropriate course for long-term sustainability of the SCS and its resources, including consideration of a regional framework for cooperation, coordination and communication. At this juncture, the SCS states have the opportunity to choose to move forward into the future. Political commitment will determine whether any new cooperative framework becomes a paper tiger or an Asian tiger.
APPENDICES
### APPENDIX 1 - GLOBAL INSTRUMENTS AND THEIR STATUS WITHIN THE SCS REGION

<table>
<thead>
<tr>
<th>Global Treaties/Legislation/Action Plans</th>
<th>Open for Signature</th>
<th>Entry into Force</th>
<th>Status of Ratification by the Countries bordering South China Sea</th>
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<tr>
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<tr>
<td>1 Stockholm Convention on Persistent Organic Pollutants (2001)</td>
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### Global Instruments and Their Status within the SCS Region

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APPENDIX 2 - REVIEW OF REGIONAL INSTRUMENTS AND MECHANISMS

The following cursory review of some elements of RSPs falls within five main categories: hard- and soft-law instruments, institutional arrangements, cooperative mechanisms, funding and financial issues and processes and procedural considerations.

1. HARD- AND SOFT- LAW INSTRUMENTS

Hard-law instruments, such as global and regional conventions and their protocols, are legally binding. Traditionally, these global and regional instruments have been closely associated with LOS, which infers negotiated outcomes, and the involvement of lawyers from the Ministries of Foreign Affairs (MFA) who were generally trained in LOS. Soft-law instruments are legally non-binding, and include action plans/programmes, declarations, guidelines, MoUs and other quasi-legal instruments. The ecological complexity of environmental issues, inter-connections with socio-economic, development and other issues, and the reluctance of states to commit to binding obligations have contributed to the proliferation of soft-law instruments. Action plans, programmes and guidelines are frequently associated with IEL and less with LOS. The distinction between LOS and IEL is informative as LOS tends to be more formal and involves very different processes and end-products as compared to IEL, which is generally considered to produce more practical and functional instruments. LOS is primarily grounded in sovereign jurisdiction over national territory, whereas IEL endorses cooperation to address environmental issues. Thus, LOS and IEL practitioners often have very different mindsets when approaching environmental issues.

Environmental protection globally, regionally and domestically has seen the use of both hard- and soft-law instruments. At the domestic level, soft-law instruments most frequently involve plans or programmes of action or guidelines for the implementation of legally-binding domestic hard-laws. The overarching hard-law gives soft-law instruments some “teeth”. Regionally and globally, many hard-law instruments, such as conventions, have associated soft-law action plans or programmes. This is entrenched in the UNEP RSP formula as noted in the main text.

Following are some observations regarding the use of hard-law and soft-law instruments within RSPs, noting some strengths and weaknesses accordingly.

- The most notable strength of hard-law instruments – their legally-binding nature – is conversely the weakness. Commitments and obligations of negotiated legal instruments are frequently watered down and tend to reflect the lowest common denominator – the position of the most reluctant state. This is particularly true where the issue is complex or politically sensitive. The framework convention adopted by the Caspian states, which they hope to ratify soon, contains very little substance. Once ratified, the members will have to rely on action plans, protocols and other instruments to flesh out the convention and provide substance. Thus, a legally-binding convention may have little direct influence regarding ecological improvement. However, it may have significant influence in promoting and enhancing cooperation and enhancing trust.

- The distinction between legally-binding and soft-law instruments blurs further when considering implementation, compliance and enforcement. Among regions surveyed, most ranked the lack of compliance mechanisms and the inability to enforce regional conventions as a major weakness. In the Baltic, it was noted that, despite having a convention, the recommendations of the meetings are not legally binding and, at most, morally binding. In most regions, implementation of and compliance with the convention is voluntary. Although the legal status of hard-law instruments should instil a strong sense of obligation and duty, functionally, both hard- and soft-law instruments may be reduced to moral duties and reliance on non-legal methods (e.g., pressure, shaming, etc.) for compliance.

- Generally, RSPs with conventions have stronger cooperation and more joint actions than regions without conventions. Conventions foster regional stability as expectations of conduct are created. Respondents to the RSP survey indicated that the regional conventions are most valuable in fostering cooperation and confidence and capacity-building, and less influential in fostering substantive changes to actors’ behaviour or ecological improvement. This is significant as it may influence the content of a legally-binding instrument.

See Appendix 8 for a comparison of the strengths and weaknesses of hard and soft-law instruments.
Regarding correlations among conventions and the resolution of ecological issues, a review of the Mediterranean environmental regime indicated that the Barcelona Convention played a direct but minor role in environmental improvement (the Mediterranean Action Plan played a minor role as well) — actions taken were often under the auspices of other instruments, including international conventions. The perspective from the Caribbean was similar — the convention performed superbly in fostering collaboration and cooperation and increased the commitment to environmental protection, but few actions could specifically be related to the convention itself. Studies are seldom undertaken by regions to determine whether the regional conventions foster ecological improvements or offer other valuable benefits. However, the general opinion is that regional conventions do not directly result in environmental improvement, but instead enhance cooperation, which in turns fosters more actions, and thus, indirectly influencing environmental improvement.

Regions that have adopted a convention believe that enhanced cooperation comes from having a convention in place and that cooperation is beneficial to the region and the states. Although cooperation may not have been present prior to adoption of a convention, circumstances (e.g., epistemic communities in the Mediterranean), catalytic events (e.g., GEF funding in the Black Sea) and/or time passage (e.g., SPREP) foster it.

The Caribbean’s framework convention, of which the states are very proud, has been instrumental in fostering cooperation, particularly regarding LBA and implementation of the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities (GPA), a soft-law document. The protocol on LBA, pursuant to the framework convention, has not been ratified due to hesitancy to commit to the heavy financial burden associated with implementation. Regardless, the Caribbean states have undertaken joint projects and programmes often with non-state partners to address LBA. Strong regional cooperation exists in the Caribbean because common membership in the framework convention provided a strong basis for cooperation and a real need (addressing LBA in this case) was identified.

All regions with conventions experienced political tensions in some form, but these have been overcome with persistent cooperation and commitment. The Mediterranean prides itself that despite intra-regional armed conflict, all the actors met regardless to discuss marine pollution issues. The Antarctic and Caspian Conventions and the Water Convention explicitly state that cooperation will not affect territorial claims in any way.

In some regions, such as the South Asia Seas, informal cooperation on practical issues builds trust and confidence, with the hope that a convention will ensue as a natural extension of the cooperative process. Further, the regional culture affects the process. In the African and Latin American regions, conventions were adopted and ratified, but little has been done to date to implement them. Although funding, poverty and other issues overrode commitments to implement, states were willing to commit to legally-binding instruments. Curiously, the three Asian regions chose not to pursue conventions. NOWPAP (Northwest Pacific region), relying on an action plan, is demonstrating a strong cooperative spirit in lieu of a convention.

Action plans/programmes can be very effective even where there is no related convention. One example is the GPA, a morally-binding soft-law instrument, which is garnering support via its strategic partnership with the RSPs. NOWPAP, which is a relatively new RSP, with only an Action Plan, is functioning well without a convention as the members are committed to cooperating and promoting ownership of their programme. Conversely, regions such as Eastern Africa, West and Central Africa and the Black Sea have had problems historically cooperating on environmental protection, despite convention obligations. Political commitment is more important than a convention.

Declarations are a common product of conferences and ministerial meetings. When strongly worded and sanctioned by high-level ministers, declarations can become an impetus for regional cooperation and domestic action. The North Sea, Caspian and Mediterranean are examples of three RSPs that have attributed increased cooperative spirit and the impetus to act to strong ministerial declarations.

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The Caspian and the Caribbean RSPs successfully rely on MoUs to forge cooperation among parties and other actors in environmental protection. MoUs may be between or among various entities, such as government to government, RCUs and government(s) or RCUs and other partners (e.g., NGOs, external donors, research institutions and corporate actors). An MoU, while legally unenforceable, is generally more effective where there are a relatively small number of signatories (2-3) than in cases where there are many signatories.

A summary of the findings regarding the use of hard-law and soft-law instruments in RSPs include:

- The most noteworthy finding is that the strength of regional conventions is that they foster stronger regional cooperation, among other reasons by providing a strong legal basis for cooperation and action generally and because they promote regional stability by affecting the mindset (trust, expectations, etc.) of the actors.
- Related to the above, the actual provisions of a convention seem to be less relevant than expected as increased cooperation emanates from the mindset brought about by having a convention and not by its substantive provisions.
- Regional conventions have less direct correlation with ecological improvement than expected, but greater indirect influence, such as increased cooperation, which promotes actions pursuant to other instruments and undertakings.
- Evidence suggests that adopting a regional convention is preferable to not adopting a convention as the former offers stability, influences mindset and, most significantly, fosters a cooperative spirit.
- However, soft-law instruments, if adopted by committed parties, can similarly promote cooperation. The operative component seems to be commitment of the parties to cooperate on environmental issues and not the legal nature of the instrument.
- The adoption of an action plan to guide implementation and flesh out the framework convention (and any protocols) is desirable.
- An action plan alone may suffice if the parties sincerely recognise the need to protect the marine and coastal environment and they are committed to working together to do so (e.g., they must have strong political will).
- Regardless of the instruments adopted, the lack of mechanisms compelling implementation and compliance/enforcement is an inherent weakness in all RSPs. Compliance is voluntary, regardless of the form of the instrument.

### 2. INSTITUTIONAL ARRANGEMENTS AND SECRETARIAT FUNCTIONS

The UNEP RSP adopted Regional Coordinating Units (RCUs) as the mechanism to implement the decisions of the parties and provide secretariat functions. In the UNEP-administered RSPs, UNEP has direct responsibility for the secretariat functions and administering the respective trust funds. Additionally, it provides some financial and budgetary services and technical assistance and advice. Under the non-UNEP administered programmes, the secretarial functions are hosted and/or performed by a regional body established by the parties and the trust fund is administered by the parties. The Black Sea region is an example of non-UNEP administered region that has a well-developed institutional structure in the form of the Commission on the Protection of the Black Sea against Pollution pursuant to the Bucharest Convention. A Permanent Secretariat, Advisory Groups and seven RACs assist in the implementation of the convention and its activities. The North Sea relies on the OSPAR Commission to coordinate activities in the region and oversee the implementation of instruments.

Independent partners have developed institutional structures as they have seen fit. The Northeast Atlantic and the Baltic both adopted commissions as their regional institutional body. The Caspian, although an independent programme, utilises UNEP as its secretariat until such time as the states can agree upon an institutional arrangement. Despite disagreement on these arrangements, the states are pursuing cooperative regional activities. The Arctic, having no convention, established the Arctic Council and supporting secretariat to oversee implementation of its programmes and projects.

