

STATE COOPERATION IN COMBATING TRANSBOUNDARY MARINE POLLUTION IN SOUTH EAST ASIA

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Introduction

The close geographical proximity of the nation states of South East Asia¹ exposes them to rapid and extensive transboundary pollution from incidents arising in their 'shared' ocean spaces. These waters have long been an important international trade route and it is estimated that more than half of the world's merchant tonnage now sails through the waters of this region.² The risk of pollution incidents arising from collisions at sea, particularly those involving tankers, has long been appreciated.³ Indeed, the Straits of Malacca and Singapore in particular, has been victim to numerous significant pollution incidents. In 1975 the tanker *Showa Maru* ran aground off Singapore spilling 3,300 tons of crude oil, affecting Singapore, Indonesia and Malaysia.⁴ In 1987, the tanker *Elhami* also ran aground off Singapore's Raffles Lighthouse, spilling 2,300 tons of crude oil. The following year the tankers *Asian Energy* and *Century Dawn*, collided and spilled oil that formed a 5.2 sq km slick off Singapore's east coast. The 1990s saw a number of incidents, including the collision between the tankers *Orapin Global* and *Evoikos* about 5 km south of the Singapore Port Limit, spilling 28,463 tons of oil.⁵ In 2000, 7000 tons of crude oil were spilled when a Panama-registered vessel, *Natuna Sea*, ran aground in the Straits of Singapore⁶, and in 2002, 450 tons of marine fuel oil spilled into the waters of Singapore when the Thai-registered freighter *MV Hermion* collided with the Singapore-registered bunker tanker *Neptank VII*. In the same year, the collision between the tanker *Agate* and the cargo ship *Tian Yu* resulted in the loss of 350 tons of light crude oil. In the following year, the container ship *MV APL Emerald* hit some rocks about 1.3 km south of the lighthouse on Pedra Branca, spilling 150 tons of fuel oil. In 2010, the tanker, *MT Bunga Kelana 3* collided with the bulk carrier *MV Waily* spilling up to 2,500 tons of crude oil.⁷ In 2011, the *MV Oceania* was sunk off Pulau Pisang, Malacca Strait Malaysia after being struck by the *MV Xin Tai Hai*.⁸ More recently, the LNG carrier *Al Gharrafa* collided with the containership *Hanjin Italy*.⁹ Other States in the East Asian region have also experienced significant shipping losses, many with loss of cargo or bunker oils or, with the sinking of the vessels, the prospect of future spills from these wrecks.¹⁰

It has not only been shipping activities that pose a transboundary oil pollution threat in the region. Recently the rapidly growing economies of South East Asia have necessitated and facilitated greater offshore oil and gas

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¹ In the context of this article, South East Asia is used to describe a geographical area that includes the territories of Brunei Darussalam, Cambodia, East Timor, Indonesia, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam. Other than East Timor, these States make up the membership of ASEAN (Association of South East Asia Nations) together with Laos, which, as a land locked State, is not directly impacted upon by trans-boundary marine pollution incidents. Given its immediate geographical proximity to South East Asia, Australia is also covered.

² Geeva Varghese, 'An Assessment of the Increasing Risk of Marine Pollution Oil Spills and the Existing Preparedness Capabilities in the Southeast Asian Region' (Paper presented at the 2014 International Oil Spill Conference, Savannah, Georgia, USA, 5-8 May 2014) <http://www.oilspillresponse.com/files/Papers%20&%20Presentations/2014/IOSC%202014_Manuscript_30014_Geeva.pdf>, 8 January 2016.

³ Rosnani Ibarahim, 'International/Regional Cooperation to Oil Spill Response in the Straits of Malacca: An Overview' Oil Spill Symposium 1998, <http://www.pcs.gr.jp/doc/esymposium/12169/95_rosnani_ibarahim_e.pdf>, 6 January 2016.

⁴ Jenny Kiong and Kartini Saparudin, 'Major Oil Spills in the Straits of Singapore' *Singapore Infopedia* <http://eresources.nlb.gov.sg/infopedia/articles/SIP_1101_2010-09-06.html>, 9 January 2016.

⁵ Captain Mark Heah Eng Siang, 'Prevention and Combat of Oil Pollution in Singapore and the "Evoikas" Oil Spill Incident on 15 October 1998(sic)', *PAJ Oil Spill Symposium* October 1998, Tokyo Japan. See also Brian Dicks, Tosh Moller and Richard Satner, 'The *Evoikos* and *Pontoon 300* incidents – Then Technical Adviser's Perspective' *International Tanker Owners Pollution Federation*, 1999.

⁶ ITOPF Report, <<http://www.itopf.com/in-action/case-studies/case-study/natuna-sea-indonesiasingaporemalaysia-2000/>>, 15 February 2016.

⁷ Bunga Kelana 3, Waily Collide in Singapore Strait, Wednesday, May 26, 2010 MarineLink.com <<http://www.marinelink.com/news/singapore-collide-kelana334372.aspx>>, 15 February 2016.

⁸ Marine Safety Investigation Report into the collision and subsequent foundering of the *B Oceania* in the Malacca Strait, Malaysia on 29 July 2011 Report No. 06/2012.

<http://mti.gov.my/en/Document%20Repository/MSIU%20Documents/Investigations%202011/MV%20B%20Oceania_Interim%20Safety%20Investigation%20Report.pdf> 15 February 2016.

⁹ Maritime Bulletin, <<http://www.news.odin.tc/index.php?page=view/article/1104/Mega-LNG-tanker-Al-Gharrafa-collided-with-mega-boxship-Hanjin-Italy-Malacca-Strait>>, 15 February 2016.

¹⁰ In the Philippines for example, the tanker SOLAR 1 sank in 2006 in rough seas with a full cargo of heavy fuel oil in the Guimaras Straits, spilling a significant amount of her cargo which resulted in pollution along the coastline <<http://www.itopf.com/in-action/case-studies/case-study/solar-1-philippines-2006/>> 15 February 2016. In 2012, the Vietnamese registered *Vinalines Queen* sank off Luzon in the Philippines with the loss of 22 of her 23 crew in December 2012. Shipwreck Log, <<http://www.shipwrecklog.com/log/2011/12/vinalines-queen/>>.

exploration and production.¹¹ The risk associated with offshore oil and gas production has been fully exposed by the Deepwater Horizon catastrophe, and within the South East Asia region, the Montara spill¹².

