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Legal Framework for Addressing Sea Environmental Pollution: A Case Study of the Montara Oil Spill in East Timor

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Abstract

This study delves into the legal framework pertinent to addressing sea environmental pollution, with a specific focus on the Montara Oil Spill incident in East Timor. The Montara Oil Spill presents a compelling case study, highlighting the complexities and challenges associated with responding to marine environmental disasters. By examining international conventions, regional agreements, and domestic laws, this research seeks to evaluate the adequacy of existing legal frameworks in managing sea pollution incidents effectively. Furthermore, it aims to assess the efficacy of regulatory mechanisms in holding accountable those responsible for environmental harm and ensuring appropriate compensation for affected parties. Through a comprehensive analysis of legal doctrines, relevant case

law, and policy considerations, this study aims to offer valuable insights into enhancing the legal framework for mitigating and preventing sea environmental pollution. By synthesizing findings from diverse sources, including international treaties, national legislation, and jurisprudential trends, this research endeavors to identify areas for improvement in regulatory frameworks and enforcement mechanisms. Additionally, it seeks to explore opportunities for strengthening international cooperation and collaboration in safeguarding marine ecosystems and addressing transboundary pollution issues. Ultimately, this study contributes to the broader discourse on environmental law and policy by shedding light on the legal dimensions of sea pollution management. By critically examining the Montara Oil Spill case and drawing lessons from it, this research seeks to inform future regulatory developments and advocacy efforts aimed at promoting environmental sustainability and protecting the world's oceans.

KEYWORDS *Montara Case, Dispute Resolution, Environmental Pollution, Transboundary Hazard Pollution, International Cooperation*

Introduction

The maritime environment plays a critical role in sustaining ecosystems, supporting livelihoods, and facilitating global trade.[1] However, the increasing frequency and severity of marine pollution incidents pose significant threats to marine biodiversity and human well-being. Addressing sea environmental pollution requires a robust legal framework that encompasses international, regional, and domestic regulations.[2] This study investigates the legal framework for managing sea pollution incidents, with a specific focus on the Montara Oil Spill in East Timor as a case study.[3]

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1 Simon F. Thrush, and Paul K. Dayton. "What can ecology contribute to ecosystem-based management?." *Annual Review of Marine Science* 2 (2010): 419-441.

2 Christopher LJ Frid, and Bryony A. Caswell. *Marine Pollution*. (Oxford: Oxford University Press, 2017).

3 Edward F. Sherman, Shane Bosma, and Josh Underwood. "Specific oil spill incidents." *Managing the Risk of Offshore Oil and Gas Accidents*. (London: Edward Elgar Publishing, 2019), pp. 408-446; Youna Lyons, "Transboundary pollution

The Montara Oil Spill, occurring in the Timor Sea in 2009, serves as a poignant illustration of the devastating consequences of marine pollution. The spill, resulting from a blowout at the Montara oil platform, led to the release of vast quantities of oil into the surrounding waters, causing extensive environmental damage and disrupting local ecosystems. The incident underscored the urgent need for effective legal mechanisms to prevent, mitigate, and remediate such disasters.[4]

The Montara oil spill in August 2009 was the first major marine oil spill from an offshore petroleum platform in Australia, with all other significant oil spills in the country originating from ship-sourced pollution.[5] This case study aims to analyze the legal framework for addressing sea environmental pollution, focusing on the Montara oil spill in East Timor. The study will outline the regulatory framework of the National Plan to Combat Pollution of the Sea by Oil and Other Noxious and Hazardous Substances (NatPlan) and the associated National Marine Oil Spill Contingency Plan (NMOSCP) in relation to marine oil spills. It will consider the three pillars of oil spill planning, namely preparedness, training, and response, and examine the adequacy of the NatPlan and NMOSCP in addressing petroleum platform-sourced oil spills. The study will also critically evaluate the response to the Montara oil spill under the NMOSCP and the adequacy of the NMOSCP in responding to a major oil spill from a remote oil platform. The analysis will assess the preparedness and response by the platform operator PTTEP (as initial

from offshore activities: a study of the Montara offshore oil spill." *Transboundary Pollution*. (London: Edward Elgar Publishing, 2015), pp. 162-189.

4 R. B. Spies, M. Mukhtasor, and K. A. Burns. "The montara oil spill: a 2009 well blowout in the Timor Sea." *Archives of Environmental Contamination and Toxicology* 73 (2017): 55-62; Jody Febryan Bagaskara, Natasha Nancy, and Kenny Czar Ivanov. "International Environment Policy: Dispute of Indonesia's Timor Sea due to The Montara Oil Spill (Australia)." *Journal of Global Environmental Dynamics* 2, no. 2 (2021): 11-13.

5 Tina Hunter, "The Montara oil spill and the National Marine Oil Spill Contingency Plan: disaster planning or just a disaster?." *Australian and New Zealand Maritime Law Journal* 24, no. 2 (2010): 46-58; R. Y. A. N. Richard, and Ellen Parry. "The Montara class action decision and implications for corporate accountability for Australian companies." *Business and Human Rights Journal* 6, no. 3 (2021): 599-606.

Combat Agency), as outlined in the NatPlan, and whether the NatPlan and NMOSCP were an adequate regulatory tool for a petroleum platform-sourced oil spill. The study will also discuss possible solutions to any identified limitations in the adequacy of the NMOSCP to oil platform spills.[6]

In 1982, the United Nations, through the United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982), articulated a comprehensive definition of marine pollution in Article 1, paragraph (4). It delineates marine pollution as the "*Pollution of the marine environment*," resulting from the direct or indirect introduction of substances or energy by human activity into marine environments, including estuaries. Such pollution is deemed to cause or likely lead to deleterious effects, including harm to living resources and marine life, risks to human health, impediments to marine activities such as fishing, and other legitimate uses of the sea, as well as the degradation of seawater quality and associated amenities. This definition encapsulates the multifaceted nature of marine pollution and highlights its significant implications for both ecological integrity and human well-being. There are two criteria used to classify pollution sources, namely: based on the activity that causes pollution (seabed activity, dumping, navigation) and based on the way pollutants enter the environment (*pollution from land and atmospheric pollution*).[7]

In 2009, Indonesia experienced a case of pollution of the marine environment, which eventually led to a dispute with a private party related to the pollution. On August 20, 2009, there was an explosion in the Montara oil field in Australia's Exclusive Economic Zone (EEZ). The explosion resulted in a crude oil spill that spread to Indonesia's EEZ.[8]

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[6] *See also* Tim Henry, "A Thai oil firm, Indonesian seaweed farmers and Australian regulators. What happened after the Montara oil spill?", *Mongabay Series: Indonesian Fisheries, Southeast Asian infrastructure*, February 14 (2017). Online at https://news.mongabay.com/2017/02/a-thai-oil-firm-indonesian-seaweed-farmers-and-australian-regulators-what-happened-after-the-montara-oil-spill/

[7] Budislav Vukas, *The Law of the Sea*, (Leiden: Martinus Nijhoff Publishers, 2004), pp. 236-237.

