

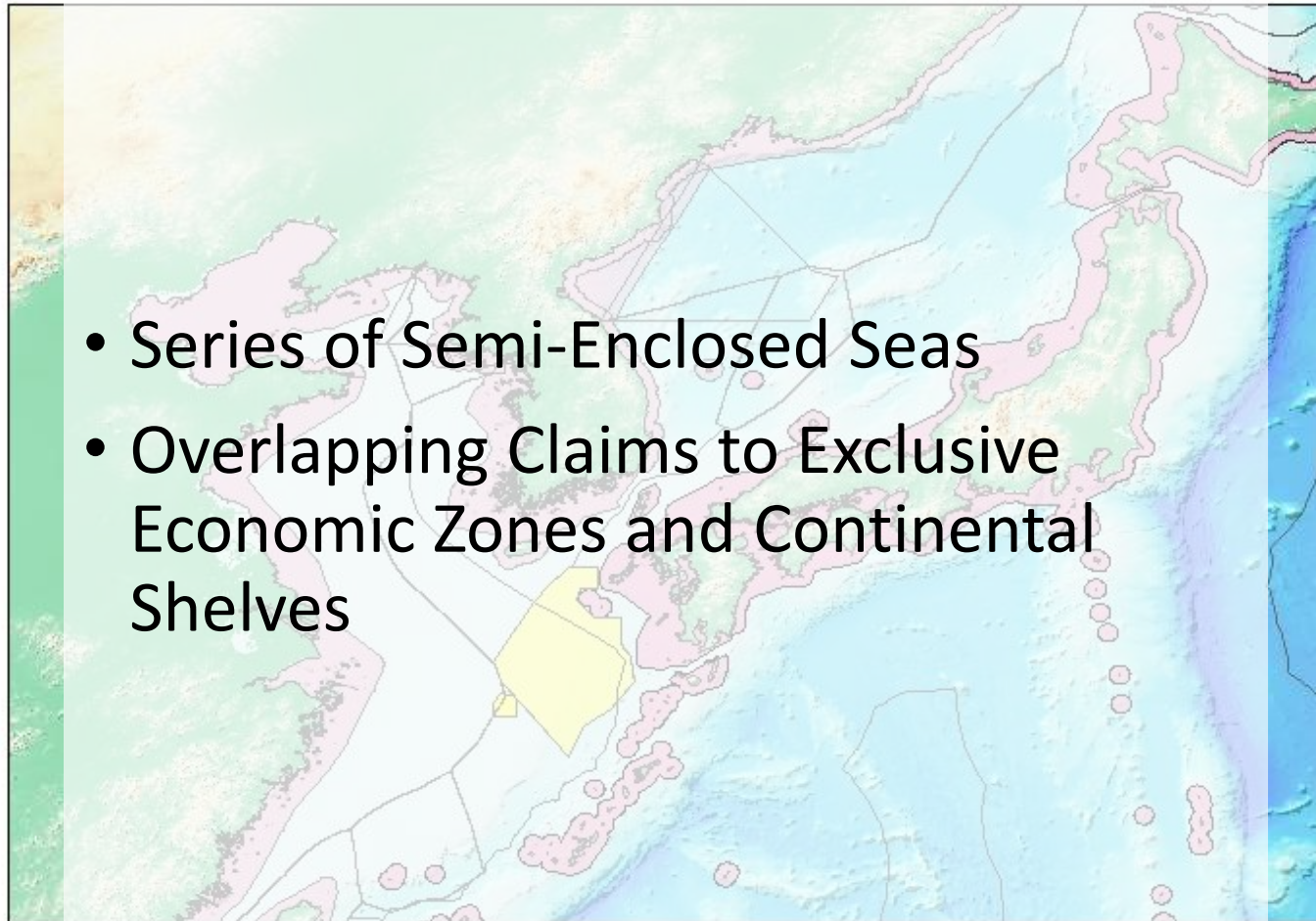
# Protecting the Marine Environment in Northeast Asia: Issues and Approaches

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# Characteristics of the Maritime Area in Northeast Asia



# Semi-Enclosed Seas

- **Part IX of UNCLOS (“Enclosed or Semi-Enclosed Seas”)**
  - Art. 122 : For the purposes of this Convention, "enclosed or semi-enclosed sea" means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States.
  - Art. 123 : States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they **shall endeavour, directly or through an appropriate regional organization:** ...  
... (b) **to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;**

# Legal Framework for Protection of the Marine Environment

- **1982 United Nations Convention on the Law of the Sea**
  - General obligation of all states to protect and preserve the marine environment (Art. 192)
  - Provides for rules and regulations according to the sources of pollution; incorporates substantive rules and standards developed outside the Convention
    - Development of extensive rules/standards for pollution from vessels  $\leftrightarrow$  little binding rules/standards for land-based marine pollution
  - Global rules for pollution from vessels (cf. freedom of navigation), **importance of regional rules** acknowledged for other sources

