



Three levels of regional integration

GBA, ASEAN, Asia-Pacific

- A bird eye's view on some new developments

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Jean Monnet Module – EU Environmental Law in Times of Transitions

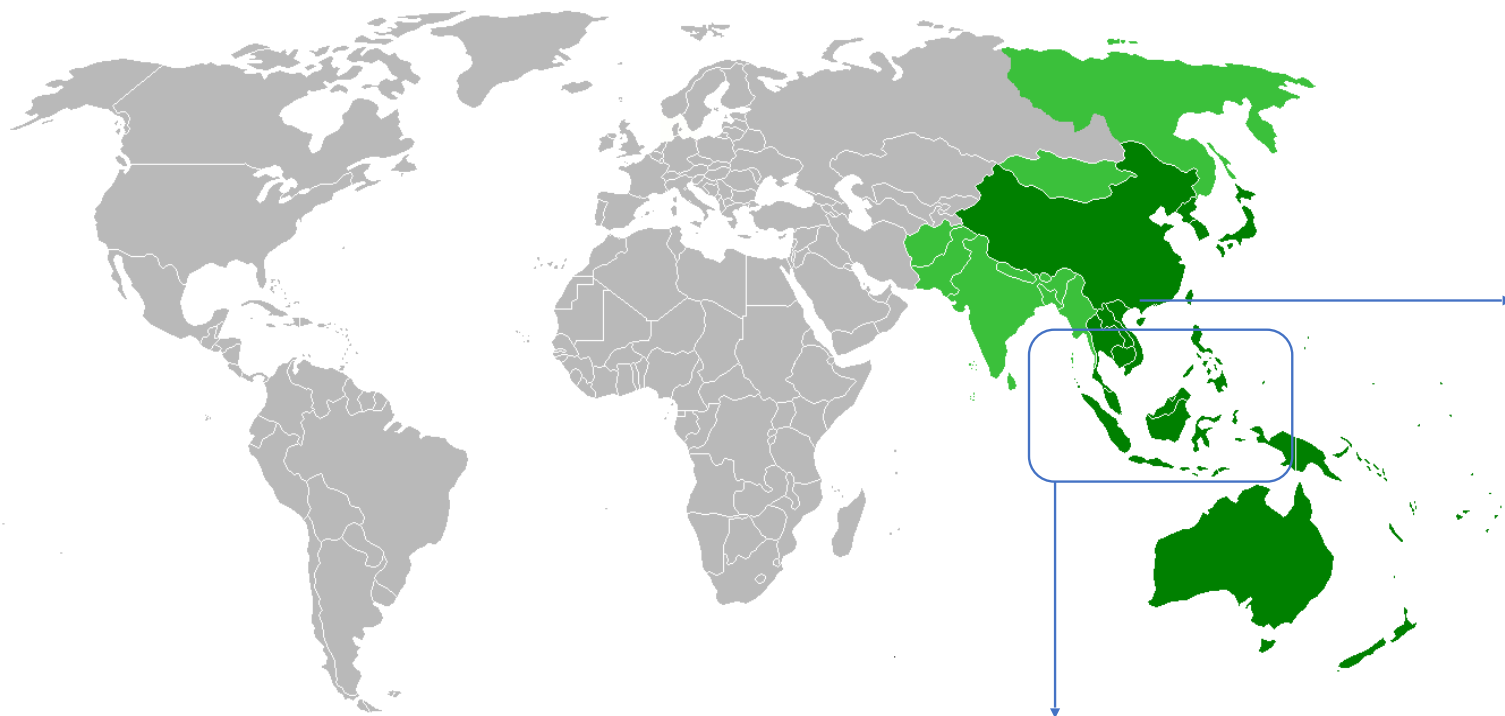
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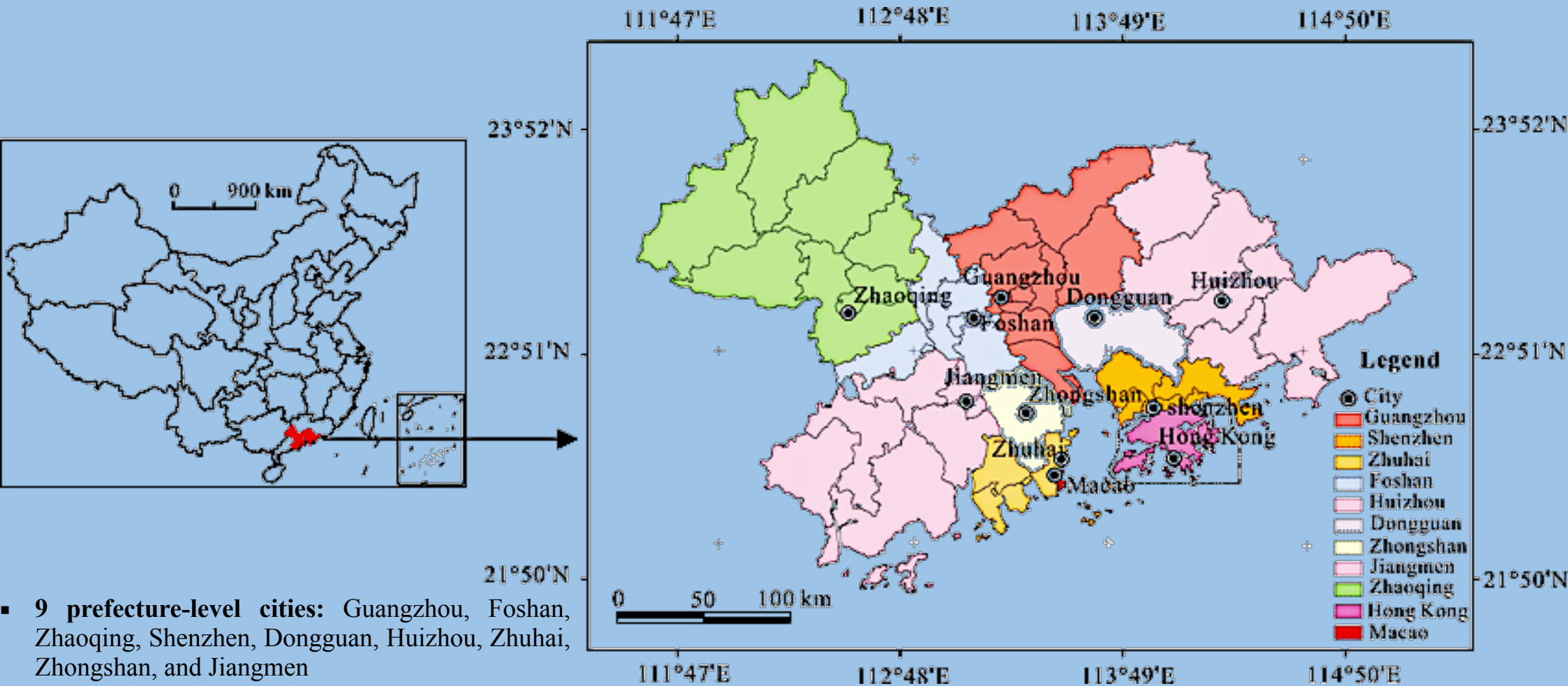


Guangdong-Hong Kong-Macao Greater Bay Area




ASEAN
Association of
Southeast Asian Nations

Location of the Guangdong-Hong Kong-Macao Greater Bay Area



- **9 prefecture-level cities:** Guangzhou, Foshan, Zhaoqing, Shenzhen, Dongguan, Huizhou, Zhuhai, Zhongshan, and Jiangmen
- **2 special administrative regions:** Hong Kong SAR and Macau SAR



Environmental Protection and Sustainable Development in Chinese law

**Reflection of the basic principles of
environmental law in Chinese
Environmental Protection Law**



Environmental Protection and Sustainable Development in China's Constitution, civil code and criminal law

- Constitution of the PRC
- Civil Code of the PRC
- Criminal Law of the PRC (Amendment XI)

Constitution of the PRC

- In March 2018,
- the first session of the 13th National People's Congress
- considered and passed the constitutional amendment, which included
- " *ecological civilization* "
- in the preamble.

Preamble

- “We the Chinese people of all ethnic groups will continue, under the leadership of the Communist Party of China and the guidance of Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory, the Theory of Three Represents, the Scientific Outlook on Development and Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era, to uphold the people’s democratic dictatorship, stay on the socialist road, carry out reform and opening up, steadily improve the socialist institutions, develop the socialist market economy and socialist democracy, improve socialist rule of law, apply the new development philosophy, and work hard in a spirit of self-reliance to modernize step by step the country’s industry, agriculture, national defense, and science and technology and promote coordinated material, political, cultural-ethical, social and ecological advancement, in order to build China into a great modern socialist country that is prosperous, strong, democratic, culturally advanced, harmonious and beautiful, and realize the great rejuvenation of the Chinese nation.”

Chapter I General Principles

- **Article 9**

All mineral resources, waters, forests, mountains, grasslands, unreclaimed land, mudflats and other natural resources are owned by the state, that is, by the whole people, except for the forests, mountains, grasslands, unreclaimed land and mudflats that are owned by collectives as prescribed by law.

The state shall ensure the rational use of natural resources and protect rare animals and plants. It is prohibited for any organization or individual to seize or damage natural resources by any means.

- **Article 10**

Land in cities is owned by the state.

Land in rural and suburban areas is owned by collectives except for that which belongs to the state as prescribed by law; housing sites and cropland and hillsides allotted for private use are also owned by collectives.