[8] *See* Lyons, "Transboundary pollution from offshore activities: a study of the Montara offshore oil spill", pp. 162-189; Youna Lyons, " Transboundary Pollution from Offshore Activities: A Study of the Montara Offshore Oil Spill." *International*

The Montara oil field explosion is the largest oil overflow case to occur in the Montara oil field in the Timor Sea, located on the north coast of Australia. The Montara oil field is located on the Kimberley coast, 250 km north of Truscott and 690 km west of Darwin. This case is one of the largest oil disasters experienced by Australia. Oil flows occurred since August 21, 2009 and continued until November 3, 2009. The Australian Embassy in Jakarta explained that crude oil began flowing into the Timor Sea on 21 August 2009, and notified the Government of Indonesia after satellite imagery obtained on 1 September 2009 showing that the oil spill was flowing towards Indonesia's EEZ in the form of a plume. As a follow-up step, on October 28, 2009, the Minister for the Environment, Heritage and the Arts, Peter Garrett, explained directly to the Indonesian Minister of Environment, Gusti Muhammad Hatta, regarding the Montara oil spill problem.[9]

Losses incurred by oil spills pollute the sea areas of Indonesia, Australia, and Timor Leste. The Government of Indonesia together with Australia is responsible for maintaining and protecting the environment. One of the steps taken to be able to resolve this oil pollution case, the Government of Indonesia submitted the marine pollution case into a dispute with PTTEP Australasia.

Against this backdrop, this study aims to analyze the legal instruments and regulatory frameworks relevant to addressing sea environmental pollution, utilizing the Montara Oil Spill as a focal point. By examining international conventions, regional agreements, and domestic laws, the study seeks to evaluate the adequacy and effectiveness of existing legal mechanisms in managing marine pollution incidents. Furthermore, it aims to identify gaps, challenges, and opportunities for enhancing the legal framework to better protect marine ecosystems and ensure accountability for polluters.

Through a multidisciplinary approach integrating legal analysis, environmental science, and policy evaluation, this study endeavors to

Conference Transboundary Pollution: Evolving Issues of International Law and Policy, Center for Inteernational Law, National University of Singapore, 2014.

9 Tobby Lendon, "Indonesia: Montara Oil Spill", *Australian Embassy Indonesia*, November 2, 2009. Online https://indonesia.embassy.gov.au/jakt/mr09_086.html

provide insights into strengthening legal frameworks and promoting effective governance in addressing sea environmental pollution. By drawing lessons from the Montara Oil Spill case, this research seeks to contribute to the broader discourse on marine environmental protection and sustainable ocean management.

The dispute between Indonesia and Australia, both affected parties in the Montara Oil Case in the Timor Sea, which falls within Indonesia's Exclusive Economic Zone (EEZ), underscores the challenges stemming from the absence of a cohesive legal regime for dispute resolution. This study adopts a normative-empirical research approach, blending descriptive analysis with primary data examination. Normative research, rooted in legal dogmatic science, elucidates the science of rules, while empirical legal research involves the scrutiny of primary data. This combined approach forms the foundation for analyzing legal complexities and practical implications surrounding the Montara Oil Case.

Research data for this study encompass both primary and secondary sources. Primary data is obtained directly from relevant stakeholders or through field research, providing firsthand insights into the dispute. Primary legal materials, as binding sources, include international and national regulations such as the United Nations Charter, the International Convention on the Law of the Sea (UNCLOS 1982), and pertinent international, regional, and bilateral conventions pertaining to environmental and marine matters. Secondary legal materials, comprising books, journals, and other scholarly works, offer additional context and interpretations of primary legal sources. Tertiary legal materials, including legal dictionaries and reference guides, supplement the analysis by providing further elucidation and guidance on legal principles and concepts. Through a comprehensive examination of these legal materials, this study aims to offer insights into the complexities of the Montara Oil Case and contribute to the broader discourse on maritime dispute resolution.

Montara Oil Pollution Case Dispute Resolution

The Montara Oil Pollution Case stands as a pivotal example of the complexities and challenges inherent in resolving disputes arising from

environmental disasters. This case, which unfolded in the Timor Sea off the coast of Australia, centered on the catastrophic oil spill that occurred in August 2009, stemming from a blowout at the Montara Wellhead Platform. The incident resulted in extensive environmental damage, including the release of vast quantities of oil into the marine ecosystem, posing threats to marine life, fisheries, and coastal communities.

In the aftermath of the spill, a protracted legal battle ensued, involving multiple stakeholders, including the Australian government, the company responsible for the operation of the Montara Wellhead Platform, and affected communities. The dispute revolved around issues of liability, compensation, and environmental remediation, highlighting the complexities of addressing environmental harm caused by industrial accidents in transboundary settings.

When an environment becomes infused with substances that are foreign or not native to the area, it is considered polluted or contaminated. The term "*pollution*" carries significant weight across academic circles, with scholars such as Thomas M. Pankratz suggesting that it signifies the presence of pollutants within the environment.[10]

Furthermore, water pollution, a pressing concern of modern times, stems from various sources, each contributing to its degradation. The causes of water pollution are multifaceted, spanning from organic pollutants to radioactive materials, and each category poses distinct challenges to environmental sustainability. It is imperative to recognize the intricate interplay of these pollutants in order to formulate effective mitigation strategies and ensure the preservation of water quality for future generations.[11]

Organic pollutants encompass a wide array of substances, including household waste, agricultural runoff laden with pesticides, and industrial effluents such as those from food processing and paper mills. These contaminants infiltrate water bodies, disrupting ecosystems and

[10] Thomas M. Pankratz, *Special Edition-Environmental Engineering Dictionary and Directory*. (Florida: CRC Press, 2000).

[11] Claude E. Boyd, and Claude E. Boyd. "Water quality protection." *Water Quality: An Introduction* (2020): 379-409; Vladimir Novotny, *Water quality: prevention, identification and management of diffuse pollution*. (New York: Van Nostrand-Reinhold Publishers, 1994).

jeopardizing human health.[12] Understanding the pathways through which organic pollutants enter aquatic environments is essential for devising targeted interventions to minimize their impact.

Inorganic pollutants, comprising salts, mineral acids, metals, and detergents, further exacerbate the issue, leaching into water sources from industrial activities, mining operations, and urban runoff. Their presence not only contaminates water but also threatens aquatic life and ecosystems. Sediments, carried by water through natural processes like soil erosion, contribute significantly to water pollution. As rivers and streams transport soil particles laden with heavy metals such as copper, nickel, and chromium, they deposit them in lakes and seas, causing long-term environmental harm. Recognizing the interconnected nature of these pollutants underscores the need for holistic approaches to water quality management.[13]

Pollution of the marine environment is one of the subjects of discussion in the United Nations (UN). UNCLOS 1982 is a product of UN law that regulates issues related to the marine environment. The following is the definition of pollution of the marine environment according to Article 1 paragraph (4) of UNCLOS 1982: *"pollution of the marine environment" means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities.*

The concept of "*pollution of the marine environment*," as articulated in Article 1, paragraph 4 of the United Nations Convention on the Law of the Sea (UNCLOS) of 1982, encompasses a broad spectrum of human-

[12] Omar ML Alharbi, Rafat A. Khattab, and Imran Ali. "Health and environmental effects of persistent organic pollutants." *Journal of Molecular Liquids* 263 (2018): 442-453; Raina M. Maier, and Terry J. Gentry. "Microorganisms and organic pollutants." *Environmental microbiology*. (Massachusetts: Academic Press, 2015), pp. 377-413.

