

ARF SEMINAR ON UNCLOS  
**MARINE  
 ENVIRONMENTAL  
 PROTECTION**

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## INTRODUCTION

- ◉ Comprehensive, general approach
  - **Umbrella** approach taken:
    - Specific and sporadic agreements' role to play
  - **Four types** of pollution sources
    - Vessels; Ocean dumping; Land-based activities; Deep seabed activities
- ◉ Protection and preservation of maritime environment
  - Balance between benefits from human being's use and the value of marine environment
- ◉ State jurisdiction, international and regional cooperation
  - **Flag state jurisdiction**, port state jurisdiction, coastal state jurisdiction
  - Role of International and regional organisations/arrangements

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## HISTORICAL DEVELOPMENTS

- ◉ Art. 24 of 1958 HS Convention
  - Obligation of States to draw up regulations to prevent pollution of the seas by the discharge of oil from ships or pipelines or resulting from the exploitation and exploration of the seabed and its subsoil
  - Obligations of States to take measures concerning this issue and to cooperate with the competent international organisations
- ◉ The *Torrey Canyon* incident of 1967
  - Outside UK territorial sea, to burn up some of the oil
  - 1969 Convention on High Seas Intervention in Oil Pollution Casualties, and 1973 Protocol
- ◉ 1972 UN Conference on the Human Environment in Stockholm: a Declaration adopted
  - Principles 7 & 21: prevention of maritime pollution, and **States' responsibility not to cause damage to the environment outside of their own territory** (cf. Trail Smelter)

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## GENERAL PRINCIPLES

- ◉ 1982 LOSC: States' general obligations
  - To protect and preserve the marine environment (Art. 192)
  - To take all measures to prevent, reduce and control pollution of the marine environment (Art. 194(1))
  - To take all the measures to deal with all sources of pollution such as;
    - The release of all toxic harmful or noxious substance,
    - pollution from vessels, pollution from maritime installations/devices for exploration/exploitation of the natural resources,
    - pollution from other installations/devices operating in the marine environment

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## COOPERATION ON A REGIONAL AND GLOBAL BASIS

- ◉ For the formulation of international rules and standards, States are required to cooperate directly or through competent international organizations. (Art. 197)
- ◉ **Policy harmonization** at a regional level must be sought regarding pollution from land-based sources and from seabed activities within zones of national jurisdiction.
- ◉ Global and regional rules and standards to be established regarding pollution from land-based sources and from seabed activities within zones of national jurisdiction, pollution by dumping, and pollution through or from the atmosphere.

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## VESSEL SOURCE POLLUTION

- ◉ States act through the competent IO (such as the International Maritime Organization (IMO)) or general diplomatic conference.
- ◉ Most traditional type:
  - 1954 Int'l Convention for the Prevention of Pollution of Sea by Oil (London Convention)
  - MARPOL 73/78 (under IMO's auspices) deals with all forms of international pollution of the sea from ships.
- ◉ Various types of regulatory jurisdiction
  - **Flag state jurisdiction**: primary responsibility for ensuring that its ships comply with international rules and standards
  - **Coastal state jurisdiction** in ports and in the territorial sea: but no impediment with innocent passage; harmonization of port entrance policies with other states
  - Coordination with the competent international organizations (ex. IMO): a coastal state' request for the adoption of an additional regulation within its EEZ (ex. The 1989 Exxon Valdez oil spill disaster)

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## POLLUTION FROM LAND-BASED SOURCES

- ◉ Land-based sources includes rivers, estuaries, pipelines and outfall structures.
- ◉ Policy harmonization at the **regional** level and establishment of global and regional rules to be sought:
  - Cf. conflict with territorial sovereignty?
- ◉ No **global** agreement adopted yet.
  - Cf. UNEP's effort
- ◉ Regional programs: growing number of regional arrangements, though their effectiveness varies from one region to another.

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## OCEAN DUMPING

- ◉ Designation of the deliberate disposal of sewage, sludge, and other waste materials into the ocean.
- ◉ Coastal jurisdiction to permit, regulate and control dumping.
- ◉ Regional arrangements:
  - OSPAR:1972 Convention (from ships and aircrafts), amended and replaced by the 1992 Convention (Northeast Atlantic);
  - 1996 Protocol introduced to list only substances that may be dumped; 2006 amendment
- ◉ **Negative listing approach** (enumerating only those substances that may be dumped) becoming common

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## POLLUTION FROM SEABED ACTIVITIES

- ◉ No global agreement yet, but only at the regional level under the umbrella of UNEP Regional Seas Program.
  - Regional documents: the 1989 Persian Gulf Protocol, 1994 Mediterranean Sea Protocol, etc.
  - Some non-binding instruments exist (soft law?): UNEP's 1982 Guidelines for Offshore Mining and Drilling; IMO's 1989 Code for the Construction and Equipment of Mobile Offshore Drilling Units, etc.
- ◉ Pollution from deep seabed mining: Part XI of UNCLOS (the Area, ISA)
- ◉ Cf. Pollution from or through the atmosphere:
  - International and regional rules and regulations governing activities within the state's sovereign air space
  - No multilateral agreement yet to cover this topic.

