Options Paper

Implementation Mechanisms for the ASEAN-China South China Sea Code of Conduct

Implementation Mechanisms Expert Study Group

August 2021

Executive Summary

The Association of Southeast Asian Nations (ASEAN) and China have committed to signing a Code of Conduct of Parties in the South China Sea (COC). To put in place a regional instrument that is “substantive and effective” as agreed by all relevant parties, COC negotiators need to design implementation mechanisms that promote compliance with the COC and govern how parties will settle disputes.

The Implementation Mechanisms Expert Study Group (IMG) was independently established to provide technical advice and options to COC negotiators. The IMG is comprised of Chinese, Indonesian, Filipino, Malaysian and Vietnamese academic experts in international law, maritime affairs and foreign relations. The academic experts participated in their personal capacities.

Over the course of four meetings, the IMG academic experts examined 20 agreements, analysing their implementation mechanisms against a common set of framework questions. This paper outlines critical choices for negotiators when designing such mechanisms. These options can facilitate the emergence of consensus on a mechanism which accommodates the diverse perspectives of the negotiating countries.

Monitoring/Compliance Mechanisms

Monitoring/compliance mechanisms are designed to facilitate compliance by promoting information exchange, sharing best practice, providing technical advice, confidence building, ensuring transparency, and enabling public involvement without public shaming. Many international agreements establish organs that support the parties’ compliance. These are typically committees consisting of the parties themselves, and/or experts nominated by the parties.

The mechanisms examined in this paper undertake two types of monitoring/compliance: technical and political. Technical monitoring/compliance is often overseen by a group of designated experts in the subject matter of the agreement. These experts can sit as representatives of their state, or in their personal capacities. Most of the time, they come from academia, civil society and the private sector. Political monitoring/compliance is often undertaken by the Conference/Meeting of the State Members/Parties with representatives typically drawn from foreign ministries. Some agreements include both technical and political monitoring.

When designing a monitoring/compliance mechanism, negotiators have a range of options:

- *Sources of information* – All monitoring committees allow each state to report on their compliance. Some mechanisms hold hearings, undertake field visits, seek expert views, or consider submissions from other states, international bodies and the public.
- *Compulsory or voluntary* – Monitoring/compliance procedures vary along a spectrum between being compulsory to being optional. Some agreements impose an obligation to participate in the core monitoring functions, while other procedures are voluntary.
- *Persistent non-compliance* – Monitoring/compliance mechanisms cannot compel compliance, but they allow for declarations of non-compliance, requests for parties to submit a compliance plan, or the referral of an issue to a conference of parties.

Dispute Settlement Mechanisms

Dispute settlement governs how parties will behave if there is a dispute over the interpretation or application of an international agreement. A complainant state activates a dispute settlement mechanism (DSM) when it asserts that a respondent state is not complying with an agreement. DSMs vary in character and usually exist in legally-binding treaties, but are also part of some political agreements.

Most agreements examined in detail by the IMG outline a series of dispute settlement means that include negotiations and the use of an independent third party. Three of them require the parties to consult among themselves before engaging in other dispute settlement means. Broadly, five means of dispute settlement were highlighted across the agreements:

- *Consultations and negotiations* are typically the first means of dispute settlement that parties attempt. Some agreements require that formalised consultations be attempted first before other DSMs can be used.
- *Assisted negotiations* take place when independent actors assist the parties through good offices, mediation, conciliation or inquiry. These procedures are usually optional.
- *Consideration by the Conference of Parties* takes place when parties refer their disputes to the said Conference of the relevant agreement for settlement.
- *Arbitration* takes place when the dispute is referred to an arbitral tribunal or ad hoc arbitral tribunal, which is typically established for the purposes of resolving a specific dispute.
- *Adjudication* is usually used in legally-binding agreements, which involves the reference of the dispute to an international court or tribunal.

DSMs can be compulsory (requiring a disputing party to participate against their wishes) or optional (requiring all disputing parties to agree to participate). All DSM case studies examined in this paper require their Member States to resolve their disputes in a peaceful manner as a matter of principle. In terms of the choice of means to resolve disputes, five DSMs require states to start with consultations or negotiations and, only if those fail, to use arbitration or adjudication. Irrespective of whether participation in the procedure is compulsory or optional, parties can decide if the mechanism’s decision is binding or non-binding.

The DSM provisions of a final COC may be very similar to obligations under other international agreements with their own dispute settlement procedures. Negotiators may clarify if an existing DSM takes precedence, if a particular DSM which can achieve a binding result may be used to the exclusion of all others, or if they leave that choice to the parties.

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Not only are the COC’s implementation mechanisms practically necessary, they also embody each country’s willingness to comply with their commitments and to peacefully resolve their disputes. International practice provides a wide variety of implementation mechanisms, which widens the space for reaching consensus on a COC that meaningfully ensures peace, environmental sustainability, and economic prosperity in the South China Sea.

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Introduction

The Code of Conduct of Parties in the South China Sea (COC) currently being negotiated between officials of ASEAN and China is expected to become a regional framework establishing rules and standards for peace and stability in the South China Sea. In recent years, all parties have called for a COC that is "substantive and effective". In order to achieve this goal, outstanding issues will need to be resolved in the negotiations, in particular reaching agreement on the COC's implementation mechanisms. The implementation mechanisms will consist of a monitoring/compliance mechanism and a dispute settlement mechanism (DSM). These two mechanisms are essential in ensuring a COC that meaningfully promotes peace and co-operation in the South China Sea.

In the first half of 2021, the Implementation Mechanisms Expert Study Group (IMG) was independently established to provide technical advice and options to COC negotiators. It consisted of two academic experts each from China, Indonesia, Malaysia, the Philippines and Vietnam with proficiency in international law, maritime affairs and international relations. IMG academic experts participated in their personal capacities and this paper does not necessarily reflect the views of their organisations or governments. The Centre for Humanitarian Dialogue (HD) provided secretariat functions to the IMG, including organising meetings, handling logistics and synthesising the IMG academic experts' case studies.

The IMG academic experts examined 20 diverse international agreements[1] over four meetings (in March, April, June and July 2021), analysing their implementation mechanisms against a common set of framework questions. These agreements appear in abbreviated form in italics throughout this options paper when referenced.

The process did not produce an exhaustive record of all issues, nor did it recommend one single course of action. Instead, it outlines the critical choices for negotiators when designing dispute settlement and monitoring/compliance mechanisms. To achieve this, framework questions were used throughout the process to highlight the decisions that negotiators face when designing implementation mechanisms. The answers provide negotiators with options drawn from a diverse set of case studies. By providing negotiators with these options, we hope that a consensus emerges that accommodates the diverse perspectives of the negotiating countries.

[1] See Annex 2 for a full list of the international agreements examined by the IMG.

Monitoring/Compliance Mechanisms Framework Questions

A total of 10 agreements were examined for their monitoring/compliance mechanisms using a common set of framework questions. These agreements are referenced throughout the paper in Italics as follows: *Aarhus Convention, Antarctic Convention, Arctic MAP, ASEAN-China Trade in Goods Agreement, ASEAN Haze Agreement, Bangkok Treaty, Barcelona Convention, Basel Convention, Cartagena Protocol, Caspian Convention*,

What is the goal of the monitoring/compliance mechanism?