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65 The UNEP-administered regions are: the Caribbean, East Asian Seas, Eastern African Seas, Mediterranean, North-West Pacific and West and Central Africa.
66 [www.unep.org/regionalseas/Programmes/UNEP_Administered_Programmes/default.asp](http://www.unep.org/regionalseas/Programmes/UNEP_Administered_Programmes/default.asp).
67 [www.unep.org/regionalseas/Programmes/Non-UNEP_Administered_Programmes/default.asp](http://www.unep.org/regionalseas/Programmes/Non-UNEP_Administered_Programmes/default.asp).
Determining the success of various institutional or organisational mechanisms is difficult. Organisational structure, number of staff, sophistication of mandated functions, related bodies (e.g., advisory groups and activity centres), communication mechanisms and funding determine the administrative body’s functioning capacity and effectiveness. UNEP administered RCUs tend to be small, largely due to funding constraints. There is a perception that they are less effective than well-funded RCUs. Two exceptions to this are the Caspian and the Caribbean. In both cases, highly motivated and dedicated key staff members are committed to progress. They continue to seek means of overcoming their respective impediments to cooperation and effective action. For example, in the Caspian, UNEP’s persistence and determination is evident as it doggedly scheduled seven meetings to facilitate the adoption of a convention, regardless of impasses and little progress at times. Within a short time span relative to most regional negotiations, the parties negotiated text, reached agreement and signed the ensuing framework convention, with hopes of ratifying it soon.

Commissions tend to be larger, more powerful institutions than UNEP RCUs. The parties to the conventions have agreed upon the structure of the regional implementing body and have made commitments regarding mandate, staffing, regional representation, decision-making procedures, etc. Institutional mechanisms organised and run by the state members of a RSP generally foster greater ownership of the programme, a key ingredient in a successful RSP. Establishing a commission suggests strong commitment to coordination and cooperation as it becomes the lead and centralised institution for the region.

State commitment to RSPs may be low whether it is administered by UNEP or by the states themselves. Regardless of the institutional arrangement, there are often state members who cannot or will not meet their full financial commitments or make annual contributions. Collecting annual fees is a perennial problem in many regions, with states resorting most commonly to pressure tactics or demonstrating benefits to impress states into paying their dues.

Programme/project success and high levels of regional cooperation and commitment have a direct correlation with the proactivity of the institutional mechanisms. Officially, RSPs are driven by the countries but, in reality, the more successful regions have proactive, problem-solving secretariats to drive the states forward when necessary. In essence, a proactive secretariat must be seen (to raise the profile, problem-solve, boost confidence and lend assistance) but not heard (pressuring the parties to act). Again, the Caspian and Caribbean are examples of proactive institutions encouraging action. In a recent review of the Mediterranean, it was noted that the secretariat’s mandate should be upgraded as the rules of the 1976 Barcelona Convention, by which it was bound, impeded its capacity to be proactive. Successful project development is often the product of a proactive secretariat. Programme officers in the Caribbean have been effective in this regard and have developed projects with various partners to mobilise funds, expertise and other resources for the region’s benefit.

Evidence from many RSPs, including the Caspian, Black Sea and the Caribbean, confirm the value of promoting programme ownership by member countries and note it should be a key function of secretariats. Methods of accomplishing this are diverse but include hiring local talent in place of foreign, allowing the countries to choose and run projects with strategic regional and international partnerships, encouraging states to commit funds, and providing information and options for decision-making, seeking innovative or creative solutions for problem-solving and finding alternatives to circumvent objections.

Competent, motivated, dedicated and organised programme officers and professional staff encourage a proactive, solution-seeking and problem-solving institutional mechanism. The need for quality staff and the requisite mandate encouraging proactive initiatives are emphasised.

Fostering a good relationship between the institutional mechanism and the parties/partners, including state and non-state actors, is vital. Actions are key — delivery on promises and projects, transparency, honesty as to what projects can and cannot accomplish, funds seen to be spent responsibly and effectively, and personal contact to provide updates all assist to facilitate cooperation and participation. Establishing a successful institutional track record promotes a level of confidence among parties that in turn will ease their concerns and encourage further financial commitment and cooperation. The Caribbean RCU deserves credit for promoting actions and delivering on promises to implement the GPA.
3. COOPERATIVE MECHANISMS

Mechanisms adopted to foster and enhance cooperation vary among regions, with advisory groups and RACs being the most popular. Advisory groups are useful for providing information and direction for the parties, with knowledge-based decision-making enhancing the effectiveness of actions taken.

Advisory groups should involve regional experts and local talent, including where appropriate, local community representatives and those with local or indigenous knowledge. This fosters a regional network of experts and encourages the sharing of information, technical options, lessons learned and experiences. Advisory groups can be issue-specific (e.g., biodiversity or marine pollution) or disciplinarily specific (e.g., scientific, social, economic or policy). Multi-disciplinary advisory groups, even where issue or discipline specific, are required for compiling and disseminating effective advice. The Black Sea Commission has established advisory groups, as has the Baltic, Caribbean and the Caspian. The Caspian, demonstrating its problem-solving ability, replaced failing RACs, which were not performing as expected, with advisory groups. The UNECE Water Convention utilises the expertise of the diverse array of advisory groups under the auspices of the International Waters Assessment Centre (IWAC). The Arctic prefers project-specific steering committees and the scientific expertise of the Arctic Monitoring and Assessment Programme (AMAP). Discipline- or issue-specific advisory groups need to ensure that they interface with and coordinate with other advisory groups for integrated, comprehensive advice.

Specialised RACs have the role and function of supporting the activities of the RCUs and the states. They are often integral to coordinating and implementing action plans, fostering regional capacity-building and promoting cooperation, particularly where the RAC is housed in a centre of expertise. Most RACs are issue-specific, such as biodiversity, LBA, energy, fisheries, data management or development of methodologies. The Mediterranean has six RACs, the Caribbean has three, and the Black Sea has seven in accordance with the Black Sea Strategic Action Plan. Two regions without conventions are planning RACs. South Asian Seas RSP is planning one RAC for each country to implement the priorities identified in their action plan. The Northwest Pacific (NOWPAP) is in the process of developing a RAC, viewing it as an important addition to its implementing infrastructure.

The Caspian region had 11 RACs, called the Caspian Regional Thematic Centres (CRTC). Although physically sited for a balance of political reasons and technical expertise, they failed to perform as expected largely due to the lack of sustainable financial support and lack of ownership by the countries. The CRTC were supported by different donors, whose uncoordinated efforts and opinions as to the appropriate arrangement for the CRTC hampered their utility. Other criticisms of the CRTC included the high turn over of consultants, poor coordination and duplication of effort, as well as being too small and numerous to contribute to the implementation of the Caspian’s Strategic Action Plan (the reason for their establishment). Their performance was reviewed and the conclusions acted upon. It resulted in the conversion of the CRTCs to advisory groups, which have been more successful in this region. Again, mechanisms appropriate for one region may not perform as well in another.

RACs are important in action-oriented regions. Effective RACs improve the sense of ownership and pride. When an RAC is situated in a centre of expertise, it becomes a regional asset, providing opportunities to cooperate, collaborate and capacity-build through developing regional experts, secondments, fostering data sharing/storage functions, or managing a regional database. RACs should be structured to the needs of the region.

Another cooperative mechanism is an epistemic community, which is an informal community of various experts within a region that can inform and encourage sound decision-making. Such a community, first recognised in the Mediterranean, was instrumental in securing agreement among states as scientists were able to provide decision-makers with facts and information, which, in turn, provided an impetus for action. In the case of the Mediterranean, experts involved were from

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69 http://www.unece.org/env/water/services/serv.htm. The extensive advisory services are listed in Appendix 6, herein.
71 Ibid., p. 5.
interested countries and various disciplines, such as engineering, physics, oceanography, microbiology, urban planning and diplomacy. Trans-national members worked with domestic members, and together they were able to inform foreign ministry officials of the need to regulate specific pollutants and recommend solutions. Scientists were invited to participate in their individual capacities rather than as representatives of their governments, thus increasing professional autonomy.

Epistemic communities are most successful where they offer science-based consensual knowledge on priority issues and effective control measures. The Arctic, Caribbean, Caspian and Baltic are regions that believe that their strong scientific capacity and networking contribute to the effectiveness of their respective programmes.

Epistemic communities working in conjunction with strong regional institutions generally result in the most effective RSPs. Examples of this are the Mediterranean, Southeast Pacific, South Pacific and increasingly the Black Sea. The Baltic and North Sea RSPs have strong institutions, but their decision-making processes often involve political negotiation and compromise, with less reliance on science. As a result, the output is often environmentally less effective.

Regional cooperative mechanisms encompass implementation strategies, which may include partnerships with local and international agencies and organisations, or partnerships with other RSPs. There is an emerging emphasis on “strategic” partners, or choosing partners who can provide identified and specific benefits. “Strategic” partnerships encourage associations with entities that have experience, expertise, resources and other assets that foster efficiency and effectiveness of regional actions. An example of a strategic partnership is the RSPs and GPA Secretariat. This strategic partnership has been effective in the Caribbean where global support has enhanced the ability of the RCU to be proactive, transparent and able to deliver results. The member states, impressed with the results, are more willing to support activities and the regional programme in cash and in kind.

Other types of partnerships include twinning and inter-regional cooperation among RSPs. For example, the Baltic (a non-UNEP RSP) has a twinning arrangement agreed to in 2000 with the East African RSPs that allows the less developed regions to benefit from the experienced RSPs. Conversely, the two mature RSPs, the Baltic and North East Atlantic committed to a partnership that fosters inter-regional harmonisation as the two regions have common and overlapping interests by virtue of geography.

4. FUNDING AND FINANCIAL CONSIDERATIONS

Funding problems are ubiquitous throughout the RSPs. The reasons for this vary – from decreases in UNEP funding to lack of commitment to environmental programmes by member states. Regional trust funds, comprising annual state contributions, are often insufficient to cover core costs for institutional and staffing needs. Mobilising funds for projects is challenging and time consuming. Regions have dealt with funding issues in numerous ways.

Encouraging states to pay their annual contributions varies among the regions. The North East Atlantic is one of the few regions that operates with a “no pay, no participation” rule. Conversely, the Black Sea region feels that such a rule is counter-productive, given that political consensus and inclusion of all parties to the convention is necessary for effective protection of the Black Sea environment. The Arctic and the Baltic experience no problems with contribution collection, despite having no enforcement mechanism. Both regions rank their level of cooperation and political will as high in comparison to most other regions. Setting state contributions can be as problematic as ensuring contributions are made.