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## CONCEPTS CONCERNING AREA-BASED MANAGEMENT

- ◉ **Ecological** criteria introduced:
  - For effective oceans management
- ◉ Fisheries: 'marine protected areas'
  - 'Marine Protected Areas' (MPAs) under 1992 Biological Diversity Convention (BDC)
  - 'Specially Protected Areas' (SPAs) under 1995 Mediterranean Protocol on Biological Diversity
- ◉ Shipping: 'special areas' (MARPOL)
  - 'particularly sensitive sea areas' (PSSAs) under IMO Revised Guidelines
  - 'sanctuaries' under IWC
  - 'reserve' under the Antarctic Treaty Protocol

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## MARINE PROTECTED AREA (MPA) 1

- ◉ To restrict human activities, to protect living and non-living, cultural and/or historic resources (including species, habitats). (cf. COPs of 1992 CBD, UNEP's Regional Seas Programme)
  - Background: fish stock depletion (over fishing, habitat destruction), offshore oil discharge, gas development, tanker accidents, on-shore coastal developments.
  - The role of International Union for Conservation of Nature (IUCN) and other NGOs
  - Effectiveness, efficiency to comprehensively conserve biodiversity, sustainable livelihoods and to adapt to climate change
  - Various levels of protection, effects (national, regional)
  - Around 6% of territorial seas included within MPAs, but less than 1% of ocean space beyond the territorial sea designated within protected areas.

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## MARINE PROTECTED AREA (MPA) 2

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- ◉ Legal frameworks:
  - 'prevent, reduce and control':
    - UNCLOS 192,
    - Art. 194(5) ('to protect and preserve rare or fragile **ecosystems** as well as the **habitat** of depleted, threatened or endangered species and other forms of marine life'), &
    - Art. 196 ('use of technologies' and 'intentional or accidental introduction of species, **alien or new**, to a particular part of the marine environment')
  - 1992 CBD reiterates Art. 193 of UNCLOS (sovereign right of States to exploit their natural resources); consistent with the rights and obligations under LOSC
  - Limits: UNCLOS addresses principally **pollution**, secondarily ecosystem protection:
    - 'prevent, reduce and control pollution': restriction of rights
    - CBD's complementary function concerning the marine environmental protection and its management

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## MARINE PROTECTED AREA (MPA) 3

- ◉ Each state's individual attempt on *ad hoc* basis, historically
  - Many, various types of areas over the world
  - Necessity to establish a representative network of MPA (monitoring, reporting)
  - Mutual collaboration with neighbouring states to manage the surrounding marine zones.
  - Concept of 'Oceans management' and its implementation, currently
- ◉ 2008 Guidelines for Applying Protected Area Management Categories by International Union for Conservation of Nature (IUCN)
- ◉ 'Enclosure' of the environment by the coastal states?:
  - A balance of interests between the coastal states and the flag states necessary

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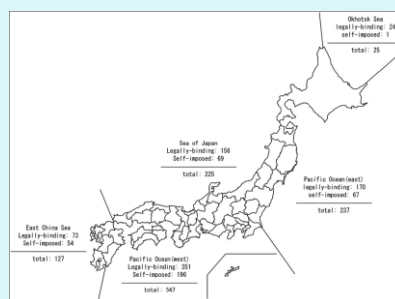
## JAPAN'S MPAS

- ◉ Marine Park Zones designated as part of National Parks/Quasi National Parks (NP/QNP) in early 1970s
- ◉ 140 MPAs covering 56,789.5 ha.
  - Classified into 4 categories: Marine Park Zones in NP/QNP, Nature Conservation Areas, and National Wildlife Protection Areas (World Heritage Site and 12 Ramsar (wetlands) sites are included into these).
- ◉ Fisheries management areas (over 50 sites) are mostly regulated by **prefectural** governments and **local** fisheries cooperatives
- ◉ Policy foundations: 'National Biodiversity Strategy of Japan' and 'Basic Plan on Ocean Policy'
  - Both national level and regional level: enhancement of cooperation to be sought

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## GEOGRAPHICAL DISTRIBUTIONS OF MPAS IN JAPAN



N. Yagi, et al., 'MPAs in Japan', 24 Marine Policy (2010), 1303.

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## CONCLUDING REMARKS

- ◉ Post-Rio era
  - 1992 Conventions on Climate Change & Biodiversity
  - World-wide ecosystem approach needed
- ◉ International and regional cooperation
  - Economic and technological gap
    - Information exchange, prior consultation framework, international standards and rules for monitoring and EIA
  - Generational equity to be considered?
  - Scientific uncertainty and precautionary approach
- ◉ Challenges
  - Environmental impacts of international disputes and disasters

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