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CIL

CENTRE FOR INTERNATIONAL LAW
National University of Singapore

**Challenges in Regulating
the Dark Fleet –
Lessons from Southeast Asia**

Robert Beckman

**Co-Head, Ocean Law & Policy Programme, CIL
Emeritus Professor, Faculty of Law
National University of Singapore**

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Part 1

Tankers in the Dark Fleet

Dark Fleet of Oil Tankers Threatens Existing IMO Regime

- To avoid **economic sanctions** imposed by the US, UK and EU, a “dark fleet” of oil tankers has developed to carry oil from Iran, Venezuela and Russian Federation
- Most of these tankers are more than 15 years old and do not comply with safety and pollution standards of IMO Conventions
- **No regulation by Flag States:** Most are either fraudulently registered or registered in States that are either unable or unwilling to ensure they comply with IMO Conventions
- **No Port State Control:** do not enter ports where they may be inspected under “port State control” regimes
- **Seafarers at risk:** may have been recruited by unscrupulous agents and not aware of risks in serving on ship in dark fleet

Characteristics of Tankers in the Dark Fleet

- Tankers are flagged in **high-risk open registries**, based on the most recently published Grey List and Black List compiled by the Paris MoU on Port State Control
- Flags on the **black and grey list** used by dark fleet ships include the international registries of Cameroon, Togo, Comoros, Tanzania, Belize, Sierra Leone, Cook Islands, St Kitts and Nevis, and Palau.
- Some of the tankers use a fake identity, taken from a scrapped ship

Tankers in Dark Fleet threaten existing IMO Regime

- The dark fleet of tankers pose a serious threat to the marine environment of coastal States
- They anchor outside territorial sea limits to receive food, water, fuel and spare parts
- The conduct ship-to-ship (STS) operations outside the territorial sea limits of coastal States, which poses a serious risk of an oil spill
- Most do not have liability insurance for an oil spill as required by the 1992 Civil Liability Convention
- They endanger the safety of navigation - To avoid detection by coastal States, they turn off their AIS or use “spoofing techniques” to hide their location or identity

Part 2

1992 Civil Liability Convention

1992 Civil Liability Convention – Scope of Application

1. The 1992 Civil Liability Convention applies to oil pollution damage resulting from spills of persistent oil from tankers carrying oil in bulk as cargo
2. The 1992 Civil Liability Convention covers pollution damage suffered in the **territory, territorial sea, archipelagic waters or EEZ of a State Party** to the Convention
3. The **flag State of the tanker** and the **nationality of the shipowner** are irrelevant
4. **‘Pollution damage’** is defined as loss or damage caused by contamination.

1982 Civil Liability Convention

Strict Liability

- The **owner** of a tanker has **strict liability** (i.e. the owner is liable also in the absence of fault) for **pollution damage** caused by oil spilled from its tanker as a result of an incident.
- The owner is **exempt from liability** under the 1992 CLC only if it proves that:
 - the damage resulted from an act of war or a grave natural disaster; or
 - the damage was wholly caused by sabotage by a third party; or
 - the damage was wholly caused by the negligence of public authorities in maintaining lights or other navigational aids.

CLC Insurance Certificate

1. Registered **owner** of a tanker carrying more than 2000 tonnes of persistent oil as cargo is **obliged to maintain insurance to cover its liability under the 1992 CLC**.
2. Tankers must carry a **certificate** on board attesting the insurance coverage.
3. When entering or leaving a port or terminal installation of a State Party to the 1992 CLC, such a **certificate** is required also for ships flying the flag of a State which is not Party to the 1992 CLC.
4. Claims for pollution damage under the 1992 CLC may be brought directly against the insurer or other person providing financial security for the owner's liability for pollution damage.

Proof of Insurance

- Proof of Insurance or other Financial Security must be provided in the form of:
 - A 'Blue Card' – usually issued by P&I Clubs;
 - An 'insurance certificate'; or
 - A 'Financial guarantee Certificate'.