74 Ibid., pp. 396-7. In Mediterranean countries where the epistemic community consolidated its power, pollution control measures were the strongest, most effective and integrated with economics through sophisticated environmental policies, EIAs, and economic plans. Ibid., p. 397.
75 Ibid., p. 387.
77 Ibid.
Encouraging states to pay requires creative planning. In the North-East Atlantic, a letter to the offending Minister with personal copies to his counterparts in other states has been effective. The Caspian region notes the low profile afforded environmental issues as an impediment to collecting annual dues. It would consider a “no pay, no participation” rule but more realistically proposes linking environmental funding to trade and aid. The West and Central Africa region, noting competing national interests (e.g., poverty, health, and education) for limited resources, suggests demonstrating tangible benefits of the RSP and empowering the Ministers of Environment by raising RSP profiles and increasing awareness of success stories – the philosophy adopted is that the benefits of participation must exceed contribution amounts where competition for funds is rife. The Caribbean has practiced the suggestions emanating from the African regions. The former has been effective in encouraging states to pay annual dues and to support projects financially or in kind through honesty, transparency, delivery of results, and demonstrating the benefits for the state and the region.

Securing external funding is challenging as donors have their own rules, mandates and agendas. However, developing a reputation for producing results can facilitate the mobilisation of external funding, as the Caribbean has done effectively. External funding agencies are impressed by regions that take effective action, demonstrate high levels of cooperation and political will, and a willingness to engage strategic partners (e.g., civil society and NGOs) and other tangible commitments to environmental protection. Having a legally-binding convention is usually seen as evidence of commitment. External donors will invest time and resources in regions where there are more likely to be used effectively. Strong regional coordination and a formalised regional cooperative framework impress external donors.

5. PROCESSES AND PROCEDURAL ISSUES

Each RSP has a unique character and circumstances and each has developed its own processes and procedures (means and methods) for reaching decisions, making policy and implementing instruments, fostering cooperation, etc.

The processes adopted vary greatly, but they are most successful where they reflect the regional culture and ethos. For example, in the North-East Atlantic region, reluctant ministers are encouraged to cooperate via peer pressure exerted at meetings attended by NGOs. However, in other regions, reluctant members may opt for non-participation rather than risk public embarrassment.

The type and focus of processes adopted are further influenced by the status of a RSP, which currently range from newly established to very mature, and the level of cooperation among the members and other actors in the region. For example, new programmes may address weak scientific and technological capacity with capacity-building processes, while a mature programme may seek to address more sensitive issues such as strengthening compliance and adopting enforcement mechanisms.

The strengths and weaknesses of processes adopted by the various RSPs are difficult to assess as each region is unique in political, socio-economic and environmental culture. However, a significant weakness noted is the lack of consideration given to how to effectively and efficiently address substantive issues with which RSPs are tasked. The development and adoption of processes is frequently undertaken without significant consideration of issues such as the need for clarity of purpose, strong knowledge-base, sound science, feedback loops/assessment, realistic objectives and time frames in which to realise them, transparency, strategic partnerships, priority issues, proactive secretariat, and creative solutions. While lip service is often paid to such issues, failure to actively consider them frequently results is ecologically and economically unsound policies and implementation practices. In short, processes generally lack strategy to foster overall effectiveness of actions.

Knowledge-based decision-making fosters effective actions. This involves the inclusion of all relevant information and, in particular, science. In the surveys, most regions either rated strong scientific capacity (e.g., NOWPAP) as a major asset in their programme, or they rated lack of scientific capacity as a major weakness (e.g., PERSGA). The programme goal to learn more about the marine environment for decision-making purposes is common to the North-East Atlantic, Nairobi and Abidjan Convention regions. The need for knowledge-based decision-making is increasingly recognised by actors.
Identifying and addressing ecological priorities fosters long-term environmental integrity and wise use of resources. The surveys reveal that in most instances priorities were set by the member states. Frequently, setting priorities entails political negotiations or choosing non-controversial issues, without considering ecological priorities or the ecological soundness of the choices. Regions with GEF-funded projects focus attention on ecological priorities through the mandatory preparation of a Transboundary Diagnostic Analysis and a subsequent Strategic Action Programme. This is a sound process.

The use of science, and, in particular sound science, varies among the RSPs. While science is available, it is often overlooked. For example, AMAP, the science arm of the Arctic RSP is very effective in its role of monitoring and assessment. Its effectiveness is partially attributable to its independence from the policy arm, Pollution of the Arctic Marine Environment (PAME). However, the available science is not incorporated into PAME policy-making processes as effectively as it could be. Another example of the ineffective use of science is the North-East Atlantic, which determines ecological priorities in part through measuring contamination levels. However, the adverse effects of contamination (and not the levels) are more relevant to determining priorities. Sound science should be institutionalised into the decision-making processes for effective actions and sound management practices.

The establishment of indicators to assess and measure progress and/or success of actions undertaken is generally lacking, although some regions are in the process of developing them. Indicators of success are very relevant with the growing emphasis on implementation as they are one method or process for measuring whether actions taken and resources invested are producing the intended result. If not, time and scarce human and financial resources are wasted. Review and adjustments should be part of an effective process.
APPENDIX 3 - ACTION PLANS AND MAJOR PROJECTS

Following are a sampling of the action plans and major programmes undertaken by the various regional seas areas.

<table>
<thead>
<tr>
<th>UNEP RSP</th>
<th>Convention</th>
<th>Action Plans and Projects</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black Sea</td>
<td>Bucharest</td>
<td>Strategic Action Plan for the Protection and Rehabilitation of the Black Sea (BSSAP)</td>
<td>1996</td>
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<tr>
<td></td>
<td></td>
<td>The GEF Black Sea Pollution Recovery Project</td>
<td></td>
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<tr>
<td>North-East Pacific</td>
<td>Antigua (not yet in force)</td>
<td>Plan of Action for the Protection and Sustainable Development of the Marine and Coastal Areas of the North-East Pacific</td>
<td>2002</td>
</tr>
<tr>
<td>ROPME Sea Area</td>
<td>Kuwait</td>
<td>Action Plan for the Protection of the Marine Environment and Coastal Areas of Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates</td>
<td>1978</td>
</tr>
<tr>
<td>South Asian Seas</td>
<td></td>
<td>South Asian Seas Action Plan</td>
<td>1995</td>
</tr>
<tr>
<td>South-East Pacific</td>
<td>Lima</td>
<td>Action Plan for the Protection of the Marine Environment and Coastal Areas of the South-East Pacific</td>
<td>1981</td>
</tr>
</tbody>
</table>
### Action Plans and Major Projects

<table>
<thead>
<tr>
<th>UNEP RSP</th>
<th>Convention</th>
<th>Action Plans and Projects</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Wider Caribbean</strong></td>
<td>Cartagena</td>
<td>Action Plan for the Caribbean Environment Programme White Water to Blue Water Initiative (WW2BW) (a partnership programme to enhance integrated environmental protection)</td>
<td>1981&lt;br&gt;2002</td>
</tr>
<tr>
<td><strong>Partner Programmes</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Antarctic</strong></td>
<td>CCAMLR</td>
<td>Rules and Scientific Committee</td>
<td></td>
</tr>
<tr>
<td><strong>Arctic</strong></td>
<td></td>
<td>Arctic Environmental Protection Strategy&lt;br&gt;Regional Programme of Action for the Protection of the Arctic Marine Environment from Land-based Activities&lt;br&gt;Terms of Reference for a Sustainable Development Program&lt;br&gt;Arctic Marine Strategic Plan</td>
<td>1998&lt;br&gt;1998&lt;br&gt;1998&lt;br&gt;draft 2004</td>
</tr>
<tr>
<td><strong>Baltic Sea</strong></td>
<td>Helsinki</td>
<td>Baltic Sea Joint Comprehensive Environmental Action Programme (JCP)&lt;br&gt;Hazardous Substances Project</td>
<td>1992&lt;br&gt;1998</td>
</tr>
<tr>
<td><strong>North east Atlantic</strong></td>
<td>OSPAR</td>
<td>OSPAR has adopted 6 strategies and respective annual work programmes: Biological Diversity and Ecosystems, Eutrophication, Hazardous Substances, Offshore Oil and Gas, Radioactive Substances and the Joint Assessment and Monitoring Programme</td>
<td>1998-99</td>
</tr>
<tr>
<td><strong>Other Regions</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Europe and Central Asia</strong></td>
<td>UNECE Water Convention</td>
<td>Objective is to enhance cooperation for region / sub-region-specific action plans and programmes (to numerous to list). Utilises guidelines, recommendations, action plans, pilot projects and other means appropriate to the need.</td>
<td></td>
</tr>
</tbody>
</table>
APPENDIX 4 - STRATEGIC DIRECTIONS FOR THE REGIONAL SEAS PROGRAMME, 2004-2007*

1. Increase Regional Seas’ contribution to Sustainable Development, through the enhancement of local, national, regional and global partnerships with relevant social, economic and environmental stakeholders, and through the strengthened implementation of the mandates of the Regional Seas, as a major contribution to the implementation of the WSSD Plan of Implementation and the goals and targets associated with the Millennium Declaration.

2. Enhance the sustainability and effectiveness of Regional Seas Programmes through increasing country ownership, incorporating Regional Seas conventions and protocols into national legislation, promoting compliance and enforcement mechanisms, involving civil society and the private sector, building capacities, ensuring viable national and international financial arrangements, as well as developing assessment/evaluation procedures where appropriate.

3. Enhance Regional Seas’ visibility and political impact in global, regional and national policy setting, through strengthening the Regional Seas Partnership, increasing political and public awareness on the economic, social, and environmental importance of coastal and marine resources, promoting information collection and communication policies, and ensuring participation and promotion of Regional Seas in relevant national, regional and global fora.

4. Support knowledge-based policy making, enhanced public participation, education, awareness, and improved reporting on the state of the coastal & marine environment, its resources, and possible threats to them, through amongst others, contributing to appropriate national and regional monitoring and assessment activities.

5. Increase the use of Regional Seas as a platform for developing common regional objectives, promoting synergies and co-ordinated regional implementation of relevant multilateral environmental agreements, global and regional initiatives, and responsibilities of United Nations Agencies and other international actors, as a contribution to the sustainable management of the coastal and marine environment.

6. Develop and promote a common vision and integrated management, based on ecosystem approaches, of priorities and concerns related to the coastal and marine environment and its resources in Regional Seas Conventions and Action Plans, introducing amongst others proactive, creative and innovative partnerships and networks and effective communication strategies.

APPENDIX 5 - EXCERPTS FROM THE UNECE WATER CONVENTION

The Preamble and Parts I and II of the UNECE Water Convention are reproduced below.