This significant transboundary oil pollution risk requires a commensurate response capability. This necessitates a collaborative international legal framework within which a practical response capability can be formulated. This article considers the degree to which such a collaborative international legal framework exists in South East Asia, both for pollution arising from shipping and that arising from offshore oil and gas activities. In its focus on shipping, this article addresses the participation of the South East Asian nations in the International Maritime Organisation's (IMO) marine pollution prevention, response and compensation suite of conventions. In what amounts to a mediocre degree of participations with some startling gaps in the South East Asian coverage, consideration is also given to the regional agreements that address the issue. In its focus on offshore oil and gas, the problematic 'gap' that arising from the IMO's activities and its mandate is touched upon.

The International Cooperation Framework

The United Nations Convention on the Law of the Sea (UNCLOS)¹³ provides the 'constitutional' framework within which both shipping and offshore oil and gas pollution regulation is considered. The rights and obligations of States with respect to addressing marine pollution is reflected in the convention's broad balancing of interests between maritime (or shipping) states and coastal states.

Part XII of UNLCOS imposes the broad obligation 'to protect and preserve the marine environment'.¹⁴ This obligation applies notwithstanding the sovereign right of a coastal state to exploit the natural resources of its continental shelf¹⁵ pursuant to its own environmental policies.¹⁶ This immediate consideration in UNCLOS of marine pollution arising from coastal state activities turns to the risk of trans-boundary marine pollution and provides in article 194(2) that;

States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention.

An obvious activity that falls within a coastal States jurisdiction is oil and gas exploration and exploitation in the territorial sea and in the exclusive economic zone¹⁷ or on the continental shelf¹⁸. In this respect, article 194(3)(c) provides that measures taken to deal with marine pollution shall be designed to minimise to the fullest extent possible "pollution from installations and devices used in exploration or exploitation of the natural resources of the seabed and subsoil, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices." Furthermore, should the risk of a trans-boundary marine pollution incident arise, the State must immediately notify other States it deems likely to be affected.¹⁹ Given the trans-boundary nature of such an incident, a number of obligations are imposed on States to cooperate in addressing the pollution incident.²⁰ Nevertheless, the primary obligation to prevent, reduce and control pollution falls on the coastal State and it is obliged to adopt laws and regulations to that effect.²¹ These laws and regulations, however, 'shall be no less

¹¹ Geeva Varghese, 'An Assessment of the Increasing Risk of Marine Pollution Oil Spills and the Existing Preparedness Capabilities in the Southeast Asian Region' (Paper presented at the 2014 International Oil Spill Conference, Savannah, Georgia, USA 5-8 May 2014) available at: <http://www.oilspillresponse.com/files/Papers%20&%20Presentations/2014/IOSC%202014_Manuscript_30014_Geeva.pdf>, 15 February 2016.

¹² Tina Hunter, 'The Montara Oil Spill and the Marine Oil Spill Contingency Plan: Disaster Response or Just a Disaster?' (2010) 24 *Australian and New Zealand Maritime Law Journal*, 46.

¹³ Opened for signature 10 December 1982, Cmnd. 8941; 21 I.L.M. 1245 (1982) (entered into force 16 November 1994).

¹⁴ UNCLOS art 192.

¹⁵ UNCLOS arts 76 and 77.

¹⁶ UNCLOS art 193.

¹⁷ UNCLOS art 60 addresses the rights and obligations of States to construct installations and structures in the Exclusive Economic Zone (EEZ).

¹⁸ UNCLOS art 80- provides that art 60 applies *mutatis mutandis* to artificial islands, installations and structures on the continental shelf. Moreover, UNCLOS art 81 provides that the "coastal State shall have the exclusive right to authorize and regulate drilling on the continental shelf for all purposes".

¹⁹ UNCLSO art 198.

²⁰ UNCLOS arts 194(1), 197, 199, 200 and 201. Cooperation extends to providing technical assistance to developing States – arts 202 and 203. Art 123 also requires States bordering enclosed or semi-enclosed sea to cooperate with each other in the exercise of their rights and in the performance of their duties under the Convention, including in the implementation of their rights and duties with respect to the protection and preservation of the marine environment.

²¹ UNCLOS art 208 (and see art 193(3)(c)).

effective than international rules, standards and recommended practices and procedures'.²² This poses some difficulty as a literal interpretation would subject UNCLOS States Parties to obligations arising out of other international conventions to which they are not necessarily a party to, or to standards and practices that, strictly speaking, are not mandatory. A purposive interpretation would essential bind the coastal State to such standards, though they would not arise out of the conventions themselves. These interpretational difficulties are a natural result of the negotiating history of UNCLOS and this approach was an attempt to harmonise national laws and regulations with generally accepted rules.²³ Notwithstanding this uncertainty, determining exactly what international rules, standards and recommended practices and procedures actually exist with respect to offshore oil and gas activities is problematic. While the IMO had adopted some standards in this regard²⁴, there is no comprehensive or integrated framework for regulation of offshore oil and gas activities and addressing trans-boundary pollution arising from incidents.

The obligation 'to protect and preserve the marine environment' by adopting laws and regulation for the prevention, reduction and control of pollution from vessels is imposed on the flag State of the vessel.²⁵ In waters over which a coastal State exercises sovereignty, jurisdictional problems necessarily arise. This is most acute in the territorial sea, particularly where the foreign flagged ship is exercising the right of innocent passage.²⁶ Given the interest of coastal States in vessel source pollution in their waters, it is granted some enforcement measures.²⁷ These jurisdictional difficulties can be minimised through uniformity in flag State and coastal State laws, and UNCLOS is most concerned with facilitating such uniformity, providing that the flag States laws and regulation 'shall at least have the same effect as that of generally accepted international rules and standards established through the competent international organization or general diplomatic conference'.²⁸ The competent international organisation in this respect is the IMO.²⁹ While the interpretation of this provision varies greatly³⁰, a literal interpretation of this provision gives rise to the same uncertainty as that which prevails with respect to article 208(3). A purposive interpretation, it is argued, will require States to give effect to rules arising out of other international conventions to which they are not necessarily a party.³¹ Importantly though, this uncertainty can clearly be avoided though through wide participation in the relevant IMO conventions and it is in this respect that the participation to the South East Asian maritime nations is considered.

The IMO Conventions

The IMO's mandate is to promote the safety and security of shipping and the prevention of marine pollution by ships. While it has touched on matter relevant to offshore oil and gas exploration, its mandate does not technically extend to such activities. Nevertheless, the relationship between shipping and offshore oil and gas is naturally very close, and considerable overlap occurs when Floating Offshore Units (FSO), Floating Production, Storage and Offloading Units (FPSO) or Floating and Storage Units (FSU) are being utilised.³² For some purposes, such as the liability and compensation regimes established for oil pollution, the definition of ship is such that these floating entities will fall within its coverage.³³ On the other hand, the Intervention Convention³⁴ does not apply to

²² UNCLOS art 208(3). See also Youna Lyons, 'Transboundary Pollution from Offshore Oil and Gas Activities in the Seas of Southeast Asia' in Simona Marsden and Robin Warner (eds), *Transboundary Environmental Governance: Inland, Coastal and Marine Perspectives* (2012), 167.

