Legal and Political Challenges and Prospects
International Conference on Regional Cooperation for The Protection of the Marine Environment

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Singapore, 16 January 2019
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INTERNATIONAL PRINCIPLES

Several relevant principles of international law, which endorsed inter alia by the UN General Assembly, the International Law Commission, and Judicial Decisions

- ‘No harm’ principle
- Notification, Consultation and EIA
- Prevention and Precaution

International Cases:
- *Trail Smelter Arbitration* (1938-1941)
- The *Pulp Mills Case*
- *Legality of the Threat/Use of Nuclear Weapon* (ICJ 1996)
- The *Corfu Channel Case* (ICJ 1949)
PART XII: Protection and Preservation of the Marine Environment

- Article 192: General obligation
- Article 193: Reaffirmation of permanent sovereignty
- Article 194: An obligation to reduce pollution from any source: Land-Based Pollution (Art. 207), Sea-bed Activities (Art. 208), Activities in the Area (Art. 209), Dumping (A. 210), Pollution from Vessels (Art. 211), Pollution from or through the atmosphere (A. 212).

- **Articles 197-201: Global and regional cooperation**
  (by formulating rules and standards, giving notification of imminent or actual damage, and undertaking research and the exchange of information)

- **Articles 213-233: Enforcement and Safeguards measures** (Coastal states, flag states and port states)
**INDONESIA’S SEAS**

- Indonesia’s territory is largely ocean and more than 2/3 is deep sea
- Waters area: +/- 7.8 million km²
- Coast line: 99,093 km²
- Islands: 17,504 (13,466 have been registered to the UN Conference on the Standardization of Geographical Names)
- Numerous active volcanoes including underwater volcanoes
- Strategic location: connecting two Oceans (Indian and Pacific) and two Continents (Asia and Australia)
- Pivotal maritime/shipping passages and choke points e.g. Malacca Straits, Sunda Strait, Singapore Strait, and Lombok Strait
- Mega Marine biodiversity: coral reef, mangrove, fish, etc
INDONESIA’S NATIONAL LAWS AND POLICY

- Law No. 6/1996 on Indonesian Waters
- Law No. 32/2014 on Marine Affairs
- Law No. 32/2009 on Env Management
- Government Regulation (GR) No. 21/2010
- GR No. 19/1999 on Marine Env Protection
- Presidential Regulation No. 109/2006
- Ministerial Regulation No. 58/2013
- Etc

INDONESIA’S NATIONAL OCEAN POLICY (KKI)

• 7 Pillars:
  - Pillar on sea space management and marine protection
    o 6 Marine spatial development policies
    o 6 Marine environment policies/programs

Main programs e.g.
- Development of international cooperation on marine Environment protection
- Prevention and restoration of marine pollution
- Reinforcement of the conservation of ecosystem, species, and genetics

Principles of Indonesia’s NOP
- Sustainable development > Blue economy > Integrated and transparent management > Participation > Equality and equity
INDONESIA’S EFFORTS THROUGH MULTILATERAL AND REGIONAL COOPERATION

Designation of PSSA in Lombok Strait

Cooperative Mechanism: CF, PCC and TTEG in the Straits of Malacca and Singapore (SOMS)
CHALLENGES

- Various forum on marine environment protection > more opportunities
- Further commitments from government e.g. UN Ocean Conference, OOC, EAS, etc
- Support from other States, IO, etc
- Involvement/action of community
- Less contentious issue

PROSPECTS

- Vast marine areas of Indonesia +/- 7.8 million km²
- Great necessity of financial resources, maritime infrastructure, equipment, and assets
- High population density
- Rapid industrialization
- Disparity among regions
- Different types of threats from natural hazard to security
CASE STUDY I: MONTARA INCIDENT

- Explosion at Montara Well Head Platform on 21 August 2009
- Situated in West Atlas Block, Timor Sea Water, Australia
- Spill of oil and hydrocarbon gases +/- 400 barrels/day
- Social & economic losses, marine environment damage, and property damage
INDONESIA-AUSTRALIA BILATERAL COOPERATION

- Scope of application
- Pollution prevention and emergency plan
- Reporting and cooperation in emergency situation
- Settlement of claims
- Polluter pays principle
- Liability and limitation of liability

INDONESIA-AUSTRALIA BILATERAL COOPERATION

- MoU 1996 on Oil Spill
- MoU 2018 on Trans-boundary Oil Pollution
CASE STUDY II: REGIONAL EFFORTS IN COMBATING TRANSBOUNDARY OIL POLLUTION

The 2014 MoU on ASEAN OSPAR

ASEAN Strategic Transport Plan (Brunei and Kuala Lumpur Action Plan 2011-2015/2016-2025)

ASEAN Oil Spill Response Plan (OSRAP), 1993

Trilateral Cooperation MoU on Revolving Fund, 1981

Areas of cooperation
Development of RPOA
Sharing of information
Obligation to designate national focal point
Protection of intellectual property

Inadequate & too general/broad

ADOPTION OF ASEAN OIL SPILL CONTINGENCY PLAN at 24th ASEAN Transport Ministers Meeting (ATM), 8 November 2018 in Bangkok, Thailand.
MARINE PLASTIC DEBRIS

- Major issue in Indonesia e.g. polluted rivers
- Second largest contributor of plastic pollution > 3.22 million/year
- Widely used and cheap to produce
- Lack of awareness and recycling facilities
- Great amount of fund needed

INDONESIA’S NATIONAL EFFORTS

- Law No. 32/2009 on Environment
- Law No. 32/2014 on Marine Affairs
- Law No. 27/2007 on Coastal Area & Small Island
- Law No. 18/2008 on Waste Management
- National Action Plan:
  Raising awareness, addressing land-based pollution, financial investment, law enforcement, and research and development

GLOBAL & REGIONAL COLLABORATION

- UN Ocean Conference, Our Ocean Conference (OOC), etc
- UNEP Intergovernmental Review Meeting of the Global Programme of Action
- APEC, G20 Declaration
- ASEAN, EAS regional legal framework
CONCLUSION

Lessons learned: regional cooperation through ASEAN, Cooperative Mechanism in the SOMS, Indian Ocean Region Association (IORA), Coral Triangle Initiative (CTI), APEC, APHoMSA, etc

Challenges > different level of development, political and economic interests, domestic factors

Prospects > growing interest/willingness, various regional bodies/cooperation, support from others

More agenda/efforts to address marine environment issues: IUUF, Oil Spill, etc

Synergy between Int’l Law and Soft Law (Plan of action, voluntary commitments, etc)

Require to establish regional compliance mechanism through existing bodies

Further engagement with concerned States

Emerging issues e.g. climate change, BBNJ

FUTURE DIRECTIONS
THANK YOU
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