The state may, in order to meet the demands of the public interest and in accordance with the provisions of law, expropriate or requisition land and furnish compensation.

No organization or individual shall unlawfully transfer land through seizure, sale and purchase, or in any other form. Land-use rights may be transferred in accordance with the provisions of law.

All organizations and individuals using land must use it in an appropriate manner.

- **Article 26**

The state shall protect and improve living environments and the ecological environment, and prevent and control pollution and other public hazards.

The state shall organize and encourage afforestation and protect forests.

Civil Code of the PRC

- The Civil Code adopted in 2020 is a pioneer green civil code in the world
- with its complete system of "green rules".
- At the same time, the Civil Code has more than ten articles on ecological environmental protection and resource conservation in the Real Rights, Contracts and Tort Liability sections.
- As an important legal cornerstone of the market economy, the establishment of green principles in the Civil Code is of great significance for declaring the concept of green development and establishing the value of ecological security.

General Provisions -Chapter I Basic Provisions

- **Article 9**

When conducting a civil activity, a person (...) shall act in a manner that facilitates conservation of resources and protection of the ecological environment.

Book Two Real Rights-Title One General Provisions-Chapter II Creation, Modification, Transfer and Extinction of Real Rights-Section 1 Registration of Immovables

- **Article 209**

...The ownership registration is not required for natural resources that are owned by the State in accordance with law.

Book Three Contracts-Title One General Provisions-Chapter IV Performance of Contracts

- **Article 509**

... In performing a contract, the parties shall avoid wasting the resources, polluting the environment, or damaging the ecology in the course of performance of the contract.

Criminal Law of the PRC (Amendment XI)

- The Criminal Law Amendment (XI) adopted in 2020 adapts to the needs of combating illegal and criminal offenses in the field of ecology and environment, and for the first time incorporates "falsification" of environmental impact assessment and environmental monitoring agencies into the criminal law for criminalization and sentencing, and at the same time increases the level of punishment for the original "crime of polluting the environment" in the criminal law.
- At the same time, the applicable circumstances of the original "pollution of the environment" in the Criminal Law were raised to a higher level of punishment. In addition, in response to new situations that have emerged in recent years, the amendment has added two new types of crimes:): Crime of destruction of nature reserves and Crime of illegal introduction, release, discarding of invasive alien species.

- **Article 229**

Crime of providing false documents

Where any employee of an intermediary organization assuming asset appraisal, capital verification, validation, accounting, auditing, legal service, sponsorship, security evaluation, environmental impact assessment, environmental monitoring, or any other duty intentionally provides any supporting document that is false, the employee shall be sentenced to imprisonment of not more than five years or limited incarceration and a fine if the circumstances are serious; or under any of the following circumstances, the employee shall be sentenced to imprisonment of not less than five years nor more than ten years and a fine.

- **Article 338**

Crime of polluting the environment.

Whoever, in violation of the provisions issued by the state, discharges, dumps, or disposes of any radioactive waste, waste containing pathogens of an infectious disease, poisonous substance, or other hazardous substance, causing serious environmental pollution, shall be sentenced to imprisonment of not more than three years or limited incarceration and a fine or be sentenced to a fine only; if the circumstances are serious, be sentenced to imprisonment of not less than three years nor more than seven years and a fine; or under any of the following circumstances, be sentenced to imprisonment of not less than seven years and a fine.

- **Article 342 (I)**

Crime of destruction of nature reserves

Whoever, in violation of the legislation on the administration of nature reserves, conducts any activity of reclamation or development or constructs any building in a national park or national nature reserve shall, if the consequences are serious or there is any other execrable circumstance, be sentenced to imprisonment of not more than five years or limited incarceration and a fine or be sentenced to a fine only.

- **Article 344 (I)**

Crime of illegal introduction, release, discarding of invasive alien species

Whoever, in violation of the provisions issued by the state, illegally introduces, releases, or discards any invasive alien species shall, if the circumstances are serious, be sentenced to imprisonment of not more than three years or limited incarceration and a fine or be sentenced to a fine only.

China's environmental resources legal system

- Focusing on deepening the construction of ecological civilization, the Standing Committee of China's National People's Congress has continuously increased its efforts to revise environmental resources laws, and has initially formed a "1+N+4" resource and environmental legal system.
- "1" is the Environmental Protection Law. In 2014, the Standing Committee of China's National People's Congress comprehensively revised the Environmental Protection Law, clarifying its fundamental position in the resource and environmental legal system.
- "N" refers to a number of separate laws on resources and the environment, including the newly enacted Soil Pollution Prevention and Control Law, the Biosafety Law, the Wetland Protection Law, etc., and the newly revised Land Management Law, the Wildlife Protection Law and the Forestry Law, etc.
- "4" refers to the four special area protection legislations: the Yangtze River Protection Law, the Yellow River Protection Law, the Qinghai-Tibet Plateau Ecological Protection Law, and the Black Soil Protection Law.

Basic Principles of Environmental Law in the Chinese Environmental Protection Law

- Principle of State sovereignty
- Principle of integration
- Principle of prevention (pollution prevention)
- Principle of precaution
- Principle of public participation
- Polluter-pays principle
- Conditions for action: science data
- Conditions for action: regional conditions
- Right to a clean environment
- Access to environmental information
- Access to justice (the duty to compensate for harm)
- Environmental impact assessment
- Measures concerning industrial installations
- Environmental liability, taxes, charges

Provisions on principles in the Chinese Environmental Protection Law

- **Article 5**

Environmental protection shall adhere to the principles of giving priority to protection, focusing on prevention, conducting comprehensive treatment, engaging the general public, and enforcing accountability for damage.

give priority to protection

focus on prevention

conduct comprehensive treatment

engage the general public

enforce accountability for damage

Principle of State sovereignty

- **Article 4**

Protecting environment is a fundamental national policy of the state.

The state shall adopt economic and technological policies and measures conducive to economically and cyclically utilizing resources, protecting and improving environment and enhancing the harmony between mankind and nature to coordinate economic and social development with environmental protection.

Principle of integration

- **Article 13**

The people's governments at and above the county level shall include the environmental protection work in their plans on national economic and social development.

- **Article 14**

In organizing the development of economic and technological policies, the relevant departments of the State Council and the people's governments of all provinces, autonomous regions, and municipalities directly under the Central Government shall fully consider the environmental impact thereof, and hear the opinions of the relevant parties and experts.

Principle of prevention (pollution prevention)

- **Article 41**

The pollution prevention and control installations included in a construction project shall be designed, constructed and put to use simultaneously with the body of the construction project. Such installations shall satisfy the requirements of the approved environmental impact assessment document, and may not be dismantled or left unused without permission.

- **Article 39**

The state shall establish and improve the environment and health monitoring, survey and risk assessment rules, encourage and organize research on the impact of environmental quality on public health, and adopt measures to prevent and control diseases related to environmental pollution.

Principle of precaution

- **Article 18**

The people's governments at and above the provincial level shall organize the relevant departments or commission specialized institutions to survey and assess the environmental condition, and establish an environmental and resource carrying capacity monitoring and early warning mechanism.

- **Article 30**

In the development and utilization of natural resources, the development shall be rational to protect biological diversity and ecological safety, and the relevant ecological protection and rehabilitation management plans shall be developed and implemented according to the law.

- **Article 32**

The state shall strengthen the protection of air, water, and soil, among others, and establish and improve the corresponding survey, monitoring, assessment, and remediation rules.

Principle of public participation

- **Article 56**

For a construction project for which an environmental impact report is required by the law, when preparing such a report, the construction employer shall provide an explanation to the public that may be affected, and fully solicit their opinions.

- **Article 57**

Citizens, legal persons, and other organizations that discover any environmental pollution or ecological damage caused by any entity or individual shall have the right to report to environmental protection administrative departments or other departments with environmental protection supervision and administration functions.

Polluter-pays principle

- **Article 59**

Where any enterprise, public institution, or other business is fined and ordered to make correction for illegally discharging pollutants but refuses to make correction, the administrative agency legally making the punishment decision may impose continuous fines on it in the amount of the original fine for each day from the next day after it is ordered to make correction.

- **Article 60**

Where any enterprise, public institution, or other business discharges pollutants beyond the pollutant discharge standards or the total discharge volume control indicators of key pollutants, the environmental protection administrative department of the local people's government at or above the county level may order it to adopt measures such as restricting production or suspending business for rectification; and if the circumstances are serious, order it to terminate business or close down with the approval of the people's government with such approval power.

- **Article 64**

Where any damage is caused by environmental pollution or ecological disruption, the tortfeasor shall assume tort liability in accordance with the relevant provisions of the Tort Law of the People's Republic of China.

Conditions for action: science data

- **Article 14**

In organizing the development of economic and technological policies, the relevant departments of the State Council and the people's governments of all provinces, autonomous regions, and municipalities directly under the Central Government shall fully consider the environmental impact thereof, and hear the opinions of the relevant parties and experts.

- **Article 15**

The environmental protection administrative department of the State Council shall develop the national environmental quality standards.

- **Article 16**

The environmental protection administrative department of the State Council shall develop the national pollutant discharge standards in accordance with the national environmental quality standards and the national economic and technological conditions.

Conditions for action: regional conditions

- **Article 15**

The environmental protection administrative department of the State Council shall develop the national environmental quality standards.

For matters not included in the national environmental quality standards, the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government may develop local environmental quality standards; and for matters included in the national environmental quality standards, they may develop local environmental quality standards higher than the national standards. Local environmental quality standards shall be submitted to the environmental protection administrative department of the State Council for recordation.

