



**STRENGTHENING CAPACITY FOR ENVIRONMENTAL LAW IN
THE ASIA-PACIFIC : DEVELOPING ENVIRONMENTAL LAW CHAMPIONS
Cebu City, August 22-26, 2016**

SESSION 11: REGIONAL ENVIRONMENTAL LAW

Presented by Grizelda Mayo-Anda



Learning Outcomes

- Session Topic
- Understanding the links between regional and domestic environmental law
 - Teaching Methodology
- Understanding how comparative case studies can be used to analyse strengths and weaknesses of regional arrangements



Examples of Existing Regional Groupings



- European Union (EU)
- Organization of African Unity (OAU) -- now the African Union (AU)
- South Asian Association for Regional Cooperation (SAARC)
- Organization of American States (OAS)
- Association of South East Asian Nations (ASEAN)
- Mekong Region



Classification of Regional Environmental Agreements

- Regional “soft law” environmental agreements
- General “hard law” environmental agreements
- Specific “hard law” environmental agreements



Examples of Regional Environmental Agreements

| Regional “Soft law” | General “hard law” | Specific “hard law” |
|--|---|---|
| 2010 Parma Declaration on Environment and Health | 1986 Convention for the Protection of the Natural Resources and Environment of the South Pacific Region (Noumea Convention) | 1979 Convention on Long-Range Transboundary Air Pollution |
| 2008 Dhaka Declaration and SAARC Action Plan on Climate Change | 1985 ASEAN Agreement on the Conservation of Nature and Natural Resources | 2002 ASEAN Agreement on Transboundary Haze Pollution |
| 1981 Manila Declaration on the ASEAN Environment | African Convention on the Conservation of Nature and Natural Resources, 1968 and revised in Maputo 2003 | 1995 Agreement on Sustainable Development of Mekong River (1995 Mekong River Agreement) |



ASEAN Approach to Environmental Protection





ASEAN Declaration, 8 August 1967

“Environment” was not in the mind of the
founders of ASEAN



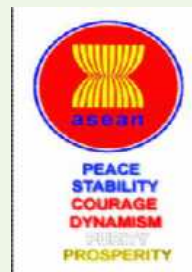


ASEAN Environmental Crisis



ASEAN Legal Responses

- Mostly in form of soft law instruments
- So far only three hard law agreements concerning the environment
- Environmental protection has been recognized as an important aspect of cooperation after the conclusion of ASEAN Charter in 2007.





The 2007 ASEAN Charter, Art. 1

9. To **PROMOTE SUSTAINABLE DEVELOPMENT** so as to **ENSURE** the **PROTECTION** of the region's **ENVIRONMENT**, the **SUSTAINABILITY** of its natural resources, the **PRESERVATION** of its **CULTURAL HERITAGE** and the **HIGH QUALITY OF LIFE** of its people.

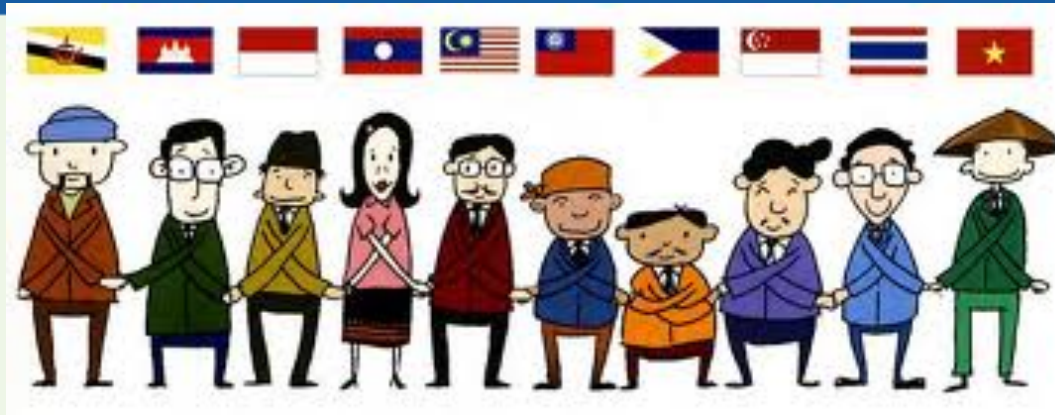


General Soft Law Instruments:

- *1987 Jakarta Resolution on Sustainable Development;*
- *1990 Kuala Lumpur Accord on Environment and Development*
- *1992 Singapore Resolution on Environment and Development.*
- *1994 Bandar Seri Begawan Resolution on Environment and Development*
- *1997 Jakarta Declaration on Environment and Development,*
- *2000 Kota Kinabalu Resolution on the Environment,*
- **and several other ASEAN soft law instruments**



Regional Hard Law Instruments



- *1985 ASEAN Agreement on the Conservation of Nature and Natural Resources*
- *2002 ASEAN Agreement on Transboundary Haze*
- *Mekong Region: 1995 Mekong River Agreement*





The 1985 ASEAN Agreement on the Conservation of Nature and Natural Resources



Main Provisions

National Flowers of 10 Asean countries



- *Conservation of wild flora & fauna;*
- *Protection of ecosystems, renewable natural resources, and endangered species;*
- *Conservation of ground and surface water;*
- *Air quality management;*
- *Land use planning; and*
- *Protected Areas.*