CONVENTION ON THE PROTECTION AND USE OF TRANSBOUNDARY WATERCOURSES AND INTERNATIONAL LAKES

done at Helsinki, on 17 March 1992

PREAMBLE

The Parties to this Convention,

Mindful that the protection and use of transboundary watercourses and international lakes are important and urgent tasks, the effective accomplishment of which can only be ensured by enhanced cooperation. Concerned over the existence and threats of adverse effects, in the short or long term, of changes in the conditions of transboundary watercourses and international lakes on the environment, economies and well-being of the member countries of the Economic Commission for Europe (ECE),

Emphasizing the need for strengthened national and international measures to prevent, control and reduce the release of hazardous substances into the aquatic environment and to abate eutrophication and acidification, as well as pollution of the marine environment, in particular coastal areas, from land-based sources,

Commending the efforts already undertaken by the ECE Governments to strengthen cooperation, on bilateral and multilateral levels, for the prevention, control and reduction of transboundary pollution, sustainable water management, conservation of water resources and environmental protection,

Recalling the pertinent provisions and principles of the Declaration of the Stockholm Conference on the Human Environment, the Final Act of the Conference on Security and Cooperation in Europe (CSCE), the Concluding Documents of the Madrid and Vienna Meetings of Representatives of the Participating States of the CSCE, and the Regional Strategy for Environmental Protection and Rational Use of Natural Resources in ECE Member Countries covering the Period up to the Year 2000 and Beyond,

Conscious of the role of the United Nations Economic Commission for Europe in promoting international cooperation for the prevention, control and reduction of transboundary water pollution and sustainable use of transboundary waters, and in this regard recalling the ECE Declaration of Policy on Prevention and Control of Water Pollution, including Transboundary Pollution; the ECE Declaration of Policy on the Rational Use of Water; the ECE Principles Regarding Cooperation in the Field of Transboundary Waters; the ECE Charter on Groundwater Management; and the Code of Conduct on Accidental Pollution of Transboundary Inland Waters, Referring to decisions I (42) and I (44) adopted by the Economic Commission for Europe at its forty-second and forty-fourth sessions, respectively, and the outcome of the CSCE Meeting on the Protection of the Environment (Sofia, Bulgaria, 16 October – 3 November 1989),

Emphasizing that cooperation between member countries in regard to the protection and use of transboundary waters shall be implemented primarily through the elaboration of agreements between countries bordering the same waters, especially where no such agreements have yet been reached,

Have agreed as follows:

Article 1: DEFINITIONS

For the purposes of this Convention,

1. "Transboundary waters" means any surface or ground waters which mark, cross or are located on boundaries between two or more States; wherever transboundary waters flow directly into the sea, these transboundary waters end at a straight line across their respective mouths between points on the low-water line of their banks;

2. "Transboundary impact" means any significant adverse effect on the environment resulting from a change in the conditions of transboundary waters caused by a human activity, the physical origin of which is situated wholly or in part within an area under the jurisdiction of a Party, within an area under the jurisdiction of another Party. Such effects on the environment include effects on human health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments or other physical structures or the interaction among these factors; they also include effects on the cultural heritage or socio-economic conditions resulting from alterations to those factors;
3. "Party" means, unless the text otherwise indicates, a Contracting Party to this Convention;

4. "Riparian Parties" means the Parties bordering the same transboundary waters;

5. "Joint body" means any bilateral or multilateral commission or other appropriate institutional arrangements for cooperation between the Riparian Parties;

6. "Hazardous substances" means substances which are toxic, carcinogenic, mutagenic, teratogenic or bio-accumulative, especially when they are persistent;

7. "Best available technology" (the definition is contained in annex I to this Convention).

**PART I - PROVISIONS RELATING TO ALL PARTIES**

**Article 2: GENERAL PROVISIONS**

1. The Parties shall take all appropriate measures to prevent, control and reduce any transboundary impact.

2. The Parties shall, in particular, take all appropriate measures:
   
   (a) To prevent, control and reduce pollution of waters causing or likely to cause transboundary impact;

   (b) To ensure that transboundary waters are used with the aim of ecologically sound and rational water management, conservation of water resources and environmental protection;

   (c) To ensure that transboundary waters are used in a reasonable and equitable way, taking into particular account their transboundary character, in the case of activities which cause or are likely to cause transboundary impact;

   (d) To ensure conservation and, where necessary, restoration of ecosystems.

3. Measures for the prevention, control and reduction of water pollution shall be taken, where possible, at source.

4. These measures shall not directly or indirectly result in a transfer of pollution to other parts of the environment.

5. In taking the measures referred to in paragraphs 1 and 2 of this article, the Parties shall be guided by the following principles:

   (a) The precautionary principle, by virtue of which action to avoid the potential transboundary impact of the release of hazardous substances shall not be postponed on the ground that scientific research has not fully proved a causal link between those substances, on the one hand, and the potential transboundary impact, on the other hand;

   (b) The polluter-pays principle, by virtue of which costs of pollution prevention, control and reduction measures shall be borne by the polluter;

   (c) Water resources shall be managed so that the needs of the present generation are met without compromising the ability of future generations to meet their own needs.

6. The Riparian Parties shall cooperate on the basis of equality and reciprocity, in particular through bilateral and multilateral agreements, in order to develop harmonized policies, programmes and strategies covering the relevant catchment areas, or parts thereof, aimed at the prevention, control and reduction of transboundary impact and aimed at the protection of the environment of transboundary waters or the environment influenced by such waters, including the marine environment.

7. The application of this Convention shall not lead to the deterioration of environmental conditions nor lead to increased transboundary impact.
8. The provisions of this Convention shall not affect the right of Parties individually or jointly to adopt and implement more stringent measures than those set down in this Convention.

**Article 3: PREVENTION, CONTROL AND REDUCTION**

1. To prevent, control and reduce transboundary impact, the Parties shall develop, adopt, implement and, as far as possible, render compatible relevant legal, administrative, economic, financial and technical measures, in order to ensure, *inter alia*, that:

   (a) The emission of pollutants is prevented, controlled and reduced at source through the application of, *inter alia*, low- and non-waste technology;

   (b) Transboundary waters are protected against pollution from point sources through the prior licensing of waste-water discharges by the competent national authorities, and that the authorized discharges are monitored and controlled;

   (c) Limits for waste-water discharges stated in permits are based on the best available technology for discharges of hazardous substances;

   (d) Stricter requirements, even leading to prohibition in individual cases, are imposed when the quality of the receiving water or the ecosystem so requires;

   (e) At least biological treatment or equivalent processes are applied to municipal waste water, where necessary in a step-by-step approach;

   (f) Appropriate measures are taken, such as the application of the best available technology, in order to reduce nutrient inputs from industrial and municipal sources;

   (g) Appropriate measures and best environmental practices are developed and implemented for the reduction of inputs of nutrients and hazardous substances from diffuse sources, especially where the main sources are from agriculture (guidelines for developing best environmental practices are given in annex II to this Convention);

   (h) Environmental impact assessment and other means of assessment are applied;

   (i) Sustainable water-resources management, including the application of the ecosystems approach, is promoted;

   (j) Contingency planning is developed;

   (k) Additional specific measures are taken to prevent the pollution of groundwaters;

   (l) The risk of accidental pollution is minimized.

2. To this end, each Party shall set emission limits for discharges from point sources into surface waters based on the best available technology, which are specifically applicable to individual industrial sectors or industries from which hazardous substances derive. The appropriate measures mentioned in paragraph 1 of this article to prevent, control and reduce the input of hazardous substances from point and diffuse sources into waters, may, *inter alia*, include total or partial prohibition of the production or use of such substances. Existing lists of such industrial sectors or industries and of such hazardous substances in international conventions or regulations, which are applicable in the area covered by this Convention, shall be taken into account.

3. In addition, each Party shall define, where appropriate, water-quality objectives and adopt water-quality criteria for the purpose of preventing, controlling and reducing transboundary impact. General guidance for developing such objectives and criteria is given in annex III to this Convention. When necessary, the Parties shall endeavour to update this annex.

**Article 4: MONITORING**

The Parties shall establish programmes for monitoring the conditions of transboundary waters.
Article 5: RESEARCH AND DEVELOPMENT

The Parties shall cooperate in the conduct of research into and development of effective techniques for the prevention, control and reduction of transboundary impact. To this effect, the Parties shall, on a bilateral and/or multilateral basis, taking into account research activities pursued in relevant international forums, endeavour to initiate or intensify specific research programmes, where necessary, aimed, inter alia, at:

(a) Methods for the assessment of the toxicity of hazardous substances and the noxiousness of pollutants;
(b) Improved knowledge on the occurrence, distribution and environmental effects of pollutants and the processes involved;
(c) The development and application of environmentally sound technologies, production and consumption patterns;
(d) The phasing out and/or substitution of substances likely to have transboundary impact;
(e) Environmentally sound methods of disposal of hazardous substances;
(f) Special methods for improving the conditions of transboundary waters;
(g) The development of environmentally sound water-construction works and water-regulation techniques;
(h) The physical and financial assessment of damage resulting from transboundary impact. The results of these research programmes shall be exchanged among the Parties in accordance with article 6 of this Convention.

Article 6: EXCHANGE OF INFORMATION

The Parties shall provide for the widest exchange of information, as early as possible, on issues covered by the provisions of this Convention.

Article 7: RESPONSIBILITY AND LIABILITY

The Parties shall support appropriate international efforts to elaborate rules, criteria and procedures in the field of responsibility and liability.

Article 8: PROTECTION OF INFORMATION

The provisions of this Convention shall not affect the rights or the obligations of Parties in accordance with their national legal systems and applicable supranational regulations to protect information related to industrial and commercial secrecy, including intellectual property, or national security.

PART II - PROVISIONS RELATING TO RIPARIAN PARTIES

Article 9: BILATERAL AND MULTILATERAL COOPERATION

1. The Riparian Parties shall on the basis of equality and reciprocity enter into bilateral or multilateral agreements or other arrangements, where these do not yet exist, or adapt existing ones, where necessary to eliminate the contradictions with the basic principles of this Convention, in order to define their mutual relations and conduct regarding the prevention, control and reduction of transboundary impact. The Riparian Parties shall specify the catchment area, or part(s) thereof, subject to cooperation. These agreements or arrangements shall embrace relevant issues covered by this Convention, as well as any other issues on which the Riparian Parties may deem it necessary to cooperate.

2. The agreements or arrangements mentioned in paragraph 1 of this article shall provide for the establishment of joint bodies. The tasks of these joint bodies shall be, inter alia, and without prejudice to relevant existing agreements or arrangements, the following:
   (a) To collect, compile and evaluate data in order to identify pollution sources likely to cause transboundary impact;
Reversing Environmental Degradation Trends in the South China Sea and Gulf of Thailand

(b) To elaborate joint monitoring programmes concerning water quality and quantity; (c) To draw up inventories and exchange information on the pollution sources mentioned in paragraph 2 (a) of this article;

(d) To elaborate emission limits for waste water and evaluate the effectiveness of control programmes;

(e) To elaborate joint water-quality objectives and criteria having regard to the provisions of article 3, paragraph 3 of this Convention, and to propose relevant measures for maintaining and, where necessary, improving the existing water quality;

(f) To develop concerted action programmes for the reduction of pollution loads from both point sources (e.g. municipal and industrial sources) and diffuse sources (particularly from agriculture);

(g) To establish warning and alarm procedures;

(h) To serve as a forum for the exchange of information on existing and planned uses of water and related installations that are likely to cause transboundary impact;

(i) To promote cooperation and exchange of information on the best available technology in accordance with the provisions of article 13 of this Convention, as well as to encourage cooperation in scientific research programmes;

(j) To participate in the implementation of environmental impact assessments relating to transboundary waters, in accordance with appropriate international regulations.