- **Article 35**

In urban and rural construction, the characteristics of the local natural environment shall be considered, vegetation, waters and natural landscapes shall be protected, and the construction and management of gardens, green land, and scenic spots and historic sites in urban areas shall be strengthened.

Right to a clean environment

- **Article 1**

This Law is developed for the purposes of protecting and improving environment, preventing and controlling pollution and other public nuisances, safeguarding public health, promoting ecological civilization, and enhancing sustainable economic and social development.

- **Article 6**

All entities and individuals shall have the obligation to protect environment.

- **Article 9**

The people's governments at all levels shall strengthen the publicity and dissemination of information on environmental protection, encourage basic-level self-governing organizations of the masses, social organizations, and environmental protection volunteers to conduct publicity of environmental protection laws and regulations and environmental protection knowledge, and create a favorable atmosphere for environmental protection.

Access to environmental information

- **Article 53**

Citizens, legal persons, and other organizations shall, according to the law, have the rights to obtain environmental information and participate in and oversee environmental protection.

The environmental protection administrative departments and other departments with environmental protection supervision and administration functions of the people's governments at all levels shall, according to the law, disclose environmental information, and improve the procedures for public engagement, to facilitate the participation in and oversight of environmental protection by citizens, legal persons, and other organizations.

- **Article 54**

The environmental protection administrative department of the State Council shall release information on environmental quality and the monitoring of key pollution sources and other significant environmental information of the state in a unified way. The environmental protection administrative departments of the people's governments at and above the provincial level shall periodically release reports on the state of environment.

Access to justice (the duty to compensate for harm)

- **Article 58**

For an act polluting environment or causing ecological damage in violation of public interest, a social organization which satisfies the following conditions may institute an action in a people's court:

- (1) It has been legally registered with the civil affairs department of the people's government at or above the level of a districted city.
- (2) It has specially engaged in environmental protection for the public good for five consecutive years or more without any recorded violation of law.

A people's court shall, according to the law, accept an action instituted by a social organization that satisfies the provision of the preceding paragraph.

A social organization may not seek any economic benefit from an action instituted by it.

- **Article 69**

Whoever is suspected of a crime for violating this Law shall be subject to criminal liability according to the law.

Environmental impact assessment

- **Article 19**

An environmental impact assessment shall be conducted as legally required in the preparation of a relevant development and utilization plan or the construction of a project impacting the environment.

A development and utilization plan that has not undergone environmental impact assessment as legally required may not be implemented. The construction of a construction project that has not undergone environmental impact assessment as legally required may not be commenced.

Measures concerning industrial installations

- **Article 22**

The people's governments shall adopt policies and measures in finance, taxation, price, and government procurement, among others, to encourage and support the further pollutant discharge reduction by enterprises, public institutions, and other businesses after meeting the statutory requirements for the discharge of pollutants.

- **Article 41**

The pollution prevention and control installations included in a construction project shall be designed, constructed and put to use simultaneously with the body of the construction project. Such installations shall satisfy the requirements of the approved environmental impact assessment document, and may not be dismantled or left unused without permission.

- **Article 42**

Enterprises, public institutions, and other businesses that discharge pollutants shall adopt measures to prevent and control pollution and damage to environment caused by waste gas, waste water, waste residue, medical wastes, dust, malodorous gases, radioactive substances, noise, vibration, optical radiation, electromagnetic radiation, and other substances generated in their production, construction, and other activities.

Environmental liability, taxes, charges

- **Article 21**

The state shall adopt policies and measures in finance, taxation, price, and government procurement, among others, to encourage and support the development of environmental protection industries such as technological equipment for environmental protection, comprehensive utilization of resources, and environmental services.

- **Article 22**

The people's governments shall adopt policies and measures in finance, taxation, price, and government procurement, among others, to encourage and support the further pollutant discharge reduction by enterprises, public institutions, and other businesses after meeting the statutory requirements for the discharge of pollutants.

- **Article 43**

Enterprises, public institutions, and other businesses that discharge pollutants shall pay pollutant discharge fees in accordance with the relevant provisions of the state. Pollutant discharge fees shall be all used for the prevention and control of environmental pollution. No entity or individual may withhold such funds or use such funds for similar or other purposes.

No pollutant discharge fees shall be levied if environmental pollution tax has been levied according to the law.



Outline

- **I. Background of Development Plans of in the Guangdong-Hong Kong-Macao Greater Bay Area (GBA)**
- **II. Environmental Protection Cooperation in the GBA**
 - Framework
 - Challenges
- **III. Pathways for Legal Coordination in Ecological and Environmental Protection in the GBA**



I. Background of Development Plans of GBA

- ❖ Pearl River Delta, Greater Pearl River Delta, Pearl River Delta Ring, Pan Pearl River Delta, and the Guangdong-Hong Kong-Macao Greater Bay Area
- 2004: Co-ordinated Development Plan of the Pearl River Delta Townships (2014-2020)
- 2008: Development Outline of the Pearl River Delta
- 2009: Planning Study on the Co-ordinated Development of the Greater Pearl River Delta Townships
 - “One Bay with Three Metropolitan Areas”: “One Bay”: the Pearl River estuary. “Three Metropolitan Areas”: Guangzhou-Foshan, HK-Shenzhen and Macao-Zhuhai
- 2010: Key Action Plan for Liveable Bay Area of the Pearl River Estuary
- 2016: Outline of the 13th Five-Year Plan for Guangdong Province;
Outline of the 13th Five-Year Plan for National Economic and Social Development
- 2017: Report on the Work of the Central Government
 - The GBA was for the first time incorporated into this report, elevating its significance to the level of a national strategic framework. This places it on par with other major urban clusters such as the Beijing-Tianjin-Hebei region and the Yangtze River Delta. It represents another economic cooperation initiative extended by Mainland China to Hong Kong and Macao, following the Closer Economic Partnership Arrangement (CEPA) and the Pan Pearl River Delta regional cooperation. Additionally, it serves as an extension of the Belt and Road initiative.



- 2019: Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area;
Outline of the 14th Five-Year Plan for National Economic and Social Development
- 2020: Official Reply on the Development Plan for Inter-city Railway Links in the Guangdong-Hong Kong-Macao Greater Bay Area;
Comprehensive Reform Pilot Implementation Plan for the Construction of Shenzhen as a Demonstration Zone of Socialism with Chinese Characteristics (2020-2025)
- 2021: Implementation Plan for Guangzhou-Hong Kong Smart Manufacturing Cooperation Zone



II. Environmental Protection Cooperation in the Guangdong-Hong Kong-Macao Greater Bay Area

- The tripartite environmental cooperation in the Guangdong-Hong Kong-Macao Greater Bay Area has been underway for many years. Following the successive introduction of the “Outline of the Plan for the Reform and Development of the Pearl River Delta (2008),” the “Framework Agreement on Guangdong-Hong Kong Cooperation (2010),” the “The Framework Agreement on Cooperation Between Guangdong and Macao (2011),”
- the “Framework Agreement on Deepening Guangdong-Hong Kong-Macao Cooperation and Promoting the Development of the Greater Bay Area (2017),”
- the “Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area (2019),”
- and related specific environmental plans and agreements, intergovernmental environmental cooperation within the Greater Bay Area has continued to expand and deepen.
- Guangdong, Hong Kong, and Macao have been continuously advancing collaborative efforts in managing air quality, transboundary river management, water quality management of the Pearl River Estuary, and the protection of the water quality of the Dongjiang River.



II. Environmental Protection Cooperation in the Guangdong-Hong Kong-Macao Greater Bay Area

• 2.1 Framework

- Regional Planning as the Guiding Force**
- Intergovernmental Agreements (IGAs) as Catalysts**
- Institutional Framework: Joint Meetings**
- Environmental Cooperation Projects as Implementation Tools**

• 2.2 Challenges



List of Ecological and Environmental Collaborative Governance Policy Documents in the GBA (Partial)

No.	Filename	Publishing department	Year of release
1	Outline Development Plan for the Guangdong-Hong Kong-Macao State Council (PRC) Greater Bay Area		2019
2	Framework Agreement on Deepening Guangdong-Hong Kong-Macao PRC National Development and Reform Cooperation and Promoting the Development of the Greater Bay Area	Commission	2017
3	The State Council's Guidance on Deepening Pan Pear River Delta State Council (PRC) Regional Cooperation		2016
4	Outline of the Plan for the Reform and Development of the Pearl River Delta (2008-2020)	PRC National Development and Reform Commission	2011
5	13th Five-Year Plan for Environmental Protection in Guangdong Province	Guangdong Provincial Government	2017
6	Plan for the Integration of the Ecological Security System in the Pearl River Delta (2014-2020)	Guangdong Provincial Government	2014
7	12th Five-Year Plan for Environmental Protection and Ecological Construction in Guangdong Province	Guangdong Provincial Government	2011
8	Integrated Plan for Environmental Protection in the Pearl River Delta (2009-2020)	Guangdong Provincial Government	2010
9	Framework Agreement on Cooperation Between Guangdong and Macao	Guangdong Provincial Government	2011
10	Framework Agreement on Guangdong-Hong Kong Co-operation	Guangdong Provincial Government	2010
11	Pan Pearl River Delta Regional Cooperation Agreement on Environmental Protection	Guangdong Provincial Government of Ecology and Environment	2004



2.1 Framework of Environmental Protection Cooperation in the GBA

- **1. Regional Planning as the Guiding Force**
 - Key development plans since 2008
 - List of Ecological and Environmental Collaborative Governance Policy Documents in the GBA (Partial) [see next slide]
 - Main objectives and strategies outlined in the plans
 - **Common Objective:** Enhance regional cooperation among Guangdong, Hong Kong, and Macao to foster a collaborative approach for sustainable environmental governance and promote a transition to a low-carbon economy.
 - **Consolidated Strategies:**
 1. Develop and implement a joint mechanism for pollution prevention and control, including cross-boundary ecological conservation.
 2. Undertake comprehensive management and remediation of environmental issues, focusing on air quality.
 3. Encourage research, development, and application of clean, renewable, and new energy sources through tripartite cooperation.
 4. Promote cleaner production practices and low-carbon development models across enterprises in the region.
 5. Enhance policy coordination and regional planning under the guidance of central authorities, utilizing mechanisms like the Chief Executives' Joint Conference for collaborative decision-making.