²³ See further Erik Franckx (ed), *Vessel-Source Pollution and Coastal State Jurisdiction: The Work of the ILA Committee on Coastal State Jurisdiction Relating to Marine Pollution* (Kluwer law International, the Hague, 2001), 19.

²⁴ See for example the *Guidelines and Standards for the Removal of Offshore Installations and Structures on the Continental Shelf and in the Exclusive Economic Zone* (IMO Res A.672(16), 19 October 1989).

²⁵ UNCLOS art 211(2).

²⁶ UNCLOS art 211(3) and (4).

²⁷ UNCLOS art 220.

²⁸ UNCLOS 211(2). UNCLOS 211(1) provides that 'States, acting through the competent international organization or general diplomatic conference, shall establish international rules and standards to prevent, reduce and control pollution of the marine environment from vessels and promote the adoption, in the same manner, wherever appropriate, of routing systems designed to minimize the threat of accidents which might cause pollution of the marine environment, including the coastline, and pollution damage to the related interests of coastal States. Such rules and standards shall, in the same manner, be re-examined from time to time as necessary'.

²⁹ Franckx, above n 23, 20.

³⁰ Ibid 23-24.

³¹ Ibid 28.

³² See for example, *Guidance for the Application of Safety, Security and Environmental Protection Provisions to FPSOs and FSUs* (IMO MSC-MEPC.2/Circ.9, 25 May 2010).

³³ For example, the *International Convention on Civil Liability for Oil Pollution Damage* 1992 Protocol (CLC) adopted 27 November 1992, 1953 UNTS 330; UKTS 86 (1996)(entered into force 30 May 1996), art 1(1) provides that "'Ship" means any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard'.

³⁴ *International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties*, 1969,

these floating entities. Broad participation in the IMO suite of conventions that address, or are directly pertinent to, trans-boundary marine pollution whatever its source, will reduce, though not eliminate, some of these difficulties. Unfortunately, a number of key IMO conventions have poor traction in South East Asia.³⁵ Of greatest concern is the poor participation in the Oil Preparedness, Response and Co-operation (OPRC) Convention³⁶, the Intervention Convention, the Salvage Convention³⁷ and the Bunker Convention³⁸.

Oil Preparedness, Response and Co-operation Convention

‘Recognising the serious threat posed to the marine environment by oil pollution incidents involving ships, offshore units, sea ports and oil handling facilities’³⁹ the OPRC was adopted to facilitate effective preparation for combating oil pollution once it occurred. It requires each State Party to establish a national system for responding promptly and efficiently to oil pollution incidents which includes amongst other things, the establishment of a competent authority and the development of a national contingency plan for preparedness and response.⁴⁰ It also requires that each State establish ‘a minimum level of pre-positioned oil spill combating equipment, commensurate with the risk involved, and programmes for its use; a programme of exercises for oil pollution response organizations and training of relevant personnel; detailed plans and communication capabilities for responding to an oil pollution incident ... and a mechanism or arrangement to co-ordinate the response to an oil pollution incident with, if appropriate, the capabilities to mobilize the necessary resources’.⁴¹

Less than half of the ASEAN Asian States considered here are party to the OPRC.⁴² Those not party are Brunei, Cambodia, Indonesia, Myanmar, Timor-Leste and Vietnam. This is a particular concern as the OPRC not only provides a framework for national oil spill response, but forms the bedrock upon which international cooperation rests. For a number of South East Asian states (and many in other regions), compliance would be a particularly difficult burden. Recognising this difficulty, these obligations are not absolute, and qualified in that it is made subject to each State Party’s specific capability. Nevertheless, such a capability is at the heart of the Convention, and compliance is promoted by encouraging bilateral or multilateral cooperation or indeed through cooperation with the private sector, especially the oil and shipping industries. Participation of industry, both the shipping and oil industries, is crucial to the success of a preparedness and response capability. A number of South East Asian States, such as Singapore, Malaysia and Thailand rely on industry led preparedness and response with varying degrees of government oversight.⁴³ Other States, such as Indonesia and the Philippines, preparedness and response responsibility rests entirely with the State. This necessarily affects the way States with differing primary responsibilities coordinate a response to a transboundary incident. The OPRC provides, at least, a common framework from which these States might base their respective responsibilities.

An important part of the OPRC regime is the obligation of States Parties to ensure that oil pollution emergency plans are devised and implemented for each vessel flying its flag or offshore unit within its jurisdiction. These are then to be consistent with, and integrated into, the national contingency plan.⁴⁴ Participation in the OPRC offers coastal States in particular distinct advantages with respect to shipping. Not only can the coastal State inspect the oil pollution contingency plans when a vessel is within its port limits, but foreign vessels have an obligation to report a discharge or probable discharge of oil to the coastal State, both that which may emanate from the vessel or other oil pollution that is observed by that vessel.⁴⁵ Moreover, when the coastal State receives such a report, it is required to inform all States whose interests are affected or likely to be affected by such oil pollution incident

(Intervention Convention) adopted 29 November 1969, 970 UNTS 211; 9 ILM 25 (entered into force 6 May 1975); *Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil*, 1973, adopted 2 November 1973, 131 UNTS 3; 13 ILM 605 (entered into force 20 March 1983).

³⁵ See Appendix to this article, which sets out in tabular form a summary of State participation in the key IMO Conventions.

³⁶ *International Convention on Oil Pollution Preparedness, Response and Co-operation* (OPRC), adopted 30 November 1990, 1891 UNTS 51; 30 ILM 735 (entered into force 13 May 1995). See also the Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, adopted 14 March 2000; HNS-OPRC/CONF/11/Rev, 15 March 2000 (entered into force 14 June 2007).

³⁷ *International Convention on Salvage*, 1989 (Salvage Convention), adopted 28 April 1989, 1953 UNTS 165, UKTS 93 (1996) (entered into force 14 July 1996).

³⁸ *International Convention on Civil Liability for Bunker Oil Pollution Damage*, 2001 (Bunker Convention), adopted 23 March 2001, ATS 14 (entered into force 21 November 2008).

³⁹ OPRC first recital.

⁴⁰ OPRC art 6.

⁴¹ OPRC art 6(2).

⁴² As at 11 February 2016, there were 108 States Parties covering 72.75% of global shipping tonnage.