[13] Anil Kumar De, *Environment and Ecology* (India: New Age International, India, 2009), pp. 65-68; Pooja Devi, Pardeep Singh, and Sushil Kumar Kansal, eds. *Inorganic pollutants in water*. (Amsterdam: Elsevier, 2020).

induced actions with potentially detrimental outcomes. It involves the introduction of substances or energy by human activities, either directly or indirectly, into marine environments and estuaries.[14] These actions can have severe repercussions, leading to a range of adverse effects.

Firstly, pollution may result in harm to living resources and marine life, disrupting ecosystems and threatening biodiversity. This includes impacts such as habitat degradation, species decline, and ecological imbalances. Secondly, pollutants in marine environments pose hazards to human health, particularly through the consumption of contaminated seafood or exposure to polluted waters.[15] This jeopardizes public health and safety, necessitating measures to mitigate risks and protect human well-being.[16]

Additionally, pollution can hinder various marine activities essential for economic, social, and cultural purposes. Fishing, shipping, tourism, and recreation are among the activities vulnerable to disruption, potentially leading to economic losses and social upheaval.[17] Furthermore, the impairment of seawater quality due to pollution poses challenges for its use in diverse sectors, including drinking water supply, agriculture, industry, and recreation. This degradation undermines the reliability and sustainability of marine resources, necessitating efforts to preserve and restore water quality. Lastly, pollution diminishes the aesthetic and recreational value of marine environments, reducing their appeal as destinations for tourism and recreation. This not only affects local

[14] *See* Gajahin Gamage Nadeeka Thushari, and Jayan Duminda Mahesh Senevirathna. "Plastic pollution in the marine environment." *Heliyon* 6, no. 8 (2020); José GB. Derraik, "The pollution of the marine environment by plastic debris: a review." *Marine Pollution Bulletin* 44, no. 9 (2002): 842-852.

[15] L. E. Fleming, et al. "Oceans and human health: emerging public health risks in the marine environment." *Marine Pollution Bulletin* 53, no. 10-12 (2006): 545-560.

[16] Carlos Corvalan, Simon Hales, and Anthony J. McMichael. *Ecosystems and Human Well-being: Health Synthesis*. (Geneva: World Health Organization, 2005).

[17] Md Shahidul Islam, and Masaru Tanaka. "Impacts of pollution on coastal and marine ecosystems including coastal and marine fisheries and approach for management: a review and synthesis." *Marine Pollution Bulletin* 48, no. 7-8 (2004): 624-649.

economies but also diminishes the overall quality of life for coastal communities and society at large.[18]

Marine pollution, a multifaceted environmental challenge, encompasses various sources that degrade oceanic ecosystems. One significant category arises from land-based activities, where pollutants are dispersed into the marine environment through the atmosphere. This includes synthetic chemicals like chlorinated hydrocarbons used in agriculture, heavy metals released from industrial processes, and oil hydrocarbons emitted during petroleum energy production. Another prominent source stems from the direct disposal of domestic and industrial wastes into marine ecosystems, either through river runoff, sewage outlets, or deliberate dumping.[19] These pollutants pose serious threats to marine life and coastal regions, necessitating robust mitigation efforts to preserve oceanic biodiversity and ecological balance.

Additionally, marine pollution resulting from radioactivity, whether from natural sources or human activities like nuclear weapons testing and waste disposal, presents significant concerns.[20] Ship-borne pollution further exacerbates the issue, with oil spills being a primary focus due to their detrimental impacts on marine habitats and wildlife. Moreover, offshore mineral production activities, particularly mining operations, introduce pollutants into marine environments through leaks and inadequate waste management practices. The complexity and diversity of marine pollution sources underscore the importance of comprehensive strategies and international cooperation to mitigate its adverse effects and protect the health and integrity of our oceans.

Oil pollution in the marine environment can inflict detrimental effects on both biological and non-biological resources, encompassing a wide array of consequences:

Regarding non-biological resources, oil contamination poses risks to crucial elements such as surface water, groundwater, sediments, and

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[18] *See* Article 1 paragraph (4) UNCLOS, available at https://www.un.org/depts/los/convention_agreements/texts/unclos/part1.htm

[19] Ricardo Beiras, *Marine Pollution: Sources, Fate and Effects of Pollutants in Coastal Ecosystems*. (Amsterdam: Elsevier, 2018).

[20] Remus Prăvălie, "Nuclear weapons tests and environmental consequences: a global perspective." *Ambio* 43, no. 6 (2014): 729-744.

soils, often resulting from oil spills either directly or through indirect contact. Additionally, the evaporation of volatile compounds like benzene presents a threat to air quality, potentially leading to health hazards due to carcinogenic effects. Moreover, the aesthetic value of natural treasures, including marine reserves and seabed artifacts, may be compromised, impacting their cultural and recreational significance.

In terms of biological resources, oil pollution poses significant risks to marine ecosystems and biodiversity. Various forms of marine life, ranging from marine mammals and fish to plankton and birds, are susceptible to the harmful effects of oil spills. Furthermore, ecosystems such as coral reefs, mangroves, and seagrass beds face profound disturbances, including reduced reproductive capacity, growth inhibition, and habitat degradation. Such impacts extend to fisheries areas, affecting both sensitive fishing grounds and vital marine habitats, thereby threatening the livelihoods of coastal communities dependent on aquaculture, fisheries, and tourisms.

Pollution from oil spills is a major problem in some coastal waters, killing or impacting fish, other marine organisms, birds and mammals. Oil spills also kill or reduce the life of organisms in beach sand and coral, and can also kill worms and insects that are food for birds and wildlife. When spills infiltrate coastal swamps, oil can damage or kill fish, shrimp, and other animals.

Oil spills not only contaminate marine environments but can also despoil beaches frequented by swimmers and recreational enthusiasts. Despite the substantial damage inflicted by oil spills, they are often perceived as relatively minor issues concerning fish populations and marine ecosystems compared to chronic nutrient pollution. The pace and extent of ecosystem recovery following an oil spill vary depending on factors such as the volume and composition of the spilled oil, the location of the spill, and prevailing weather conditions. Consequently, recovery processes can range from rapid restoration to prolonged and arduous rehabilitation efforts.

