Organization

1. **General Obligations concerning Pollution of the Marine Environment**

2. **Specific Obligations to take Measures to Prevent, Reduce and Control Pollution of the Marine Environment and to Enforce such Measures**

3. **UNCLOS and State Responsibility for Transboundary Pollution of the Marine Environment**
PART 1

General Obligations concerning Pollution of the Marine Environment
Importance of UNCLOS

- Universally accepted
- Parties must accept Provisions on Environment in Part XII and on Settlement of Disputes in Part XV
- Provisions of UNCLOS being interpreted in light of developing principles of international environmental law
- Principles and rules governing States are more clear and certain because they are set out in UNCLOS
Article 194(1) General Obligation to prevent pollution of marine environment

- Article 194(1) imposes a general obligation on States to take all measures consistent with UNCLOS that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities.

- “Pollution of the marine environment” is defined in Article 1
Article 194 (2) Obligation concerning transboundary pollution

- 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.
Obligations “to ensure”

- Provisions in UNCLOS establishing a responsibility to ensure set out obligations that States Parties must fulfil by exercising their power over entities under their jurisdiction and control, such as ships flying their flag or companies subject to their national jurisdiction.

- Must be read in light of the reasoning in the 2011 Advisory Opinion on Responsibility of Sponsoring States.

- The Advisory Opinion defines the “responsibility to ensure” as one of “due diligence”.

www.cil.nus.edu.sg
Environmental Impact Assessment

- Article 206 provides that when States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment.

- In paragraph 145 of its 2011 Advisory Opinion on Responsibility of Sponsoring States, the ITLOS Seabed Disputes Chamber affirmed that the obligation to conduct an environmental impact assessment (EIA) is a general obligation under both Article 206 of UNCLOS and customary international law.
Duty to Cooperate

• In the *MOX Plant Case (Ireland v. United Kingdom), and the Land Reclamation Case (Malaysia v. Singapore)* ITLOS stated that the “duty to cooperate” is a fundamental principle in the prevention of pollution of the marine environment under Part XII of the Convention and general international law.

• Duty to Cooperate similar to Article 19 of 1992 Rio Principles:
  – States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.
In its 2010 decision in the *Pulp Mills* case the ICJ stated in paragraph 164 that:

- . . . the Court considers that while a precautionary approach may be relevant to the interpretation and application of the provisions of the Statute, it does not follow that it operates as a reversal of the burden of proof.

In its 2011 *Advisory Opinion on Responsibility of Sponsoring States*, ITLOS suggests that it agrees with the ICJ on the precautionary approach, and hints that it may be willing to read it into UNCLOS:

- 135. The Chamber observes that the precautionary approach has been incorporated into a growing number of international treaties and other instruments, many of which reflect the formulation of Principle 15 of the Rio Declaration. In the view of the Chamber, this has initiated a trend towards making this approach part of customary international law.
Specific Obligations to take Measures to Prevent, Reduce and Control Pollution of the Marine Environment and to Enforce such Measures
Pollution from Vessels – Articles 211, 217-220
Pollution from Dumping – Articles 210 & 216
Pollution from Seabed Activities subject to national jurisdiction – Articles 208 & 214
Pollution from Land-Based Sources – Article 207 & 213
Pollution from or through the Atmosphere – Articles 212 & 222
Incorporation by Reference of IMO Conventions

• UNCLOS provisions on Pollution from Vessels require flag States to adopt laws and regulations that have at least the same effect as that of generally accepted international rules and standards established by the IMO
  – MARPOL 73/78: International Convention on the Prevention of Pollution from Ships

• UNCLOS provisions on Pollution by Dumping require States to adopt laws and regulations and take other measures that are no less effective than the global rules and standards
Seabed Activities subject to National Jurisdiction

- Article 208 provides that States shall adopt laws and regulations and take other measures that are *no less effective than* the international rules, standards, and recommended practices and procedures.

- However, the international community has not established the global rules and standards called for in Article 208.
PART 3

UNCLOS and State Responsibility for Transboundary Pollution of the Marine Environment
UNCLOS provisions on responsibility and liability for pollution of the marine environment must be read together with the International Law Commission’s 2001 Articles on Responsibility of States for Internationally Wrongful Acts (2001 ILC Articles).

Under Article 42 of the ILC Articles a State is entitled as an injured State to invoke the responsibility of another State if the obligation breached is owed to . . . a group of States including that State, . . . and the breach of the obligation . . . specially affects that State

- Environmental obligations under UNCLOS are owed to a group of States – all States Parties to UNCLOS;
- A State whose waters are polluted is “specially affected”
• Under Article 48 of the ILC Articles, any State other than an injured State is entitled to invoke the responsibility of another State if:
  – The obligation breached
    • is owed to a group of States including that State, and
    • is established for the protection of a collective interest of the group.
• It can be argued that obligations to prevent, reduce & control pollution of the marine environment are established in the “collective interest of the group”, that is, the States Parties to UNCLOS.
State Responsibility under UNCLOS

• A State can be responsible for its failure to carry out its obligations to prevent transboundary pollution of the marine environment from activities within its jurisdiction and control that may cause significant pollution of the marine environment of another State.

• Potentially injured States can go to a court or tribunal to seek an order that a State fulfill its obligations under UNCLOS, including its duty to cooperate and its duty to conduct an EIA.

• UNCLOS also expressly provides that the State which commences proceedings has the right to request provisional measures to prevent serious harm to the marine environment.
Liability of the Responsible State for Damage to Marine Environment

- It is not easy under UNCLOS and the law on the responsibility of States to hold States liable for damage caused to the marine environment.
- States are entitled to reparations from another State for damage to their marine environment only if the internationally wrongful act caused pollution of the marine environment.
The dispute settlement regime in Part XV of UNCLOS gives injured States parties the right to institute proceedings against other States parties who have breached their obligations under UNCLOS to prevent, reduce and control pollution of the marine environment.

If a dispute arises concerning the interpretation or application of any provision in the Convention, and it cannot be resolved by negotiation and consultation between the parties, either party to the dispute may unilaterally institute proceedings against the other State.
Conclusions on Responsibility of States for Marine Pollution

1. The principles and rules governing States are more clear and certain because they are set out in UNCLOS.

2. UNCLOS and ILC Articles have mechanisms to hold States responsible if they fail to fulfill their obligations to prevent, reduce and control pollution of the marine environment.

3. The dispute settlement procedures in UNCLOS provide remedies for effective action that are not available in most other fields of transboundary pollution.
Thanks for your attention

Prof Robert Beckman
Director, Centre for International Law (CIL)
National University of Singapore
Email: cildir@nus.edu.sg