The central goal of most monitoring/compliance mechanisms is to facilitate and promote compliance with the international agreement. This fosters transparency which, in turn, is essential for fair dealings. For international agreements on more technical subjects, the monitoring/compliance mechanisms can determine whether parties are complying or if there are deviations. They can also identify when parties are unable to comply with the agreement despite making good-faith efforts. In these circumstances, monitoring/compliance mechanisms can provide advice and assistance to comply (*Barcelona Convention*, *Cartagena Protocol*).

Monitoring/compliance mechanisms can also pursue other objectives besides directly promoting compliance. These include confidence-building between parties (*Caspian Convention*), facilitating information exchange (*Antarctic Convention*, *Cartagena Protocol*), promoting co-operation (*Antarctic Convention*, *Arctic MAP*), and enabling public involvement in the implementation of the agreement (*Aarhus Convention*). This is important for fostering continued good faith and compliance. These mechanisms can provide a forum for parties to exchange best practice and innovative ways to support the agreement's implementation. The establishment of monitoring/compliance mechanisms also has symbolic value in signalling the commitment of the parties to the agreement.

Some monitoring/compliance mechanisms, especially those under international environmental agreements, monitor the overall challenge the agreement is designed to address (*Arctic MAP, ASEAN Haze Agreement*). For example, the *ASEAN Haze Agreement*'s monitoring/compliance mechanism monitors the levels of overall air pollution throughout the region, in addition to considering the compliance of individual parties. These two types of monitoring are conceptually distinct but sometimes overlap in practice.

Who are the members of the monitoring/compliance mechanism?

Monitoring/compliance mechanisms can be divided into two main types: political and technical. Political monitoring/compliance is often under the charge of the Conference or Meeting of Parties which is comprised of representatives of state parties, typically from Foreign Ministries (*Arctic MAP, ASEAN Haze Agreement, Bangkok Treaty, Caspian Convention, JCPOA*), or

Economic Ministries for trade-related matters (*ASEAN-China Trade in Goods Agreement*). The Conference or Meeting of Parties is not a specialised monitoring/compliance mechanism, instead it is the decision-taking mechanism of an agreement and a monitoring role is just one among other responsibilities, such as determining funding and/or necessary reforms to an agreement.

Technical monitoring/compliance is usually carried out by experts in the subject matter of the international agreement. These mechanisms provide an opportunity to leverage the expertise of individual members on technical subject matters where this expertise is typically held in Foreign Ministries. These members are usually drawn from academia, civil society and/or the private sector. They can either sit as representatives of their state or in their personal capacities (*Aarhus Convention, Basel Convention, Cartagena Protocol*). Having members sit in their personal capacity arguably insulates a monitoring/compliance mechanism from the immediate political priorities of the state parties. However, the degree to which experts are independent of the priorities of their own countries varies.

In some cases, monitoring mechanisms leverage the expertise of other international organisations. As an example, the technical monitoring aspects of the *Bangkok Treaty* – a moratorium on nuclear weapons – leverages the existing safeguards and compliance mechanisms of the International Atomic Energy Agency.

Some technical committees include one representative for each Member/Contracting State, while others use the United Nations (UN) regional groups system to choose their representatives. However, it is more common that the State Parties nominate experts from their own country, following which all State Parties vote to select which of those candidates will become members of the compliance mechanism (*Aarhus Convention, Barcelona Convention, Basel Convention, Cartagena Protocol*).

Some agreements include both political and technical monitoring/compliance. For example, the *Aarhus Convention* has regular meetings of the parties which are tasked to “keep under continuous review the implementation of this Convention on the basis of regular reporting by the Parties” as well as other tasks. Those parties also established a specialised “Compliance Committee” that consists of experts and environmental lawyers from backgrounds in academia, the private sector and government. The *Basel Convention* similarly includes both political and technical monitoring/compliance.

In some cases, existing organisations or secretariats will be tasked with monitoring, at least in the initial, technical stages. The *ASEAN-China Trade in Goods Agreement* entrusts the ASEAN Secretariat with monitoring implementation, which then reports its findings to the ASEAN Senior Economic Officials Meeting and the Ministry of Commerce of China.

How does the monitoring/compliance mechanism collect information?

Almost all monitoring/compliance mechanisms rely on each party submitting written reports about their compliance, with most allowing discussion amongst the State Parties based on those reports. These discussions could be carried out in the format of traditional diplomatic meetings

in which states update each other about compliance (*ASEAN-China Trade in Goods Agreement, Caspian Convention*). Some agreements include specific provisions which enable parties to request a state to clarify when there is a question over compliance (*Bangkok Treaty*).

Technical monitoring/compliance organs may hold hearings in which they consider the compliance of a particular State Party in detail. This process allows members of the organ with technical expertise to ask more questions about the compliance of a specific State Party.

Where an agreement has established a secretariat or utilised an existing secretariat, they can provide information to the monitoring/compliance organ (*Antarctic Convention, ASEAN-China Trade in Goods Agreement, Barcelona Convention, Basel Convention*). Several monitoring/compliance mechanisms are permitted to proactively collect relevant information (*Antarctic Convention, Arctic MAP, Barcelona Convention, Basel Convention*), for example, by undertaking field visits/site appraisals (*Bangkok Treaty*), although typically only at the invitation of the relevant state party (*Barcelona Convention, Basel Convention*).

What information can be considered by the monitoring/ compliance mechanisms?

For political monitoring, the sources of information are often not specified. In practice, each party provides written or oral reports, and there may be discussions with other political representatives who have particular knowledge or interests in a compliance issue.

In contrast, the sources of information and associated procedures are much clearer for technical monitoring/compliance. In almost all agreements, parties can provide information about their own compliance with the agreement in the form of reports or oral presentations to a monitoring/compliance organ. This can be supplemented by allowing members of the organ to ask specific questions of state representatives during meetings.

Beyond the state parties reporting about their own compliance, some agreements allow other sources of information to be considered by the monitoring/compliance organ. For example, the *Barcelona Convention* allows other countries to provide information about another party's compliance. In practice, this often takes the form of complaints against another party that is not complying with the agreement.

There has been a trend in some areas of international law to allow actors other than governments to provide information to the monitoring/compliance organ. This could be in the form of allowing private citizens or organisations to make submissions (*Aarhus Convention*), or proactively seeking expert opinions (*Basel Convention, Cartagena Protocol*). The organ still ultimately decides if it acts on a submission or not.

When does monitoring/compliance take place?

Monitoring/compliance mechanisms can operate on a regular timetable, when a party or group of parties initiates a monitoring/compliance procedure, or a combination of both.

Regular monitoring/compliance processes can occur annually (*Barcelona Convention, Caspian Convention, ASEAN Haze Agreement*) or on a biennial basis (*ASEAN-China Trade in Goods Agreement*)**.** The timetable for parties to submit reports can be contained in the agreement itself or developed by the monitoring/compliance mechanism (*Cartagena Protocol*).

Many monitoring/compliance mechanisms enable a monitoring/compliance organ to take action at the request of a party. For example, the *Antarctic Convention* should meet at least once per year, but if one-third of members are in support, then additional meetings can be held. Similarly, under the *ASEAN Haze Agreement*, an extraordinary meeting of the Conference of the Parties can be held if requested by two parties. The *Bangkok Treaty* monitoring/compliance mechanism is triggered when a state party makes a voluntary notification, requests clarification from another party, or initiates a fact-finding mission. The *JCPOA's* Joint Commission can be triggered when a state party refers an "issue" to the body.

