

# Regulatory Gaps in Offshore Activities in the Arctic: Concerns and Lessons from Southeast Asia

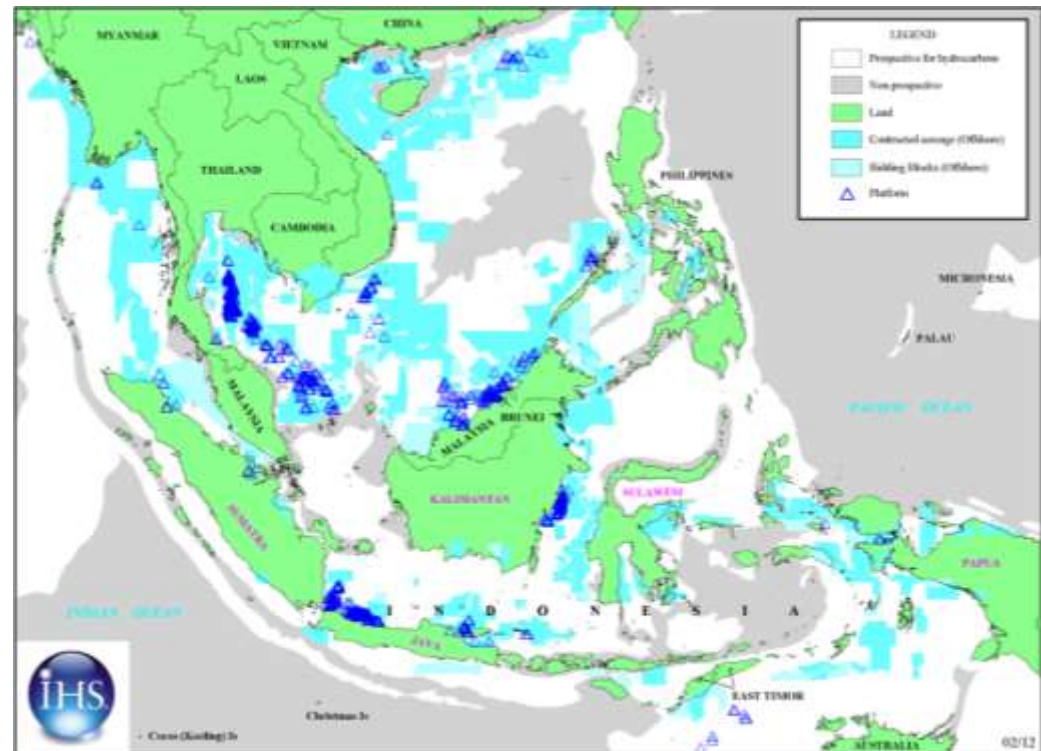
Arctic Energy Summit

*Bringing Together Arctic Energy Expertise, Innovation and Solutions*

18-20 September 2017, Helsinki, Finland

**Robert Beckman & Zhen Sun**

*Centre for International Law*



<https://www.ihs.com/index.html>

## **I. Oil Pollution of the Marine Environment**

Legal Framework of Ship-Source Oil Pollution

Oil Pollution from Offshore Activities

## **II. Rules to Prevent Oil Pollution from Offshore Activities**

Requirements by Law

Actions Taken by Arctic States

## **III. Compensation for Offshore Oil Pollution**

Comparison to Tanker-Source Oil Pollution

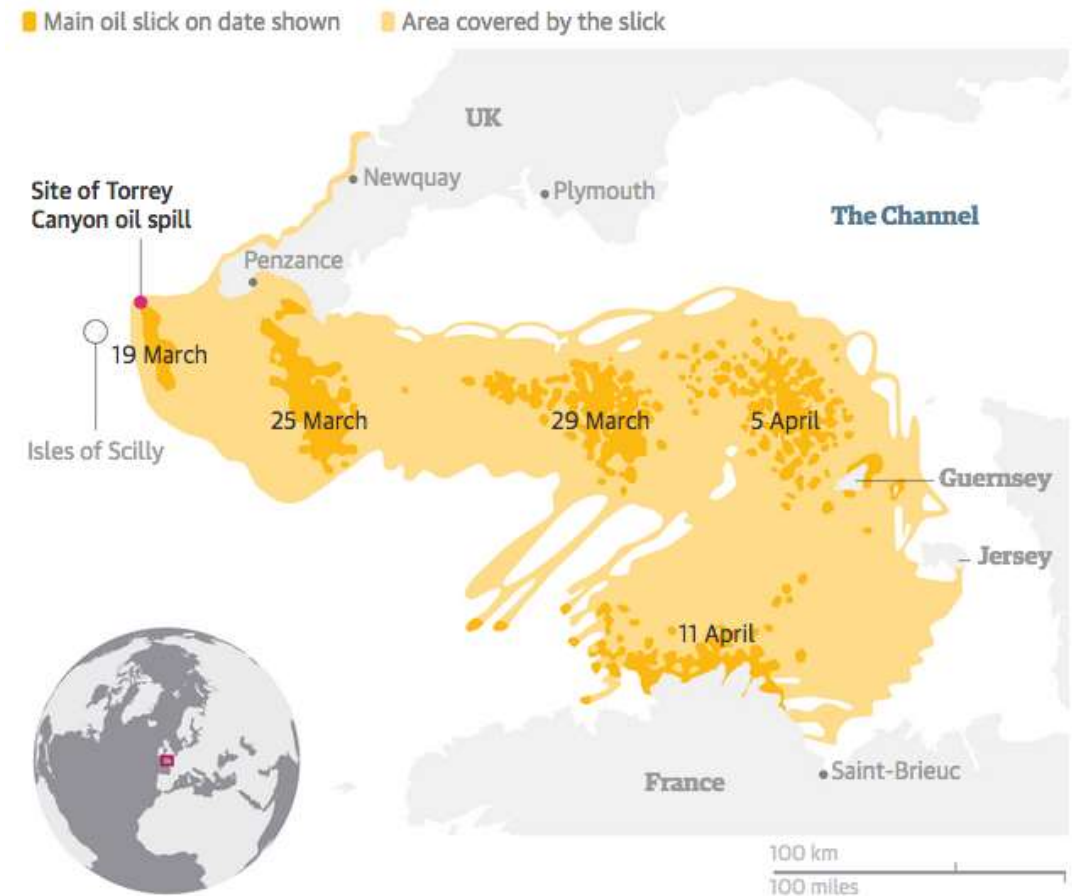
Montara Oil Spill Incident

# I. Oil Pollution of the Marine Environment



## 1967 Torrey Canyon oil spill

Covering some 1,000 square kilometres, the Torrey Canyon oil spill caused massive coastal pollution around Cornwall, the Channel Islands and Brittany



<http://www.bbc.com/news/uk-england-39223308>

# I. Oil Pollution of the Marine Environment

---

## 1982 United Nations Convention on the Law of the Sea

- States have the **general obligation** to protect and preserve the marine environment.
- States shall take **all measures that are necessary** to prevent, reduce and control pollution of the marine environment from any source.
- 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/offshore activities.

# I. Oil Pollution of the Marine Environment

---

## International Maritime Organization

### Mandate of the IMO

- To provide machinery for co-operation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting **shipping engaged in international trade**; to encourage and facilitate the general adoption of the highest practicable standards in matters concerning **the maritime safety, efficiency of navigation and prevention and control of marine pollution from ships**;

### Reference to IMO under UNCLOS

- Competent International Organization
- Sources of generally accepted international rules/regulations

# I. Oil Pollution of the Marine Environment

---

## IMO Conventions Relating to Ship-source Oil Pollution

- International Convention for the **Prevention** of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL)
- International Convention on Oil Pollution **Preparedness, Response and Co-operation** (OPRC), 1990
- International Convention on **Civil Liability** for Oil Pollution Damage (CLC), 1969/1992
- 1992 Protocol to the International Convention on the Establishment of an International Fund for **Compensation** for Oil Pollution Damage (FUND), 1972/1992