Information on Certificate

The certificate showing proof of insurance must indicate:

- Name of Registered Owner and Principal Place of Business of Registered Owner
- Name of Insurer or Guarantor and Principal Place of Business of Insurer or Guarantor
- Duration of Security
- Name of Ship
- IMO Ship Identification Number
- Distinctive Numbers/Letters
- Port of Registry

CLC Insurance & Tankers in the “Dark Fleet”

- 15 March 2024 the *Financial Times* report:
 - Russian oil tankers circumventing western sanctions are relying on insurance that appears impossible to claim against, according to leaked documents exposing the risks taken by Moscow’s “dark fleet”.
 - The cache of shipping files, seen by the *Financial Times* and the Danish media group *Danwatch*, reveals a number of Russian vessels travelling from the Baltic are relying on **insurance that can be easily voided in the event of a disaster**.
 - Ingosstrakh, a Moscow-based insurer, provides coverage that is essential for its shipping clients to enter ports around the world. **But the contractual fine print includes a “sanctions exclusion clause”, which would invalidate claims involving most tankers moving Russian oil.**

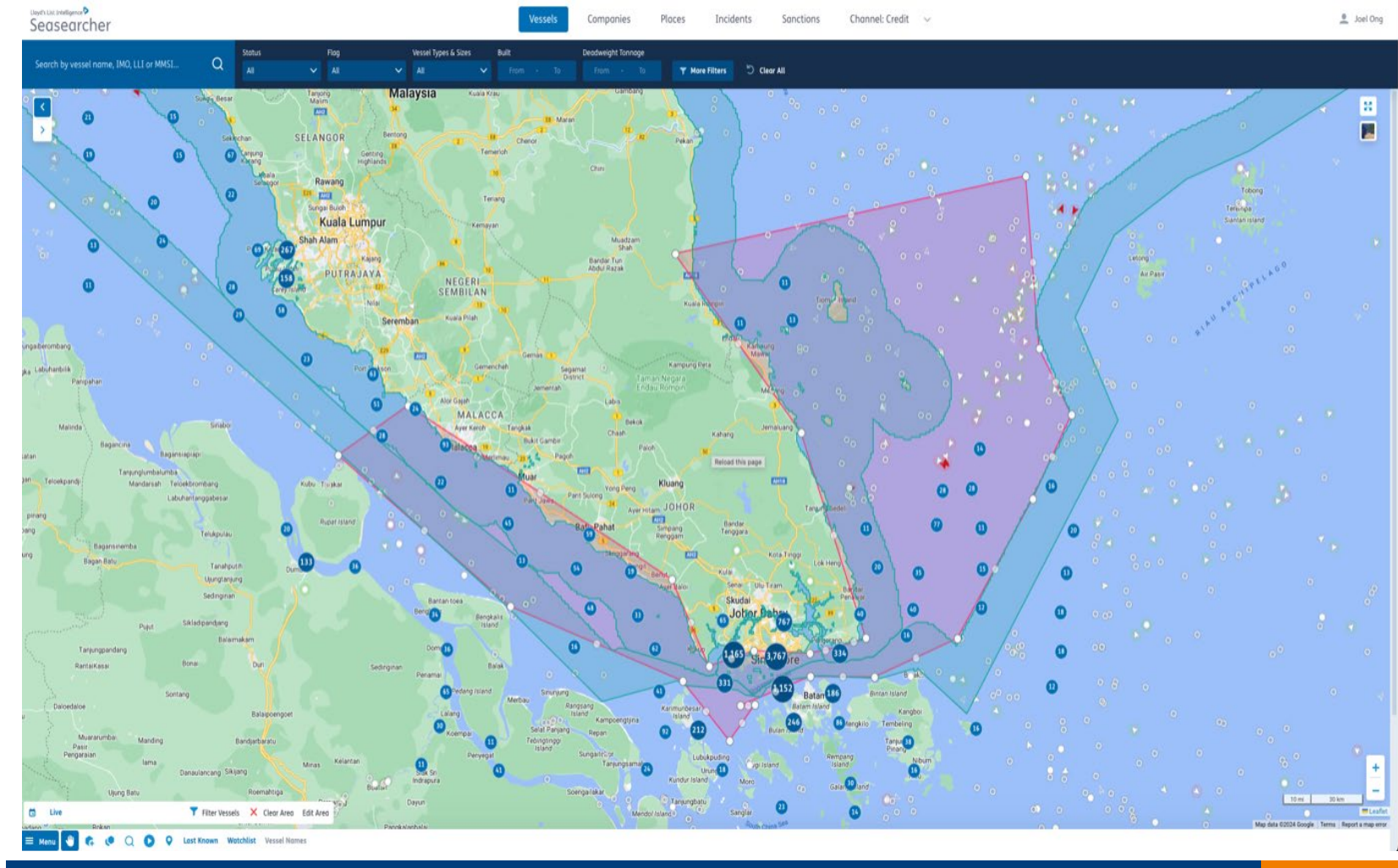
“Owners” of Tankers in Dark Fleet

- Another major problem with tankers in the dark fleet is that it is often not possible to identify the “owner” or the “managers”
- The registered owners, managers and insurers of tankers in the dark fleet are often hidden behind a labyrinth of shell companies incorporated in various States around the world
- Lloyds List reported in April 2023 that 28% of the tankers in the dark fleet were linked to shell companies in either China or Hong Kong

Pablo Incident in Malaysia EEZ - 1 May 2023

- Unladen Tanker *Pablo* exploded on 1 May 2023 in EEZ of Malaysia
- Three crew members died in the explosion
- The tanker was built in 1997 and its name was *Mockingbird*
- It was de-flagged by Panama in 2021 for suspected ties to Iran
- It was then reflagged with Cameroon, Cook Islands and Tanzania
- In March 2023, its name was change to *Pablo* and it was reflagged in Gabon
- Its registered owner was then changed to Marshall Islands-based Pablo Union Shipping
- Its beneficial owner is unknown
- Not known if it had any insurance