2.1 Framework of Environmental Protection Cooperation in the GBA

• 2. Intergovernmental Agreements (IGAs) as Catalyst

• Types of IGAs

- **Framework Agreements:** Principled, declarative, and guiding in nature. They represent cooperation intentions without specific content. Examples:
 - Closer Economic Partnership Arrangement (CPEA)
 - Framework Agreement on Guangdong-Hong Kong Co-operation
 - Framework Agreement on Cooperation Between Guangdong and Macao
- **Specific Cooperation Agreements:** Detailed and actionable. Examples:
 - Comprehensive environmental cooperation agreements such as the Guangdong-Hong Kong Environmental Cooperation Agreement, Pearl River Delta and Macao Environmental Protection Cooperation Agreement, Hong Kong-Macao Environmental Cooperation Agreement, 2017-2020 Guangdong-Macao Environmental Cooperation Agreement.
 - Specialized environmental cooperation agreements like the Joint Declaration on Improving Air Quality in the Pearl River Delta, Guangdong-Hong Kong Clean Production Partnership, Guangdong-Hong Kong-Macao Regional Atmospheric Pollution Joint Defense and Control Cooperation Agreement.

• Purpose:

- These specific agreements provide clear guidance for promoting collaborative environmental management in the Guangdong-Hong Kong-Macao Greater Bay Area.
- They act as a blueprint and roadmap for governments to advance environmental protection.



2.1 Framework of Environmental Protection Cooperation in the GBA

• 3. Institutional Framework: Joint Meetings

• Purpose:

- Established to deepen cooperation in trade, finance, infrastructure, social well-being, environment, and climate among Guangdong, Hong Kong, and Macao.

• Establishment:

- Guangdong-Hong Kong and Guangdong-Macao joint conferences were set up in 1998 and 2003 respectively.
- Adopted a "dual leadership system" to strengthen cross-regional coordination and fully harness the "One Country, Two Systems" advantage.

• Structure:

- Consists of the joint conference, liaison offices, and specialized groups.
- Specialized groups act as the primary executing bodies for the decisions of the joint conference.

• Adaptation to Evolving Needs:

- In response to the shift from trade to environmental and climate cooperation, various groups were established:
 - Guangdong-Hong Kong Sustainable Development and Environmental Protection Group
 - Guangdong-Hong Kong Climate Change Liaison Coordination Group
 - Guangdong-Macao Environmental Protection Specialized Group
 - Their sub-specialized/theme groups

• Collaborative Model:

- These groups host high-level meetings annually, forming a multi-level cooperation model with decision-making, coordination, and execution layers.
- Example: The early "Guangdong-Hong Kong Environmental Protection Liaison Group" was set up to address river pollution (Shenzhen River), a beneficial exploration for cross-regional environmental coordination.

• Impact:

- The joint conference system, as the primary regional coordination method, facilitates interaction and regular communication among departments.
- It has played a proactive role in addressing air and water pollution in the Guangdong-Hong Kong-Macao region, ensuring a high-quality ecological environment in the Greater Bay Area.



2.1 Framework of Environmental Protection Cooperation in the GBA

• 4. Environmental Cooperation Projects as Implementation Tools

- **Guidance and Promotion:**

- Guided by various planning agreements and promoted through Guangdong-Hong Kong and Guangdong-Macao liaison meetings.

- **Cooperation Areas:**

- Collaborative practices in water, air, marine, solid waste management, clean production, and climate change response.
- Formation of a regional urban governance network.

- **Water Environment Management:**

- Key projects in the Dongjiang River, Shenzhen River, Daya Bay, Pearl River Estuary, and Duck Creek.
- Continuous improvement in water quality within the bay area.
- The notable Dongshen Water Supply Project ensures a stable water supply for Hong Kong, providing water security for the Greater Bay Area.

- **Air Quality Management:**

- Joint establishment of the Guangdong-Hong Kong Pearl River Delta Regional Air Quality Monitoring Network.
- Real-time air quality monitoring and public index release.
- Pioneering efforts in regional air pollution control in China and the implementation of the first cross-border air quality management plan.

- **Clean Production:**

- Guangdong-Hong Kong "Clean Production Partnership Plan".
- Demonstrated and promoted reduction of corporate pollutant emissions, playing a significant role in achieving the "Dual Carbon" goals for the Greater Bay Area.

- **Solid Waste Management:**

- Guangdong-Hong Kong-Macao collaboration in recycling, processing, and reusing waste vehicles and home appliances.
- Accelerated efforts towards building a "Zero Waste City" in the Greater Bay Area.

National Strategy or Policy (*After 2019*)

- Outline Development Plan (Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area) -2019
- Ecological and Environmental Protection Plan for the Guangdong-Hong Kong-Macao Greater Bay Area – 2020
- Cooperation Framework Agreement on Jointly Building a World-Class Beautiful Bay Area– 2021
- Cooperation Arrangement on Environmental Protection between the Mainland and the Macao Special Administrative Region - 2021
- Key Points for Ecological Environmental Protection for the Construction of the Guangdong-Hong Kong-Macao Greater Bay Area in 2022
- Guidelines for Prevention and Resolution of Cross-border Environmental and Social Risks in Guangdong, Hong Kong and Macao– 2022

2017-Framework Agreement on Deepening Guangdong-Hong Kong-Macao Cooperation in the Development of the Greater Bay Area

- On July 1, 2017, President Xi Jinping personally witnessed
- the signing of the 2017-Framework Agreement on Deepening Guangdong-Hong Kong-Macao Cooperation in the Development of the Greater Bay Area and Promoting the Construction of the Greater Bay Area by
- the National Development and Reform Commission and the governments of Guangdong, Hong Kong and Macao,
- kicked off national-level promotion of the construction of the Greater Bay Area.

Outline Development Plan

Outline Development Plan for the Guangdong-Hong Kong-Macao GBA -2019

• ***Six Basic Principles:***

- To be driven by innovation and led by reform.
- To coordinate development and plan holistically.
- To pursue green development and ecological conservation.
- To open up and cooperate and achieve a win-win outcome.
- To share the benefits of development and improve people's livelihood.
- To adhere to "One Country, Two Systems" and act in accordance with the law.

• ***Seven Areas of Development:***

- Developing an international innovation and technology hub.
- Expediting infrastructural connectivity.
- Building a globally competitive modern industrial system.
- Taking forward ecological conservation.
- Developing a quality living circle for living, working and travelling.
- Strengthen cooperation and jointly participating in the Belt and Road Initiative.
- Jointly developing Guangdong-Hong Kong-Macao cooperation platforms.



2.2 Challenges in Collaborative Environmental Governance in the GBA

- Ineffectiveness in Collaborative Governance**
- Institutional Heterogeneity**
- Divergent Focus in Environmental Concern**
- Inadequate Depth and Diversity in Multistakeholder Participation**



2.2 Challenges in Collaborative Environmental Governance in the GBA

- **Ineffectiveness in Collaborative Governance:** Despite years of development, the GBA has yet to fully realize the potential of environmental governance. The multi-tiered regional framework of collaborative governance lacks robust organizational support and financial backing, making significant policy and task implementation challenging.
- **Institutional Heterogeneity:** The “one country, two systems, three legal jurisdictions” uniqueness leads to high communication and collaboration costs. Bilateral cooperation is prevalent due to lower transaction costs, but trilateral mechanisms are lacking, impeding comprehensive and efficient environmental governance.
- **Divergent Focus in Environmental Concern:** Due to varying stages of economic development and diverse environmental issues, GBA regions prioritize different aspects of environmental governance. While Hong Kong and Macao focus on modern environmental practices, Guangdong, being an industrial base, is more concerned with pollution control.
- **Inadequate Depth and Diversity in Multistakeholder Participation:**
 - **Lack of Multi-Stakeholder Participation:** Current cooperative mechanisms are primarily government-centric. Greater involvement from businesses, NGOs, and the public is necessary for more efficient environmental governance;
 - **Public Participation in Environmental Protection:** High degree of involvement in Hong Kong with robust systems for legislative, enforcement, and supervision participation; Lower public participation in Mainland China, lacking mechanisms for involvement, supervision, and complaint reporting in significant environmental decisions.
 - **Environmental Information Accessibility:** Significant differences in information disclosure, standards, and feedback mechanisms across the regions, impacting public access to information and rights protection