# I. Oil Pollution of the Marine Environment

## Oil Pollution from Offshore Activities



**Deepwater Horizon** [http://archive.boston.com/bigpicture/2010/05/disaster\\_unfolds\\_slowly\\_in\\_the.html](http://archive.boston.com/bigpicture/2010/05/disaster_unfolds_slowly_in_the.html)

## II. Rules to Prevent Oil Pollution from Offshore Activities

---

### Art 208 Pollution from Seabed Activities Subject to National Jurisdiction

- 1. Coastal States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment arising from or in connection with seabed activities subject to their jurisdiction and from artificial islands, installations and structures under their jurisdiction, pursuant to articles 60 and 80.
- 2. States shall take other measures as may be necessary to prevent, reduce and control such pollution.
- 3. Such laws, regulations and measures shall be no less effective than international rules, standards and recommended practices and procedures.



## II. Rules to Prevent Oil Pollution from Offshore Activities

---

- 4. States shall endeavour to **harmonize** their policies in this connection **at the appropriate regional level**.
- 5. States, acting especially through **competent international organizations or diplomatic conference**, **shall establish global and regional rules, standards and recommended practices and procedures** to prevent, reduce and control pollution of the marine environment referred to in paragraph I. Such rules, standards and recommended practices and procedures shall be **re-examined** from time to time as necessary.

## II. Rules to Prevent Oil Pollution from Offshore Activities

---

### **Sources of Pollution**

- Operational Pollution
- Accidental Pollution

### **Laws & Regulations to Prevent, Reduce and Control Pollution**

- Performance Based Regulations vs. Prescriptive Regulations
- Management Systems Requirements – Drilling and Well Activities
  - Facility and Drilling System Requirements – Requirement for Well Control – Independent Verification of Safety – Oil Spill Preparedness Requirements

# Facility and Drilling System Requirements

	Canada	US	Denmark	Norway
<b>Drilling Fluid Control System</b>	Must strategically locate indicators and alarms of drilling fluid control system.	Specific regulations on where alarms should be located.	No mention of indicators or alarms in reference to drilling fluid control systems.	No specific regulations on location of indicators and alarms of drilling fluid control systems.
<b>Emergency Shutdown System (ESD)</b>	ESD required on all offshore installations.	No reference for ESD being required on offshore installations.	No requirement for ESD on offshore installations.	ESD required on all offshore installations.
<b>Fire and Gas Systems</b>	No overarching regulations specifically on fire and gas systems.	Fire and gas system description required in an Application for Permit to Drill.	No specific regulation on fire and gas systems, although such requirements could be included in a licence or an approval letter.	Specific regulations exist for gas release systems, firewater supply, fixed firefighting systems, manual firefighting and firefighters' equipment.

(Comparing the Offshore Drilling Regulatory Regimes of the Canadian Arctic, the US, the UK, Greenland and Norway, Pembina Institute, 2011)

## II. Rules to Prevent Oil Pollution from Offshore Activities

---

### **Actions taken by the Arctic States**

Emergency Prevention, Preparedness and Response (EPPR)

Protection of the Arctic Marine Environment (PAME)

Task Force on Arctic Marine Oil Pollution Preparedness and Response

Task Force on Arctic Marine Oil Pollution Prevention

- 2013 Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic
- 2014 Arctic Offshore Oil & Gas Guidelines - Systems Safety Management and Safety Culture
- 2015 Framework Plan for Cooperation on Prevention of Oil Pollution from Petroleum and Maritime Activities in the Marine areas of the Arctic

### III. Compensation for Offshore Oil Pollution

- “Polluter Pays” is a general principle of international environmental law
- There is no international compensation mechanism in place for oil pollution from offshore platforms

