

**FOUNDING PRINCIPLES & SUCCESSES OF OIL SPILL PREPAREDNESS,
RESPONSE & COOPERATION**

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Abstract

Thirty years ago, a diplomatic conference held in Paris recognised the importance of cooperation in helping countries better prepare for and respond to oil pollution incidents. The Oil Pollution Preparedness, Response and Cooperation Convention (OPRC 90) was thus conceived and shortly afterwards, the International Maritime Organization (IMO) and IPIECA jointly developed a program to help nations implement the provisions of the Convention with practical assistance and technical cooperation as the central offering. This programme, which was launched in Cape Town and became known as the Global Initiative (GI), is still growing, developing and evolving some 24 year later. A key fundamental concept is the principle of regionality. Often countries in a specific region share similar geographical features and cultures, and face similar risks associated with the extraction and transportation of oil, which transcend the needs of national sovereignty and independence. The GI program focuses on

these shared values of marine environmental protection and draws strength, not only from the collective will of national governments to protect the marine environment, but also on the needs of industry to work collaboratively with regulators and authorities to achieve a common goal for society. A regional approach also “raises the bar” in terms of national preparedness, ensuring a regional level playing field. It also underscores the need for regional collaboration noting that a catastrophic oil spill may exceed the capacity for any single country to respond. To that end, the GI program has further developed to be in a position to accommodate the growing range of needs of countries implementing OPRC 90, from offering support on core concepts (on topics such as implementing legislation, designating authority in charge etc.), to facilitating training on more technical topics (e.g. sensitivity mapping and how to implement a shoreline clean-up program). For a quarter of a century, the GI model has progressed into a series of regional programs which now encompass a third of all maritime coastal states. In this session we will hear more of these regional manifestations of GI, their challenges and opportunities which will provide us with a truly global perspective on what GI has achieved and has still to achieve in a world where the risks of oil spills continue to evolve. This paper will explore the concept of regionality and other key elements that continue to make the program relevant and adaptable to the oil spill risks that society faces today.

BACKGROUND

Following major oil spill incidents of the 1960's and 1970's, a series of measures designed to prevent shipping accidents and to minimize their consequences were introduced through the International Maritime Organization (IMO) under the International Convention for the Prevention of Pollution from Ships (MARPOL), providing the first pillar to an international framework on Oil Pollution. In parallel, measures were adopted to establish a liability and compensation pillar to the framework, with the adoption of the 1969 International Convention

on Civil Liability for Oil Pollution Damage (CLC) and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND) Convention.

Although at the time there was a collective desire to improve capability to deal with oil spill incidents, it was not until 25 years later, during the aftermath of the EXXON VALDEZ incident in Alaska that the roles, responsibilities and cooperation needs in preparing for and responding to incidents of major pollution were formally addressed through the adoption of the International Convention on Oil Pollution, Preparedness, Response and Cooperation (OPRC) in 1990. The OPRC 90 Convention thus provides the third, yet central pillar, of this legal framework.

Analysing over 40 years of statistics collated by ITOPF highlights the benefits of efforts to prevent marine incidents resulting in pollution. They show the frequency of large (≥ 700 tonnes) and medium (7 – 700 tonnes) spills have steadily gone down over the last 30 years thanks to a range of prevention measures that include improvements in ship design and operation, together with higher standards of crewing and navigation. Despite these considerable improvements, the risk of spills with considerable impacts on marine and coastal ecosystems remains ever present. For 2018, ITOPF recorded three large spills as well as three medium ones. Furthermore, ITOPF reports that the majority of oil spills it now responds to are from non-tankers, which are not taken into account of its official statistics.

PREPAREDNESS AND RESPONSE FRAMEWORK

Preparedness, response and cooperation have been intertwined concepts in several international instruments. It has notably been captured early in the United Nations Convention on the Law of the Sea (UNCLOS), which entered into force on 16 November 1994 (UN General Assembly, 1982). This instrument sets the founding principles for international cooperation, notably in its

PART XII - PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT in

article 194 of SECTION 1. GENERAL PROVISIONS. This Article covers measures to prevent, reduce and control pollution of the marine environment, and calls States to:

“take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection.”

UNCLOS is often referred to as an "umbrella convention" in that the general nature of its provisions relies on other international arrangements being in place (Attard et al, 2016). To that end, the OPRC Convention was adopted in 1990 as the international instrument which provides a framework designed to facilitate international cooperation and mutual assistance in preparing for and responding to major oil pollution incidents. The scope of this Convention notably extends beyond ship-sourced oil pollution and includes provisions relevant to sea ports and oil handling facilities (including pipelines and other associated infrastructure) presenting a risk of an oil pollution incident. Furthermore, and unusually for an IMO Convention, the scope also covers offshore units engaged in gas or oil exploration or production activities. As of November 2019, OPRC 90 has been ratified by 112 States, and is widely accepted as the vehicle for international cooperation when dealing with an oil spill.