Area of Interest in SE Asia



Part 3

MARPOL Regulations on STS Transfer Operations in the EEZ

Enforcement of IMO Conventions

- The State of Registration or **Flag State** has the primary obligation under IMO conventions to regulate ships registered in its territory and flying its flag and to enforce IMO regulations on the safety of navigation and pollution of the marine environment
- In addition, **port States** have the power to inspect and enforce IMO regulations on ships which voluntarily enter their ports or internal waters
- IMO conventions give almost no powers to **coastal States** to regulate foreign ships outside their ports and internal waters

IMO Assembly Resolution A.1192(33) of 11 Dec 2023

6. CALLS UPON **coastal States to monitor STS operations in their territorial sea and exclusive economic zone,**
 - **notified** in accordance with regulation 42 of Annex I of MARPOL, including monitoring the provision of the notifications required pursuant to regulation 42 of Annex I of MARPOL,
 - **and take appropriate actions in cases identified as not complying with the maritime safety and prevention of marine pollution regulations;**
7. ENCOURAGES **coastal States to collaborate** to improve monitoring of these practices and operations;

IMO Resolution MEPC.186(59) adopted on 17 July 2009

- Addition of a new chapter 8 to MARPOL Annex I and consequential amendments to the Supplement to the IOPP Certificate Form B
- Applies to oil tankers engaged in the transfer of oil cargo between tankers at sea (STS operations) conducted after 1 April 2012
- **Regulation 41:** Tanker engaged in STS operations must carry on board an STS operations plan developed taking into account best practice guidelines and approved by administration of flag State

MARPOL Regulations on STS Transfer

- Each oil tanker subject to MARPOL Regulation 42, Chapter 8, Annex 1 as amended,
 - that plans STS operations within the territorial sea, or the **EXCLUSIVE ECONOMIC ZONE** of a Party to the present Convention
 - **shall notify that Party not less than 48 hours in advance of the scheduled STS operations.**
- Where, in an exceptional case, STS operations are to take place within less than 48 hours' notice, the oil tanker shall notify the Party to the present Convention at the earliest opportunity.