What can the monitoring/compliance mechanism do?

The capabilities of political monitoring/compliance mechanisms are often left unstated (*ASEAN-China Trade in Goods Agreement, Montreux Convention*). The implication is that if parties to an agreement are persistently non-compliant, then it will damage their international relations with other parties. Those parties could publicly criticise them for non-compliance, affecting their broader international reputation. The *Bangkok Treaty*'s political monitoring/compliance mechanism ("the Executive Committee") obliges the signatory states to respond to requests for clarification from other states; it can also authorise fact-finding missions.

The powers of technical monitoring/compliance organs are typically more clearly outlined in agreements. They can advise parties on how to work towards full compliance, particularly for agreements that impose complex technical obligations on the parties (*Aarhus Convention, Barcelona Convention*). Some mechanisms are empowered to issue declarations of non-compliance (*Aarhus Convention*). Monitoring committees can request a party to submit a plan outlining how it will comply and report against that plan (*Aarhus Convention, Barcelona Convention, Basel Convention, Cartagena Protocol*). The *ASEAN Haze Agreement's* monitoring centre compiles reports from the contracting states to produce assessments of the risks emerging from haze pollution.

Where an agreement provides for both technical and political monitoring/compliance, technical organs can report to the more senior political mechanisms about the overall status of compliance with the agreement (*Basel Convention, Barcelona Convention*) or the level of compliance of a State Party.

How transparent is the monitoring/compliance mechanism?

Monitoring/compliance mechanisms have various degrees of transparency for different elements of the monitoring/compliance process. The degree of transparency can be approximately summarised as a monitoring/compliance mechanism being available to:

- The Member State that is being subjected to monitoring;

- The Member State or States which have been affected by one state's lack of compliance;
- All Contracting parties to the agreement, often called "other contracting states";
- International organisations (IOs) and non-government organisations (NGOs) that have been accepted by all State Parties to assist with proceedings;
- Other states and persons that have not signed the agreement, often called 'non-parties'.

Political mechanisms are typically open to all parties but closed to the public, NGOs and IOs, with summaries of discussions sometimes contained in official statements released at the end of the discussion (*ASEAN-China Trade in Goods Agreement, Caspian Convention*) or in public action plans (*Bangkok Treaty*). The written reports provided by parties to the *ASEAN Haze Agreement* are distributed to the Member States but are not public. Arguably, monitoring/compliance mechanisms which are more discreet and less public would encourage honesty among parties.

Technical organs can be more transparent. Meetings of mechanisms might be open to competent technical IOs, NGOs that are approved by the parties (*Barcelona Convention*), or indigenous people's organisations (*Arctic MAP*). The most transparent monitoring/compliance mechanisms are open to the public (*Aarhus Convention*, *Antarctic Convention*).

Some mechanisms may distinguish between different elements of the monitoring/compliance organs for the purpose of determining if they should be confidential or not, such as state reports, complaints, deliberations, hearings, recommendations and findings of non-compliance. For example, many aspects of deliberation in the *Barcelona Convention* Compliance Committee are confidential. However, if it finds that a party is non-compliant, the finding is made public. Similarly, the procedure of the *Basel Convention*'s monitoring/compliance mechanism ("the Meeting of the Parties") is generally transparent, but the submission is typically limited to the members of the mechanism, the party that is subject to the inquiry, and states that are directly affected by any non-compliance.

Is the monitoring/compliance mechanism compulsory?

Monitoring/compliance mechanisms vary along a spectrum between being compulsory and being optional. The *Cartagena Protocol*'s non-confrontational compliance mechanism is compulsory, and states are not permitted to make a reservation that would avoid participation. In contrast, the *Aarhus Convention* has an optional compliance mechanism. In some agreements, parties are obligated to participate in a 'core' monitoring/compliance mechanism, but allowing other states, citizens, or organisations to make complaints about a state's compliance is optional. Compulsory features depend on the political and technical nature of the agreement. The findings of a monitoring/compliance organ are not legally binding.

How are procedures for monitoring/compliance developed?

To function effectively, the monitoring process requires a set of agreed procedures, such as formats for written reports or rules for meetings. An agreement may contain some guidance on the nature of the monitoring/compliance mechanism. For example, the *Aarhus Convention* states that its mechanisms will be "non-confrontational, non-judicial and consultative". However,

detailed procedures are rarely contained in the agreement itself. Instead, states parties often develop procedures after the agreement has already entered into force. This prevents disagreements about technical procedures from delaying the conclusion of the main agreement. Some monitoring/compliance mechanisms are empowered to develop their own procedures while others need to be approved by a hierarchically superior body, such as a Conference of Parties (*ASEAN Haze Agreement, Barcelona Convention*, *Basel Convention*, *Cartagena Protocol*).

Political monitoring/compliance mechanisms do not have their own specific procedures but often follow rules defined for regular diplomatic meetings (*ASEAN-China Trade in Goods Agreement*, *Caspian Convention*).

Dispute Settlement Mechanism Framework Questions

A total of 13 agreements were examined for their dispute settlement mechanisms (DSMs) using a common set of framework questions. These agreements are referenced in the paper as follows: *ASEAN-China DSM Agreement, ASEAN DSM Protocol, ASEAN TAC, Bluefin Convention, Cartagena Convention, Energy Treaty, JCPOA, Montreux Convention, RCEP, UNCLOS Straddling Fish Stocks. Antarctic Convention, Basel Convention* and *Caspian Convention*.

What type of dispute settlement procedures are included in the agreement?

An international agreement's DSMs consist of different means for resolving disputes between parties: diplomatic means and adjudicative means. The diplomatic means include consultations, negotiations and assisted negotiations. Almost all agreements highlight consultations and negotiations as the first step in dispute settlement. Sometimes the terms "consultations" and "negotiations" are used interchangeably. Generally, and in this options paper, "consultations" refer to informal discussions in which the state parties exchange views and information. While negotiations are typically more formal. With the exception of the *JCPOA*, all the agreements examined by the IMG include a requirement for Parties to consult or negotiate with each other before engaging in other means of dispute settlement (for example, *ASEAN-China DSM Agreement, ASEAN DSM Protocol, RCEP*).

Assisted negotiation mechanisms often involve an independent actor but are not adjudicative in nature. They can include inquiries, mediation and the use of good offices. The exact procedures for these mechanisms are often left unstated. However, some agreements do outline specific procedures for the conduct of these mechanisms, such as the *ASEAN DSM Protocol* provisions about the conduct of good offices.

The UN Convention on the Law of the Sea (UNCLOS) *Straddling Fish Stocks* agreement allows for states to refer disputes of a "technical nature" to an ad hoc body of experts. These experts are tasked to "resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes". Similarly, the *JCPOA* allows for the establishment of an Advisory Board to provide a non-binding opinion on a specific compliance issue.