III. Pathways for Legal Coordination in Ecological and Environmental Protection in the GBA

- **Optimal Pathway: Formulating a Regional Ecological and Environmental Protection Model Law**
 - The GBA faces inadequacies in existing governance methods and the direct formulation of hard laws is not yet feasible. As Hong Kong and Macao enjoy high degrees of autonomy with independent legal systems, a diversified adjustment phase led by a model law approach can be initiated once agreements become more standardized and institutionalized.
 - Model laws are effective in harmonizing legal conflicts between nations and within regions, promoting a unified approach to related legal issues. Originating in the U.S. to unify private law among states, model laws became an alternative solution to legal conflicts in the federal system when codification movements aimed at unifying state laws failed. These laws, often drafted by impartial academic groups or specialized institutions, reflect progressive rationality, balancing different legislative interests, and enhancing their scientific and progressive nature. Model laws offer advantages over conventional laws due to their non-binding nature, potential for adoption into local or national legislation, flexibility, openness, and capacity to transform from “soft law” to “hard law” once adopted, acquiring legal binding force and realizing the value of legal security. Model legislation has thus emerged as a contemporary legislative approach, offering a progressive and flexible solution to interstate or interregional legal conflicts. China could consider this method to address interregional legal conflicts, promoting harmony between unity and diversity in local legislation, and gradually achieving regional legal unity.
 - The GBA’s unique political and legal environment poses challenges to directly unifying environmental laws to resolve interregional legal conflicts. Discrepancies exist in environmental legislative systems, enforcement methods, and judicial systems between the three jurisdictions of Hong Kong, Macao, and Mainland China. However, since enforcement and judiciary are based on law, overcoming legislative barriers in the GBA becomes crucial to alleviating interregional environmental legal conflicts. Drafting the “GBA Ecological and Environmental Protection Model Law” represents a comprehensive legislative approach to building the environmental legal framework in the GBA, respecting the independent legislative rights of the Hong Kong and Macao Special Administrative Regions while breaking free from constraints imposed by “one country, two systems, three legal jurisdictions,” and administrative boundaries, thus compensating for deficiencies in the traditional legal normative system.



- **Alternative Pathways:**

- **Unified Legislation: Not adaptable to current legal conditions**

- The development of the Guangdong-Hong Kong-Macao Greater Bay Area (GBA) must consider the “One Country, Two Systems” principle applied in the Hong Kong and Macao Special Administrative Regions. The Constitution and the Basic Laws serve as the legal foundation for this principle and the collaboration within the GBA. According to the Basic Laws, only national laws listed in Annex III are implemented in Hong Kong or Macao, and these are limited to matters of national defense, foreign affairs, and other areas not within the autonomous scope of the Special Administrative Regions as stipulated by the laws.
- Ecological and environmental governance in the GBA is an internal affair of China, not involving national defense or foreign affairs, and is also not excluded from the autonomous scope of the Special Administrative Regions by the Basic Laws. Therefore, it cannot be included in Annex III, and national legislative bodies cannot enact unified legislation to regulate ecological and environmental coordinated governance. In matters of environmental protection, the autonomy of the Hong Kong and Macao Special Administrative Regions should be respected. Hence, under the current legal system conditions, it is not yet possible to prescribe comprehensive ecological and environmental governance in the GBA through unified legislation.

- **Separate Legislation by Guangdong, Hong Kong, and Macao: Difficult to form a cohesive governance force**



• **Separate Legislation by Guangdong, Hong Kong, and Macao: Difficult to form a cohesive governance force**

- Lack of legislative coordination in environmental protection among Guangdong, Hong Kong, and Macao.
- Significant disparities in legal concepts and frameworks.
- Colonial influences and divergence from traditional Chinese legal systems in Hong Kong and Macao.
- Mainland China's distinct socialist legal system with Chinese characteristics.
- Different approaches to environmental issues due to varying historical, economic, and developmental factors.
- Diverse legislative powers and levels of autonomy among the three regions.
- Marked differences in the rule of law and legislative quality.
- Separate legislation hampers the formation of a unified environmental governance force, affecting the legal construction of the GBA.

- Currently, the legislative bodies of Guangdong, Hong Kong, and Macao have not coordinated their legislative planning in the field of environmental protection. Each region is operating independently within its own legal concepts and frameworks. In fact, there are significant differences in legal concepts and frameworks among the three regions, resulting in environmental protection systems that reflect hard-to-coordinate heterogeneity.
- During the colonial period, the laws of Hong Kong and Macao were profoundly influenced by British and Portuguese laws, incorporating legal concepts, systems, and sources from the colonizers, gradually diverging from traditional Chinese legal systems. After their return to China, following the provisions of the Joint Declarations and the Basic Laws, they retained their original social systems unchanged, along with a high degree of autonomy. Consequently, their legal systems preserved the capitalist legal system and practices, retaining and developing their original legislative systems.
- Mainland China, since the establishment of the People's Republic of China, has implemented a socialist system, deeply influenced by Marxist legal theory, and has gradually formed a socialist legal system with Chinese characteristics. Thus, the legal concepts, jurisprudence, and philosophy on the mainland differ in many aspects from those of Hong Kong and Macao.
- More importantly, due to historical reasons, natural resource endowments, levels of economic development, and environmental development goals, the three regions may also make different provisions for the same environmental issues.
- Additionally, the legislative powers of the three regions differ. Hong Kong and Macao have a high degree of autonomous legislative power for environmental protection matters, and the laws they enact need only be filed with the Standing Committee of the National People's Congress. Shenzhen, as a Special Economic Zone and a pioneering demonstration zone of socialism with Chinese characteristics, has Special Economic Zone legislative power, and can make flexible provisions for laws, administrative regulations, and local regulations based on authorization. Other cities in the Pearl River Delta are deeply restricted by legislative powers and can only regulate environmental protection matters without conflicting with different constitutions, laws, administrative regulations, and local regulations of their provinces or autonomous regions, making it difficult to flexibly formulate environmental laws based on the actual needs of the Bay Area development. Furthermore, there are significant differences in the level of the rule of law between Hong Kong and Macao, the nine cities of the Pearl River Delta, and even among the nine cities themselves, leading to obvious stratification in legislative quality. In such a situation, separate legislation by Guangdong, Hong Kong, and Macao may hardly form a cohesive force for environmental governance, which is not conducive to the legal construction of the Guangdong-Hong Kong-Macao Greater Bay Area.



Optimal Pathway:

Crafting a Regional Ecological and Environmental
Protection Model Law,

drawing on the **soft law mechanisms**
and **cooperative experiences**

from ASEAN and Asia-Pacific legal frameworks.

**ASEAN
environmental protection
and
sustainable development**



ASEAN Vision 2025

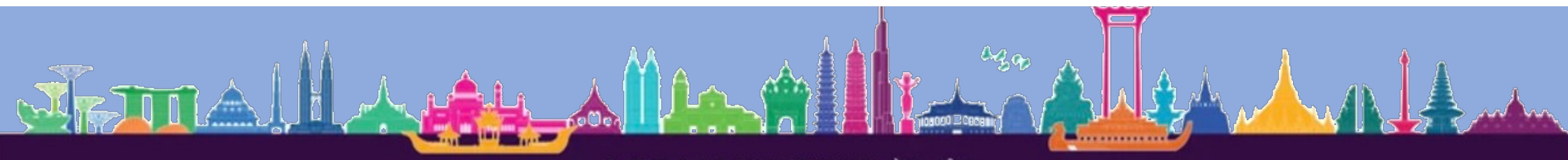
- ASEAN was proclaimed a Community through a Declaration signed by ASEAN Leaders at their 27th Summit in Kuala Lumpur on 22 November 2015.
- ASEAN 2025: Forging Ahead Together, which was simultaneously endorsed by the Leaders at their 27th Summit, charts the path for ASEAN Community building over the next ten years. ASEAN is working towards a Community that is “politically cohesive, economically integrated, and socially responsible”.
- ASEAN 2025 consists of specific action lines and strategic measures to realize the targets identified.
- ASEAN 2025: Forging Ahead Together consists of the Kuala Lumpur Declaration on ASEAN 2025: Forging Ahead Together, the ASEAN Community Vision 2025, the ASEAN Political-Security Community Blueprint 2025, the ASEAN Economic Community Blueprint 2025 and the ASEAN Socio-Cultural Community Blueprint 2025.



Key Elements of the ASEAN 2025

• Key aspirations across Socio-Cultural Community

1. An inclusive Community that is people-oriented, people-centred and promotes a high quality of life and equitable access to
2. opportunities for all, and engages relevant stakeholders in ASEAN processes;
3. A sustainable Community that promotes social development and environmental protection through effective mechanisms to meet current and future needs of the peoples;
4. A resilient Community with enhanced capacity to continuously respond and adapt to current challenges and emerging threats; and
5. A dynamic, open, creative and adaptive Community with an ASEAN identity reflecting the region's collective personality, norms, values and beliefs as well as aspirations as one ASEAN Community.



ASEAN Socio-Cultural Community Blueprint 2025 (ASCC Blueprint 2025)

- The ASCC has helped to heighten commitment in the form of policy and legal frameworks.
- In moving towards the realization of the overarching goals of an ASEAN Community 2025, the ASCC envisions the achievement of a sustainable environment in the face of social changes and economic development.
- The objective of this Characteristic is to promote and ensure balanced social development and sustainable environment that meet the needs of the peoples at all times.
- The aim is to strive for an ASEAN Community with equitable access to sustainable environment that can support its social development and its capacity to work towards sustainable development.

ASEAN Cooperation on Environment Institutional Framework





ASEAN Strategic Plan on Environment (ASPEN)

- In order to support the implementation of the environmentally-related actions as stated in the ASEAN 2025: Forging Ahead Together roadmap,
- particularly the ASCC Blueprint 2025,
-
- ASEAN Strategic Plan on Environment (ASPEN) was developed
- to serve as a comprehensive guide of ASEAN cooperation on environment
- to contribute to the promotion of sustainable development in the region.