⁴³ Yoppy Tan, *The Growth in Energy Activities in the South China Sea—Are We Truly Prepared?*, 2014 Proceedings of the International Oil Spill Conference <<http://ioseproceedings.org/doi/pdf/10.7901/2169-3358-2014.1.825>>, 15 February 2016.

⁴⁴ OPRC art 3.

⁴⁵ OPRC art 4.

without delay.⁴⁶ In the narrow seas of South East Asia this has very obvious advantages, but breaks down when key State are not party to the OPRC.⁴⁷

Whilst concerned with constructing a national preparedness and response capability, the convention is also concerned with establishing an international cooperative system for responding to pollution incidents. States Parties are required to cooperate and 'provide advisory services, technical support and equipment for the purpose of responding to an oil pollution incident, when the severity of such incident so justifies, upon the request of any Party affected or likely to be affected'.⁴⁸ This obligation is qualified in that it is subject to the capabilities and the availability of relevant resources of the State.

Where another State does provide assistance, the requesting State is required to ensure that the necessary legal or administrative steps are taken to facilitate the expeditious arrival, use of and departure from its territory of ships, aircraft, personnel, cargoes, materials and equipment required to deal with such an incident.⁴⁹ Non-participation in the OPRC has meant that some State have not given due to consideration to these necessary steps to facilitate prompt response. It is the case, for example, that in some South East Asian States, air control is strictly controlled by the military such that aerial observation of spills and its movement, as well as access to an oil spill site by foreign aircraft delivering equipment and personnel, is severely restricted. Similarly, in exercises undertaken by industry, stockpiled equipment has been prevented from entering a State due to customs irregularities.⁵⁰ This has been particularly problematic, for example, where stockpiled equipment in one State has not been authorised for use in another State.

Where a State Party does provide assistance to another State, the OPRC provides a mechanism for determining who bears the costs of that assistance if there is no standing or ad-hoc agreement between the States on this issue prior to the oil pollution incident. It thus provides a default cost mechanism that States parties may base decision on in emergency situations. The OPRC provides, as a default position, that where the action was taken by one Party at the express request of another Party, the requesting Party shall reimburse to the assisting Party the cost of its action. If, however, the action was taken by a Party on its own initiative, this Party shall bear the costs of its action.⁵¹ This is likely to be the case in trans-boundary marine pollution incidents that threatens a State emanates from a spill in a neighbouring State.⁵²

The conclusion of cost provisions in the OPRC are particularly helpful to States whose initial response to an oil spill may be tempered by financial concerns. These are, however, complex consideration as the basic principles set out in the Annex do not fully account for the cost allocation exercise, which is merely raised in the Annex by noting that its provisions are 'not be interpreted as in any way prejudicing the rights of Parties to recover from third parties the costs of actions to deal with pollution or the threat of pollution under other applicable provisions and rules of national and international law'.⁵³ In this respect, the CLC and Fund Conventions⁵⁴ are specifically mentioned; though other Conventions would also be applicable, such as the Bunker Convention and the Wreck Removal Convention⁵⁵. This is of great import as a State may seek assistance from another State on the basis that it will then be obliged to cover the costs of that assistance in circumstances where those cost will then be covered by the compulsory insurance provisions in the CLC or Bunker Conventions for example. Naturally this then requires that the relevant States are party to the relevant liability convention. Unfortunately, in South East Asia this is not the case with Timor-Leste and Thailand in particularly not being a party to the any of the liability regimes, while Indonesia and Vietnam have failed to join the 1992 Fund Convention. The OPRC thus provides a sound basis for regional cooperation as well as a basis for considering the national response plans to oil spills.

⁴⁶ OPRC art 5. Importantly, major shipping States such as Liberia, Marshall Islands, Hong Kong, Greece, Bahamas, Malta and Singapore are Party to the OPRC.

⁴⁷ Other international conventions do also provide for notification of oil spills, including *International Convention for the Prevention of Pollution from Ships* (MARPOL) adopted 17 February 1978, 1340 UNTS 61; 17 ILM 546 (as Amended) (entered into force 2 October 1983).

⁴⁸ OPRC art 7.

⁴⁹ OPRC art 7(3).

⁵⁰ Tan, above n 43.

⁵¹ OPRC Annex art 1. The requesting Party may cancel its request at any time, but in that case it shall bear the costs already incurred or committed by the assisting Party.

⁵² It is now supplemented by the IMO's 2014 *Guidance for International Offers of Assistance in Response to a Marine Oil Pollution Incident* IMO PPR 2/10, 16 October 2014.

⁵³ OPRC Annex art 4.

⁵⁴ *International Convention on the Establishment of an International Fund for Oil Pollution Damage*, 1992 Protocol (Fund Convention) adopted 27 November 1992, UKTS 87 (1996) (entered into force 30 May 1996).

⁵⁵ *International Convention on the Removal of Wrecks* (Wreck Removal Convention) adopted 18 May, 2007, IMO Doc. LEG/CONF.16/21 of 22 May 2007 (entered into force 14 April 2015).

The Intervention Convention

The uncertainty as to the powers of a coastal State in international law to intervene when a non-flag vessel on the high seas posed a pollution risk arose in the wake of the *Torrey Canyon* disaster in 1967. The IMO initiated a review of a range of matters associated with wrecked ships, oil pollution, ship safety and '[t]he extent to which a State directly threatened or affected by a casualty which takes place outside its territorial sea can, or should be entitled to, take measures to protect its coastline, harbours, territorial sea or amenities, even when such measures may affect the interest of shipowners, salvage companies and insurers and even of a flag government'.⁵⁶ The result was the adoption in 1969 of the International Convention⁵⁷ as well as the original CLC⁵⁸ and Fund Conventions⁵⁹. While the latter two conventions address, in the main, liability and compensation regimes, the Intervention Convention addresses the rights of States to intervene in the case of a foreign ship that poses a grave and imminent danger to its coastline.