The adjudicative forms of dispute settlement are often divided into, *inter alia*, adjudication and arbitration. Adjudication typically involves the dispute being decided by an international court or tribunal. It also typically leaves the parties with little control over the composition or procedures of those courts. In contrast, arbitration provides the parties with greater control over conduct and procedures (*Antarctic Convention, Cartagena Convention, Energy Treaty, RCEP*). Many agreements offer both adjudication and arbitration. For example, the *Basel Convention, Bluefin Convention,* and the *Antarctic Convention* allow parties to pursue resolution through the International Court of Justice (ICJ) or a specialised arbitration procedure.

Several agreements allow disputes to be referred to a council (*ASEAN TAC)* or conference of parties comprised of all the signatories to the agreement (*ASEAN DSM Protocol, Energy Treaty, Montreux Convention,*). The powers of these councils and conferences vary. Some agreements give this body the authority to resolve the dispute, others can only facilitate the dispute process, while the other agreements are unclear.

Is there a specific sequence that parties must follow during the dispute settlement process?

Most agreements outline a series of dispute settlement means that include consultations, negotiations, and the use of an independent third party.

The procedures for negotiations are generally not detailed and are left to the parties to decide. In several agreements where parties must attempt consultations before using other dispute settlement means, the text outlines procedures for consultations, such as modes of communication and response times (*ASEAN-China DSM Agreement, Energy Treaty, RCEP*).

Many agreements specify that if consultations or negotiations cannot resolve the dispute, parties should then seek to address the dispute through assisted negotiations such as the use of assisted negotiations (good offices, inquiry, mediation, or conciliation processes). If that does not resolve the dispute, parties can continue the dispute resolution process through arbitration (*Antarctic Convention, ASEAN-China DSM Agreement, Basel Convention, Cartagena Convention, Energy Treaty, RCEP*), international courts or tribunals (*Antarctic Convention, Basel Convention, Bluefin Convention*), a council (*ASEAN TAC's High Council),* or the Conference of Parties (*Montreux Convention*). The *ASEAN-China DSM Agreement* and *RCEP* explicitly state that good offices, conciliation and mediation can occur at any time, even during arbitration.

If the agreement involves the dispute being considered by a body, what are the provisions for its establishment, convening, composition, and procedures?

Many agreements establish specialised arbitration mechanisms to resolve disputes, with some also having provisions for conciliation.

The most common format for arbitration consists of three arbitrators. Each party submits one arbitrator while the third is selected jointly (*ASEAN-China DSM Agreement*) or by the two designated arbitrators (*Basel Convention, Cartagena Convention*). If the parties or arbitrators are unable to agree, an independent third party which holds a level of international or regional authority can select the third arbitrator (*Antarctic Convention, ASEAN DSM Protocol, Bluefin Convention, Energy Treaty, RCEP*). The independent third parties tasked with appointing arbitrators vary in the agreements and include the ASEAN Secretary-General (*ASEAN DSM Protocol*), the Secretary-General of the Permanent Court of Arbitration (*Antarctic Convention, Bluefin Convention*), the Director-General of the World Trade Organization (*ASEAN-China DSM*

Agreement, Energy Treaty, RCEP), the Secretary-General of the UN (*Cartagena Convention, Basel Convention*), and the President of the ICJ (*ASEAN-China DSM Agreement*).

The procedures for arbitration can be devised in several ways. They can be outlined in the agreement, left to the body themselves to decide, be devised by the parties to the dispute, or be adopted from other institutions. For example, in the absence of agreement by the parties, the *Energy Treaty* provides for UN Commission on International Trade Law arbitration rules to be used. In most cases, there are some basic principles to be respected by the arbitral body mentioned in the agreement or annex, such as the principles which govern the right of intervention of other parties and the principle that decisions should be rendered based on international law.

Conciliation is mentioned in a wide range of agreements, but many do not provide specific procedures (*Antarctic Convention, Bluefin Convention, RCEP*). There are some exceptions: the *ASEAN DSM Protocol* and *Energy Treaty* both include specific procedures and the *UNCLOS Straddling Fish Stocks* agreement follows the procedures for conciliation under UNCLOS.

Where a political body or Conference or Meeting of Contracting Parties is tasked with resolving the dispute, the procedures are left unspecified and are likely to default to standard diplomatic practice (*ASEAN TAC*, *JCPOA, Montreux Convention*). The *ASEAN DSM Protocol* delegates the development of the ASEAN Coordinating Council's procedures to the chair of the ASEAN Coordinating Council (the Foreign Minister of the current ASEAN Chair). The procedures here refer to consultations through correspondence, emails, videoconferencing, or other means.

In some situations, procedures can be devised after the main agreements are signed. For example, ASEAN Member States signed the ASEAN Charter in 2007, but the *ASEAN DSM Protocol* was signed in 2010, and more details were added in 2012 covering non-compliance with arbitration rulings. Similarly, the *ASEAN TAC* was signed in 1976, but the High Council rules were not agreed until 2001. This practice prevents disputes about procedures from obstructing the conclusion of the main agreement.

How transparent is the dispute settlement process?

A DSM's level of transparency is determined by assessing which type of actor has access to each element of the mechanism. There are broadly four types of actors:

- The parties to the dispute, often called "disputing parties";
- Parties that have been deemed to have an important interest in the outcome of the dispute, which could be called "third parties with an interest of a legal nature" (under International Tribunal for the Law of the Sea, ICJ, and UNCLOS's Arbitration) or "third parties with a substantial interest" (under *ASEAN-China DSM Agreement* and *RCEP*);
- Contracting/Member States to the agreement that are not involved in the specific dispute, often called "other contracting states";
- A State or organisation that is not a Contracting/Member State to the agreement, often called "non-parties".

The various DSMs typically apply differing levels of transparency to each of these types of parties.

Consultations, negotiations, mediation, conciliation and good offices processes are typically not open to the public. In some agreements, disputing parties are required to notify other contracting states that negotiations will occur and the basic facts of the dispute. The other contracting states having an important interest in the dispute's outcome can assert their rights. For example, the *ASEAN DSM Protocol* requires a complaining party to provide details of the dispute to the ASEAN Secretary-General, who will then pass it to other ASEAN Member States. The conduct of the negotiations will only be open to the disputing parties and relevant third parties.

Similar provisions are common in agreements which include arbitration. While disputing parties will often inform all contracting states of an arbitration, most hearings and submissions are limited to the disputing parties. Agreements may specify that a party requesting arbitration should notify all other states directly (*RCEP*), or through an independent body/person designated by the convention (*ASEAN DSM Protocol, Cartagena Convention*).

The transparency of the arbitral proceedings is often not specified (*Antarctic Convention, Basel Convention, Bluefin Convention*), which is likely to mean that the parties or arbitral members will decide the level of transparency.

Access to arbitral hearings and submissions under the *ASEAN DSM Protocol* is limited to the disputing parties and third parties with a substantial interest. The same principle applies in *ASEAN-China DSM Agreement* and *RCEP*; although, a party can request another party to provide a non-confidential summary of their submissions that can be made public.

When agreements allow disputes to be referred to the international courts or tribunals, these bodies normally make their hearings and judgements available to the public, but they can apply varying levels of confidentiality for other processes and documentation depending on the request of the concerned party. The *UNCLOS Straddling Fish Stocks* Agreement allows for compulsory dispute settlement under UNCLOS, which provides access only to states parties unless parties agree to additional transparency.