3. In cases where a coastal State, being Party to this Convention, is directly and significantly affected by transboundary impact, the Riparian Parties can, if they all so agree, invite that coastal State to be involved in an appropriate manner in the activities of multilateral joint bodies established by Parties riparian to such transboundary waters.

4. Joint bodies according to this Convention shall invite joint bodies, established by coastal States for the protection of the marine environment directly affected by transboundary impact, to cooperate in order to harmonize their work and to prevent, control and reduce the transboundary impact.

5. Where two or more joint bodies exist in the same catchment area, they shall endeavour to coordinate their activities in order to strengthen the prevention, control and reduction of transboundary impact within that catchment area.

Article 10: CONSULTATIONS

Consultations shall be held between the Riparian Parties on the basis of reciprocity, good faith and good-neighbourliness, at the request of any such Party. Such consultations shall aim at cooperation regarding the issues covered by the provisions of this Convention. Any such consultations shall be conducted through a joint body established under article 9 of this Convention, where one exists.

Article 11: JOINT MONITORING AND ASSESSMENT

1. In the framework of general cooperation mentioned in article 9 of this Convention, or specific arrangements, the Riparian Parties shall establish and implement joint programmes for monitoring the conditions of transboundary waters, including floods and ice drifts, as well as transboundary impact.

2. The Riparian Parties shall agree upon pollution parameters and pollutants whose discharges and concentration in transboundary waters shall be regularly monitored.

3. The Riparian Parties shall, at regular intervals, carry out joint or coordinated assessments of the conditions of transboundary waters and the effectiveness of measures taken for the prevention, control and reduction of transboundary impact. The results of these assessments shall be made available to the public in accordance with the provisions set out in article 16 of this Convention.

4. For these purposes, the Riparian Parties shall harmonize rules for the setting up and operation of monitoring programmes, measurement systems, devices, analytical techniques, data processing and evaluation procedures, and methods for the registration of pollutants discharged.
Article 12: COMMON RESEARCH AND DEVELOPMENT

In the framework of general cooperation mentioned in article 9 of this Convention, or specific arrangements, the Riparian Parties shall undertake specific research and development activities in support of achieving and maintaining the water-quality objectives and criteria which they have agreed to set and adopt.

Article 13: EXCHANGE OF INFORMATION BETWEEN RIPARIAN PARTIES

1. The Riparian Parties shall, within the framework of relevant agreements or other arrangements according to article 9 of this Convention, exchange reasonably available data, inter alia, on:
   (a) Environmental conditions of transboundary waters;
   (b) Experience gained in the application and operation of best available technology and results of research and development;
   (c) Emission and monitoring data;
   (d) Measures taken and planned to be taken to prevent, control and reduce transboundary impact;
   (e) Permits or regulations for waste-water discharges issued by the competent authority or appropriate body.

2. In order to harmonize emission limits, the Riparian Parties shall undertake the exchange of information on their national regulations.

3. If a Riparian Party is requested by another Riparian Party to provide data or information that is not available, the former shall endeavour to comply with the request but may condition its compliance upon the payment, by the requesting Party, of reasonable charges for collecting and, where appropriate, processing such data or information.

4. For the purposes of the implementation of this Convention, the Riparian Parties shall facilitate the exchange of best available technology, particularly through the promotion of: the commercial exchange of available technology; direct industrial contacts and cooperation, including joint ventures; the exchange of information and experience; and the provision of technical assistance. The Riparian Parties shall also undertake joint training programmes and the organization of relevant seminars and meetings.

Article 14: WARNING AND ALARM SYSTEMS

The Riparian Parties shall without delay inform each other about any critical situation that may have transboundary impact. The Riparian Parties shall set up, where appropriate, and operate coordinated or joint communication, warning and alarm systems with the aim of obtaining and transmitting information. These systems shall operate on the basis of compatible data transmission and treatment procedures and facilities to be agreed upon by the Riparian Parties. The Riparian Parties shall inform each other about competent authorities or points of contact designated for this purpose.

Article 15: MUTUAL ASSISTANCE

1. If a critical situation should arise, the Riparian Parties shall provide mutual assistance upon request, following procedures to be established in accordance with paragraph 2 of this article.

2. The Riparian Parties shall elaborate and agree upon procedures for mutual assistance addressing, inter alia, the following issues:
   (a) The direction, control, coordination and supervision of assistance;
   (b) Local facilities and services to be rendered by the Party requesting assistance, including, where necessary, the facilitation of border-crossing formalities;
   (c) Arrangements for holding harmless, indemnifying and/or compensating the assisting Party and/or its personnel, as well as for transit through territories of third Parties, where necessary;
   (d) Methods of reimbursing assistance services.
Article 16: PUBLIC INFORMATION

1. The Riparian Parties shall ensure that information on the conditions of transboundary waters, measures taken or planned to be taken to prevent, control and reduce transboundary impact, and the effectiveness of those measures, is made available to the public. For this purpose, the Riparian Parties shall ensure that the following information is made available to the public:
   (a) Water-quality objectives;
   (b) Permits issued and the conditions required to be met;
   (c) Results of water and effluent sampling carried out for the purposes of monitoring and assessment, as well as results of checking compliance with the water-quality objectives or the permit conditions.

2. The Riparian Parties shall ensure that this information shall be available to the public at all reasonable times for inspection free of charge, and shall provide members of the public with reasonable facilities for obtaining from the Riparian Parties, on payment of reasonable charges, copies of such information.
APPENDIX 6 - INTERNATIONAL WATER ASSESSMENT CENTRE (IWAC)

IWAC was established in September 2000 at the Netherlands Institute for Inland Water Management and Waste Water Treatment (RIZA).

IWAC’s TERMS OF REFERENCE

Overall tasks:

**Assist in the development and implementation of tailor-made monitoring and assessment systems** in the UN/ECE region, and upon request in other regions following the offer of the Parties at their first meeting (ECE/MP.WAT/2, annex I, Helsinki Declaration) to share their experience with other regions in the world;

**Organize training courses and workshops**, and/or render assistance to UN/ECE countries and joint bodies in conducting such events to improve monitoring and information systems for decision-making;

**Act as a clearing house** on issues related to the sharing of data and information among UN/ECE countries that are gathered through monitoring systems according to the provisions of the Convention;

**Act as a coordinator**, providing a network of scientists in Europe, promoting the exchange of concepts and findings of scientific research on monitoring strategies, and to establish a dialogue between scientists and policy makers, for the transformation of scientific results and technical know-how into policies, and to get the feedback from policy makers to scientists to seek answers for solving still existing problems and tackling those ahead;

**Assist joint bodies** within the terms of article 9, paragraph 2, of the Convention in matters related to monitoring and assessment.

IWAC’s main activities:

**Provide scientific, methodological and technical support** to UN/ECE Governments to implement the provisions of the Convention related to monitoring and assessment of the conditions in transboundary surface waters and groundwaters as well as international lakes;

**Provide a platform for all key players**, such as scientists, experts and policy makers, to discuss cooperation on transboundary waters in the UN/ECE region, to review scientific developments in monitoring and assessment and to share knowledge;

**Assist countries** in implementing the recommended practices through pilot projects for transboundary waters;

**Assist in, and promote the development of, national training capacities** for different target groups at different levels, and organize the training of trainers.

IWAC’s specific activities:

**Provide guidance** on the design and operation of monitoring networks, including the optimization of existing networks for transboundary waters;

**Assist in the drawing-up of proposals for the region-wide harmonization** of rules for setting up and operating monitoring programmes in transboundary waters, relevant devices and analytical techniques, methods for the registration of water uses, including the discharge of pollutants, and methods for assessing conditions of transboundary waters, including data processing and evaluation procedures;

**Assist in the drawing-up of proposals for setting up**, where appropriate, information transmission by warning and alarm systems;

**Promote and support, where appropriate, initiatives on quality management**, in particular those undertaken by other bodies established under the Convention;

**Assist countries** in the preparation of inventories of pollution sources and in conducting surveys of hot spots and key locations;

**Assist UN/ECE countries with economies in transition**, through the organization of seminars and workshops, in the exchange of information on the best available technology, the results of research and development, practices and instruments, and training related to monitoring and assessment;
Assist in the preparation of status reports, including region-wide information on the conditions of transboundary waters, and in developing and maintaining an appropriate database;

Ensure that the Guidelines on monitoring and assessment of transboundary watercourses and international lakes drawn up under the auspices of the Meeting of the Parties to the Convention are kept up to date.

IWAC's clearing house functions:

Assist countries in transition to improve the formulation of projects related to monitoring and assessment, and promote their effective implementation;

Promote the exchange of experts;

Gather and distribute information on relevant international organizations, activities and programmes on monitoring and assessment;

Gather and distribute information on methodologies, technical requirements and guidelines.

IWAC's coordination functions:

**IWAC shall ensure that all its tasks and main activities are properly coordinated and harmonized**, to the extent feasible, with pertinent legislation and policies of the European Union, activities of the European Environment Agency and its relevant topic centres, and the activities of joint bodies under the Convention.

**Advisory Services on Legal Instruments**

Terms of Reference:

**The Advisory Network** on Legal Instruments shall facilitate the implementation of the legal and administrative provisions of the Convention on the Protection and Use of Transboundary Watercourses and International Lakes and its Protocol on Water and Health in the whole UN/ECE region.

**The Advisory Network** shall handle requests for clarification or regarding the practical implementation of legal, administrative or institutional issues related to the Convention and its Protocol on Water and Health. It shall take into consideration only written requests addressed to the UN/ECE secretariat. The UN/ECE secretariat will transmit the requests to the appropriate legal and administrative experts and institutions of the Network.

**The Advisory Network** shall be open-ended: its experts and institutions will be nominated by the national focal points and confirmed by the Working Group on Legal Aspects on the grounds of professional excellence. It may include governmental and non-governmental experts, private sector practitioners as well as experts from international organizations.

**The Working Group on Legal and Administrative Aspects** shall regularly evaluate the progress of, and experience gained with, setting up the informal Network of legal experts, and shall inform the Meeting of the Parties, the Bureau and the other Working Groups about the achievements.

APPENDIX 7 - CONDITIONS FOR SUCCESS AND CAUSES OF FAILURE: A SUMMARY OF A RECENT STUDY OF THE EFFECTIVENESS OF ENVIRONMENTAL REGIMES

1. INTRODUCTION

A recent study of 14 regional and global regimes offers some interesting insights into success and failure. It should be noted that in each case study, the regime was grounded in a regional or global convention.

Measuring regime effectiveness requires precision as to what is being measured, such as ecological improvements, behavioural changes of the targeted actors (although these may not translate into ecological improvements) or the degree of cooperation and confidence-building that has resulted.