ASEAN Strategic Plan on Environment (ASPEN)

- ASEAN Strategic Plan on Environment (ASPEN)
- is planned to consist of
- action plans of the following seven strategic priorities
- that cover major thematic areas of cooperation in environmental protection and sustainable development undertaken by ASOEN. Each action plan will contain selected programmes based on existing cooperation or emerging needs of ASEAN Member States. These programmes can be used as a guide in developing specific projects or activities with partners.



KEY PROGRAMMES

- Biodiversity Conservation
- Mainstreaming Biodiversity
- Capacity Development
- Knowledge Management
- Communication, Education, and Public Awareness
- Partnerships



FLAGSHIP INITIATIVES

- ASEAN GREEN INITIATIVE
- #WEAREASEANBIODIVERSITY
- ASEAN BIODIVERSITY DASHBOARD
- ASEAN BIODIVERSITY HEROES
- ASEAN BIODIVERSITY OUTLOOK

Special Characteristics of ASEAN's Environmental and Sustainable Development Normative Advancement

- **Soft Law :**
- Soft law – concept - topic of discussion since the 1980s.
- There's no unanimous definition for soft law. However, it's widely recognized as *norms that regulate international relations without strict legal obligations.*
- Soft law isn't immediately legally binding but can have practical or legal influence.



Manifestations of Soft Law

- Some see soft law as international norms not included in the sources of international law by the Statute of the International Court of Justice.
- Soft law can be found in non-binding international agreements, principles, norms, and certain modes of dispute resolution.



ASEAN's Environmental Initiatives:

- ASEAN's commitment to environmental protection began formally with the ASEAN Sub-regional Environmental Programme (ASEP1) in 1977.
- There have been multiple committees and working groups established over the years, with the ASEAN Senior Officials on Environmental Protection (ASOEN) playing a significant role.
- Several written documents, mostly in the form of declarations and resolutions, have been developed over the years. Examples include the Manila Declaration, Bangkok Declaration, Kuala Lumpur Declaration, Jakarta Resolution, and others.



Environmental Action Plans:

- ASEAN has launched various action plans, including the ASEAN Sub-regional Environment Programme and the Hanoi Plan of Action.
- These plans are designed to strategically guide environmental protection and sustainability efforts.



International Environmental Treaties:

- ASEAN nations have signed several legally binding international environmental agreements.
- However, soft law instruments like declarations and statements outnumber these treaties



ASEAN's Environmental Documents

- Various declarations and resolutions including:
 - Manila Declaration on the ASEAN Environment, 1981
 - Bangkok Declaration, Jakarta Declaration, 1984
 - Kuala Lumpur Declaration on the Enhancement of the Conservation of Natural Forests, 1985
 - Jakarta Resolution on Sustainable Development, 1987
 - Singapore Declaration on Environment and Development, 1992
 - Bandar Seri Begawan Declaration on Environment and Development, 1994
 - Jakarta Declaration on Environment and Development, 1997
 - Statement on "Fire, Haze - ASEAN's Response Strategy", 2001
 - ASEAN Declaration on "Fire, Haze - ASEAN's Response Strategy", 2001
 - Yangon Resolution on Sustainable Development, 2003 ASEAN Declaration on Cultural Heritage Parks, 2003
 - ASEAN Centre for Ecological Diversity Agreement, 2005 Heart of Borneo Declaration, 2007
 - ASEAN Declaration on the Implementation of the United Nations Framework Convention on Climate Change (UNFCCC) at its tenth session, 2007
 - ASEAN Declaration on the Environment and Development in the Gulf of Mexico, 2007
 - ASEAN Declaration on the Thirteenth Meeting of the Conference of the Parties to the UNFCCC and the Third Meeting of the Parties to the Kyoto Protocol (MOP3), 2007
 - ASEAN Declaration on the Fifteenth Meeting of the Conference of the Parties (COP15) to the UNFCCC and the Fifth Meeting of the Parties (MOP5) to the Kyoto Protocol, 2009
 - ASEAN Declaration on Climate Change, 2009



Action Plans & Environmental Treaties

- Action Plans:
 - ASEAN Sub-regional Environment Programme, 1977-1993
 - Hanoi Plan of Action, 1994-2004
 - Vientiane Plan of Action, post-2004
- Environmental Treaties:
 - Agreement on Conservation of Nature, 1985
 - Jakarta Agreement on Sustainable Development, 1987
 - ... and several more till 2003.



Soft Law Practice in ASEAN Environmental Co-operation

- Soft law plays a pivotal role in ASEAN's environmental cooperation.
- ASEAN has shown a preference for soft law (declarations & statements) over legally binding treaties.
- Soft law provides flexibility and fosters cooperation among ASEAN members in environmental matters.



Advantages of international soft law in ASEAN environmental co-operation

2.1 Causes of soft law phenomenon in ASEAN environmental co-operation

- Environmental protection: A legal and political issue.
- Inappropriate policies: Affect internal stability and international image.
- ASEAN countries: Varying development levels.
- Difficulty: Agreeing on specific environmental goals.
- ASEAN decision-making: Principle of unanimity and consultation.
- Financial limitations: Many ASEAN countries rely on external support.
- ASEAN's environmental cooperation: Involves external countries and International Organisations.
- Role of International Organisations: Provide economic and policy support.
- Regional dimension of environmental problems: More impactful within the region.
- ASEAN's unique position: Challenges in setting uniform environmental arrangements.
- Soft law: Achieves co-operation gradually through political checks and balances.



Limitations of International Soft Law

Limitations of Soft Law:

- **Vague Language & Rough Obligations**
 - Tendency for ASEAN countries to "talk but not act"
 - Frameworks often describe future responsibilities in general terms
- **Inherent Non-Binding Nature**
 - Often neglected due to economic interests
 - National security used as an excuse to avoid obligations
- **Lack of Safeguards**
 - No clear commitments or timetables
 - No requirement for alignment with domestic laws



The “Social” Perception of Soft Law

- Not legally binding
- Emphasis on:
 - National interests alignment
 - Concerns with Damage to reputation in case of legal breaches



Role of Soft Law vs. Hard Law / TIME

- **Soft Law**

- Important for promoting formation and change in the international order
- Encourages consensus and cooperation

- **Hard Law**

- Essential for security, stability, and development
- Introduced once consensus is reached or when an issue becomes critical



Conclusions for The Role of International Soft Law in ASEAN Environmental Cooperation

- **Soft ≠ Weak:** Soft law represents flexibility and adaptability; it's a "temporary compromise" for achieving broader goals.
- **Holistic Approach:** International environmental issues encompass legal, economic, political, cultural, social, scientific, and technological dimensions.
- **Politicisation:** The intertwining of environmental and political issues; it is intensifying due to the complex global situation.
- **Significance of Law:** Law's pivotal role in fostering international environmental protection is undeniable, especially in today's context.
- **Emergence of Soft Laws:** Represents intelligence behind legal strategies.
- **Utilizing Soft Law:** Challenges lie in leveraging its strengths, navigating its weaknesses, and directing positive international environmental order growth.
- **ASEAN's Role:** ASEAN offers crucial insights due to its distinctiveness and regional significance, benefiting both academic exploration and practical application in international politics and law.



Bird Eye's Overview
of
environmental protection
in Asia-Pacific

Asia and Pacific: Afghanistan, Australia, Bangladesh, Bhutan, India, Maldives, Nepal, Sri Lanka, Pakistan, Cambodia, Laos, Myanmar, Vietnam, Thailand, China (including special administrative regions of Hong Kong and Macau, Taiwan), Japan, North Korea, South Korea, Mongolia, Brunei Darussalam, Indonesia, Malaysia, Philippines, Singapore, Samoa, Australia, Christmas Island, Cocos Island, Cook Islands, East Timor, Fiji, French Polynesia, Guam, Kiribati, Micronesia, Marshall Islands, Nauru, New Caledonia, New Zealand, Niue, Norfolk Island, North Mariana, Pacific Island, Palau, Papua New Guinea, Pitacairn, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu, Vanuatu, Wake Island, Wallis & Fatuna

SUSTAINABLE DEVELOPMENT GOALS



Compliance with SDGs

- Environmental protection in Asia and Pacific Area – A reflection of different national realities and different approaches theretowards

- 1. No Poverty
- 2. Zero Hunger
- 3. Good Health and Well Being

Goals about Human survival
(through development)

- 6. Clean Water and Sanitation
- 7. Affordable and Clean Energy
- 13. Climate Action
- 14. Life below Water
- 15. Life on Land

Goals about a Standard of living
(through environmental protection)

Asia-Pacific Case 1: China

Development prevails/used to prevail sustainability.

environmental legislation in China is relatively comprehensive, evolving, reflecting socio-political conditions.

CEPA, BRI MoUs, China-EU CAI concluded by China and other parties show the gradual increase of importance of environmental protection.
gradual increase of environmental provisions in these treaties

CEPA Investment Agreement with HK and Macau

双方均承认，通过放松环境措施来鼓励另一方投资者进行投资是不适当的。为此，一方不应豁免、违背或以其他方式减损此类环境措施去鼓励另一方投资者在前述一方境内设立、取得、扩大或保留投资。

English Translation: Both sides acknowledged that it would be inappropriate to encourage investment from the other side by loosening environmental measures. To this end, one party shall not exempt, violate or derogate the environmental measures in other methods for the purpose of encouraging investors of the other party to establish, acquire, expand or retain investments in its territory.