FOUNDATION PRINCIPLES

INDICATORS

The Convention requires contracting States to plan and prepare by developing national systems for pollution response in their respective countries, and by maintaining adequate capacity and resources to address oil pollution emergencies. To that end, the implementation of the instrument is often measured against commonly agreed performance indicators or founding principles of preparedness and response, specifically:

1. Designation of authorities in charge;
2. Ratification of relevant international conventions;
3. Development of a National Oil Spill Contingency Plan;
4. Structuring of regional agreements;
5. Implementation of training and exercises; and
6. Procurement of national resources and equipment.

Whilst oil spill response capabilities over the world have advanced since the adoption of the OPRC Convention, the rate of development has varied significantly between individual countries, with some advancing more rapidly than others. As capabilities improved, additional indicators have been introduced to take account of further enhancements in the level of oil spill preparedness and response, such as sensitivity maps, dispersant policy, shoreline assessment and clean-up, waste management plan, trans-boundary cooperation and incident management systems. This two-tier approach provides for the aspirational challenge of continuous improvement across a wide spectrum of OPRC 90 implementation, from basic adoption to advanced levels of preparedness and response capability.

STEPS TO IMPLEMENTATION

In any case, it is widely accepted that steps to building robust preparedness and response capacities are three-fold:

1. Establishing a strong legal oil spill preparedness and response basis;
2. Develop processes, such as the National Oil Spill Contingency Plan (NOSCP);
and
3. Utilisation of response tools and techniques.

The schematic process is as follows:

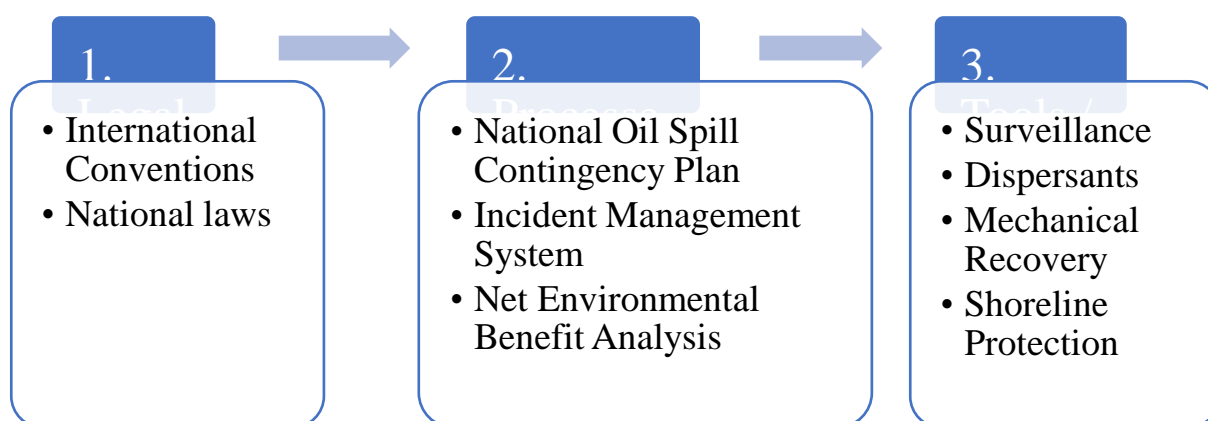


Figure 1 Steps toward the development of a robust oil spill preparedness and response framework

GOVERNMENT / INDUSTRY COOPERATION

GLOBAL INITIATIVE

Following the ratification of the OPRC 90 in 1995, it was recognised that many countries would need practical assistance to implement the provisions therein. In this regard IMO and IPIECA established the Global Initiative (GI) which is a joint programme aimed at enhancing the capacity of countries to prepare for and respond to marine oil spills¹. The overall objective of the programme, which was initially endorsed by IMO's 37th Session of the Marine Environment Protection Committee (MEPC) and remains current, is to improve and sustain the

¹ See: <http://www.imo.org/en/OurWork/Environment/MajorProjects/Pages/GIProjects.aspx>

capacity of countries to protect their marine and coastal resources at risk from an oil pollution incident.

The GI programme was officially launched in Cape Town, South Africa in 1996 and is an umbrella programme, co-funded by IMO and IPIECA, under which governments and the oil industry agree to work together. GI also informally reminds us that the core of this programme is Government and Industry. The specific objectives agreed at the launch were to:

- .1 assist countries in developing national structures and capability for oil spill preparedness and response; and
- .2 encourage ratification and implementation of OPRC 90 and associated conventions relating to liability and compensation.