The study by Miles et al. adopts a rational and functional approach to effectiveness, determining that a regime can only be effective if it is instrumental in resolving the targeted environmental problem. This is termed functional effectiveness. To this end, the study identifies three inter-related components of environmental regimes that are relevant to assessing functional effectiveness:

a) the output, being the product of regime formation, namely a new set of norms, principles, rules and regulations (collective agreements implemented domestically);

b) the outcome, being the result of implementation of the output, manifested as changes in the behaviour of the targeted actors; and

c) the impact, which is measured as the ecological changes as a result of the output and the outcome.

In this study, the functional effectiveness of a regime is ranked by its degree of success in resolving the relevant environmental issue (i.e., the degree of environmental improvement). Simply stated, functional effectiveness requires a causal chain of action and reaction, namely the output must result in changes in human behaviour (outcome) and the changes in behaviour must have a direct relationship to ecosystem improvements and environmental problem resolution (impact). It is not enough to have behavioural changes if they do not improve the environment or to have ecological improvements that emanate from non-regime related initiatives or external circumstances.

In assessing the elements of effectiveness, two key variables affecting success are identified:

a) the type of ecological problem to be resolved. Some environmental issues are intellectually and/or politically complex (malign). Examples are global climate change and land-based activities. Other issues are more easily resolved (benign), scientifically and politically.

b) the problem-solving capacity of the relevant institutions and the tools available to do so. This involves the power, motivation, creativity, leadership qualities, and other skills that can be employed to address a range of problems that may arise in regime formation and implementation.

2. OVERVIEW OF SELECTIVE FINDINGS OF THE STUDY:

General findings:

a) Regimes do make a difference. In over 50% of the cases, improvements related to the regime are considered significant or major. A direct correlation was found between the level and degree of cooperation and the functional effectiveness. For example, regimes involved in planning and implementation were more effective than those only involved with standard setting.

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79 The SCS study is to review environmental instruments and the associated institutional mechanisms. Together, these two components form a "regime". A regime is considered the "packet" of two basic components: (1) the rules, norms, principles, regulations, guidelines, etc. primarily found in instruments and (2) the actions of the institutional/executive/administrative bodies that oversee the crafting and implementation of instruments in a regional or global context, together with the inherent inter-play and mutual dependency between them.

80 The findings and conclusions are taken from and paraphrased from pp. 467-474. Not all findings are reiterated here and the text should be consulted for a fuller explanation.
b) Regimes become more effective with time. Evidence suggests that if a region can achieve a common understanding of the problem, commit to a long-term objective and establish an organisational framework for cooperation, substantive measures will follow in time.

c) Even where regimes had little impact on behaviour and the environment, a regime fostered cooperation and confidence-building among parties, which benefits the region generally.

d) The analysis shows that the level of problem-solving capacity is a significant determinant of the success or failure of the regime. To this end, a strong, motivated institutional body fosters success as an instigator of capacity-building initiatives.

e) Although regimes are effective in different ways, nearly 60% scored low in problem-solving effectiveness (i.e. ecological improvement), although most regimes studied made a positive difference. In other words, the majority of regimes failed to achieve functional effectiveness. It should be noted that in assessing effectiveness, efficiency (financial, time, and otherwise) was not taken into account.

f) However, over 50% of the regimes showed significant improvement in the actors’ behaviour. This leads to the conclusion that behavioural changes and ecological (or functional) improvement, should be distinguished in assessing regime effectiveness as changes in behaviour are not necessarily directly correlated with ecological results.

g) In 2 out of 3 cases, the regime helped strengthen the knowledge base for decision-making by providing an arena for trans-national learning about the problem at hand. This is a significant benefit of a regime, providing decision-makers utilise the knowledge to enhance functional effectiveness.

h) Regime building is an on-going process requiring periodic assessment and verification as to functional effectiveness.

Following are findings related to more specific conditions of success and causes of failure:

i) Scientific uncertainty and the degree of complexity of the problem interact synergistically and they have an inverse relationship with success. The success rate of a regime declines as either uncertainty or complexity increase, to the point of rendering the problem intractable if both are high.

j) Such an impasse or deadlock as described above can be addressed by trying to build a consensual knowledge-base about core characteristics of the problem (scientific, socio-economic, etc.). Increased knowledge can reduce complexity, and the problem may become more manageable as options for action become apparent. Alternatively, increased knowledge can provide a base from which to launch negotiations. A high problem-solving capacity (involving a strong secretariat) enhances the chances of success.

k) Related to the above, in almost all cases concerning complex problems, a consensual knowledge-base about the core, or basic, characteristics of the problem was essential for achieving effective solutions. If progress is difficult, it is suggested that the parties move forward by concentrating on building a knowledge-base.

l) If political tensions, or other factors, prevent advancement on substantive issues, parties can focus their energies on improving problem-solving capacity, and thus moving the process forward incrementally. Problem-solving capacity can include scientific, technical, institutional, educational and political factors, to name a few.

m) Where institutional capacity is weak and progress on substantive matters is slow, it is recommended that the parties concentrate on improving problem-solving capacity.

n) Regimes for addressing environmental problems must suit the needs of the region and can only be copied or adapted from other regions or regimes with caution and foresight. What works well in one region may be inappropriate for another.

o) Regions must regularly assess their progress and be creative, adaptive and analytical in their quest to adjust measures/actions that are not effective and implement new (and perhaps original) ones as required or suitable to the circumstances. Again, learn from other regimes, but adapt lessons to the local needs.

p) Strong institutional capacity produces positive results in all problem-solving exercises and even small increments in capacity can improve performance and lead to solutions where parties would otherwise be stalled.
3. THE REGIONAL CASE STUDIES FROM THE STUDY BY MILES ET AL.

The following section summarises the findings of the four regional regimes studied by Miles et al. They are:

a) The North Sea: Land-based Pollution Control
b) The North Sea: Dumping and the Oslo Commission
c) The Effectiveness of the Mediterranean Action Plan
d) The Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR)

3.1 The North Sea: Land-based Pollution Control

This case is ranked by Miles et al. as a regime which has both successes and failures. In this instance, it is the successes that are of interest.

3.1.1 A Brief Overview

The states bordering the North Sea, and later the European Union, adopted the Convention for the Prevention of Marine Pollution from Land-based Sources (Paris Convention) in 1974. Despite annual meetings, joint commitments adopted in the 1970s to mid-80s required little change in terms of actors’ behaviour as discretion was broad and constraints were low.

The reason for this were numerous, but most importantly, land-based issues are considered malign in that they are intellectually complicated and often fraught with political tensions. It was this way in the North Sea. Land-based pollution issues were politically charged in addition to the usual complexity due to currents in the North Sea and the fact that the primary contributors were not generally recipients of others’ contamination. Complicating matters was the philosophical debate as to the type of regulation to adopt—uniform emission standards or environmental quality standards. The issue was much more complicated than can be presented here, but the successes remain significant.

3.1.2 The Successes

The first success relates to the adoption of soft-law documents, namely two Ministerial Declarations adopted in 1987 and 1990, which reversed the pattern of little environmental impact despite the convention. The Ministers, meeting at the International North Sea Conferences in 1987 and 1990, endorsed land-based issues as legitimate issues of concern in two Ministerial Declarations, which among other things provided time frames for the significant reduction of inputs of hazardous substances and nutrients. Additionally, the Ministers adopted an Action Plan that included objectives of future work. The then Paris Commission, being the pro-active institutional body of the Paris Convention, took action on the Ministers’ Declarations by adopting numerous joint commitments that utilised the evolving international standards of best environmental practice and best available technology. Domestic actors followed the lead and inputs of substances were in fact reduced.

Such strong endorsement at the ministerial level solidified the common goals and provided momentum to focus problem-solving capacity. This gave impetus to the actors at lower levels to address tensions and difficulties and take action.

This is a case of soft-law instruments having a very strong impact on problem-resolution. However, the influence of the Paris Convention is debatable. While Skjaerseth believes that the Convention was important as it fostered “stable mutual expectations” it played a functional role and not a substantive role, rendering its influence indirect as it fostered a cooperative environment conducive to acting on the Ministerial Declarations.

The second example of success in this case is the proactive nature of the Paris Commission in acting on the Ministerial Declarations. The Commission had the power and the mandate to allow it to take such actions and it had the personnel with initiative to move forward.

A third success was a touch of creativity that resulted in the involvement of the respective Ministries of Agriculture in Ministerial Meetings commencing in 1993. A large source of land-based pollution was pesticides and nutrients, and yet domestic measures were slow to be implemented and the regulations generally weak. Historically, Ministries of Agriculture were not directly involved in the regional meetings concerning land-based pollution of the marine environment. Concerned by the emerging evidence that states could not meet their obligations pursuant to the Declarations, the

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87 This review is taken from Jon Birger Skjaerseth’s article entitled, “Cleaning up the Sea: The Case of Land-based Pollution Control” in Miles et al., supra note.78, pp. 175-195.
82 Ibid., p. 193.
actors determined a viable solution would be to involve the domestic ministries who were to implement the obligations. By inviting the Agricultural Ministers to an Intermediate Ministerial Meeting, significant progress was made on tightening up commitments related to nutrients.

The turning point for the North Sea regime can be attributed to soft-law declarations that were the product of high-level government endorsement. In 1992, the parties negotiated an updated treaty that combined the Paris Convention and Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft (Oslo Convention). It is the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention) and its institutional body is known as the OSPAR Commission.

3.2 The North Sea: Dumping and the Oslo Commission

This case is ranked by Miles et al. as one of the more successful regimes studied.\textsuperscript{83}

3.2.1 A Brief Overview

The North Sea states cooperated to regulate the dumping of wastes by adopting the Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft (Oslo Convention) in the early 1970s. Domestic implementation utilised permit systems in accordance with the Oslo Convention and they were considered effective in regulating an activity that was previously unregulated. More stringent regulations evolved over time, being easily enforced by the withholding of permits. Over time, new technology and alternative disposal options have largely solved the problem of dumping in the North Sea.

Dumping can be considered a moderately malign problem as the parties had very different interests with some states more reliant on ocean disposal compared to other states who opposed it. Further, the cost of installing new technology or adopting other disposal options was quite onerous for some. Currents caused some states to view themselves as importers of pollution while others were seen as exporters. Like land-based issues, the parties were in disagreement as to whether measures should be related to uniform emission standards or environmental quality standards. The United Kingdom, an exporter of pollution, was considered a laggard and opposed stringent measures in the earlier period of the convention. Its interests were in direct conflict with the Nordic countries, which opposed dumping.

The Oslo Commission was formed as the executive body for the Convention. Parties met annually, and were required to submit records of permits and approvals issued domestically. The Commission reviewed the effectiveness of control measures and adopted on measures to prevent pollution. Initially, the Oslo Commission decision-making process required unanimity. This allowed those opposing proposals to block them. Until the mid-80s, the parties failed to adopt effective joint commitments and statistics show that the amount of waste dumped actually increased between 1976 and 1983. In 1987 at the International North Sea Conference (INSC), the United Kingdom virtually reversed its position and via a Ministerial Declaration agreed to phase out dumping. The 1990 INSC saw further tightening of the joint commitments on dumping and the precautionary principle was adopted for the first time by an international agreement. Dumping was eventually phased out and the Oslo Convention merged with the Paris Convention to become the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention), which was adopted in 1992 and entered into force in 1998.