China's Belt and Road Initiative's MoUs

No	Party	Time of signature	Whether there's similar environmental protection clauses
	Sri Lanka	20/10/2023	Have consented to sign a "Memorandum of Understanding on Green and Low-Carbon Development Cooperation". Cannot find the full text.
	Chile	17/10/2023	The press has mentioned green development and sustainable development, however, cannot find the full text
	Papua new Guinea	16/10/2023	Signed the "Memorandum of Understanding on Cooperation on Sustainable Development" to promote green and low-carbon economic and social development and jointly respond to climate change
	Hungary	16/10/2023	The signing of the "Memorandum of Understanding on Green and Low-Carbon Development Cooperation" will further build consensus and promote policy, technology and information exchanges in key areas such as energy conservation, environmental protection, and circular economy.
	Argentina	04/02/2022	Memorandum of Understanding on cooperation within the framework of the Silk Road Economic Belt and the 21st Century Maritime Silk Road Initiative, aim to facilitate cooperation in clear energy, aim to sustainable development
	France	06/11/2019	The two heads of state welcomed the signing of the "Memorandum of Understanding on Promoting Cooperation in the Construction of Reprocessing/ Recycling Plants in China", hoped that enterprises from both sides would complete negotiations as soon as possible, and reiterated their willingness to simultaneously reach an intergovernmental agreement on the project.
	United Arab Emirates	24/07/2019	The two sides signed a number of agreements and memorandums of understanding aimed at strengthening bilateral relations in the fields of economy and trade, investment, technology transfer, artificial intelligence, environmental protection, food security, culture and education.

BRI MoUs

Most of the MoUs are actually not public available. The available MoUs either did not mention environmental protection or mention it as an objective.

Example: MoU with Italy

Green development cooperation. Both Parties are fully supportive of the objective to develop connectivity following a sustainable, environmentally friendly approach, actively promoting the global process towards green, low carbon and circular development. In this spirit, the Parties will cooperate in the field of ecological and environmental protection, climate change and other areas of mutual interest.

The Parties will share ideas about green development and actively promote the implementation of the 2030 Agenda for Sustainable Development and the Paris Accord on Climate Change. The Ministry for the Environment, Land and Sea of the Italian Republic will actively participate the International Coalition for Green Development on the Belt and Road initiated by the Ministry of Ecology and Environment of the People's Republic of China and the United Nations Environment Programme (UNEP).

Asia-Pacific Case 2: ASEAN

Development prevails sustainability.

The environmental protection treaties initiated by ASEAN, states that the purpose of these treaties is the better use of environment.

There are seldom environmental protection clauses in ASEAN trade and investment treaties.

Even if there is one, it is in the form of GATT exception style.

Clauses in trade/investment agreements passed by ASEAN or ASEAN countries

No	Name	Contents
1	ASEAN Trade in Service Agreement	Only mention sustainable development as objective.
2	Agreement on ASEAN Preferential Trading Arrangements	Only like environmental exception as of GATT
3	MEMORANDUM OF UNDERSTANDING ON STANDSTILL AND ROLLBACK ON NON-TARIFF BARRIERS AMONG ASEAN COUNTRIES AGREEMENTON	Only like environmental exception as of GATT
4	THE COMMON EFFECTIVE PREFERENTIAL TARIFF (CEPT) SCHEME FOR THE ASEAN FREE TRADE AREA (AFTA)	Only like environmental exception as of GATT
5	FRAMEWORK AGREEMENT on ENHANCING ASEAN ECONOMIC COOPERATION	Only like environmental exception as of GATT
6	CUSTOMS TRANSIT SYSTEM	Only like environmental exception as of GATT
7	FRAMEWORK AGREEMENT ON THE ASEAN INVESTMENT AREA	Only like environmental exception as of GATT
8	ASEAN COMPREHENSIVE INVESTMENT AGREEMENT	Only like environmental exception as of GATT
9	ASEAN Trade in Goods Agreement	Only like environmental exception as of GATT

Asia-Pacific Case 3: Japan

Environmental legal system is divided into general environmental law and laws on specific fields.

Individual is entitled to sue the administrative authority's inaction through Mandamus Action which does not require the clear demonstration of a certain right.

Individual is entitled to bring two kinds of lawsuits against environmental polluters, namely claims for damages (tort), claims for injunctive relief (injunction to personal rights such as right to life, the wrongful act must be intolerable, Sendai Citizens v. Sendai Power Station).

EU-Japan Economic Partnership Agreement

There is a “Trade and Sustainable Development” chapter, which is similar to the sustainable development section in China-EU CAI.

Asia-Pacific Case 4: Korea

Individual brings constitutional complaint against environmental laws (Do-Hyun Kim et al. v. South Korea).

Individual brings constitutional complaint against governments policies (Korean Biomass Plaintiffs v. South Korea), or specific measures (Yeon-Tae Kim et al. v. Minister of Land, Infrastructure and Transport).

Individual seeks preliminary injunction against private subjects for environmental harm (Kang et al. v. KSURE and KEXIM).

EU-Korea Free Trade Agreement

There is a “Trade and Sustainable Development” chapter, which is similar to the sustainable development section in China-EU CAI.

Asia-Pacific Oceania Case 5: Treaties

The environmental treaties concluded purely by Oceanian states address environmental protection for the purpose of good health, benefit and enjoyment of present and future generations.

EU-Australia Free Trade Agreement

This is still in negotiation. But there is a proposed “Trade and Sustainable Development” chapter which is similar to the sustainable development section in China-EU CAI.

EU-New Zealand Free Trade Agreement

There is a “Trade and Sustainable Development” chapter, which is similar to the sustainable development section in China-EU CAI.

TTIP

There is a proposed “Trade and Sustainable Development” chapter, which is similar to the sustainable development section in China-EU CAI. It is even longer.

CPTPP

There is a chapter specially addressing environment. It seems long and detailed.

RCEP: no much about environment, still GATT style.

GATT Model: Article XX General Exception

Cases: GATT, ASEAN economic treaties, ASEAN-China BIT, RCEP

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

- (a) necessary to protect public morals;
- (b) necessary to protect human, animal or plant life or health;
- (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;

EU Model of Environmental Protection Provisions

Cases: FTAs or proposed FTA with Korea, Singapore, Viet Nam, Australia, and New Zealand; EPA with Japan; proposed CAI with China; proposed TTIP

Chapter Trade/Investment and Sustainable Development

1. Objectives/Principles
2. Review of Sustainability Impacts
3. Transparency
4. Right to Regulate and Levels of Protection
5. Multilateral Environmental Agreements
6. Trade/Investment favouring Sustainable Development
7. Mechanism to Address Difference
 - a. Consultation
 - b. Panel of Experts

Example: Text of EU China CAI

Objectives/Principles

1. The Parties recall the relevant international documents with regard to sustainable development in particular the Agenda 21 on Environment and Development of 1992, the Johannesburg Plan of Implementation on Sustainable Development of 2002, the Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work of 2006, the International Labour Organisation (ILO) Declaration on Social Justice for a Fair Globalisation of 2008 and the Outcome Document of the UN Conference on Sustainable Development of 2012 entitled "The Future We Want", the UN 2030 Agenda for Sustainable Development and its Sustainable Development Goals, and the 2019 ILO Centenary Declaration for the Future of Work and reaffirm their commitment to promote the development of investment in such a way as to contribute to the objective of sustainable development, for the welfare of present and future generations, and to ensure that this objective is integrated and reflected in their investment relationship.

2. The Parties are committed to pursue sustainable development, and recognize that economic development, social development and environmental protection are interdependent and mutually reinforcing dimensions of sustainable development.

Example: Text of EU China CAI

Review of Sustainability Impacts

The Parties recognise the importance of reviewing, monitoring and assessing the impact of the implementation of this Agreement on sustainable development through their respective processes and institutions.

Example: Text of EU China CAI

Transparency

1. Each Party, in accordance with its domestic laws and [Transparency provisions], shall ensure that measures of general application, including implementing measures, on matters related to this [Section] are proposed and adopted in a transparent manner providing reasonable opportunities for the public, including non-state stakeholders, to submit their views.
2. The Parties shall hold regular discussions and exchanges of views on the elements of this [Section] in the Investment Committee. In this regard, the Parties shall seek views of their non-state stakeholders, in a balanced representation of interests across all three dimensions of sustainable development. Each Party shall receive written communication on matters related to this [Section] and refer the relevant ones for due consideration by the Investment Committee.
3. The Parties may facilitate the meetings of non-state stakeholders on matters related to this [Section] in accordance with domestic law.

Example: Text of EU China CAI

Right to Regulate

The Parties recognise the right of each Party to determine its sustainable development policies and priorities, to establish its own levels of domestic labour and environmental protection, and to adopt or modify its relevant laws and policies accordingly, consistently with its multilateral commitments in the fields of labour and environment.

Levels of protection

1. Each Party shall strive to ensure that its laws and policies provide for and encourage high levels of environmental protection and shall strive to continue to improve those laws and policies and their underlying levels of protection.
2. The Parties recognise that it is inappropriate to encourage investment by weakening or reducing the levels of protection afforded in their domestic environmental laws.
3. A Party shall not waive or derogate from, or offer to waive or derogate from, its environmental laws as an encouragement for the establishment, acquisition or retention of an investment or an investor in its territory.
4. A Party shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its environmental laws, as an encouragement for investment.
5. The Parties recognize that with respect to the enforcement of environmental laws, a Party is in compliance with paragraph 4 if a course of action or inaction results from a good faith decision regarding the allocation of resources in accordance with its priorities for enforcement of its environmental laws.
6. A Party shall not apply domestic environmental laws in a manner that would constitute a disguised restriction of investment or an unjustified discrimination between investors and investments of the Parties.