At the time of the *Torrey Canyon* disaster, few States questioned the right of the United Kingdom to take the action it did, which included bombing the wreck, yet it was not immediately clear on what international basis this action could have been taken.⁶⁰ Principles of self-defence or self-help⁶¹, on the grounds that such pollution 'may affect the coastal State or threaten its security'⁶² was said to underpin the action. Alternatively, it was also argued that the international community's apparent acceptance of United Kingdom's intervention in the case of the *Torrey Canyon* resulted in the emergence of a new rule of customary international law.⁶³ While such a right may have existed⁶⁴ or come into existence, the *Torrey Canyon* disaster certainly raised issues as to the *extent* of this right and highlighted the need for clarification through conventional rules.⁶⁵

The Intervention Convention itself provides that:

Parties to the present Convention may take such measures on the high seas as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat of pollution of the sea by oil, following upon a maritime casualty or acts related to such a casualty, which may reasonably be expected to result in major harmful consequences.⁶⁶

The Convention does not specify precisely what measures can be taken by the coastal State, essentially limiting such action only by the principle of proportionality of the response to the hazard⁶⁷ and by a requirement to enter into consultation with other States affected by the maritime casualty, particularly with the flag State.⁶⁸ It does, however, embrace and endorse the right of coastal State intervention, which become exceptionally important in a timely response to a pollution incident arising outside of the territorial sea. Both Spain and Portugal, for example, exercised this right of intervention in 2002 when ordering that the sinking *Prestige* be excluded from Portugal's EEZ and kept at least 120 nm off Spain's coast.⁶⁹ Ratification of the Intervention Convention is therefore an important preparatory consideration in transboundary marine pollution incidents. Indeed, the rights derived

⁵⁶ IMO Doc C/ES. III/5, 8 May 1967, 5.

⁵⁷ As at 11 February 2016 there were 88 States Parties to the Intervention Convention covering 73.93% of global shipping tonnage while the 1973 Protocol has 56 States parties covering 51.70% of global shipping tonnage.

⁵⁸ *International Convention on Civil Liability for Oil Pollution Damage*, adopted 29 November 1969; 973 UNTS 3; 9 ILM 45, (entered into force 19 June 1975).

⁵⁹ *International Convention on the Establishment of an International Fund for Oil Pollution Damage*, adopted 18 December 1971, 1110 UNTS 57 (entered into force 16 October 1978).

⁶⁰ C. de la Rue and C.B. Anderson, *Shipping and the Environment* (London, 2nd ed, 2009) 899.

⁶¹ R.M M'Gonigle and M. W. Zacher, *Pollution, Politics and International Law: Tankers at Sea* (Los Angeles: University of California Press, 1979).

⁶² D. Bodansky, 'Protecting the Marine Environment from Vessel-Source Pollution: UNCLOS III and Beyond' (1991) 18 *Ecology Law Quarterly* 719, 737.

⁶³ Robin. R. Churchill and A.V. Lowe, *The Law of the Sea*, (Manchester, 1999) 355.

⁶⁴ That a right of intervention might have existed prior to the adoption of the Intervention Convention is suggested by the IMO in its introduction to the Convention when it declared that the Convention 'affirms the right of a coastal State to take such measures on the high seas as may be necessary to prevent, mitigate or eliminate danger to its coastline or related interests from pollution by oil or the threat thereof, following upon a maritime casualty'. Own emphasis. See <http://www.imo.org/Conventions/mainframe.asp?topic_id=1604>, 25 November 2009. UNCLOS art 221 reaffirms the right of a coastal State to intervene in cases where a ship, situated beyond its territorial seas, posed a pollution threat to its coastline or related interests.

⁶⁵ M'Gonigle and Zacher, above n 61, 143-149.

⁶⁶ Intervention Convention art. I. While this original right of intervention was limited to incidents involving oil it was extended by protocol to any incident which involves a substance which is liable to create a hazard to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea; though the intervening State bears the burden of establishing that the substance reasonably posed a grave and imminent danger. 1973 Intervention Convention protocol, art. 1.

⁶⁷ Intervention Convention arts. I and V.

⁶⁸ Intervention Convention art. III(a).

⁶⁹ de la Rue and Anderson, above n 60, 901.

therefrom form a necessary part of the contingency planning process envisaged in the OPRC Convention. It is therefore unfortunate that no ASEAN States are party to the Intervention Convention, nor the 1973 Protocol.⁷⁰

Salvage Convention

The 1989 Salvage Convention introduced, for the first time, environmental considerations into what was essentially a private property regime.⁷¹ Traditional admiralty salvage law rewarded the salvor for saving maritime property from the ravages of the sea, and the salvage reward was then a function of the value of the property saved.⁷² The limitation of determining the salvage reward in this way was exposed with the development of oil tankers and the risk they posed to the environment. No longer was saving the tanker a primary concern, replaced by the need to ensure that its cargo did not spill. Traditional admiralty law of no cure no pay was such that salvors had no incentive to consider the marine environment, and where the tanker could not be saved, no salvage incentive existed.⁷³

The Salvage Convention was negotiated to address this development, and did so in two ways. First, it introduced an additional criterion for assessing a salvage award. Article 13 of the Salvage Convention sets out the usual considerations to be taken into account in determining the salvage reward, such as the value of the salvaged property. To this was added “the skill and efforts of the salvors in preventing or minimizing damage to the environment”.⁷⁴ Secondly, it introduced a safety net for salvors whose salvage reward was restricted, or absent, due to the limited success, or no success, in salvaging property, but by whose actions the threat to the marine environment was prevented or minimized.⁷⁵ In such circumstances the salvors were entitled to ‘special compensation’ that was at least equivalent to the salvors expenses, with an additional uplift of between 30% and 100% of the expenses.⁷⁶ Subsequent salvage arbitration has revealed this safety net to be generally beneficial, though the “mechanics of assessing it, in accordance with the provisions of Article 14, proved to be time-consuming, cumbersome, expensive and uncertain”.⁷⁷ The salvage industry, through the International Salvage Union, has managed to address some of these difficulties through a negotiated compromise with the International Groups of P&I clubs in the form of the SCOPIC clause that can be incorporated into a Lloyds Open Form (LOF) Salvage Contract. However, only about one third of all of today's salvage operations are undertaken under an LOF contract.⁷⁸ While the remainder may be subject to contractual terms similar to that of LOF and SCOPIC, they are not supported by the international structure that underpins LOF and SCOPIC. Moreover, if an arbitral tribunal or court applies the law of a State that is not party to the Salvage Convention, the risk arises that salvors will not be entitled to special compensation. There is then no incentive in that jurisdiction for salvors to aid a vessel that poses an environmental threat where the value of the vessel itself (and its cargo) is low, or unlikely to be saved.

The Salvage Convention appears to offer States Parties a number of advantages in addition to the environmental provisions discussed above. It introduces an element of uniformity to the applicable salvage regime across States which allows salvors to respond to incidents immediately knowing that the Convention regime will underpin the national salvage regime. This is particularly important for large international salvage entities that operate globally. However, no ASEAN State is party to the Salvage Convention. This is surprising, especially for States such as Singapore, Malaysia and Indonesia. Singapore for example has no fewer than 9 salvage companies based there, and it was from Singapore that the salvors of the *MV Rena* were able to obtain the crane barge.⁷⁹

⁷⁰ 1973 Intervention Convention Protocol.