IMO Resolution MEPC.186(59) adopted on 17 July 2009

Regulation 42 - Notification to the coastal State

- Each tanker that plans STS operations within the territorial sea or Exclusive Economic Zone of a Party shall notify that Party not less than 48 hours in advance of the scheduled STS operations.
- The Notification to the coastal State must include:
 1. name, flag, call sign, IMO Number and estimated arrival time of the tankers involved in the STS operations
 2. date, time and geographic location at the commencement of the planned STS operations
 7. Confirmation that the oil tanker has on board an STS operations Plan meeting the requirement of regulation 41

MARPOL Chp 8, Regulation 42

STS Notification Requirements

1. Name, flag, call sign, IMO Number and estimated time of arrival of the oil tankers involved in the STS operations;
2. Date, time and geographical location at the commencement of the planned STS operations;
3. Whether STS operations are to be conducted at anchor or underway;
4. Oil type and quantity;
5. Planned duration of the STS operations;
6. Identification of STS operations service provider or person in overall advisory control and contact information; and
7. Confirmation that the oil tanker has on board an STS operations Plan

Questions on MARPOL Regulations on STS Operations

- Extremely rare for the IMO to impose regulations on ships in the EEZ
- IMO regulation is silent on how the regulation is to be enforced
- Does the regulation imply that it can be enforced by coastal States?
- **Jurisdiction of coastal States** over ship-source pollution is governed by the provisions in **Part XII of UNCLOS**

Part 4

Coastal State Regulation of STS Operations in their EEZ

Resolution A.1192(33) of 11 Dec 2023

6. CALLS UPON **coastal States** to monitor STS operations in their territorial sea and exclusive economic zone, notified in accordance with regulation 42 of Annex I of MARPOL, including monitoring the provision of the notifications required pursuant to regulation 42 of Annex I of MARPOL,
 - and **take appropriate actions** in cases identified as not complying with the maritime safety and prevention of marine pollution regulations;
7. ENCOURAGES **coastal States** to collaborate to improve monitoring of these practices and operations;

Nature of EEZ Regime

- Article 55: EEZ is a specific legal regime under which the **rights and jurisdiction** of the **coastal State** and the **rights and freedoms** of **other States** are governed by the relevant provisions of this Convention
- Article 56: Rights, Jurisdiction and Duties of **Coastal State**
- Article 58: Rights and Duties of **Other States**

1982 UNCLOS

Rights of Other States in EEZ

Article 58. Rights and Duties of Other States in the EEZ

- 1. All States, subject to rules in UNCLOS, have **freedom of navigation** and **other lawful uses of the sea related to such freedoms**
- 2. **Articles 88 to 115** and other pertinent rules of international law apply to the Exclusive Economic zone in so far as they are not incompatible with this part.
- 3. States shall have **due regard** to the rights and duties of the coastal State and **shall comply with the laws and regulations of the coastal State** adopted in accordance with the Convention

Article 56. Rights, Jurisdiction and Duties of the Coastal State in the EEZ

1. In the EEZ the **coastal State** has ...

(b) **Jurisdiction** as provided for in the relevant provisions of this Convention with regard to . . .

- (iii) the protection and preservation of the marine environment

- Note: the relevant provisions of UNCLOS are in **Part XII** on **Protection and Preservation of the Marine Environment**

Article 211. Pollution from Vessels

Article 211(5)

- **Coastal States, for the purpose of enforcement** as provided for in section 6,
- may in respect of their **exclusive economic zones** **adopt laws and regulations** for the prevention, reduction and control of **pollution from vessels**
- **conforming to and giving effect to *generally accepted international rules and standards established through the competent international organization or general diplomatic conference.* (GAIRS)**
- *This provisions allows coastal States to regulate STS operations in accordance with **MARPOL Chp 8, Regulation 42***

Article 211. Pollution from Vessels

Article 211(7)

7. The international rules and standards referred to in this article should include *inter alia* those relating to **prompt notification to coastal States,** whose coastline or related interests may be affected **by incidents,** including maritime casualties, **which involve discharges or probability of discharges**