The referral of disputes to a Council or Conference of the Parties is typically only open to contracting states (*ASEAN DSM Protocol, JCPOA, Montreux Convention*). In an example, the *ASEAN TAC*'s High Council is comprised of representatives from all ASEAN states but if one of the disputing parties is not an ASEAN member, it will also have a representative on the High Council during the dispute settlement process. The High Council can grant observer status to an *ASEAN TAC* signatory outside of Southeast Asia.

Does the dispute settlement process allow the involvement of the parties to the agreement that are not involved in the dispute or entities that are non-parties to the agreement?

There are several different ways in which agreements allow for non-disputing parties to be involved in dispute resolution mechanisms. These differ depending on the nature of the non-disputing parties.

Contracting States with an important interest

Contracting states with an important interest in a dispute are frequently given rights by international agreements in the dispute settlement process. Under the formal procedures in the *ASEAN-China DSM Agreement* and *RCEP*, third parties with a substantial interest have the right to request to be involved in formal consultations between the disputing parties. However, whether they participate is at the discretion of the responding party (*ASEAN-China DSM Agreement*) or both disputing parties (*RCEP*).

If an agreement has arbitration provisions, most provide an opportunity for third parties with an important interest to be involved in the proceedings (*ASEAN-China Trade in Goods Agreement, ASEAN DSM Protocol*), sometimes subject to the consent of the arbitration body (*Antarctic Convention, Basel Convention, Bluefin Convention*). The *Energy Treaty* and *RCEP* declare that the other contracting states to the agreement that are not a party to the dispute shall have their "interest taken into account" and outline a set of rights of participation during an arbitration.

Under the *ASEAN DSM Protocol*, contracting states with an important interest have the right to receive arbitral documents, make submissions and be heard by the arbitral tribunal. Other conventions make no specific provisions for third parties with an important interest in arbitration. In the case of the *Cartagena Convention*, for example, it is left to the arbitral tribunal to develop its own procedures.

Contracting States without an important interest

Contracting States to the agreement without an important interest typically do not have a substantial role in the dispute settlement process. On rare occasions, representatives of those parties may play a role in assisted negotiations, such as in the *ASEAN DSM Protocol* offering the Chairman of ASEAN the opportunity to provide good offices, mediation or conciliation. Non-disputing parties may also play a role if disputes are referred to a conference of parties, either directly (*Montreux Convention*) or when a party is not complying with an arbitration decision (*ASEAN DSM Protocol, Energy Treaty*).

Non-Parties to the Agreement

Most of the DSMs analysed by the IMG experts make no provision for the involvement of states or organisations that are not Contracting Parties to the agreement in the dispute settlement procedures. One exception is the *Energy Charter*. The *Energy Charter* contains special provisions for an investor of a Contracting Party to sue another Contracting Party. This typically occurs in domestic courts, but arbitration and conciliation are also available.

Are the dispute settlement procedures compulsory or voluntary?

Most agreements impose an obligation on parties to a dispute to peacefully resolve their dispute as a matter of principle. An exchange of views or consultations must be undertaken as a first step in some agreements. For example, the *ASEAN-China DSM Agreement* outlines a formalised timeline for how parties should consult with one another. Similar provisions are contained in the *ASEAN DSM Protocol,* the *Energy Treaty* and *RCEP*. The use of good offices, mediation and conciliation are generally not compulsory.

Within a single agreement, there may be some dispute settlement mechanisms that are voluntary and others that are compulsory. Parties to the *Antarctic Convention* are urged to consult each other "with a view to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means". If they fail to resolve the issue, the disputing parties are urged, but not required, to consent to the submission of the dispute to the ICJ or to arbitration. Such consent can be given upon ratification or accession to the instrument or at a later point. Similar optional arbitration procedures appear in the *Basel Convention, Bluefin Convention* and *Cartagena Convention*. The *Basel Convention* and the *Cartagena Convention* both allow parties to declare that they accept as compulsory the arbitration procedures (and in the *Basel Convention*'s case, that they also accept the ICJ as compulsory).

Agreements involving economic and trade matters are more likely to have compulsory arbitration. The *Energy Treaty* and *RCEP* arbitration provisions are compulsory, but these agreements exempt substantive provisions from its application, such as those related to trade-related investment measures and interim provisions.

For agreements that include a Conference of the Parties to hear disputes, this process is often compulsory. For example, under the *Montreux Convention*, if parties cannot resolve a dispute, a complaining party can call for a compulsory conference of the high contracting parties to resolve the dispute. Similarly, a party to the JCPOA can unilaterally bring an issue to the Joint Commission which includes representatives but all parties must agree for it to be considered by an Advisory Board.

Similar provisions exist for those agreements which establish the use of a council of state parties. Under the *ASEAN DSM Protocol*, the complainant has the right to bring the dispute to the ASEAN Coordinating Council if parties cannot agree to the voluntary arbitration provisions. One exception is the *ASEAN TAC*'s High Council procedure, which only applies if both parties agree for the High Council to consider the dispute.

Are the decisions of dispute settlement procedures binding on the parties?

A binding dispute settlement involves a decision that parties are legally obligated to respect. The consensual nature of negotiations, mediation, conciliation and the use of good offices means they are not legally binding. Instead, these procedures facilitate an agreement which is

acceptable to both parties and does not require legal compliance. However, some agreements allow the parties to enshrine their negotiated consensus in legally-binding "settlement agreements" (*ASEAN DSM Protocol*).

The decisions of an arbitral tribunal are binding, even when the arbitration itself is optional. The arbitration processes of the *Antarctic Convention*, *ASEAN DSM Protocol, Basel Convention*, *Bluefin Convention* and *Cartagena Convention* are optional, but if parties choose to participate in these processes, the decisions reached through these processes will be binding. Similarly, decisions made under compulsory arbitration are also final and binding. (*ASEAN-China DSM Agreement, Basel Convention, Energy Treaty, RCEP*).

Whether or not the decisions of a Council or Conference of the Parties are legally binding varies. The decisions of the ASEAN Coordinating Council and the ASEAN Summit when resolving disputes under the *ASEAN DSM Protocol* are technically binding. The High Council of parties established by the *ASEAN TAC* is empowered to make "recommendations". However, the responding party will always be a member of both of these bodies and therefore can obstruct the unanimity that would render a binding decision. It is unclear if the decision of the Conference of High Parties in the *Montreux Convention* is binding.

	Compulsory	**Non-Compulsory**
Binding	● Arbitration and Adjudication under *UNCLOS Straddling Fish Stocks* ● Arbitration under *RCEP*, *ASEAN-China DSM Agreement, ASEAN DSM Protocol*, (for ASEAN Charter matters), *Energy Treaty*	● Arbitration under *Antarctic Convention, Bluefin Convention, Cartagena, ASEAN DSM Protocol, Basel Convention* ● ICJ Adjudication - *Basel Convention* ● Arbitration under *ASEAN DSM Protocol* for ASEAN instruments under the Charter ● Formal settlement agreements resulting from good offices, mediation, and conciliation under the *ASEAN DSM Protocol.*

Non-Binding	● Negotiations under *RCEP, ASEAN DSM Protocol* ● Discussions before the ASEAN Coordinating Council and ASEAN Summit (while technically binding, the responding state will always be a member of both of these bodies so it can prevent a unanimous decision). ● Conciliation under *UNCLOS Straddling Fish Stocks*	● Most assisted negotiations (conciliation, mediation, the use of good offices) ● Dispute settlement recommendations provided by the *ASEAN TAC* High Council. ● Opinions of the *JCPOA* Advisory Board.