⁷¹ As at 11 February 2016 there were 67 States Parties covering 51.31% of the global shipping tonnage.

⁷² Francis Rose, *Kennedy and Rose Law of Salvage* (Sweet and Maxwell, 2009), 1.

⁷³ Archie Bishop, ‘The Development of Environmental Salvage and Review of the Salvage Convention 1989’ 2.

<<http://www.comitemaritime.org/Uploads/Salvage%20Convention/Development%20of%20Environmental%20Salvage%20-%20Archie%20Bishop%209%20Feb%202012.pdf>>, 15 February 2016.

⁷⁴ Salvage Convention art 13(1)(b).

⁷⁵ Salvage Convention art 14.

⁷⁶ Salvage Convention art 14. By 2013, the highest uplift award was 65% in the case of the salvage of the *Nagasaki Spirit* (see *The Nagasaki Spirit* [1997] 1 Lloyd's Rep 323). Bishop, above n 73, 6.

⁷⁷ Bishop, above n 73, 8.

⁷⁸ *Ibid* 9.

⁷⁹ World Maritime News <<http://worldmaritimeneews.com/archives/93271/singapores-new-incentives-for-salvage-companies/>>, 15 February 2016.

Bunker Convention

The Bunker Convention⁸⁰ was adopted to introduce the type of compensation and liability regime that applied to oil damage from tankers to that from all other vessels. As essentially an expansion of the CLC regime to non-tankers it follows that regime relatively closely, providing for strict, but limited, liability of shipowners for pollution caused by bunker oils, requires the registered shipowners of ships over 1,000 gt to maintain insurance, and allowing claimants to sue the insurer directly.⁸¹

Naturally, there are some slight variations to the CLC theme. ‘Bunker oil’ is defined to mean: “[a]ny hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of the ship, and any residues of such oil”.⁸² The definition therefore goes beyond the normal meaning of bunkers as fuel, in order to cover lube oil, and unlike the CLC there is no reference to ‘persistent’, so it covers HFO and lighter fuels such as marine diesels. The Convention definition of ‘ship’ is very wide and⁸³ means ‘any seagoing vessel and seaborne craft, of any type whatsoever’. The effect of this definition is highly significant as, unlike the CLC, it applies the liability regime to *any* ship (e.g. bulk carrier, passenger ship, container ship, tug, fishing vessel, launch etc), whatever its size provided that it is seagoing.⁸⁴ Pollution damage is defined in a similar way to the CLC but with specific reference to bunker oil.⁸⁵

Unlike the CLC, the Bunker Convention provides not only that the shipowner is strictly liable for pollution damage caused by any bunker oil on board or originating from the ship, but also that “shipowner” means “the owner, including the registered owner, bareboat charterer, manager and operator of the ship”.⁸⁶ In part this expanded category of defendant is due to the fact that the Bunker Convention does not have an industry linked second tier of liability, as the CLC does in the Fund Convention, and as such, and expanded category provides the alternative avenues for claimants. This strict liability is not, however, absolute, as the standard defences, as found in CLC⁸⁷, provide that no liability shall attach to the shipowner if the shipowner proves that damage resulted from an act of war, hostilities, civil war, insurrection etc; or was wholly caused by an act or omission done with intent to cause damage by a third party; or was wholly caused by the negligence or other wrongful act of an entity responsible for the maintenance of lights or other navigational aids.⁸⁸

The compensation and liability regime would cover bunker pollution damage arising from a range of incidents, most commonly groundings,⁸⁹ collisions,⁹⁰ or operational discharges.⁹¹ It includes basic clean-up costs caused by contamination and includes reasonable measures of actual reinstatement of the environment as well as economic losses in the form of loss of profit from impairment of the environment.⁹² It also covers ‘preventative measures’, being those that prevent or minimise pollution damage.⁹³ However, the Bunker Convention only covers pollution damage; it does not specifically cover death and personal injury, although it is accepted that injury actually caused by contamination would be covered.⁹⁴

⁸⁰ As at 11 February 2016, there were 81 States party to the Bunker Convention covering 91% of global shipping tonnage. See Nicholas Gaskell and Craig Forrest, ‘Marine Pollution Damage in Australia: Implementing the Bunker Oil Convention 2001 and the Supplementary Fund protocol 2003’ (2008) 27(2) *University of Queensland Law Journal*, 103.

⁸¹ Mikis Tsimplis, ‘The Bunker Pollution Convention 2001: Completing and Harmonising the Liability Regime for Oil Pollution from Ships?’ (2005) *Lloyd’s Maritime and Commercial Law Quarterly* 83.

⁸² Bunker Convention art 1(5).

⁸³ Bunker Convention art 1(1).

⁸⁴ Bunker Convention art 4(2) provides that it does not apply to warships, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on Government non-commercial service.

⁸⁵ Bunker Convention art 1(9).

⁸⁶ Bunker Convention art 3 and 1(3).

⁸⁷ CLC art 3(2).

⁸⁸ Bunker Convention art 3(3).

⁸⁹ South East Asian, Australian and New Zealand examples include the *Showa Maru*, *Elhami*, *Natuna Sea*, *MV APL Emerald*, *Korean Star*, *Nella Dan*, *Sanko Harvest*, *Iron Baron*, *Pasha Bulker* and *MV Rena*.

⁹⁰ South East Asian, Australian and New Zealand include the *Asian Energy* and *Century Dawn*, *Orapin Global* and *Evoikos*, *MV Hermion* and *Neptank VII*, *Agate* and *Tian Yu*, *MT Bunga Kelana 3* and *MV Waily*, *MV Oceania* and *MV Xin Tai Hai*. *Al Gharrafa* and *Hanjin Italy* and *Global Peace* and *Tom Tough*.

⁹¹ South East Asian, Australian and New Zealand include *Pacific Quest* and *Pax Phoenix*.

⁹² Bunker Convention art 1(9).

⁹³ Bunker Convention art 1(7).

⁹⁴ The IOPC Fund Executive Committee accepted the advice of its Director, in the light of discussion at the 1969 conference, that inhalation of oil vapour and skin complaints caused by contact with oil could be covered as ‘damage’ within the CLC/Fund: see eg, Fund/Exc.37/3, para 4.2.11, *Annual Report 1995*, 65. In the *Braer* case, the Fund rejected claims for psychological damage (eg, for stress at the destruction of livelihood) and these were ultimately withdrawn before trial: see *Annual Report 1999*, 61. The Bunker Oil Convention was intended to replicate Fund practice: see eg, LEG 78/5/2, 14 August 1998, LEG 77/11, 28 April 1998.