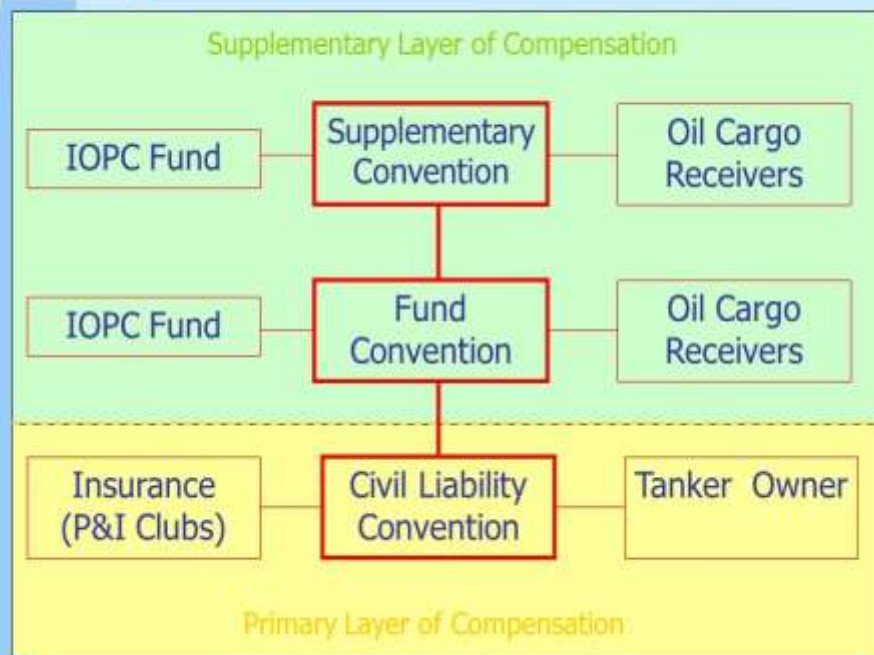


# Compensation for Oil Pollution from a Tanker

Anyone in a Member State of the 1992 Fund who has suffered pollution damage caused by oil transported by a tanker can claim compensation from the shipowner/insurer, the 1992 Fund and, if applicable, the Supplementary Fund.