What enforcement mechanisms exist if a party is not complying with the decisions of a dispute settlement process?

Many international agreements do not provide any provision for parties who fail to comply with the decisions of arbitration (*Antarctic Convention*, *Bluefin Convention*). The presumed deterrent is that failure to comply with DSM procedures would damage the violator's international reputation. It could result in the complaining party imposing political costs on the violator, perhaps in co-operation with other states.

Several agreements allow disputes over the interpretation or implementation of arbitration decisions to be resubmitted to the arbitration tribunal (*Basel Convention, Cartagena Convention, RCEP, UNCLOS Straddling Fish Stocks*).

Trade agreements have the clearest sanctions available to complaining parties in cases of non-compliance. Under the *ASEAN-China DSM Agreement* and *RCEP*, if a party fails to comply with the recommendations and findings of the arbitration, the complaining party can suspend the responding party's trade concessions and benefits under the agreement in a manner consistent with its provisions. This is also the case with the *Energy Treaty*, but the withdrawal of benefits can only be achieved after being approved by a conference of parties.

Some agreements allow non-compliance with arbitral awards to be considered by a conference of parties. The *Energy Treaty* also allows for non-compliance with an arbitral award to be referred to the Charter Conference which includes representatives of all signatory countries. The Charter Conference can then allow the complaining party to withdraw from its obligation to the responding party that would otherwise be required under the Treaty. Under the 2010 *ASEAN DSM Protocol* and its 2012 update, the complaining party can refer the dispute to the ASEAN Summit which consists of ASEAN Heads of Government.

In the case of decisions by international courts, there is also limited recourse for non-compliance. Pursuant to article 94(2) of the UN Charter, if a party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the ICJ, the other party may have recourse to the UN Security Council, which may make recommendations or decide upon measures to be taken to give effect to the judgment. However, this has never been used in practice. Furthermore, pursuant to article 24 and Chapter VII of the Charter, the primary responsibility of the UN Security Council is the maintenance of international peace and security.

How does the agreement affect the contracting states' ability to use dispute settlement procedures in other agreements?

There is substantial overlap in the substance of international agreements, which means parties assume the same or similar obligations under multiple agreements. Agreements manage this in several ways:

- **Including text clarifying that other DSM avenues are not precluded**. For example, the *ASEAN-China DSM Agreement* says "nothing in this Agreement shall prejudice any right of the Parties to have recourse to dispute settlement procedures available under any other treaty to which they are parties". The *ASEAN TAC, Caspian Convention* and the *Energy Treaty* have similar provisions. The *ASEAN DSM Protocol* has a similar standard that does not infringe on a party's rights to use other DSM in other agreements. Unusually, parties can also voluntarily elect to use the procedures and protocols *in* the *ASEAN DSM Protocol* for disputes in other ASEAN agreements.

- **Offering a choice to select one DSM to the exclusion of all others.** The *ASEAN-China DSM Agreement* and *RCEP* explicitly state that "where a dispute concerns substantially equivalent rights and obligations under this Agreement and another international trade or investment agreement" the complaining party has their choice of forum. However, once they seek arbitration (a compulsory DSM) they are deemed to have selected that forum "to the exclusion of other fora" unless both parties had expressly agreed to the use of more than one forum. This effectively means only when parties agree and act jointly can they pursue the same rights in multiple fora; otherwise, they must abide by the forum initially selected.

- **Not including references to other DSMs at all.** Many agreements do not have a provision that specifically addresses a party's rights to use dispute settlement mechanisms in other agreements (*Antarctic Convention*, *Basel Convention, Bluefin Convention*). In this situation, parties have a choice about where they bring their complaint. This is, however, a complex area of law, where the choice of forum may depend on the interaction between different treaties or conventions.

Some arrangements allow disputes to "resort to regional agencies or arrangements" (*UNCLOS Straddling Fish Stocks*), allowing a party to pursue resolution through existing mechanisms.

Some encourage the High Contracting Parties to resort to the other procedures provided for in the Charter of the UN (*ASEAN TAC*).

While agreements may give relative the parties freedom to pursue disputes in a range of forums before arbitration or adjudication, many include provisions that say that after resolution, the arbitral or judicial tribunal's decision is final and binding (*Cartagena Convention, Energy Treaty, RCEP*). This limits the scope for parties to continue to pursue dispute resolution through other avenues, thereby extending the dispute after a decision has already been made.

Annex 1: Agreements examined by the IMG

Throughout the IMG process, the academic experts selected 20 international agreements and examined their monitoring/compliance and dispute settlement mechanisms. They ranged from agreements about fisheries, environmental management, nuclear weapons, hazardous waste, air pollution, access to information, disputed territories, trade, regional co-operation, and maritime governance. The IMG academic experts and HD selected the agreements because they were relevant in at least one of three ways:

- *Relevance to the COC's subject matter* – agreements that govern the behaviour of states in maritime domains, areas of overlapping claims, or on other subjects likely to be included in the COC.
- *Parties* – agreements that included similar states to the ASEAN-China COC negotiations indicating that the mechanisms in the agreements align with the COC parties' approach to managing international relations.
- *Innovative mechanisms* – agreements with unique or novel procedures for ensuring compliance and offering interesting options for the ASEAN-China COC negotiators.

Aarhus Convention (1998)
Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters
Examined for: monitoring/compliance mechanisms

The Aarhus Convention is a multilateral environmental agreement between 47 parties, all of whom are in Europe or Central Asia. Its goal is to guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters. It includes an unusual provision for public participation in its monitoring process.

Antarctic Convention (1982)
Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR)
Examined for: monitoring/compliance AND dispute settlement mechanisms

The Antarctic Convention (CCAMLR) is an international treaty between 25 member states and 10 acceding states to manage Antarctic fisheries with the goal of preserving species diversity and the stability of the entire Antarctic marine ecosystem. Its objective is to provide for the conservation, including rational use, of Antarctic marine living resources south of the Antarctic Polar Front through precautionary and ecosystem-based management.

Arctic MAP (1991)
Arctic Monitoring and Assessment Programme (AMAP)
Examined for: monitoring/compliance mechanisms

The Arctic MAP (AMAP) is one of six Working Groups of the Arctic Council, an eight-state intergovernmental forum. It is mandated to monitor and assess the status of the Arctic region with respect to pollution and climate change issues, to document levels and trends, effects on

ecosystems and humans, and propose actions to reduce associated threats for consideration by governments. The Programme also produces sound science-based, policy-relevant assessments and public outreach products to inform policy and decision-making processes.

ASEAN-China DSM Agreement (2012)
Agreement on Dispute Settlement Mechanism of the Framework Agreement on Comprehensive Economic Co-operation Between ASEAN and the People's Republic of China (ADSM-CEC)
Examined for: dispute settlement mechanisms

The ASEAN-China DSM Agreement (ADSM-CEC) is an agreement between the 10 ASEAN Member States and China implementing the 2002 Framework Agreement on Comprehensive Economic Co-operation between ASEAN and the People's Republic of China. It applies to disputes arising under the Framework Agreement, which is the foundation of ASEAN-China economic relations, including the economic, trade and investment co-operation that underlies efforts to facilitate ASEAN economic integration.