3.2.2 Factors Affecting Success

There is little doubt that the UK’s position changed in part due to pressure from the green movement to stop dumping. UK companies and the government came under attack from NGOs and the general public. However, there are a few points of interest to note concerning the factors that lead to the success in achieving the goal to phase out dumping.\textsuperscript{84}

First, the Oslo Commission, which initially required unanimity, realised how such rules were hindering progress. They agreed that common goals would be reached by majority consensus, but agreements could also contain differentiated standards for routes and timetables for compliance. This allowed states to fast-track compliance and the whole process of phasing out dumping to move forward. The Oslo Commission acted creatively to solve a problem. Common but differentiated standards are now

\textsuperscript{83} This review is taken from Jon Birger Skjaerseth’s article entitled, “Toward the End of Dumping in the North Sea: The Case of the Oslo Commission”, in Miles et al., supra note 78, pp. 65-85.

\textsuperscript{84} While the goals of the parties were to phase out dumping and the regime was effective in this case, it may not have been efficient as the assimilative capacity of the marine environment was not utilized to absorb some contaminants.
endorsed as a method to resolve tensions and address state capacity. It avoids the weaknesses associated with the lowest common denominator.

Second, the synergy between the Oslo Commission and the INSC is in large part responsible for the progress made in solving the problem. The Oslo Commission represented a formal and legally-binding process that had allowed parties to develop a degree of confidence and trust over the years, despite their divergent interests. Also, it had fostered the development of national licensing systems that were ready to respond when the time came. By contrast, the INSC was a high-level dynamic body whose objective was to foster action within the region. Pressure from the INSC and associated organisations encouraged the cooperation of the laggard states. The Oslo Commission and the INSC were two very different bodies that complemented each other and through cooperation and utilising the strengths of each they were able to achieve goals that neither could alone.

Similar to the case of addressing land-based activities in the North Sea, the responsible commission was instrumental in linking international and domestic measures.

3.3 The Effectiveness of the Mediterranean Action Plan

This case is ranked as a “collaborative success without much substantial behavioural impact” and as a regime of low effectiveness as there is little collaboration between environmental improvements and actions taken pursuant to the Mediterranean Action Plan (MAP).

3.3.1 A Brief Overview

The Mediterranean was the first region to establish a regional seas programme under the auspices of UNEP. The Mediterranean Action Plan (MAP) was adopted in 1975, followed a year later by the Convention for the Protection of the Mediterranean Sea Against Pollution (Barcelona Convention). Four protocols were adopted between 1978 and 1980 concerning dumping, combating pollution from harmful substances in cases of emergencies, land-based sources of pollution and specially protected areas. Med Pol was established for ongoing research, monitoring and assessment of the regional waters. A unique concept was the system implemented for integrated planning to foster sustainable economic development, the primary components being the Blue Plan and the Priority Actions Programme.

By the mid-80s, MAP appeared to be a political success, if not an environmental one, as the parties had collaborated and cooperated to formulate a comprehensive plan to address pollution issues in the Mediterranean.

Map entered into Phase II in the mid-90s. In 1995, the Barcelona Convention was substantially revised and renamed the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean. The amended Barcelona Convention entered into force in 2004. The four original protocols were also amended in 1995, and two new protocols pertaining to marine protection in cases of oil and gas exploration and exploitation and the transboundary movement of hazardous waste have been adopted since 1994. An updated Action Plan was also adopted in 1995.

In Phase I, MAP foundered as the parties failed to develop significant joint commitments for specific actions. Further, poor reporting and vague obligations rendered it difficult to correlate domestic actions or changes in behaviour with the few joint commitments. Other international bodies, such as the European Union, were more instrumental in the adoption of legal and administrative measures that have resulted in environmental improvement.

However, MAP provided a forum for states to meet and exchange views, engage in confidence-building measures, and collaborate on common interests. The states surrounding the Mediterranean comprised then, as now, a mix of developed and developing countries with a history of suspicion and fractious relations. Capacity, particularly in science and technology, was asymmetrically distributed in favour of the developed states. Territorial disputes continue to contribute to the fractious nature of the region. However, a common bond has always been the region-wide interest in the tourist industry, and hence region-wide recognition of the importance of preserving the Mediterranean.

MAP turned 30 in 2005. It has succeeded, since the late 1980s, to convert its growing consensual knowledge-base and common ground for cooperation into joint commitments for protection of the Mediterranean Sea.

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85 This review is taken from Jon Birger Skjaerseth’s article entitled, “The Effectiveness of the Mediterranean Action Plan”, in Miles et al., supra note 78, pp. 311-330. The quote is from p. 311.
3.3.2 Successes

MAP engendered at least two positive impacts in terms of collaboration.

- The first is that it contributed significantly to the knowledge-base, developed primarily through Med Pol. Overall, it reduced the complexity of the environmental issues, forged a consensual knowledge-base, and alleviated some of the tensions and suspicions among the parties.
- Collaboration and cooperation at the regional level contributed to the collective awareness of relevant issues and prepared the parties to entertain joint commitments for collective problem-solving.

By participating in MAP, states, particularly the less developed, were able to increase their capacity on many levels. In addition to scientific and technological capacity, their exposure in MAP allowed them to develop their negotiation and political skills to allow them to participate on more equal ground.

The significant increase in problem-solving capacity of the region contributed significantly to incremental cooperation and movement toward joint commitments. UNEP was instrumental in improving capacity as it provided legal, financial, technical, scientific and diplomatic input throughout.

A component of MAP not developed in the Miles study is the role of epistemic communities. A community of scientists, policy-makers and politicians having a common goal of marine environmental protection, has been credited with fostering cooperation and collaboration at the regional level. Their endorsement of a consensual knowledge-base encouraged wider endorsement of the need for collective action.\(^\text{86}\)

Similar to the North Sea regimes, progress on the adoption of joint commitments was facilitated by holding ministerial meetings and receiving endorsement of the higher governmental officials.

3.3.3 Failures

The greatest failure of MAP is that states have had little success in implementing their joint commitments at the domestic level. The reasons for this are complex, but a few can be isolated.

MAP adopted too broad a range of issues that it hoped to address, and this resulted in less stringent measures and the stretching of available resources.

MAP, in its quest to include so many issues related to both environment and development failed to set priorities and address the most pressing regional issues effectively or efficiently.

Other institutions, such as international development banks and the European Union, have large-scale programmes that overlap with MAP. Coordination of the various efforts is sadly lacking.

Indicative of the failure to collectively and effectively solve problems is the parties’ historical reluctance to contribute to the RSP Trust Fund. Initially the budget was funded solely by UNEP and into the 1990s a large portion of the funding came from external sources, as compared to the North Sea which is largely self-funded.

3.4 The Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR): Improving Procedures but Lacking Results

This case is ranked as a regime of low effectiveness.\(^\text{87}\) Unique circumstances exist in this case as there are no human settlements in the region, CCAMLR is a sub-regime within the wider Antarctic Treaty System, and resources it aims to protect had been severely depleted for more than a decade at the time of its adoption. Despite its name, CCAMLR is concerned with fisheries management issues as distant fishing nations compete for stocks.

3.4.1 Brief Overview

The Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR) was adopted in 1980 as an attempt to restore the fragile ecosystem, primarily degraded from decades of over-fishing. The parent treaty, the Antarctic Treaty, came into force in 1961. The original twelve signatory states had conflicting and diverse interests in the Antarctic, including overlapping jurisdictional claims and some states that rejected all national claims in this uninhabited region of the globe. The Antarctic Treaty was acceptable to the parties as it froze the politically sensitive issues of sovereignty and

\(^{86}\) See Peter M. Haas, “Do Regimes Matter?: Epistemic Communities and Mediterranean Pollution Control”, 43 International Organizations 377 (1989).

\(^{87}\) This review is taken from Steinar Andresen’s article entitled, “The Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR): Improving Procedures but Lacking Results”, in Miles et al., supra note 76, pp. 405-429.

CCAMLR was adopted primarily in response to scientific concerns about over-fishing of krill, which are the basis of the Antarctic food web, and to address fishing by long-distance fishing fleets in the region, which intensified throughout the 1970s. The Antarctic Commission was the primary decision-making body, whose procedures allowed parties a right of veto. While any state could become a member of CCAMLR, only states engaged in harvesting or research could become members of the Commission. The Commission is to take full account of the advice given by the Scientific Committee (Article IX). Further, it is obliged to hear all views from scientists. The Secretariat of CCAMLR is in Tasmania, Australia.

The parties must cope with diverse values and interests as the parties roughly fall into two categories, the fishing nations and conservationists. Unlike the jurisdictional tensions that have been set aside, the divergent mindset and conflicting values have affected the effective implementation of the treaty.

3.4.2 Successes
The regime is science-based and it was the first international treaty to adopt an ecosystem approach for fisheries management.

Commencing with minimal knowledge, it has built up a respectable knowledge-base.

The organisation of the Commission, which was to take full account of the Scientific Committee’s advice, and the establishment of a dedicated Scientific Committee are components for an effective regime.

Institutional capacity improved and regulations were drafted. This occurred primarily in incremental steps as knowledge of the Antarctic marine ecosystem improved.

CCAMLR established a system for inspections and reporting to monitor fishing activity. While laudable, it was not as effective as it may have been as it was largely a system of self-inspection - countries inspecting their own fishing vessels. However, it did allow for some verification as to the success of the measures adopted.

3.4.3 Failures
CCAMLR has had little effect on the behaviour of the parties or in improving/restoring the ecological balance of this fragile system.

In the 1990s, Patagonian toothfish became a target of commercial fishermen. The regime demonstrated that it was incapable of dealing with the over-fishing of this species. When issues became polarised and parties could not decide on appropriate measures, the Commission failed to consult the scientists and decisions become politicised to the detriment of the effectiveness of the regime.

It is a difficult system to evaluate as many factors came into play. Factors included the role of non-member fishing nations, member states who relied on flags of convenience, political changes in parties such as the Soviet Union (a major fishing nation) and the fishing of species beyond the jurisdictional area of CCAMLR. An influential factor that affects the effectiveness of CCAMLR as compared to the ATS generally is the position of some parties, namely those who fail to push for drastic actions in CCAMLR in the hopes of preserving the political balance of the overall ATS.