Article 220(3)-(4). Enforcement by Coastal States - Requesting Information

3. Where there are clear grounds for believing that a vessel navigating in the **exclusive economic zone** or the territorial sea of a State has, **in the exclusive economic zone**,
 - committed a violation of applicable international rules and standards for the prevention, reduction and control of pollution from vessels or laws and regulations of that State conforming and giving effect to such rules and standards,
 - **that State may require the vessel to give information regarding its identity and port of registry, its last and its next port of call and other relevant information required to establish whether a violation has occurred.**
4. States shall adopt laws and regulations and take other measures so that vessels flying their flag comply with requests for information pursuant to paragraph 3.

Possible Actions of Coastal State with regard to Tankers anchored in its EEZ

1. Authorities in the coastal State can approach a suspect tanker anchored in its EEZ where STS operations take place and ask Master to provide a copy of **the CLC Certificate and the STS operations plan**
2. Could a coastal State also require this same information from the ship registry of the flag State?
3. If neither the Master nor the flag State is able or willing to provide the information, can the authorities in the coastal State require the tanker to leave the area in its EEZ where tankers are anchored?
4. If a tanker engages in a STS transfer without providing information on the STS operation to the coastal State, **can the authorities in the coastal State arrest the tanker and escort it into its nearest port?**
5. Is the flag State of the tanker likely to challenge the actions of the coastal State by invoking the dispute settlement provisions in Part XV?

Article 220(6) . Enforcement by Coastal States - Instituting Proceedings

6. Where there is clear objective evidence that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone,
- committed a violation referred to in paragraph 3 resulting in a discharge causing major damage or threat of major damage to the coastline or related interests of the coastal State, or to any resources of its territorial sea or exclusive economic zone,
 - that State may, subject to section 7, provided that the evidence so warrants,
 - institute proceedings, including detention of the vessel, in accordance with its laws.

Coastal State Rights regarding tankers doing STS operations in its EEZ

- If tanker is approached and neither the Master or the Flag State can provide a copy of the STS operations plan or the CLC Certificate, the coastal State could escort the tanker into port
- Coastal State could not **institute proceedings** because no discharge and tanker is not voluntarily in port
- In the meantime, coastal State could take **administrative measures** under **Article 219** to prevent the tanker from sailing until it complies with MARPOL and SOLAS
- In these circumstances a representative of the either the tanker owner or the cargo owner is likely to contact the authorities in the coastal State

Conclusions

- Coastal States should adopt national legislation on STS operations in their EEZ as authorized by UNCLOS
- Coastal States should be prepared to approach tankers loitering in their EEZ to request the STS operations plan and the CLC certificate
- If tanker cannot comply, and tanker is likely a dark ship, the coastal State should escort it into port
- The flag State of tankers in the dark fleet are not likely to legally challenge the actions of the coastal State

Part 5

Coastal State Regulation of Passage of Tankers

Can Coastal States Regulate Innocent Passage of Tankers in the Dark Fleet ?

- Article 21 stipulates that coastal States may adopt laws and regulations for the safety of navigation and the prevention, reduction and control of vessel pollution that give effect to GAIRS of the IMO.
- To address the threat posed by tankers in the dark fleet transiting their waters, coastal States could pass laws and regulations requiring that all oil tankers that intend to exercise the right of innocent passage in their territorial sea provide the coastal State with **advance notice of the time of their intended passage, together with a copy of the insurance certificate required under the 1992 CLC.**

Can Coastal States Regulate Innocent Passage of Tankers in the Dark Fleet?

- Coastal States might also require copies of other certificates required under SOLAS 1974 and MARPOL 73/78.
- The coastal State's regulations could provide that oil tankers which fail to provide a copy of such certificates will be denied innocent passage rights through their territorial waters.
- The flag States of tankers in the dark fleet are unlikely to challenge the legality of such regulations.