ASEAN-China Trade in Goods Agreement (2004)
Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Co-operation between ASEAN and the People's Republic of China (ACTIGA)
Examined for: monitoring/compliance mechanisms

The ASEAN-China Trade in Goods Agreement (ACTIGA) is a free-trade agreement between the 10 ASEAN Member States and China. It was signed in implementation of the 2002 Framework Agreement on Comprehensive Economic Co-operation between ASEAN and China, in which the Parties agreed "to enter into negotiations in which duties and other restrictive regulations of commerce" would "be eliminated on substantially all trade in goods between the Parties".

ASEAN DSM Protocol (2010)
Protocol to the ASEAN Charter on Dispute Settlement Mechanisms
Examined for: dispute settlement mechanisms

The ASEAN DSM Protocol (PDSM) is a Protocol that applies to the 10 ASEAN Member States should disputes arise between them concerning the interpretation or application of the ASEAN Charter or other ASEAN instruments.

ASEAN Haze Agreement (2002)
ASEAN Agreement on Transboundary Haze Pollution
Examined for: monitoring/compliance mechanisms

The ASEAN Haze Agreement is an environmental treaty between the 10 ASEAN Member States. The Agreement's objective is to prevent and monitor transboundary haze pollution as a result of land and/or forest fires, which should be mitigated through concerted national efforts and intensified regional and international co-operation. This should be pursued in the overall context of sustainable development.

ASEAN TAC (1976)
Treaty of Amity and Cooperation in Southeast Asia
Examined for: dispute settlement mechanisms

The ASEAN TAC is a peace treaty among 10 Southeast Asian countries established by the founding members of ASEAN which provides for the pacific settlement of disputes among ASEAN Member States and promotes regional co-operation to achieve peace, amity and friendship. The agreement has been supplemented by additional protocols; the first in 1987 and the second in 1998.

Bangkok Treaty (1995)
Southeast Asian Nuclear Weapon-Free Zone Treaty (SEANWFZ)
Examined for: monitoring/compliance mechanisms

The Bangkok Treaty (SEANWFZ) is a nuclear weapons moratorium treaty between the 10 ASEAN Member States that aims to create a nuclear weapon-free zone within the territories, exclusive economic zones (EEZs) and continental shelves of its members Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam.

Barcelona Convention (1975)
Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols
Examined for: monitoring/compliance mechanisms

The Barcelona Convention is an environmental treaty between the 22 littoral states of the Mediterranean Sea. It provides for the prevention, reduction and elimination of marine pollution in the Mediterranean Sea area, as well as the protection and enhancement of the Mediterranean region's marine environment.

Basel Convention (1989)
Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal
Examined for: monitoring/compliance AND dispute settlement mechanisms

The Basel Convention is a wide-reaching international treaty between more than 180 parties that aims to protect human health and the environment against the effects of hazardous wastes. It does so by encouraging the reduction of hazardous waste generation, the promotion of environmentally sound management of hazardous wastes, the restriction of transboundary movements of hazardous wastes, and the establishment of a regulatory system applying to cases where transboundary movements are permissible.

Bluefin Convention (1993)
Convention on the Conservation of Southern Bluefin Tuna (CCSBT)
Examined for: dispute settlement mechanisms

The Bluefin Convention (CCSBT) is an international nine-state treaty signed by the main Southern Bluefin Tuna fishing nations. The objective of the Convention is to ensure, through appropriate management, the optimum utilisation of Southern Bluefin Tuna. The Convention established the Commission for the Conservation of Southern Bluefin Tuna which consists of the representatives of each party.

Cartagena Convention (1983)
Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region
Examined for: dispute settlement mechanisms

The Cartagena Convention is a regional environmental treaty between 25 Caribbean states that aims to protect the marine environment; to prevent, reduce and control pollution; and to ensure sound environmental management in the Wider Caribbean. It precedes, and is distinct from, the Cartagena Protocol (2000).

Cartagena Protocol (2000)
Cartagena Protocol on Biosafety to the Convention on Biological Diversity
Examined for: monitoring/compliance

The Cartagena Protocol is an international biosafety agreement between 173 parties. The main goal of the Cartagena Protocol is to ensure the safe handling, transport and use of living modified organisms resulting from modern biotechnology that may have adverse effects on biological diversity, taking into account risks to human health, and specifically focusing on transboundary movements. This goal is intricately linked to the objectives of its parent treaty, the 1992 Convention on Biological Diversity (CBD), namely: the conservation of biological diversity; the sustainable use of its components; and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources.

Caspian Convention (2018)
Convention on the Legal Status of the Caspian Sea
Examined for: monitoring/compliance AND dispute settlement mechanisms

The Caspian Convention is a multilateral treaty signed by the five littoral states of the Caspian Sea: Azerbaijan, Iran, Kazakhstan, Russia, and Turkmenistan. Its goal is to promote co-operation and good neighbourliness in and around the Caspian Sea, thereby facilitating development and co-operation among Parties for peaceful purposes.

Energy Treaty (1994)
Energy Charter Treaty
Examined for: dispute settlement mechanisms

The Energy Treaty is an international agreement between 53 parties that establishes a multilateral framework for cross-border co-operation in the energy industry. The treaty covers all aspects of commercial energy activities including trade, transit, investments and energy efficiency.

JCPOA (2015)
Joint Comprehensive Plan of Action
Examined for: dispute settlement mechanisms

The JCPOA is a multilateral nuclear deal between the five permanent members of the UN Security Council, Germany, and Iran. Its goal is the gradual limitation of Iranian uranium enrichment. In 2018, the US, one of the signatories, withdrew from the agreement. In 2019, in response to the US' withdrawal, Iran began uranium enrichment. Its status remains contested.

Montreux Convention (1936)
Convention regarding the Régime of Straits
Examined for: dispute settlement mechanisms

The Montreux Convention is an international treaty that grants Turkey control over the straits that lead in and out of the Black Sea, thereby regulating the transit of non-Black Sea warships in the Black Sea. Although the Convention pre-dates the establishment of the UN and many of the signatories no longer exist in their 1936 form (e.g. the Union of Soviet Socialist Republics and the Kingdom of Yugoslavia), the Convention remains in force.

RCEP (2020)
Regional Comprehensive Economic Partnership
Examined for: dispute settlement mechanisms

RCEP is a trade agreement between the 10 ASEAN Member States and Australia, China, Japan, New Zealand, and South Korea. Its objective is to create a modern, comprehensive, high-quality, and mutually beneficial economic partnership that will expand regional trade and investment and contribute to global economic growth and development.

UNCLOS Straddling Fish Stocks (1995)
UN Agreement for the Implementation of the Provisions of UNCLOS relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks
Examined for: dispute settlement mechanisms

The UNCLOS Straddling Fish Stocks Agreement is a multilateral treaty between 91 parties created by the UN to further implement provisions of the UN Convention on the Law of the Sea (UNCLOS) specifically relating to the conservation and management of straddling and highly migratory fish stocks. It also aims to enhance co-operation in management of fisheries resources that span broad areas of economic and environmental concern to its parties.