In relation to the problems in this study involving Indonesia and Australia, there are several forms of cooperation, both bilateral, regional, and international in terms of protection and maintenance of transboundary marine environments, namely:

1. Bilateral Cooperation
   MoU between the Government of Australia and Indonesia on Oil Pollution Preparedness and Response 1996, which contains the following points of cooperation:
   a. Promotion of mutually beneficial cooperation in preparedness in response to oil pollution in the sea
   b. Cooperation exchange of information on oil pollution incidents at sea
   c. Field inspections at the site of ongoing oil incidents at sea for mutually beneficial cooperation between the two sides
   d. Training and education together for better capacity building
   e. Promotion to conduct research and research in creating necessary measures, techniques, standards and equipment
2. Regional Cooperation
   Within the scope of ASEAN, one of the cooperation on oil pollution relevant to the problem under review is the MoU for ASEAN Oil Spill Response Action Plan (ASEAN-OSRAP) 1992, which contains the following details of cooperation:
   a. Improve the ability of participating countries to respond to incidents of oil pollution at sea that occur in the territory of ASEAN countries
   b. Form cooperation scheme for the provision of mutually beneficial assistance among ASEAN member states
   c. Make disaster management procedures in response to incidents of oil pollution in the sea that occur in the territory of ASEAN countries
   d. Create external and internal assistance schemes needed in responding to incidents of oil pollution in the sea that occur in the territory of ASEAN countries, and others.
3. Global Collaboration
   One of the global collaborations on handling oil pollution that is quite relevant to the problems in this study is the International Convention on Civil Liability for Oil Pollution Damage (CLC) and the International Oil Pollution Compensation (IOPC) Funds 1992, which contains points of cooperation including:

a. CLC is intended to ensure that adequate compensation is available to those affected by marine pollution due to oil spills stemming from ship accidents.
b. In CLC, unless it is proven that the fault lies absolutely with a party, there is a limit of liability Answer (limit of liability) to the amount of compensation borne by parties involved in a marine pollution incident. Therefore, IOPC Funds provides additional funds if the losses incurred exceed the limit of liability stipulated in the CLC, and others.

International Legal Instruments Concerning the Environment and Marine Protection: Case of Montara Oil Spill

The Montara Oil Spill serves as a poignant illustration of the intricate interplay between international legal instruments and the imperative to safeguard the environment, particularly marine ecosystems. This incident, occurring in the Timor Sea off the coast of Australia in August 2009, precipitated a profound examination of existing legal frameworks governing environmental protection on a global scale. Against the backdrop of this environmental catastrophe, the efficacy of international legal instruments concerning marine protection comes sharply into focus.

The study—the Montara Oil Spill as a compelling case study—examining the role and effectiveness of international legal instruments in responding to and mitigating environmental disasters of this magnitude. Through a comprehensive analysis, we aim to elucidate the strengths, limitations, and potential avenues for improvement within the current legal landscape governing environmental and marine protection. By scrutinizing the response to the Montara Oil Spill within the context of international law, we endeavor to glean valuable insights that can inform future strategies for enhancing environmental stewardship and preserving the integrity of our oceans.

Efforts to accommodate the interests of Indonesia and the broader international community regarding the necessity of a robust law of the sea regime have been pursued through the pursuit of comprehensive legal

frameworks. This commitment is articulated through various conventions dedicated to the law of the sea, including:

1. The Hague Codification Conference in 1930 under the auspices of the League of Nations.
2. The First UN Conference on the Law of the Sea in 1958.
3. The Second UN Conference on the Law of the Sea in 1960
4. Law of the Sea Conference III on 1982 (The Third UN Conference on the Law of the Sea 1982) which produces United Nations Convention on the Law of the Sea (UNCLOS 1982).

UNCLOS 1982 was an international effort to establish a comprehensive law of the sea regime approved in Montego Bay, Jamaica, on December 10, 1982 with 164 members. UNCLOS 1982 consists of 17 parts and 9 annexes which among others regulate on: boundaries of national jurisdiction in airspace over the sea, navigation, scientific research, marine mining, exploitation of biological and non-biological resources at sea, protection and maintenance of the sea and settlement of disputes over exploitation and exploration of the sea by States parties.[21]

In accordance with UNCLOS 1982 Article 194, States shall take all necessary measures, individually and jointly to prevent, reduce and control pollution of the marine environment caused by each source using practical means appropriate to their respective capabilities. Any activity under the jurisdiction of such States shall be carried out in such a manner as not to cause damage caused by pollution to other States and their environment. In the event of pollution, each State shall make efforts so that pollution arising from such acts and activities does not spread beyond the areas under the exercise of the sovereign rights of the State concerned.[22]

Efforts to prevent, mitigate, and control pollution of the marine environment necessitate strategic measures aimed at minimizing pollution levels. UNCLOS 1982 identifies four primary marine environmental pollutants, comprising:[23]

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[21] Fabio Spadi, "Navigation in marine protected areas: National and international law." *Ocean Development & International Law* 31, no. 3 (2000): 285-302.

[22] Adrian Nugraha, "Legal Analysis of Current Indonesia's Marine Protected Areas Development." *Sriwijaya Law Review* 5, no. 1 (2021): 14-28.

[23] Article 194 (3) UNCLOS 1982.

1. The release of toxic, harmful or noxious substances, especially those which are persistent, from land-based sources, from or through the atmosphere or by dumping.
2. Pollution from vessels, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, preventing intentional and unintentional discharges, and regulating the design, construction, equipment, operation, and manning of vessels.
3. 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.
4. Pollution from other installations and devices operating in the marine environment, 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.

Chapter XII of UNCLOS 1982, obliges States Parties to take such measures as they deem necessary to prevent, reduce and monitor pollution of the marine environment from any sources either from land (disposal of household waste and excess detergents, use of pesticides exceeding permissible thresholds, pollution of river water, etc.) or the sea. UNCLOS 1982 also regulates the obligations of States Parties to ensure that exploration and exploitation of marine resources within their national jurisdiction does not result in damage and pollution to the marine environment of their own territory as well as the marine environment of other States.

States parties to UNCLOS 1982 are required to cooperate bilaterally, regionally and globally either directly or through international organizations in formulating rules, standards and recommendations for practices and procedures to protect and take into account the regional situation concerned[24]. If a State becomes aware of environmental threats

[24] *See* Article 197 UNCLOS 1982.

or pollution that has occurred in transboundary areas, it shall notify other States that may be polluted and relevant international organizations of such transboundary marine environmental threats or pollution events.[25]

UNCLOS 1982 also establishes the right of States Parties to manage their natural resources in accordance with the environmental policies of each State[26]. UNCLOS 1982 also regulates matters relating to liability for damage to the marine environment, the right of immunity for warships and government vessels and the connection of Part XII of UNCLOS 1982 on the Protection and Maintenance of the Marine Environment with obligations contained in other conventions for the protection of the marine environment.[27]

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[25] *See* Article 198 UNCLOS 1982.

[26] *See* Article 193 UNCLOS 1982.