3.4.4 Lessons Learned
The resource management regime in the Antarctic is unique. However, it is an example of international cooperation among states with diverse interests, jurisdictional disputes, environmental issues rife with scientific uncertainty and fraught with political and socio-economic issues, external factors such as non-member fishing states, shifting global values, and the overall survival of the ATS. Despite the numerous challenges and coming together after the resource was severely depleted, the parties persisted and achieved modest ecological change within the first decade and a half.
APPENDIX 8 - LEGALLY-BINDING VS. NON-LEGALLY BINDING INSTRUMENTS

The following is a comparison of some of the commonly perceived strengths and weaknesses of binding and non-legally binding instruments. For many aspects, there is an inverse relationship. For example, one’s strength is the other’s weakness. Used together, hard- and soft-law instruments largely compliment each other.

**Strengths of Legally-binding Instruments**
- Adoption and ratification of a legally-binding instrument is considered the strongest form of commitment a state can make.
- Foster stability within the region through a sense of joint commitment and reasonable expectations of behaviour from the parties.
- They provide a catalyst for regional cooperation.
- They provide greater impetus and pressure to engage in regional cooperation and implementation activities. This may involve focusing on capacity-building, joint research, or other cooperative measures, even if reluctant states are not directly implementing the instrument.
- Where there are tensions or complex issues, a legally-binding instrument can foster dialogue as parties are under greater pressure to take action or be seen as taking action than in cases where the binding instrument is soft-law.
- A legally-binding instrument encourages a shift in mindset, which can foster confidence and allow parties to reach a comfort zone that in turn fosters concrete actions.
- They evidence strong commitment within the region to address the relevant issue as high-level government officials are usually involved in convention-making exercises.
- External donors are impressed by legally-binding instruments and more likely to invest in regions subject to such an instrument.
- They foster regional and domestic awareness of the issue(s) due to involvement of high-level government officials in the adoption of the instrument.
- They enhance domestic implementation as they provide a legal impetus for action.
- Bonds among states can be enhanced as they help each other implement the instrument provisions or come together to determine specific joint commitments and actions.

**Weaknesses of Legally-binding Instruments**
- They are seen to be weakened by the tendency to adopt the position of the most reluctant party, often referred to as the lowest common denominator. This may not be a weakness where the objective is to foster cooperation and the parties provide for substantive issues that have a direct impact on environmental improvement in soft-law instruments.

**Strengths of Non-Legally Binding Instruments (Soft-law Instruments)**
- Soft-law instruments are generally easier to negotiate and parties are able to reach a consensus or “meeting of the minds” more readily as the instrument is only morally and not legally binding.
- Time from commencement of exercise to adoption of the instrument is usually significantly shorter compared to legally-binding agreements.
- Actions and provisions adopted are often more specific and detailed with timeframes and options for effective solutions, providing useful substantive actions.
- Negotiations and drafting exercises usually occur at a lower political level and involve more technically adept individuals with practical experience, which can result in ecologically sounder provisions.
- Drafting exercises are usually more inclusive, involving NGOs, community, and other relevant actors.
- They provide greater opportunity for the infusion of science and science-based policy as technical people are frequently involved and fewer Ministry of Foreign Affairs representatives who tend to be more legalistic and formalistic.
- They can provide effective guidance for framework legal instruments.
- They tend to be more practical and functional instruments.

**Weaknesses of Legally-binding Instruments**
- They are seen to be weakened by the tendency to adopt the position of the most reluctant party, often referred to as the lowest common denominator. This may not be a weakness where the objective is to foster cooperation and the parties provide for substantive issues that have a direct impact on environmental improvement in soft-law instruments.
The legally-binding nature deters states from strong commitments, resulting in obligations and duties tend to be more general and non-specific in terms of type of action and time frames for adopting measures or addressing the issue. This can be addressed with specific protocols and/or action plans.

Compliance and enforcement mechanisms are often weak, if present at all. The moral obligation to comply, arguably, is greater than that associated with non-legally binding instruments. Realistically, appealing to the moral duty via pressure applied by peers, secretariat, NGOs or others is the primary means of securing compliance. Parties seldom pursue legal means to secure compliance, unless it is a domestic legal action.

Instruments are often negotiated by actors from the Ministries of Foreign Affairs who are primarily lawyers with limited scientific/technical knowledge of environmental issues. This can result in provisions that are not ecologically or economically sound.

Negotiations and drafting processes are often legalistic, involving primarily actors from the ministries of foreign affairs, and exclusionary regarding non-state actors (NGOs, corporations, etc.) and domestic state actors (national ministries) with interests in the subject. Vital viewpoints and relevant information may be missed.

Legally-binding instruments often remain within the domain of Foreign Affairs and little effort is made to communicate with domestic ministries or bodies responsible for implementing it (this can be addressed with better communication and involving the relevant ministries in the regional process)

Treaty negotiations are frequently politically driven with the formulation of the duties and obligations often unrelated to environmental priorities or effective actions, but owing more to factors external to the issue at hand, such as political convenience or acceptability.

The length of time from commencement of the negotiations to the ratification and then implementation of a treaty can be inordinately long, to the point that treaty provisions can become outdated. Benefits of a protracted negotiation process are that the product is usually superior and the exercise builds regional trust over time.

Legally-binding instruments are less flexible in terms of amendments and adjustments to accommodate new knowledge or other relevant factors

Weaknesses of Non-Legally Binding Instruments

There is a lack of a formal, binding sense of commitment to implement provisions regionally and domestically.

There is only moral pressure to implement, comply and undertake actions.

There is less impetus to resolve difficult issues and overcome barriers to performance and implementation as the moral obligation to act is lower than with legally-binding instruments.

There is less accountability for actions, implementation and compliance.

Their non-binding status renders parties less able to encourage laggard parties to perform through pressure, shaming or reminders of binding obligations.

They often lack endorsement of high-level politicians, which is more likely to translate into lack of political will to resolve problems and take action.

It is more difficult to rally support both domestically and regionally, particularly where the issue is politically charged or complex.

External donors may view commitment as weaker and choose to fund projects where political commitment is evidenced by a legally-binding instrument.

Continued implementation and long-term planning can be more difficult as resources can be displaced or re-allocated with less thought than if legally bound to act in accordance with a legally-binding instrument.

Implementation is often asymmetrical as states act individually on implementation. This can affect the regional effectiveness of measures and create political tensions as resentments can form regarding performance/non-performance and there is no political recourse (i.e., cannot claim that other states are bound legally to act).
### APPENDIX 9 - MEANS OF IMPROVING COOPERATION*

<table>
<thead>
<tr>
<th>UNEP RSP (Convention)</th>
<th>Recommendations for Improving Cooperation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black Sea (Bucharest)</td>
<td>Improve member commitment to the process by adopting all amendments to legal instruments, describing duties of the members in a clear and unambiguous way.</td>
</tr>
<tr>
<td>Eastern Africa (Nairobi)</td>
<td>Establish focal points forum, support focal points to operate in their respective countries and report back to the convention secretariat.</td>
</tr>
<tr>
<td>East Asian</td>
<td>Country involvement, frequent communication between secretariat and member governments, concrete programme outputs directly beneficial to members and funding returning to members for implementation</td>
</tr>
<tr>
<td>Mediterranean (Barcelona)</td>
<td>Increase country involvement and ownership of the programme and activities</td>
</tr>
<tr>
<td>North-East Pacific (Antigua)</td>
<td>Expose individual ministers to peer pressure of other ministers at meetings in which NGOs participate</td>
</tr>
<tr>
<td>North-West Pacific</td>
<td>RCU established in 2005 and it is to early to elaborate</td>
</tr>
<tr>
<td>Red Sea and Gulf of Aden (Jeddah)</td>
<td>Establish regional specialised working groups in various fields, establish committee composed of national focal points to review ongoing activities, programmes and budgets</td>
</tr>
<tr>
<td>ROPME Sea Area (Kuwait)</td>
<td>Designate lead member state in specific programme areas, establish regional task forces for programme activities</td>
</tr>
<tr>
<td>South Asian Seas</td>
<td>No suggestions for improving cooperation</td>
</tr>
<tr>
<td>South-East Pacific (Lima)</td>
<td>No suggestions for improving cooperation</td>
</tr>
<tr>
<td>South Pacific (Noumea)</td>
<td>No survey submitted</td>
</tr>
<tr>
<td>West and Central Africa (Abidjan)</td>
<td>Establish focal points forum, support focal points to operate in their respective countries and report back to the convention secretariat.</td>
</tr>
<tr>
<td>Wider Caribbean (Cartagena)</td>
<td>Assist ratification process at national level, encourage hosting of meetings and workshops, encourage involvement in regional initiatives, and demonstrate how programmes and projects can support the national development agenda</td>
</tr>
</tbody>
</table>

**Partner Programmes**

| Antarctic (CCAMLR)                    | No survey submitted                                                                                                                                                     |
| Arctic                                | Activities undertaken must be inclusive and transparent from the beginning.                                                                                           |
| Baltic Sea (Helsinki)                | All Baltic states, despite differences, agreed to a Convention, which created binding obligations, but primarily and notably created a legal basis for close and permanent cooperation among the member states. The political achievement became the groundwork and basis for further achievements. |
| Caspian Sea (Tehran)                 | Persistence and not being paternalistic – encourage states to take ownership                                                                                           |
| North-East Atlantic (OSPAR)          | Exposing individual Ministers to the peer pressure of the other Ministers in the region at meetings in which NGOs participate                                              |

*Results compiled from surveys sent to Regional Seas Programme Coordinators*
APPENDIX 10 - RECOMMENDATIONS FROM THE REVIEW OF THE EAST ASIAN SEAS ACTION PLAN AND STRATEGY FOR FUTURE DEVELOPMENT*

Recommendation 1: COBSEA should firmly and urgently address the issue of funding and develop an appropriate arrangement that ensures sustainable operation of the Secretariat and at the same time provides some degree of flexibility in the level of contributions during periods of financial crisis.

Recommendation 2: The Secretariat should be re-activated to ensure continued coordination and implementation of the Action Plan. A minimum staff structure proposed for the Secretariat is a P5 level Programme Officer and a P3 level Programme Officer, and two support staff.

Recommendation 3: Relocation of the Secretariat should not be considered unless a host institution offers to provide salaries in addition to rent-free premises.

Recommendation 4: Research activities should focus at a more defined geographic area. COBSEA should consider the seas of Southeast Asia and southern P.R. China as the main geographic region for the implementation of the EAS Action Plan.

Recommendation 5: Attempts be initiated/continued to invite Brunei Darussalam, Myanmar and East Timor to join COBSEA.

Recommendation 6: The focus areas of the Long-Term Action Plan should be considered and a decision taken to proceed with all components or selected ones based on direct relevance to most member states.

Recommendation 7: In the implementation of the Long-Term Plan, effective collaborative arrangements and stronger partnerships with other regional programmes/projects be expanded (e.g. following the model established with AWGCME, which resulted in regional criteria for marine water quality, national marine protected areas, and marine heritage areas).

Recommendation 8: EAS/RCU considers reviving the Association of Southeast Asian Marine Scientists and to involve it as a partner in the Long-Term Action Plan.

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Treaties and Other International Instruments