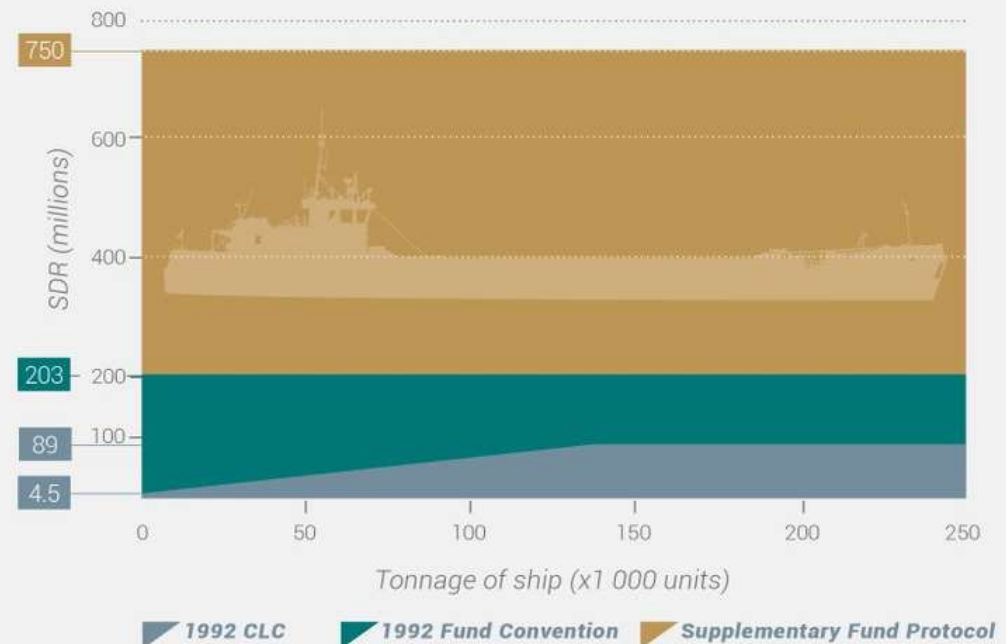


## Three Levels of Compensation (4)



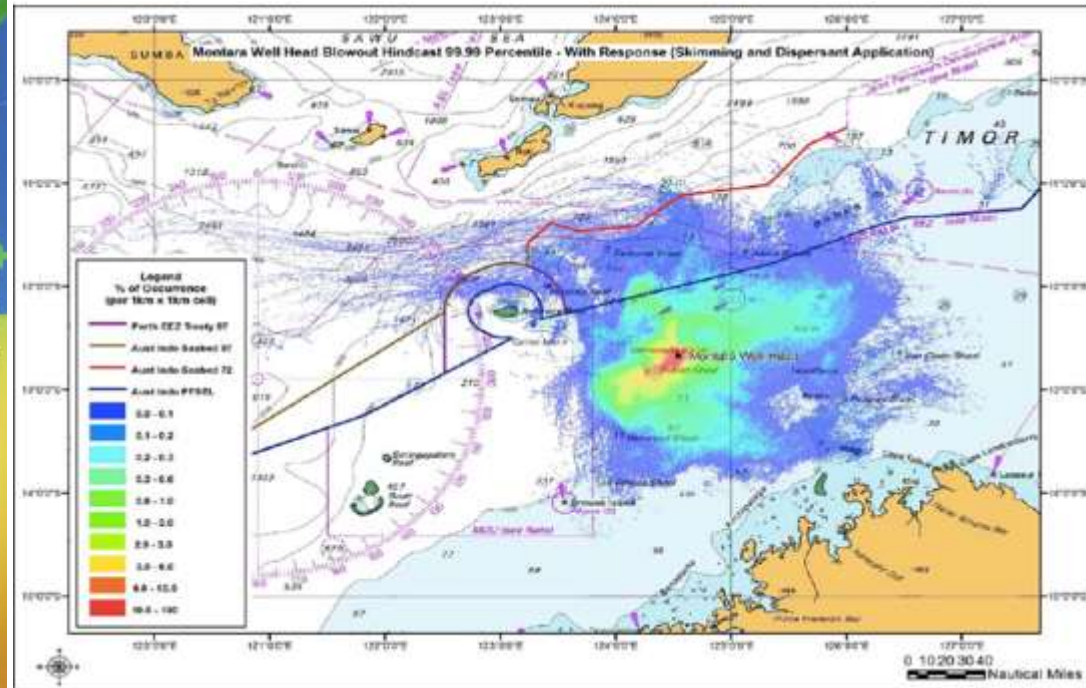
INTERTANKO

## Maximum limits of compensation



IOPC Funds

### III. Compensation for Offshore Oil Pollution – *Montara*



<http://www.au.pttep.com/our-business/montara-incident/>

Extract from the Report of the Commission of Inquiry

**PTTEP-AA:** an Australian subsidiary of the Thai national oil company

**74 days:** 21/08-03/09 2009

**Spill:** 4,750 to 10,000 tonnes of oil, 3rd largest oil spill in Australia

**Response:** new drilling rig needed to drill a relief well and plug the leak;

### III. Compensation for Offshore Oil Pollution

---

- PTEEP-AA recognized its responsibility before an Australian Court
- Australia also recognized and fixed identified gaps and deficiencies
- Indonesia claims US\$2.4bi as damages which includes damage to seaweed farming, the pearl industry, fisheries, as well as ecological damage to coral reefs
- PTTEP-AA and Australia respond that there is no verifiable, valid scientific evidence to Indonesia's claims
- In August 2016, a class action suit was filed in Sydney representing the interests of over 13,000 Indonesian seaweed farmers
- In May 2017 Indonesia launched civil lawsuit against PTEEP-AA in Jakarta

## IV. Conclusions

---

- Consider establishing regional rules, standards and recommended practices and procedures to prevent, reduce and control oil pollution arising from or in connection with offshore activities in the Arctic
- Consider establishing a compensation regime for oil pollution from offshore activities among relevant States and non-State stakeholders:
  - Provide clarification for the procedure for claims, rights and obligations, and jurisdiction
  - Special consideration for potential transboundary pollution

# THANK YOU

Dr Zhen Sun  
Research Fellow  
Centre for International Law  
[cilsz@nus.edu.sg](mailto:cilsz@nus.edu.sg)