[27] *See also* James Harrison, *Saving the Oceans Through Law: The International Legal Framework for the Protection of the Marine Environment.* (Oxford: Oxford University Press, 2017). Furthermore, Harrison provides a comprehensive analysis of the international legal regime governing marine protection, highlighting key treaties, conventions, and agreements that form the backbone of this framework. Through meticulous research and case studies, he examines the effectiveness of these legal instruments in addressing issues such as marine pollution, overfishing, habitat destruction, and climate change. By shedding light on the role of law in ocean conservation, Harrison underscores the importance of international cooperation and collective action in preserving marine biodiversity and ecological integrity. The book serves as a valuable resource for policymakers, legal scholars, environmental advocates, and anyone interested in understanding the complexities of marine governance and the quest to save our oceans for future generations. *For some Indonesian cases, please also see* Mellisa Towadi, and Julius T. Mandjo. "Tomini Gulf Maritime Axis in International Law Review." *Journal of Indonesian Legal Studies* 6, no. 2 (2021): 389-410; Adi, Hatta Acarya Wiraraja Wijayanto, and Siti Aminah Idris. "Forest Fire and Environmental Damage: The Indonesian Legal Policy and Law Enforcement." *Unnes Law Journal* 8, no. 1 (2022): 105-132; Dina Sunyowati,et al. "Indonesia-Timor Leste Maritime Boundaries on Exclusive Economic Zone: Equitable Principle." *Lex Scientia Law Review* 7, no. 1 (2023): 347-372; Anissaa Nuril Chasanah, Ridwan Arifin, and Ngboawaji Daniel Nte. "Indonesia-China International Dispute on the Natuna Island Case: Various International Law Discourses and Practices in Regional Countries." *International Law Discourse in Southeast Asia* 2, no. 1 (2022).

Settlement of International Disputes Related to Marine Pollution

The foundational objective of the United Nations, as outlined in Article 1 of the UN Charter, is to uphold international peace and security. This is achieved through the collective efforts of member states in preventing and resolving threats to peace, suppressing acts of aggression, and promoting peaceful means of conflict resolution. The UN is committed to adhering to principles of justice and international law, facilitating the adjustment or settlement of disputes and situations that have the potential to escalate into breaches of the peace.[28]

It is the duty of the United Nations to encourage disputes to be resolved peacefully. These two objectives are reactions arising from the outbreak of World War II. The United Nations seeks to prevent a new world war from happening again and the United Nations must work hard so that disputes that occur between States can be resolved as soon as possible peacefully.

In pursuit of international peace and security, the United Nations advocates for peaceful dispute resolution methods outlined in Article 33 of its Charter. These include negotiation, research or inquiry, mediation, conciliation, arbitration, judicial settlement, and recourse to international organizations. These mechanisms offer diplomatic pathways to resolve disputes, emphasizing dialogue, impartial intervention, and adherence to legal principles. By promoting peaceful settlement options, the UN seeks to prevent conflicts from escalating, fostering stability and cooperation among nations.[29]

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[28] *See* Elly Kristiani Purwendah, Dewa Gede Sudika Mangku, and Aniek Periani. "Dispute settlements of oil spills in the sea towards sea environment pollution." *First International Conference on Progressive Civil Society (ICONPROCS 2019)*. Atlantis Press, 2019; Martti Koskenniemi, "Peaceful settlement of environmental disputes." *Nordic Journal of International Law* 60, no. 2 (1991): 73-92.

[29] Temitope Peter Ola, "United Nations' Provisions for Pacific Settlement of International Disputes." *Acta Universitatis Danubius. Relationes Internationales* 14, no. 2 (2021): 84-95; Elena Andreevska, "The Un as a dispute settlement system: The Role of the Security Council." *Journal of Political Administrative and Local Studies* 1, no. 1 (2018): 19-32.

Of the seven dispute resolution methods listed in the Charter, it is then grouped into two parts, namely diplomatic/political dispute resolution and legal dispute resolution. Diplomatic dispute resolution includes, Negotiation, Inquiry, Mediation, Conciliation. While what is included in legal dispute resolution is, Arbitration and dispute resolution through the court. In addition, in public international law it is also known that dispute resolution uses good services or good offices which can also be classified as diplomatic dispute resolution.[30]

A successful peaceful dispute resolution procedure is said to be successful when the parties to the dispute jointly accept and are satisfied with the results of the recommendation or decision of the dispute resolution procedure carried out.31 And the following procedure is a legal dispute resolution procedure that the parties can choose, namely:

1. Dispute Resolution through Arbitration

Arbitration is an alternative legal institution for extrajudicial dispute resolution. Alternative dispute resolution has long been developed, both in the west and in the east. This is due to practical reasons such as the length of time taken when resolving disputes in court, large costs to cultural reasons so that people prefer to settle disputes outside the court.

The term "arbitration" originates from the Latin word "*arbitrare*," which implies the power to settle matters at one's discretion. In various languages and legal systems, arbitration is known by different terms such as "*debutant*," "*witting*," or "*arbitrage*." These terms all convey the same essence, emphasizing the authority to resolve disputes based on individual judgment. However, such terminology can sometimes lead to misconceptions about arbitration, suggesting that arbitrators or panels may disregard legal norms and rely solely on their discretion to end disputes. This impression is inaccurate, as arbitrators or arbitration panels also apply the law, akin to judges or courts.[31]

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[30] Gernot Biehler, "Alternative Methods of Dispute Resolution." *Procedures in International Law* (2008): 295-307.

[31] Susan D. Franck, "The Role of International Arbitrators." *ILSA Journal of International & Comparative Law* 12, no. 2 (2006): 499-521. *See also* William W. Park, "Arbitrators and accuracy." *Journal of International Dispute Settlement* 1, no. 1 (2010): 25-53.

Arbitration involves the resolution of a dispute or difference between at least two parties through a formal hearing process, conducted by individuals or a panel other than a court, to obtain an award. This process typically involves the presentation of arguments and evidence by both parties, akin to a judicial examination, with the aim of reaching a decision. While some scholars' interpretation characterized arbitration as a case heard by one or more arbitrators jointly appointed by the disputing parties, bypassing resolution through the court system.[32]

In the aforementioned context, the essential elements of arbitration can be summarized as follows:

a. Resolution of disputes through private or extrajudicial means, outside of formal court proceedings.
b. Initiation based on a written agreement between the involved parties, either to anticipate potential disputes or to address existing ones.
c. Involvement of third-party arbitrators or referees empowered to render decisions impartially.
d. The resulting verdict holds finality and binding authority, establishing a conclusive resolution to the dispute.[33]

[32] Emmanuel Gaillard, "The representations of international arbitration." *Journal of International Dispute Settlement* 1, no. 2 (2010): 271-281; Maria Goltsman, et al. "Mediation, arbitration and negotiation." *Journal of Economic Theory* 144, no. 4 (2009): 1397-1420; Orley Ashenfelter,"Arbitrator behavior." *The American Economic Review* 77, no. 2 (1987): 342-346. For Indonesian context, *see* Abdurrasyid, Priyatna. "Indonesian Entrepreneurs Need to Increase Their Interest in Arbitration and Alternative Dispute Resolution (ADR/Arbitration) An Overview." *Journal of Business Law* 21 (2002); Christ Sella, and Januari Nasya Ayu Taduri. "The Comparison Between Indonesia and the Netherlands Regarding Commercial Dispute Arbitration." *Journal of Private and Commercial Law* 7, no. 1 (2023); Adinda Destaloka Putri Permatasari, "Comparison of Arbitration Dispute Resolution in Business Between Indonesia and United States of America." *Journal of Private and Commercial Law* 6, no. 2 (2022): 183-200.