Regulation of Transit Passage and Archipelagic Sea Lanes Passage

- A more complex issue is whether littoral States bordering straits used for international navigation and archipelagic States can deny or restrict the passage of tankers through their waters.
- Littoral States and archipelagic States may only adopt laws and regulations relating to transit passage or archipelagic sea lanes passage which give effect to the rules and regulations in the IMO conventions
- However littoral States and archipelagic States can impose ships' routing and ship reporting systems on ships exercising transit passage if such measures are approved by and adopted by the IMO.

Regulation of Transit Passage and Archipelagic Sea Lanes Passage

- States bordering straits used for international navigation could consider proposing to the IMO that the **mandatory ship reporting** regulation of the IMO for ships transiting a strait used for international navigation be amended
- to require that oil tankers intending to transit a strait include
- a copy of their 1992 CLC Insurance Certificate and
- a copy of their MARPOL 73/78 STS Operations Plan, if any,
- in their report to the coastal authorities.

Part 6

Legal Action by Coastal States against Flag States under UNCLOS

Coastal States Can Challenge Flag States of Tankers under UNCLOS

- Flag States have an obligation under **Article 94** to **effectively exercise jurisdiction and control** over ships flying its flag
- Flag States are required to take measures on the safety of navigation and the prevention of pollution that conform to the **“generally accepted international regulations, procedures and practices”** on the safety of life at sea, the maintenance of radio communications, and the prevention, reduction and control of marine pollution
- A State which has clear grounds to believe that a flag State is not exercising proper jurisdiction and control **may report the facts to the flag State, which must investigate and remedy the situation**

Coastal States Can Challenge Flag States of Tankers under UNCLOS

- If flag States of tankers in dark fleet fail to comply with a request to investigate, the coastal States could invoke the dispute settlement procedures in **Part XV of UNCLOS** and institute proceedings
- The States of Registration of most tankers in the dark fleet are unlikely to go to dispute settlement
- The ruling of a court or tribunal in such a case is likely to have a very positive impact on the registration of ships by States that are unable or unwilling to exercise effective jurisdiction and control

Part 7

Tracking of Dark Fleet Tankers by Coastal States

CIL Guide to Identifying and Tracking Tankers in the Dark Fleet

- IMO Assembly Resolution of Dec 2023 “ENCOURAGES **coastal States to collaborate** to improve monitoring of these practices and operations”;
- Information on the websites of the IMO is useful but limited
 - IMO’s GISIS portal allows all vessels issued with an IMO number to be tracked — a useful feature as the IMO number stays with the vessel even if it is re-registered under multiple flags or names.
 - While the GISIS is not public, it is free to access for all IMO member states and their maritime administrations via an IMO web account

CIL Guide to Identifying and Tracking Tankers in the Dark Fleet

- CIL Student Research Assistants are currently preparing a **Guide to Dark Fleet Tankers**
- Its objective is to give **Maritime Administrations of coastal States** an overview of the open-source online research tools available to enable them to identify the scope of the threat to their marine environment from dark fleet tankers (Vessel Finder, MarineTraffic, Equasis, IGP&I)
- The Guide explains the potential use of open-source information as well as vessel-tracking services that required a paid subscription (e.g. Lloyds List Intelligence “SeaSearcher”)
- It also explains the potential use of satellite data

Part 8

Conclusions

Dark Fleet Exposes Weaknesses of IMO in Regulating International Shipping

- IMO has been unable to impose regulations to ensure that Flag States exercise “effective jurisdiction and control” over oil tankers registered in their territory
- Triple III committee and IMO Audit Scheme have not been effective
- Port State Control measures have not been effective
- Can IMO establish a “White List” of Flag States that are able and willing to ensure that tankers comply with IMO Regs?
- If IMO is unable to address the issue, coastal States are likely to take unilateral actions to protect their marine environment

Support and Caveat

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- However, the analysis in this presentation is the personal view of the author

Thanks for Your Attention !

Robert Beckman

Emeritus Professor, Faculty of Law

Co-Head, Ocean Law & Policy Programme, CIL

National University of Singapore (NUS)

Email: cilbeckman@nus.edu.sg