Example: Text of EU China CAI

Multilateral Environmental Agreements

Each Party is committed to effectively implement the multilateral environmental agreements to which it is a party. The Parties shall regularly exchange information on their respective situation and developments as regards ratifications and implementation of Multilateral Environmental Agreements or amendments to such agreements in a manner complementary to the exchanges under the multilateral mechanisms.

Example: Text of EU China CAI

Investment favouring green growth

In accordance with their commitment to enhance the contribution of investment to the goal of sustainable development, including its environmental aspects, the Parties:

- a. shall facilitate and encourage investment in environmental goods and services,
- b. agree to co-operate by exchanging experiences and good practices related to environmental impact assessments in respect of investments which are likely to have significant impact on the environment.

Example: Text of EU China CAI

Consultation

1. In the event of disagreement on any matter covered under this Section, the Parties shall only have recourse to the procedures established under this Sub-section. Section X (State to State Dispute Settlement) does not apply to this Section.
2. In case of any disagreement referred to in paragraph 1, a Party may request consultations with the other Party by delivering a written request to the other Party.
3. The request for consultations shall set out the reasons for the request, including information that is specific and sufficient for consideration and response, the identification of the matter, and an indication of the legal basis of the request.
4. The Party to which the request for consultations is made shall enter into consultations with the requesting Party within 30 days after receipt of the request, or any longer period agreed by both Parties.
5. During consultations each Party shall provide sufficient factual information related to the matter, with a view to arriving at a mutually satisfactory resolution of the matter.
6. The Parties, by mutual agreement, may seek information from international organizations, such as the ILO or relevant multilateral environmental organizations in which both Parties participate.
7. The consultations, including the information disclosed and positions taken by the Parties during the consultations shall be confidential and are without prejudice to the rights of either Party in any further proceedings.

Example: Text of EU China CAI

Panel of Experts

1. If the disagreement has not been satisfactorily resolved through consultations within 120 days, or a longer period agreed by both Parties, after the delivery of the request for consultations, a Party may request, by delivering a written request to the other Party, the establishment of a Panel of Experts to examine the matter.
2. The request shall indicate whether consultations were held, identify the specific measure at issue and briefly explain how that measure affects the application of the relevant provisions in the Sustainable Development Chapter and investment between the Parties in a manner sufficient to present the legal basis clearly. The Panel of Experts is deemed established when the request is delivered to the other Party.
3. The Panel of Experts shall be composed of three members. The Parties shall consult in order to reach an agreement on its composition.

Example: Text of EU China CAI

Panel of Experts

4. If the Parties fail to reach an agreement on the composition of the Panel of Experts within 30 days of the delivery of the request for the establishment of a Panel of Experts, the chairperson shall be selected by lot from the sub-list of chairpersons established under paragraph 7 and each Party shall designate one expert from the sub-list of that Party established under paragraph 7 within 10 days. If a Party fails to designate an expert within that time period, the expert shall be selected by lot from the sub-list of that Party within 5 days.
5. Should any of the lists provided for in paragraph 7 not be established, the expert shall be selected by lot from the individuals formally proposed for that list, within the same time- period.
6. The date of composition of the Panel of Experts shall be the date on which all three selected experts have accepted their appointment. The date of composition of the Panel of Experts shall be made publicly available without delay.
7. At the latest within one year of entry into force of this agreement, the Investment Committee shall establish a list of individuals who are willing and able to serve as experts. The list shall be composed of three sub-lists. Each Party shall propose a sub-list and the third sub-list shall consist of individuals that are not nationals of either Party and who shall serve as chairperson to the Panel of Experts. Each sub-list shall include at least four individuals. Every three years, the list shall be reviewed if a Party so requests. The list may also be reviewed at any moment upon a duly justified request of a Party.

Example: Text of EU China CAI

Panel of Experts

8. The list shall comprise individuals who shall have specialised knowledge of, or expertise in, international labour law or international environmental law, or relevant aspects of international trade or investment agreements. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government with regard to issues related to the matter at stake, or be affiliated with the government of any Party. They shall comply with the Code of Conduct, as set out in Annex X.

9. The Panel of Experts shall make an objective assessment of the matter before it, including an objective assessment of the facts of the case.

10. Unless the Parties agree otherwise within 10 days from the date of the establishment of the Panel of Experts, the terms of reference of the Panel of Experts shall be: "To examine, in the light of the relevant provisions in the Sustainable Development Chapter, the matter referred to in the request for the establishment of the Panel of Experts, and to issue reports, in accordance with Article 4, making recommendations for the solution of the matter."

Example: Text of EU China CAI

Panel of Experts

11. The Panel of Experts shall examine the matter in accordance with the Sustainable Development Chapter and interpret the provisions therein in accordance with customary rules on interpretation of public international law, as codified in the Vienna Convention of the Law of Treaties.

12. The Panel of Experts, after consulting with the Parties, may decide any procedural question not covered by this sub-section in a way that is compatible with the provisions in this sub-section, including by considering similar questions in other parts of the Agreement.

13. At the request of the complaining Party or both Parties, the Panel of Experts may, after giving the Parties an opportunity to comment, suspend its work at any time for a period not to exceed 12 months. If a Party does not request the resumption of the Panel of Expert's work at the expiry of the suspension period, the authority of the Panel of Experts shall lapse.

14. On request of a Party, or at its own initiative, the Panel of Experts may seek any information, technical advice, or expert opinion it deems appropriate³. Any such information, technical advice or expert opinion shall be disclosed to the Parties and the Parties may provide comments

TPP: more like EU model, many of the provisions appear in one or another EU FTA

Chapter 20: Environment

20.2 Objectives

20.3 General Commitments

20.4 Multilateral Environmental Agreements

20.5 Protection of Ozone Layer

20.6 Protection of the Marine Environment from Ship Pollution

20.7 Procedural Matters

20.8 Opportunities for Public Participation

20.9 Public Submission

20.10 Corporate Social Responsibility

20.11 Voluntary Mechanisms to Enhance Environmental Performance

20.12 Cooperation Frameworks

20.13 Trade and Biodiversity

20.14 Invasive Alien Species

20.15 Transition to a Low Emissions and Resilient Economy

20.16 Marine Capture Fisheries

20.17 Conservation and Trade

20.18 Environmental Goods and Services

20.19 Environment Committee and Contact Points

20.20 Environment Consultation

20.21 Senior Representative Consultations

20.22 Ministerial Consultations

20.23 Dispute Resolution

Environment-Related Provisions in IIAs

- **1. The provision recognizing environmental protection as a treaty objective:**
- Acknowledging environmental protection as **one of the treaty objectives**—commonly stipulated in the **preambles** of BITs or TIPs,
- as prescribed in Article 31 of the Vienna Convention on the Law of Treaties
- forewords to the North American Free Trade Agreement (NAFTA),
- the Canada–EU Comprehensive Economic and Trade Agreement
- and the ECT
- contain allusions to the treaty purposes,
- including these references to the environment.

Environment-Related Provisions in IIAs

- **2. The provision preserving the host states' regulatory power:**
 - preservation
 - of the **host state's police power** over relevant issues in foreign investments via exceptional clauses .
 - **EX: the US Model BIT (2012)**
 - *provision on "Investment and Environment"*
 - *demanding the contracting parties' respect for and full implementation of the host state's environmental policies and*
 - *allowing an exception for the host state's liability in taking environmental protection measures (Article 12).*
 - Even now, this remains the most common category.
 - *In contrast to an aspirational statement in the preamble, references to the environment in the main text of BITs or TIPs are often phrased as enforceable terms requiring investors to comply with environmental measures imposed by host states*
- and, probably more importantly, not to challenge the validity or legality of such measures through the ISDS.*

Environment-Related Provisions in IIAs

- **3. The provision prescribing states' *continuing duty to impose environmental protection***
- *measures: The host state's continuing commitment to implement environmental protection measures is the least common category, the host state is obliged not to*
- *reduce environmental standards so as to avoid "a regulatory race to the bottom*
- *This is the obligation incumbent on the host state to maintain a certain level of environmental*
- *standards and measures. By importing such relevant goals, BITs are able to*
- *cover environmental protection issues thoroughly.*

- EX: Canada-Hong Kong SAR BIT (2016)

Environment-Related Provisions in IIAs: 4 types

- 4. With a **hybrid model** comprising both an emphasis on environmental protection as
- parties' mutual objective and a **requirement for high-level environmental protection**
- **standards,**
- **Netherlands Model BIT (2019)**
 - addresses environmental concerns
 - systemically.
 - First, its preamble states that the BIT's policy objective may be fulfilled without compromising the host states' **police power** by measures necessary for achieving the relevant targets, such as environmental protection.
 - Second, in Article 6, Sustainable Development, the contracting parties **guarantee that their investment regulatory institutions** provide for and encourage a higher-level protection of the environment.
 - Thirdly, the **contracting parties ensure not to lower the degree of environmental protection** prescribed by relevant domestic legislation, but reaffirm the host state's treaty duties under the international agreements concerning environmental protection.
 - Fourthly, as a relatively rare paradigm, Article 7, "Corporate Social Responsibility", stipulates the **obligations of investors** and investments in the field of environmental protection. This CSR provision essentially alters the BIT paradigm by imposing obligations on investors. The Indian BIT also addresses the conduct of investors. Article 12 of the India Model BIT (2015) requires investors to comply with Environment, Social, and Governance (ESG