Whilst these objectives remain evergreen and applicable today, the scope has been broadened, befitting the wider range of preparedness measures that countries can implement and also the evolving risk of spills that specific nations face.

As the GI programme developed, it became apparent that sustained focus on the issues would be key to success. In the early days, an intensive workshop between government and industry on the importance of effective oil spill contingency planning would engage delegates for a short time but it was, and remains, difficult to catalyse lasting change without sustained attention. Moreover, the gradual but continual turnover of key staff in national administrations and in industry alike often resulted in lost momentum: a feature we can often observe today in any process of ongoing change.

REGIONAL PERSPECTIVES

To help encourage a sustained programme of stepped improvements in OPRC implementation, fundamental enhancements were introduced to the GI programme following

the experience of the early years. Such enhancements included the need to develop a regional focus to the programme, recognising that many countries in specific geographical regions of the world share common barriers to implementation and there were synergistic benefits from a sub-regional approach where neighbouring countries can support each other, and resources can be shared.

This regional prism allows for measuring the advancements of preparedness indicators on a national, sub-regional and regional basis. The current regional GI programmes are:

- .1 the Global Initiative for West, Central and Southern Africa (GI WACAF Project)²;
- .2 the GI South East Asia (GI SEA)³; and
- .3 the GI China.

Success of regional governmental/industry cooperation projects

The GI programme is today implemented through different regional projects around the world, all with a specific region as the focus area. The projects work with Governments on the primary steps in Preparedness and Response that are the designation of a competent authority and the development of a national contingency plan and response arrangements, amongst other things. This is necessary and helps pave the way to cooperation (Taylor *et al*, 2014; Nichols and Moller, 1991). It is widely accepted that the industry's role pertains to strengthening several key Preparedness and Response topics including, *inter alia*, the provision equipment and other services such as training and exercises (Moller and Santner, 1997). On the latter, the direct participation of industry into government-led exercises has proved beneficial on numerous occasions (Ho Yew Weng, 2008).

² <http://www.giwacaf.net/en/>

³ <http://www.gisea.org/#home>

OTHER REGIONAL PROGRAMMES

IMO and IPIECA also support other regional programmes with similar aims, although not specifically officialised as “GI”. In this regard, the United Nations Environment Programme (UNEP)’s Regional Seas Programmes (RSP) offers closer cooperation possibilities between regional stakeholders, keeping a regional focus in transposing international instrument, standards and regulations (UNEP, 2016). The Regional Seas Programme was established in 1974 and is designed to coordinate activities aimed at the protection of the marine environment through a regional approach for individual sea-basins around the world. There are currently 18 Regional Seas programmes with accompanying Action Plans for the sustainable management and use of the marine and coastal environment. In most cases, the Action Plans are underpinned by a legal framework in the form of a regional Convention and associated Protocols. All individual Conventions and Action Plans reflect a similar approach, yet each has been tailored by their own Contracting Parties and related institutions to suit their particular environmental challenges.

The Regional Seas Programmes work through Secretariats or Regional Coordinating Units (RCUs) and Regional Activity Centres (RACs). The RACs serve the Member States by carrying out activities related to the regional action plan as agreed and are guided by the Conference of Parties of the relevant regional sea Convention. RACs play key roles in the implementation of various components and activities of the action plan at regional, sub-regional, national and sometimes local levels.

Two RACs receive direct support from IMO and industry alike, namely the Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC) and the Regional Marine Pollution Emergency, Information and Training Centre for the Wider Caribbean Region (RAC/REMPEITC-Caribe). In terms of support, IMO provides funding for

activities through its Integrated Technical Cooperation Fund (ITCP) and strategic guidance, whilst industry seconds officers and share knowledge.

For the Caspian Sea, Black Sea and Central Eurasia⁴, the industry-led Oil Spill Preparedness Regional Initiative (OSPRI) was voluntarily established within the umbrella of IPIECA in 2003, by member oil companies with investments and interests in the region. Albeit not a GI programme *per se*, OSPRI has worked with IMO and other partners within the GI framework in order to promote improved oil spill preparedness and facilitate government/industry cooperation, notably with the RSP of the Framework Convention for the Protection of the Marine Environment of the Caspian Sea (Tehran Convention).

The mutually beneficial interactions between RSP and regional endeavours supported by IMO and IPIECA are key, as the former tend to have wide remits meaning resources must be shared with other broader topics than oil spill preparedness and response, whilst the latter ensure that knowledge and capacity are built, based on good practice within an existing regional framework.

WAY FORWARD

Whilst considerable progress has been achieved and knowledge gathered since the adoption of the OPRC Convention thirty years ago, work continues to strengthen preparedness and response capabilities in various regions of the world. This is visible in the appetite which is expressed by IMO, IPIECA, Governments and industry alike in the various technical cooperation Projects previously referred to.