[33] Aldeenea Cristabel, "Arbitrator's Dilemma: Troubles With the Same Person as Both Mediator and Arbitrator in Indonesia." *Juris Gentium Law Review* 7, no. 1 (2020): 67-80.

2. Judicial Settlement

The principal judicial body available to the international community for dispute resolution is the International Court of Justice (ICJ), headquartered in The Hague. Established under Chapter IV (Articles 92-96) of the United Nations Charter, drafted in San Francisco in 1945, the ICJ is a key institution entrusted with the adjudication of international disputes. Comprising 15 judges, the ICJ is constituted by a panel of candidates nominated by the Permanent Court of Arbitration. These nominees are subject to election by both the General Assembly and the Security Council, each exercising independent voting rights. The process of simultaneous elections by both the General Assembly and the Security Council also applies to situations involving the filling of irregular vacancies, such as those arising from the death or retirement of a judge.

The International Court operates under two primary authorities, each serving distinct functions within the realm of international law. One of the central roles of the International Court is to settle disputes between states, known as contentious cases. However, the Court can only exercise jurisdiction over such cases with the consent of the involved parties. According to Article 36, paragraph 1 of its Statute, the Court is empowered to hear cases submitted by conflicting parties. Typically, this submission is initiated through a bilateral agreement known as a *Compromis*, wherein both parties agree to submit their dispute to the Court's jurisdiction. [34]Through this authority, the Court plays a crucial role in resolving conflicts and promoting peaceful resolution of disputes among nations.[35]

In addition to adjudicating contentious cases, the International Court also serves as a legal advisor to the United Nations and its affiliated bodies. The General Assembly and the UN Security Council hold the right

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[34] Shigeta Shigeta. "Setting environmental standards for the conservation of marine living resources through the practice of international judiciary: An examination from the perspectives of arbitration v. judicial settlement and Compromis application v. unilateral application." *Non-State Actors and International Law* 2, no. 2 (2002): 141-156.

[35] Jonathan I. Charney, "Compromissory clauses and the jurisdiction of the International Court of Justice." *American Journal of International Law* 81, no. 4 (1987): 855-887.

to seek advisory opinions from the Court on legal matters. Furthermore, other UN organs and specialized agencies, as authorized by the General Assembly, may also request advisory opinions from the Court regarding legal questions within their respective areas of competence. The Court offers expert guidance on legal issues, contributing to the interpretation and development of international law.[36]

The methods of resolving maritime disputes that have so far been considered usable on all types of disputes and are available to all countries. Common methods of this joint can be found in specific procedures established by certain groups of states for the settlement of disputes in certain areas.[37]

When peaceful negotiations fail to resolve disputes, parties involved may turn to mandatory procedures that render binding decisions. Under Chapter XV of UNCLOS 1982, specifically Article 287, four forums for dispute resolution are outlined. These include the International Tribunal for the Law of the Sea (ITLOS), the International Court of Justice (ICJ), an Arbitral Tribunal, and a Special Arbitral Tribunal. Each of these forums offers a distinct avenue for adjudicating disputes and ensuring compliance with international law. Through these mechanisms, the international community seeks to uphold the principles of justice, promote peaceful resolution of conflicts, and preserve the integrity of the maritime environment.

Disputes pertaining to marine environmental pollution under UNCLOS 1982 fall within the purview of Chapter XV, which delineates obligations and procedures for dispute resolution. The resolution of international disputes concerning the marine environment closely intersects with the accountability of states. Notably, there is currently no overarching international legal instrument governing state accountability for environmental damage. Consequently, the International Law Commission (ILC) has endeavored to address this gap by drafting

[36] *See also* Hersch Lauterpacht, *The Development of International Law by the International Court*. (Cambridge: Cambridge University Press, 1982); Andrea Bianchi, Daniel Peat, and Matthew Windsor, eds. *Interpretation in International law*. (Oxford: OUP Oxford, 2015).

[37] J. G. Merrills, *International Dispute Settlement.* (Cambridge: Cambridge University Press, 2005), pp. 198-200.

provisions on state responsibility, as articulated in the ILC draft articles on state responsibility. In accordance with the principle of *sic utere tuo ut alienum non laedas*, or the doctrine of good neighborliness, diplomatic avenues are pursued to resolve such disputes.[38]

Montara Case Dispute Resolution: Indonesia's Perspective

In addressing the Montara Oil Case in the Timor Sea, the Governments of Indonesia and Australia opted for peaceful resolution, emphasizing negotiations between the involved parties. Recognizing their shared interests and interconnections in marine environmental management, both governments acknowledged the importance of a cooperative approach. Consequently, as early as 1996, Indonesia and Australia established a legal framework for resolving environmental issues, including the Memorandum of Understanding (MoU) on Oil Pollution Preparedness and Response. This agreement underscores their commitment to collaboration and proactive measures in managing marine environmental challenges.[39]

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[38] "*Sic utere tuo ut alienum non laedas*" is a Latin legal principle that translates to *use your property in such a way as not to injure others*. This maxim embodies the concept of balancing individual property rights with the broader societal interest in preventing harm to others. In legal contexts, it serves as a foundational principle in various areas, including property law, environmental law, and tort law. Essentially, the principle dictates that individuals have the right to use their property as they see fit, but this usage should not infringe upon the rights or interests of others. It places a duty upon property owners to exercise their rights responsibly, ensuring that their actions do not cause harm to neighboring properties or the wider community. Thus, the principle embodies a fundamental aspect of social responsibility and coexistence within legal frameworks, emphasizing the importance of considering the potential impact of one's actions on others and the environment. *See also* GAI. "Sic Utere Tuo ut Alienum Non Laedas." *Michigan Law Review* (1907): 673-675; T. R. Subramanya, and Shuvro Prosun Sarker. "Emergence of Principle of Sic Utere Tuo Ut Alienum Non-Laedes in Environmental Law and Its Endorsement by International and National Courts: An Assessment." *Kathmandu School of Law Review* 5, no. 2 (2017): 1-13.

[39] Craig Forrest, "State cooperation in combating transboundary marine pollution in South East Asia." *Australian and New Zealand Maritime Law Journal* 30, no. 1

As we all know that oil pollution cases are an emergency. This is because the cause of occurrence is unpredictable and takes place very quickly while the resulting impact takes place quickly and randomly. So that the first prevention cannot be done other than a response to the impact that has been caused. For this reason, it is important to be able to implement the 1996 MoU.

One form of Australia's responsibility and good faith in responding to pollution that occurs is to seek accountability for the company that causes pollution, namely PTTEP Australasia. And these efforts resulted in several steps that have been taken by PTTEP Australasia from the time of the spill event to the aftermath of the spill. Starting from actions categorized as emergency response to pollution to subsequent continuous monitoring.[40]

Following the oil spill in the Timor Sea in 2009, PTTEP Australasia assumed responsibility for funding a comprehensive long-term pollution impact monitoring program, as agreed upon with the Department for Sustainability, Environment, Water, Population, and Communities (DSEWPaC). This collaborative effort involved several prominent independent research groups and institutions dedicated to environmental research. Notable participants in the monitoring program include renowned research groups from leading Australian universities such as Queensland, Curtin, Monash, and Charles Darwin. Additionally, organizations such as Asia Pacific ASA, CSIRD, and the Australian Institute of Marine Science have been actively engaged in monitoring and assessing the ecological impact of the oil spill. Through the collective

(2016): 78-89; Warwick Gullett, "Marine Contingency Planning in Australia." *Marine Pollution Contingency Planning*. (Leiden: Brill Nijhoff, 2017), pp. 13-40.