The insurance regime too is borrowed directly from the CLC, embodying two important features the compulsory nature of the cover as demonstrated by a convention insurance certificate,⁹⁵ and the ability of a claimant to sue the insurer directly. Unlike the CLC, the Bunker Convention does not set out the limitation of liability limits for shipowners, but reserves the rights of shipowners to limit their liability under any applicable national or international regime, such as the *Convention on Limitation of Liability for Maritime Claims, 1976*.⁹⁶

The importance of the Bunker Convention in South East Asia, and in the Straits of Malacca and Singapore are immediately obvious, and an important adjunct to the CLC and Fund regimes. It does not come with the financial obligations on industry that the CLC and Fund regimes does and ought not then to deter coastal State ratification. Given that most of the shipping traversing the oceans and seas of South East Asia will have an international character, it is likely that these ships already have bunker liability P&I club cover. Indeed, it is applicable to 91% of global shipping tonnage.⁹⁷

Yet some States, such as the Philippines, have yet to ratify the Convention despite previous bunker spills.⁹⁸ The Philippines, as an archipelago, had been concerned with the imposition on shipowners requiring compulsory insurance cover for vessels that were essentially on domestic services but travelling through the EEZ, and had sought to have an exclusion provided for in the Convention.⁹⁹ At the end of negotiations, however, the exclusion was only extended to vessel in the territorial sea.¹⁰⁰ Indonesia, as a complex archipelagic States, had had similar concerns, but appears to have addressed these as it a party to the Convention. As such, the advantage of Convention for a States such as Philippines appears to outweigh the disadvantage for local interests.

Regional Agreements

This international legal framework supports regional agreements that provide greater focus for States most threatened by transboundary marine pollution incidents, both from shipping and from oil and gas exploration. Heightened concerns in South East Asia over sovereignty and security, and especially with respect to maritime spaces, have frustrated the conclusion of bi-lateral and multi-lateral regional agreements that provide a comprehensive oil spill preparedness and response regime.¹⁰¹ UNCLOS, as a 'constitutional' convention, clearly envisages regional agreements to give content to the framework provided in particular in Part XII.¹⁰² Similarly, where OPRC clarifies and extends UNCLOS, it also exhorts States parties to endeavour 'to conclude bilateral or multilateral agreements for oil pollution preparedness and response'.¹⁰³ Within the UNLCOS framework, if not, unfortunately, within the OPRC regime, a number of regional agreements have been concluded between South East Asian nations that address various aspects of oil pollution preparedness and response. An early example of which is the Sulawesi Sea oil Spill network Response Plan agreed between Indonesia, Malaysia and Philippines in 1980. Similarly, in 1994, Malaysia and Brunei concluded the Brunei Bay Oil Spill Contingency Plan. At the same time, with the ASEAN framework, the Oil Spill Response Action Plan (OSRAP) was agreed in the form of a Memorandum of Understanding (MoU) by Singapore, Indonesia, Malaysia, Brunei, Thailand and Philippines. It was substantially supported by Japan, which provided extensive funds for the stockpiling of equipment in 11 key locations throughout the area. Unfortunately, the Plan was never fully implemented, remaining static for a number of years with the stockpiled equipment gradually falling into disrepair.¹⁰⁴

⁹⁵ Alternative financial security is possible, such as a bank guarantee, but it seems unlikely that these will be used except perhaps for state commercial vessels.

⁹⁶ Bunker Convention art 6. *Convention on Limitation of Liability for Maritime Claims*, adopted 19 November 1976, 1456 UNTS 221, (entered into force 1 December 1986; *Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims*, adopted 2 May 1996, 35 ILM 1433 (entered into force 13 May 2004).

⁹⁷ IMO <<http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>>, 15 February 2016.

⁹⁸ In 1994, the bunker barge PETRO QUEEN spilt 7900 barrels of fuel oil following a collision at the entrance to the Pasig River, ITOPF, <<http://www.itopf.com/knowledge-resources/countries-regions/countries/philippines/>>. > 15 February 2016. In 2013, the RORO passenger vessel *St Thomas De Aquinas* collided with containership *Sulpicio Express 7* on approach to port in Cebu, Philippines. While the *Sulpicio Express* was able to steam back to port, and suffered no casualties or bunker loss, the *St Thomas De Aquinas* sank quickly with loss of over 100 lives, and the loss of a quantity of the 120 tonnes of Intermediate Fuel Oil (IFO180) on board. In this case both vessels were flagged in the Philippines and thus were subject to national law. ITOPF, <http://www.itopf.com/in-action/case-studies/?tx_itopfacasestudies_itopfacasestudies%5Buid%5D=47&tx_itopfacasestudies_itopfacasestudies%5Baction%5D=view&tx_itopfacasestudies_itopfacasestudies%5Bcontroller%5D=ItopfaCaseStudies&cHash=9cdb3e57b6fbd61c325e5f7b318b10d>, 15 February 2016.

⁹⁹ Patrick Grigg, 'International Convention on Civil Liability for Bunker Oil Pollution Damage 2001.

<<http://www.bmla.org.uk/documents/imo-bunker-convention.htm>>, 15 February 2016.

¹⁰⁰ Bunker Convention art 7(15).

¹⁰¹ Tan, above n 43. See also Robin Warner, 'Stemming the Black Tide: Cooperation on Oil Pollution Preparedness and Response in the South China Sea and East Asian Seas' (2015) 18(2) *Journal of International Wildlife Law and Policy*, 184, 192.

¹⁰² UNCLOS arts 192, 197 and 208(4) in particular.

¹⁰³ OPRC art 10.

¹⁰⁴ Joselito Guevarra, 'Global Initiative for Southeast Asia: The Journey Towards Regional Cooperation in Oil Spill Preparedness and Response in ASEAN' Interspill Amsterdam 2015, <<http://www.interspill.org>>, 15 February 2016.

These agreements have had varying degrees of success, but none have provided an adequate oil pollution preparedness and response regime. The need for such a regime is clearly evident and developments in that direction have been reinvigorated. In 1996, the Global Initiative Program was launched as a partnership between the IMO and the International Petroleum Industry Environmental Conservation Agency (IPIECA)¹⁰⁵ to enhance global preparedness and response capacity to respond to oil spills.¹⁰⁶ It brings both government and industry together and includes important partners such as the International Oil Pollution Compensation (IOPC) Fund and the International Tanker Owners Pollution Federation (ITOPF). Within this program, the Global Initiative for Southeast Asia (GISEA) was launched in 2013 to cover the member States of ASEAN. Within GISEA, the ASEAN OSRAP has been revitalised and extended to all members of ASEAN with the updated Memorandum of Understanding being concluded in November 2014 (ASEAN OSRAP MOU).