Annex 2: Implementation Mechanisms Expert Study Group – Biographies of Members

Mr. Aristyo Rizka Darmawan

Executive Secretary, Center for Sustainable Ocean Policy
University of Indonesia

Mr. Aristyo Darmawan is a legal academic and lecturer in International Law at the University of Indonesia (UI).

He received his Master of Laws (LL.M) from the Fletcher School of Law and Diplomacy at Tufts University, and his Bachelor of Laws (LL.B) majoring in International Law from UI.

Mr. Aristyo also serves as the Executive Secretary of UI's Center for Sustainable Ocean Policy. He regularly consults for the Indonesian Coast Guard, the Ministry of Foreign Affairs, and the Ministry of Marine Affairs and Fisheries.

He is also involved in the Indonesian Presidential Task Force for Combating Illegal, Unreported and Unregulated Fishing.

Dr. Achmad Gusman Catur Siswandi

Vice Dean and Assistant Professor, Faculty of Law
Padjadjaran University

Dr. Gusman Siswandi is Vice Dean and Assistant Professor in the Faculty of Law, Padjadjaran University.

He obtained his Doctoral degree from the Australian National University in 2014 and his Master of Laws (LLM) degree from University College London in 2005.

Dr. Gusman has published widely on topics such as the Law of the Sea, global intellectual property policy, and the international law of natural resources.

From 2007 to 2016, he assisted various government ministries in developing national measures to implement the Convention on Biological Diversity, the Cartagena Protocol on Biosafety, and the Nagoya Protocol on Access and Benefit-Sharing. He is a member of the Cartagena Protocol on Biosafety Compliance Committee.

Ms. Jalila Abdul Jalil

Centre Head, Ocean Law and Policy
Maritime Institute of Malaysia

Ms. Jalila Abdul Jalil is the Centre Head, Ocean Law and Policy, Maritime Institute of Malaysia (MIMA) and has previously served with the Ministry of Foreign Affairs, Malaysia.

She graduated with an LL.B (Hons) Bachelor of Laws from the University of Glamorgan, Wales, United Kingdom, and is an alumnus of the Rhodes Academy of Ocean Law and Policy.

Ms. Jalila is also a Member of the Honourable Society of the Middle Temple, Inns of Court, London.

Her research interests include public international law, the law of the sea, maritime boundaries, dispute settlement, and legal matters pertaining to International Maritime Organisation (IMO) Conventions.

Prof. Jacqueline Espenilla

Senior Researcher, Institute of Maritime Affairs and Law of the Sea
University of the Philippines (UP)

Prof. Jacqueline Espenilla is a Senior Researcher at the UP Institute of Maritime Affairs and Law of the Sea and a Senior Lecturer at the UP College of Law.

Her research focuses on the South China Sea disputes and, more broadly, on maritime safety and security in the Asia-Pacific.

Prof. Espenilla received her LL.M. from Harvard Law School and her J.D. and B.A. from UP.

She previously served as a Senior Attorney in the Department of Justice of the Philippines.

Prof. Jay Batongbacal

Director, Institute of Maritime Affairs and Law of the Sea
University of the Philippines (UP)

Prof. Jay Batongbacal is the Director of the UP Institute for Maritime Affairs and Law of the Sea.

Prof. Batongbacal obtained his Doctorate in the Science of Law (2010) from Dalhousie University in Canada, and his Master's degree in Marine Management (1997) and LL.B. (1991) from the UP College of Law.

His focus areas include marine territorial and jurisdictional issues, international maritime boundary negotiations, high seas fisheries, seafaring, shipping, marine environmental protection, coastal resource management, maritime security, and archipelagic studies.

Prof. Batongbacal was a member of the technical team that prepared and defended the Philippines' claim to a continental shelf beyond 200 nautical miles in the Benham Rise Region, made in a Submission filed with the Commission on the Limits of the Continental Shelf (CLCS) pursuant to the provisions of Article 76 of the Law of the Sea Convention – the CLCS recognized Philippine jurisdiction over the Benham Rise Region in April 2012.

Mr. Shahriman Lockman

Director, Chief Executive's Office
Institute of Strategic and International Studies, Malaysia

Mr. Shahriman Lockman is a Director in the Chief Executive's Office of the Institute of Strategic and International Studies, Malaysia.

His research interests include Malaysian foreign and defence policies, Southeast Asian maritime security affairs, and Malaysia-China relations, including in the context of the South China Sea.

He also manages the institute's China Engagement Initiative, which promotes Track 2 dialogue between Malaysia and China.

Mr. Lockman was a consultant to the Ministry of Defence on Malaysia's inaugural Defence White Paper (2019), specifically on budgeting and implementation issues.

Prof. Nguyen Hong Thao

Member of the UN International Law Commission and Professor Associate in Law
Diplomatic Academy of Vietnam and National University of Hanoi

Prof. Nguyen Hong Thao is currently a Senior Lecturer at the Diplomacy Academy of Vietnam and the National University of Hanoi.

Prof. Thao received his LL.B. and PhD from the University of Paris 1 Pantheon-Sorbonne, France, in 1996.

His main academic specialisations are in Public International Law, the Law of the Sea, International Organisations, and International Humanitarian and Environmental Law, and he has authored several works on international law, particularly on maritime dispute resolution.

Prof. Thao previously served as Vietnamese Ambassador to Malaysia (2011-2014) and Kuwait (2014-2017), and in 2020 was nominated by the Vietnamese Government as arbitrator under Article 2 of Annex VII to the 1982 United Nations Convention on the Law of the Sea.

Dr. Vu Hai Dang

Senior Research Fellow, Centre for International Law (CIL)
National University of Singapore

Dr. Vu Hai Dang is an Ocean Law and Policy Senior Research Fellow at CIL.

His expertise includes international law, the Law of the Sea, international environmental law, protection of the marine environment and the South China Sea.

Dr. Dang holds a JSD in international marine environmental law from Dalhousie University and a Master in international trade law from the University of Paris V. He has wide expertise, having worked in the various fields of the legal service, diplomacy, the civil service, and academia.

Dr. Yan Yan

Director, Research Centre of Oceans Law and Policy
National Institute for South China Sea Studies

Dr Yan Yan is Director of the Research Centre of Oceans Law and Policy in the National Institute for South China Sea Studies.

She received her PhD from the University of Hong Kong on public international law and her M.S. degree from the London School of Economics and Political Science.

Dr Yan Yan's research interests are in the Law of the Sea, maritime security in the Asia-Pacific, China's maritime law and policy and the South China Sea.

She is a sought-after speaker at regional conferences and seminars on maritime security issues.

Dr. Zheng Zhihua

Professor and Research Fellow
Shanghai Jiaotong University

Dr. Zheng Zhihua is a Professor and Research Fellow at the Shanghai Jiaotong University and Head of the East Asia Marine Policy Project.

He has served as Director of the Joint Institute for Maritime Law and History, Assistant Dean of the School of International Shipping Law at the East China University of Political Science and Law (ECUPL), and Deputy Secretary-General of the Shanghai Law and Society Association.

Dr. Zheng was senior editor of the China Ocean Law Review from 2010 to 2013 and was appointed Judge of the Ningbo Maritime Court in 2004.

He was a visiting fellow of St. John's College at Oxford University, the Institute of Maritime Law at Southampton University, and the Law Faculty at Göettingen University.