[40] *See* Andreas Akuinando Tegon, Dhey Wego Tadeus, and Victor Eben Sabuna. "Penyelesaian Sengketa dan Pertanggung Jawabaan Negara Australia dan Perusahaan PTT Exploration and Production terhadap Pencemaraan Laut Timor Akibat Kebocoraan Minyak Montara Australia Berdasarkaan Hukum Internasional dan Hukum Laut 1982." *Jurnal Hukum Bisnis* 12, no. 6 (2023): 1-8; Ninne Zahara Silviani, "Legal Analysis of Compensation Claim in Australia-Indonesia Maritime Delimitation Zone Belongs to UNCLOS 1982: Case Study: PTTEP Australasia-Montara Offshore Explosion." *Journal of Judicial Review* 20, no. 2 (2018): 202-216.

expertise and resources of these institutions, ongoing efforts are being made to better understand and mitigate the environmental consequences of the Timor Sea oil spill.[41]

This monitoring program aims to find and measure the level of pollution that occurs in the Timor Sea. And some of the results of the research, namely the pollution or disruption of marine life and marine ecosystems by hydrocarbons in some areas. However, there is very little or almost no impact on health or some species and marine habitats. A scientific review of the research shows no oil from Montara reaching Australian or Indonesian waters.

During the investigation into the Montara oil spill, all PTTEP Australasia employees and contractors from Seadrill and Halliburton, who were present on the West Atlas rig at the time of the incident, were extensively interviewed. Subsequently, on November 24, 2010, the commission released its report, which comprised 100 findings and 105 recommendations, the majority of which were adopted by the federal government. Among the root causes identified for the Montara oil spill were failures in surveillance of the two Montara platforms, deficiencies in platform verification procedures, inadequate management of controls, and a lack of personnel competence leading to delayed decision-making responsiveness. These findings underscored critical areas for improvement in offshore drilling operations and prompted concerted efforts to enhance safety protocols and regulatory oversight within the industry.

Based on the foregoing, the relevant ministry announced in February 2011, that PTTEP Australasia's operating license was not revoked but that the company would only be allowed to under the most comprehensive and rigorous monitoring regime ever in the Australian oil and gas industry.

In October 2009 an agreement was reached between PTTEP and the Australian Government to develop an environmental monitoring program on several long-term aspects of the spill. This monitor program is carried out jointly by the company and DSEWPaC. All scientific findings are reprocessed and by independent agencies of the DSEWPaC before being

[41] Jock W. Young, et al. *A Review of the Fisheries Potentially Affected by the Montara Oil Spill off Northwest Australia and Potential Toxicological Effects.* (Tasmania: CSIRO Marine and Atmospheric Research, 2011).

ratified as official reports. All research results are transparent and officially published through the DSEWPaC website. In this case PTTEP agreed to the Australian Government to finance the entire research, at least in approximately two years. And it is possible for advanced research for the next ten years.

In the case of Montara Oil, the method used in its settlement is negotiation by not ruling out the use of other means in accordance with the agreement of the parties. Settlement through negotiation is the most important way. Many disputes are resolved daily in this way without any publicity or public attention. One of the positive sides is that through this way the parties to the dispute can supervise its dispute resolution procedure and any settlement is based on the agreement or consensus of the parties.[42]

The dispute arising from marine pollution caused by oil spills during PTTEP Australasia's offshore oil extraction activities remains unresolved and is currently under negotiation. The countries involved in this oil pollution case are Australia, Indonesia, and Thailand.[43]

The Indonesian government plays a pivotal role in the resolution process of the oil pollution dispute. Given that the oil pollution case has impacted Indonesia's territorial waters, particularly around the East Nusa Tenggara Province, affecting the economic sector and marine environment of the local communities, Indonesia's involvement is crucial. Consequently, the government collaborates closely with the Regional Government of East Nusa Tenggara Province. This coordination entails taking various measures to substantiate the occurrence of pollution,

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[42] Igor Bogdanich, and Robert Merriam Allens Arthur Robinson. "The Montara oil spill report." *Australian Resources and Energy Law Journal* 30, no. 1 (2011): 1-4. *See also* Ridwan Stanley Sinaga, and Ika Riswanti Putranti. "State of Play Civil Society Organization in Montara Incident in 2009." *Jurnal Studi Sosial dan Politik* 5, no. 2 (2021): 165-176.

[43] *See* Marco Bastian Lumentah, et al. "Offshore Oil Spill as Liable Marine Pollution by International Law of the Sea: Case Study on Montara Oil Spill by The PTTEP Over Timor Sea." *Ilmu Hukum Prima (IHP)* 6, no. 1 (2023): 111-119; Desty Bulandari, and Bayu Asih Yulianto. "Tackling Offshore Oil Spills to Achieve Maritime Security in Indonesia." *International Journal of Law and Society (IJLS)* 1, no. 1 (2022): 25-35.

encompassing surveys and assessments to determine the extent of the pollution's impact. Such concerted efforts aim to address the environmental and socio-economic repercussions of the oil spill and facilitate the negotiation process toward a satisfactory resolution.

Based on Presidential Regulation Number 109 of 2006 concerning Emergency Management of Oil Spills at Sea, in Article 3, it is stated that in order to integrate the implementation of oil spill emergency management at sea level 3[44], a National Team for Emergency Management of Oil Spills at Sea was formed, hereinafter referred to as the National Team. The National Team formed consists of relevant ministries in Indonesia.

The National Team is chaired by the Minister of Transportation, Vice Chairman, State Minister of the Environment, and its membership consists of the Minister of Energy and Mineral Resources, Minister of Home Affairs, Minister of Foreign Affairs, Minister of Marine Affairs and Fisheries, Minister of Health, Minister of Forestry, Minister of Finance, Minister of Law and Human Rights, Commander of the Indonesian National Army, Chief of the National Police of the Republic of Indonesia, Head of the Upstream Oil and Gas Business Activities Implementing Agency, Head of the Regulatory Agency for the Supply and Distribution of Fuel Oil and Natural Gas Transportation Business Activities through Pipelines and Governors, Regents / Mayors whose parts of the area include the sea.

The Central Government also carried out negotiations with the Australian Government, this was done because the source of pollution was within the Australian EEZ. In addition, Indonesian cooperation was also carried out because the two countries were the parties harmed by oil pollution PTTEP Australasia which is a private company from Thailand.

[44] Tier 3 denotes a classification within the framework of oil spill emergency response, applicable to incidents taking place either within or beyond DLKP and DLKR Ports, oil and gas exploitation units, or other operational units. These incidents are characterized by their inability to be effectively managed within Tier 2 delineations, spanning across multiple areas or extending beyond the borders of the Unitary State of the Republic of Indonesia. This categorization is defined in Article 1, paragraph 20, of Presidential Regulation No. 109 of 2006, pertaining to the Emergency Management of Oil Spills at Sea.