Weaknesses

- Wording of its provisions are extremely weak: “shall endeavour” & “wherever possible”
- No state responsibility if the Parties fail to comply
- Lack of enforcement mechanism
- Not yet in force; ratified by 3 ASEAN countries (Indonesia, Thailand & Philippines)
- Very weak dispute settlement mechanisms
(Consultation & negotiation)



ASEAN Agreement on Transboundary Haze Pollution 2002

- Entered into force in 2003
- Parties: Malaysia, Singapore, Brunei, Myanmar, Vietnam, Laos, Cambodia, the Philippines, and Indonesia



Objective: prevent & monitor transboundary haze pollution due to land/forest fires

State obligations:

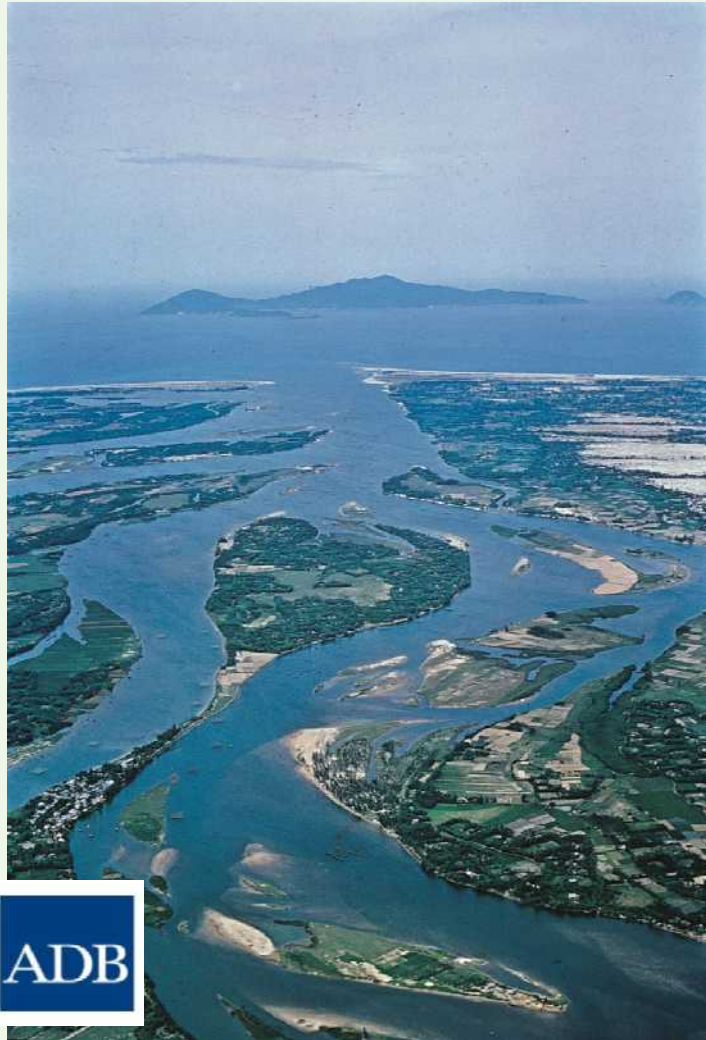
- 1. enact special laws on forest fires**
- 2. share information**
- 3. monitoring & assessment**
- 4. joint emergency response**



Implementation Challenges

- **Very late ratification of Indonesia**
- Lack of political will to enforce the existing laws
- Lack of capacity of national and sub-national government to deal with the fires
- See more, case study this session





Mekong Region: 1995 Mekong River Agreement

Heavily polluted
Mekong River Delta,
Southern Vietnam.

Photo: M. Gifford/De Wys Inc.





Numerous Hydropower Dams in Mekong River –
threats to biodiversity; displacement of people from
their traditional lands



Mekong Region

- 4193 kms of river, through six countries from Tibet headwaters through Yunnan Province, China, then Myanmar, Laos, Thailand, Cambodia, Vietnam and out through the Mekong delta
 - >70 million people live in the Mekong River basin
 - 8 out of 10 people depend on the basin for sustenance: fish and agriculture
 - Region has great internal and external conflict, which has affected legal and policy development
 - Population growth high in each of the lower Mekong countries (Will double in Cambodia and Laos in the next 20 years)
 - In Lower Mekong growth from 55 million to 90 million by 2025
- Many threats to biodiversity, and no adequate regional and national framework for its protection



Mekong River Agreement 1995

- *Objective:* Cooperate in all fields of sustainable development, utilization, management and conservation of the water and related resources of the Mekong River Basin
- *Parties:* Laos, Cambodia, Vietnam and Thailand (not China or Myanmar)
- *Institutional Framework:* Mekong River Commission



Implementation Challenges

- No parties have specific laws to implement the Mekong River Agreement
- Absence of China and Myanmar weakens the agreement
- Mekong River Agreement does not explicitly address the human rights consequences of dam construction, including displacement, loss of traditional livelihoods, and food security problems due to reduction of available agricultural lands and loss of fish production



Challenges (cont'd)

- Formal legal frameworks in the lower Mekong at regional and national level are ineffective in addressing human rights issues arising from displacement
- Litigation in the Mekong not likely to be used in the short term
- The ASEAN Human Rights Commission needs to be strengthened to allow for human rights abuses to be dealt with directly, whether arising out of hydropower development or otherwise



CONCLUSION

- It is essential to strengthen ASEAN's legal and institutional frameworks to protect the region's environment.
- ASEAN member States should make serious efforts to enforce their own national environmental laws.