# Regional Approaches in Northeast Asia

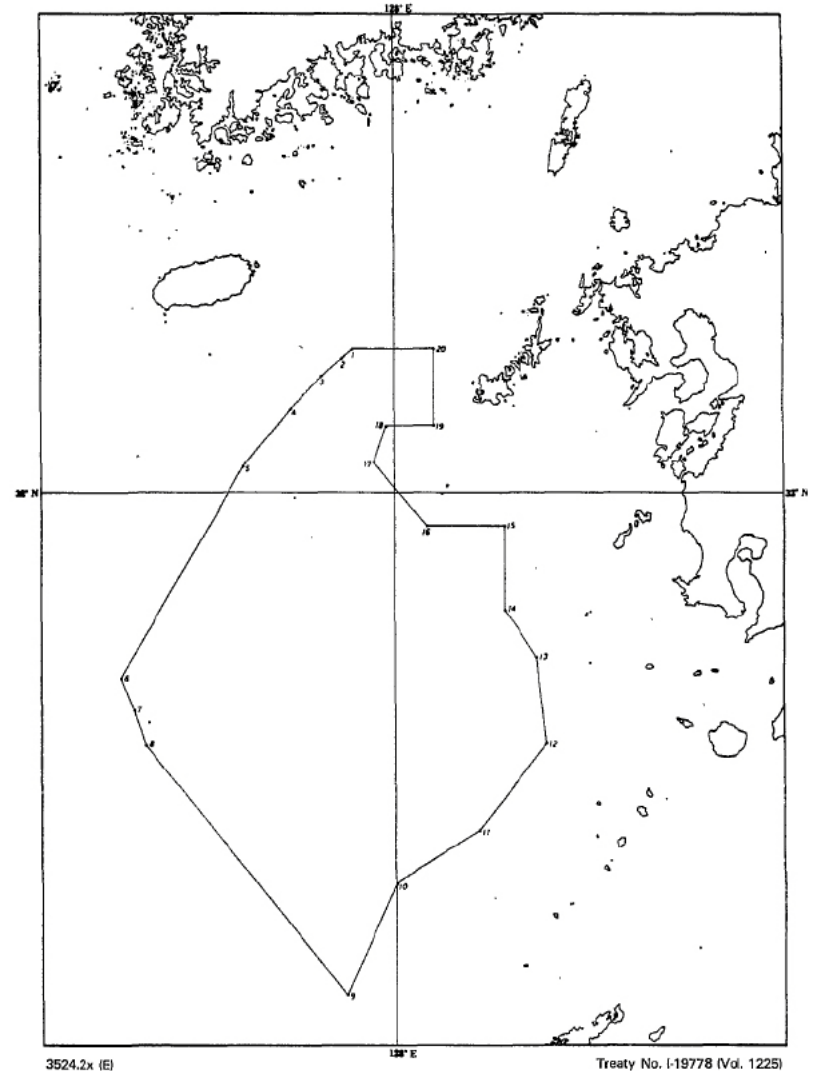
- **Strong preference for non-binding cooperation**
  - Although a number of frameworks for a regional approach have been developed since the 1990s:
    - 1992- Northwest Asian Conference on Environmental Cooperation (NEAC)
    - 1993- North-East Asia Subregional Programme for Environmental Cooperation (NEASPEC)
    - 1994- **Action Plan for the Protection, Management and Development of the Marine and Coastal Environment of the Northwest Pacific Region (NOWPAP)**
    - 1999- Tripartite Environmental Ministers Meeting (TEMM)
- ... have not resulted in additional rules/standards or institutionalized mechanisms for management of the common seas between the coastal States

# Coordination in Exercising Coastal State Jurisdiction

- Two Examples:



Photo: Korea Coast Guard



# Places of Refuge:

## The *Maritime Maisie* Incident

### Facts of the Case

- *Maritime Maisie*, a Hong Kong-flagged chemical tanker was damaged in a collision and fire on Dec. 29, 2013. The collision took place on the high seas about 10 miles SE of ROK, and 20 miles NW of Tsushima, Japan.
- The crew was rescued after the accident; fire continued until Jan. 17, 2014. The vessel drifted into the territorial sea of Japan. A place of refuge to offload cargo could not be found until it was provided at the port of Ulsan on Apr. 8.

# Places of Refuge:

## The *Maritime Maisie* Incident

### Legal Regime for Places of Refuge

- Much discussed question after the *Prestige* disaster
- No explicit regulation under UNCLOS; under customary international law, no general right of entry into foreign ports – exceptions concerning *distress* is understood to be limited to situations concerning human life
- Measures of protection from pollution (ex. Art.221)  
↔ obligation to protect the marine environment (Arts. 192, 194(2)) (cf. IMO Res. A.949(23))
- Need for decision-making process to minimize the overall effect to the marine environment



# Development of Seabed Resources in Undelimited Areas

- **1974 Japan-Republic of Korea Joint Development Agreement**

- Article XX and the Exchange of Notes provide for measures to prevent and remove pollution resulting from exploration/exploitation activities in the JDZ
- Provides for specific measures, and parallel jurisdiction to be exercised by the authorizing State or flag State; applicable law may differ for both sides, and may be problematic in transboundary contexts
- Is the regime sufficient in current-day environment? :  
Issues for a possible post-2028 or Japan-China JDZ

# Conclusions

- The semi-enclosed seas in Northeast Asia require coordination between the coastal States
- Efforts towards additional rules and standards for the region, or institutionalized mechanisms for management have had limited success; will likely continue to be an issue in the long-term
- Immediate to mid-term issues such as coordination of jurisdiction for places of refuge and joint development also need to be addressed
- A comprehensive regional approach to regional issues necessary