For example, the GI WACAF Project, which started as a two-year programme in 2006, now continues to evolve and develop some 16 years later. A concrete example on the benefits and necessity of these regional programs arose at the recent Regional Conference in

⁴ <http://ospri.moonfruit.com/>

Cape Town, South Africa, in October 2019: participants expressed that whilst some topics such as contingency planning were enduring by nature and had to be revisited on a recurring cyclical basis, discussions also highlighted new areas the Project should focus on. One such example of this included the ratification and effective implementation of IMO conventions relating to liability and compensation. Specifically, participants highlighted that the transposition of liability and compensation conventions into national laws is misunderstood and consequently often invalid. The low level of ratification of the Bunkers Convention in the GI WACAF participating countries was also discussed, especially in view of the risks posed by non-tankers highlighted by ITOPF (as referred earlier). The recent case of the grounding of the m/v SOLOMON TRADER in the Solomon Island in February 2019 and the subsequent spill in a country which was not a Party to the Bunkers Convention highlighted the risks of failure to accede to this important instrument, although fortunately, in this case the vessel had International Group Protection & Indemnity insurance which enabled a response to be undertaken without the need to prove liability. Nethertheless, this important instrument of the liability and compensation regime, is often overlooked in the spill preparedness and response framework, and more work needs to be undertaken in that regard.

Similarly, regarding the implementation of liability and compensation Conventions, the case of the VOLGANEFT 139 incident in 2007 illustrated the issue on non-ratification, whereby victims from the pollution could not benefit of the maximum limit of compensation under CLC 1992 as the Russian legislation had not been updated to include the amendments to these instruments. This illustrates the purpose of international treaties which is to create an international uniformity of law, but also shows the importance of correct implementation through accompanying national legislation. This in turn allows the fair and sound operation of the international liability and compensation regime for oil pollution to protect a victim's right to compensation.

CONCLUSIONS

Despite best efforts, the risk of spills from ships, although much reduced, remains ever-present. Additionally, society must also consider the risks associated with growing global demand for new offshore oil and gas projects, including many in developing countries. Ratification and full implementation of OPRC 90 and relevant environmental Conventions therefore are crucial to properly prepare for, and respond to, future incidents which may not only impact the waters and coasts of a single State, but of a wider sub-region involving multiple States. The importance of engaging in regional cooperation, in any of its many forms, cannot be over-emphasised.

Indeed, the various oil spill incidents involving ships, including incidents involving the release of bunker fuel, that occurred in 2018 and 2019 have demonstrated again that there is an ongoing need for implementation of OPRC 90, while new offshore exploration projects could be expected to further increase the risk of incidents. Adequate preparedness and response to spills requires ongoing training, drills and exercises to test the equipment and cooperation structures between different authorities, as well as continuous knowledge sharing on research and development undertaken in this field and valuable lessons learned from spills which each present a unique set of challenges to overcome, and therefore the need for technical assistance will remain.

There are ongoing challenges for countries both preparing adequately for possible spill scenarios as well as in responding to incidents. There is therefore clearly more to be done. Articles 7, 8 and 9 of OPRC 90 relating to International Co-operation in Pollution Response, Research and Development and Technical Co-operation respectively, place obligations on Parties to support each other in the effective implementation of the OPRC Convention, through IMO, as well as through the industry. Both IMO and IPIECA are driving and mutually

supporting efforts that encourage governments and industry respectively to take these next important steps on the road to implementation.

To give one example, the recommendations of the last GI WACAF Regional Conference, delegates recorded a desire for technical cooperation efforts to cover new topics such as the treatment of oily waste, to supplement the already-established founding principles of the OPRC 90 Convention. IMO and IPIECA are continuing their respective efforts to develop good practice in oil spill preparedness and response through the development of guidelines founded on experience and latest technological advances. These guidelines, whether developed by IMO or the industry, add to the growing library of experience and knowledge on building preparedness for effective response. Furthermore, the long-standing cooperation between IMO and IPIECA at the working group level ensures that outputs are consistent, despite their respective origins, audience and development processes.

Cooperation in oil spill preparedness and response, as inspired and required by the OPRC 90 Convention, exists at many levels. In this paper we have explored cooperation between countries, between countries and industry and between international representative bodies for maritime states and the global oil and gas industry.

As preventative measures improve, there is an increasingly long wavelength between successive oil spills and therefore it is imperative that these frameworks for response preparedness and cooperation are maintained and enhanced through enduring and sustained mechanisms such as the Global Initiative. Moreover, the lessons of hard-won experience and fostering cooperation should be passed on to the next generation who need to be prepared for effective response whenever the next major oil spill occurs.

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