GISEA coordinates and implements capacity-building activities that target the six key elements of preparedness, namely: legislation, contingency planning, equipment, training, exercises, and forces for implementation. The first of these elements addresses not only national legislation but also the incorporation of international conventions. Notwithstanding the non-participation of some of these States in the OPRC regime¹⁰⁷, the ASEAN OSRAP MOU is based on the OPRC, and indeed, has OPRC ratification as one of its key objectives.¹⁰⁸ The plan itself though calls for the implementation of a range of IMO conventions that address oil spill preparedness and response as well as compensation regimes, particularly the CLC and Fund conventions. This would create a framework within which the other objectives can be achieved, particularly in narrowing, if not eliminating, the gaps and differences in national capacities to deal with major oil spill incidents and thus erasing what now considered to be a disjointed approach to preparedness and response.

Funded originally through the Global Environment Facility¹⁰⁹ and implemented by the United Nations Development Programme (UNDP), the regional project on Prevention and Management of Marine Pollution in the East Asian Seas (PEMSEA)¹¹⁰ has since become a focal partnership, and in international organisation in its own right, addressing marine environmental issues in East Asia. Within the PEMSEA partnership, regional agreements have arisen, including the Framework Programme on Partnerships in Oil Spill Preparedness and Response in the Gulf of Thailand (GOT program) between Thailand, Cambodia and Vietnam in 2006. Whilst not transboundary in the same sense as the GOT program, the Manila Bay Oil Spill Contingency Plan¹¹¹ was also adopted in 2006. In 2015, PEMSEA adopted an updated Sustainable Development Strategy for the Seas of East Asia (SDS-SEA).¹¹² The 2015 SDS-SEA notes the importance of a framework for the protection of the marine environment made up of an integration of existing international conventions. Specifically addressing those of the IMO, it notes the need to take all the convention into account, but with special reference to the OPRC, the CLC and FUND, Ballast Water Convention¹¹³, Wreck Removal Convention and Hong Kong Ship Recycling Convention¹¹⁴. While alluded to it does not, inexplicably, address the importance of the Intervention Convention, the Salvage Convention or, given its reference to the CLC and Fund, the Bunker Convention.

Conclusion

Numerous reasons underpin a State's reluctance to ratify international conventions, including political inertia, lack of expert capacity, cost of compliance and cultural sensitivities. In many cases, a State may not be opposed to the content of the particular international convention, but see no direct advantage in becoming a party to the convention if similar results can be obtained merely through the enactment of national legislation that mirrors the content of the convention. This, for example, may very well be the case for the Salvage Convention, where a number of States give effect to the Convention in its national legislation and see no direct benefit to being a party, especially as its primary implementer is not the State but private sector entities. This is exacerbated where States

¹⁰⁵ See <<http://www.ipieca.org>>, 15 February 2016.

¹⁰⁶ Guevarra, above n 104.

¹⁰⁷ Brunei, Cambodia, Myanmar, Timor-Leste and Vietnam are not party to the OPRC Convention.

¹⁰⁸ Guevarra, above n 104.

¹⁰⁹ The (GEF) was established on the eve of the 1992 Rio Earth Summit, to help tackle our planet's most pressing environmental problems. The United Nations Development Programme, the United Nations Environment Program, and the World Bank were the three initial partners implementing GEF projects. <<https://www.thegef.org/gef/whatisgef>>, 15 February 2016.

¹¹⁰ <https://www.thegef.org/gef/project_detail?projID=396>, 15 February 2016.

¹¹¹ Available at <http://www.pemsea.org/publications/manila-bay-oil-spill-contingency-plan>.

¹¹² <http://www.pemsea.org/dev/sites/default/files/SDS-SEA%202015%20FINAL%2011272015%20FULL%20rev_1.pdf> 15 February 2016.

¹¹³ *International Convention for the Control and Management of Ships' Ballast Water and Sediments*, adopted 13 February 2004, IMO Doc. BWM/CONF/36(E/F/S)(not yet in force).

¹¹⁴ *International Convention on the Safe and Environmentally Sound Recycling of Ships*, adopted 15 May 2009, IMO Doc. SR/CONF/45, (not yet in force). See Sustainable Development Strategy for the Seas of East Asia, 95 <http://www.pemsea.org/dev/sites/default/files/SDS-SEA%202015%20FINAL%2011272015%20FULL%20rev_1.pdf>, 15 February 2016.

fear that participation in the international regime exposes them to potential liability for breaching the convention, or, at the very least, international embarrassment.

While these may be the case in the South East Asian region, the difficulty in agreeing comprehensive and effective oil spill preparedness and response arrangements in the South East Asian waters does not bode well for a region through which such extensive maritime traffic traverses. If regional security issues and heightened concerns of sovereignty in the region undermine this, then greater reference to broader internationally agreed frameworks provide at least a minimum level of cooperation. Indeed, this avoids uncertainty as to which rules and regulation may apply as 'generally accepted international rules and standards' emanating from IMO and harmonises applicable national laws. This then will more ably support regional initiatives such GISEA and the revitalised ASEAN OSRAP which presupposes participation in OPRC as well as encouraging broader participation in the IMO Conventions. This is also then encourages private sector engagement which, in many cases, are the entities that are the primary responders to oil pollution incidents, as well as being the entities most likely to develop capacity building in addressing oil pollution incidents. In this light there appears to be no reason why States of the South East Asian region should not more fully embrace the IMO's conventions that address in some way transboundary marine pollution, and most particularly, the OPRC, Intervention Convention, Salvage Convention and Bunker Convention.

Appendix

	UNCLOS	INTERVENTION Convention 69	INTERVENTION Protocol 73	CLC Convention 69	CLC Protocol 92	FUND Convention 71	FUND Protocol 92	FUND Protocol 2003	LLMC Convention 76	LLMC Protocol 96	SALVAGE Convention 89	OPRC Convention 90	OPRC/HNS 2000	BUNKERS CONVENTION 01	Wreck Removal 2007	ASEAN
Australia	X	X	X	d	X	d	X	X	d	X	X	X	X	X		
Brunei Darussalam	X			d	X	d	X									X
Cambodia	X			X	X		X									X
Indonesia	X			X	X	d								X		X
Malaysia	X			d	X	X	X			X		X	X	X	X	X
Myanmar	X															X
New Zealand	X	X	X	d	X	d	X		X	X	X	X		X		
Philippines	X				X		X					X				X
Singapore	X			d	X		X		X			X	X	X		X
Thailand	X											X				X
Timor-Leste	X															
Viet Nam	X				X									X		X
Total	12	2	2	2	9	1	7	1	2	3	2	6	3	6	1	9

X = party; d = denounced