The negotiation conducted by the Government of Indonesia with Australia is the implementation of the MoU between the Government of Australia and Indonesia on Oil Pollution Preparedness and Response 1996, which contains details of cooperation that can be applied in resolving oil pollution cases, namely: cooperation in exchanging information on oil pollution incidents at sea, field inspections at the location of oil incidents at sea that are occurring for mutual cooperation Benefit between the two parties and emergency response cooperation such as mobilization of personnel, logistics and other equipment needed in emergency situations, and others. The Governments of Indonesia and Australia jointly exchange information, inspections and other activities needed in such emergency situations.

The Indonesian government has also prepared a lawsuit against Australia and Montara oilfield operator PTTEP Australasia to compensate Indonesia for losses suffered by the pollution. The claim for compensation is based on the provisions contained in the International Convention on Civil Liability for Oil Pollution Damage 1969 (now replaced by CLC 1992), where Indonesia and Australia have ratified the convention, respectively Indonesia on 6 July 1999 and Australia on 9 October 1995.This Convention consists of 21 articles and aims to ensure appropriate compensation for parties who suffer losses due to oil pollution at sea.

The ongoing negotiation process between Indonesia and PTTEP Australasia has yet to yield a resolution regarding the compensation demanded by Indonesia. PTTEP Australasia has not fully acknowledged its compensation obligations based on the claims put forth by the Indonesian government. Instead, PTTEP conducts its own investigation through a dedicated team. However, the prolonged duration of the compensation process has caused unrest among the residents of East Nusa Tenggara Province, who have directly experienced the adverse effects of the Montara oil spill.

Similarly, no consensus has been reached between the Indonesian and Australian governments thus far. The Indonesian government, represented by the Timor Sea Advocacy Team (TALT), has been engaged in negotiations with Australia to secure compensation for the impacts on the fisheries, agriculture, and environmental sectors in the affected area.

Particularly, the Rote Ndao district suffered the most severe pollution, affecting over 21,000 coastal residents across 48 villages. This negotiation, initiated on July 27, 2010, underscores the extensive socio-economic and environmental ramifications of the oil spill. Beyond the fisheries sector, seaweed cultivation businesses along the south coast of West Timor Island and the coastlines of Rote Island to Sabu Island also suffered significant losses due to contamination of coastal waters by oil.

The Indonesian government has pursued diplomatic avenues to seek compensation for the residents of the coastal areas of Kupang who have been affected by the oil pollution. In this endeavor, diplomacy has been prioritized as a means of upholding the principles of good neighborliness and adhering to the tenets of Article 33 of the UN Charter, which emphasizes the peaceful resolution of disputes. This approach underscores Indonesia's commitment to maintaining harmonious relations with neighboring countries and its dedication to resolving conflicts through peaceful means.

Diplomacy has been deemed essential in this context, as it has become an integral aspect of Indonesia's national strategy and a cornerstone of its foreign policy. By opting for diplomatic channels, Indonesia aims to address the issue of compensation in a manner that preserves regional stability and fosters cooperation among nations. Furthermore, diplomacy offers a platform for constructive dialogue and negotiation, allowing for the articulation of grievances and the pursuit of mutually beneficial solutions to international challenges. Through diplomatic engagement, Indonesia seeks to safeguard the interests of its citizens while upholding the principles of international law and promoting peaceful coexistence in the region.[45]

Diplomacy serves as a crucial means of communication among various parties, involving negotiations between recognized representatives. When a resolution cannot be reached through diplomatic means, one or both parties may opt for alternative paths to resolve the dispute. In the

[45] *See* Günther Handl, "Marine environmental damage: the compensability of ecosystem service loss in international law." *The International Journal of Marine and Coastal Law* 34, no. 4 (2019): 602-641; Ahmad Almaududy Amri, "Maritime Security Challenges in Southeast Asia: Analysis of International and Regional Legal Frameworks." *PhD Thesis,* (Wolonggong: University of Wollongong, 2016).

context of the Montara case, if negotiations and diplomatic channels prove ineffective, Indonesia retains the option to pursue the legal route, notably through the International Tribunal for the Law of the Sea (ITLOS). This international legal avenue under the auspices of ITLOS remains available for addressing the oil spill incident at the Montara well.[46]

If the International Tribunal for the Law of the Sea (ITLOS) is deemed premature as a path for dispute resolution, it is largely due to its comparatively low utilization by countries for such purposes. Empirical evidence gathered from the period spanning 1994 to 2006 indicates that only a modest 13 cases were brought before ITLOS under the auspices of the United Nations Convention on the Law of the Sea (UNCLOS). Consequently, countries may incline towards a judicial option perceived to be more flexible and attractive, namely arbitration.

Arbitration emerges as an appealing alternative to ITLOS for several reasons. Unlike ITLOS, which may be regarded as less frequented for dispute resolution, arbitration offers a broader spectrum of procedural mechanisms and grants disputing parties greater autonomy over the resolution process. Moreover, arbitration proceedings can be customized to accommodate the unique circumstances of each dispute, thereby potentially offering a more expedient and cost-effective avenue for resolution compared to conventional litigation in international courts. Consequently, arbitration stands as a compelling and preferable option for countries navigating disputes under UNCLOS, providing a more accessible and adaptable alternative to ITLOS.

Conclusion

In conclusion, the legal framework for addressing sea environmental pollution, exemplified by the case study of the Montara Oil Spill in East Timor, underscores the complexities and challenges inherent in managing such incidents. The Montara Oil Spill serves as a poignant reminder of the far-reaching consequences of environmental disasters, not only for the affected ecosystems but also for the socio-economic well-being of coastal

[46] Ni Putu Suci Meinarni, "Upaya Hukum dalam Penyelesaian Sengketa Pencemaran Lingkungan Laut dalam Kasus Tumpahan Minyak Montara di Laut Timor." *Jurnal Magister Hukum Udayana* 5, no. 4 (2016): 833-870.

communities. Throughout the investigation and resolution process, various legal instruments and mechanisms have been employed to mitigate the spill's impacts and hold responsible parties accountable.

The Montara Oil Spill highlights the importance of robust international cooperation, legal frameworks, and dispute resolution mechanisms in addressing transboundary environmental issues. Diplomatic negotiations, legal recourse, and engagement with international organizations such as the International Tribunal for the Law of the Sea (ITLOS) have been instrumental in seeking redress and compensation for affected parties. Furthermore, the case underscores the imperative for preventive measures, stringent regulations, and effective oversight to prevent similar incidents in the future.

Moving forward, the Montara Oil Spill serves as a critical case study for refining and strengthening global environmental governance frameworks. By drawing lessons from this incident, policymakers, stakeholders, and the international community can work collaboratively to enhance disaster preparedness, response mechanisms, and sustainable resource management practices. Ultimately, concerted efforts are needed to ensure the protection and preservation of our oceans and marine ecosystems for present and future generations.

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I had fought on behalf of man against the sea, but I realized that it had become more urgent to fight on behalf of the sea against men.

Alain Bombard, Biologist

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