

The domestication of international regulation as a fundamental step to developing a preparedness and response framework

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Abstract:

The International Maritime Organization (IMO) and the oil and shipping industries have been supporting countries in the development of their oil spill preparedness and response capacity for decades, including through the Global Initiative (GI) programme. These efforts have provided a wealth of experience and understanding of international good practice. A key lesson learned is the importance of legislation and regulation as a fundamental step to developing a preparedness and response framework.

This paper will explain how, by contributing to the full implementation of international regulation, the Global Initiative benefits industry and governments alike. Whilst governments find their level of oil pollution preparedness enhanced, industry benefits from the strengthening of the legal and institutional framework which mitigates regulatory and associated economic risks, and eases the dialog with relevant national authorities.

IMO's International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC 90) is the bedrock on which national preparedness and response capability is built. OPRC 90, and various regional agreements that integrate with it, set out obligations with respect to a national response framework and associated contingency planning, communication plans, equipment capability and implementation through training and exercises.

Whilst the provisions of OPRC 90, and other relevant international legal instruments, are clear, their domestication has proven to be challenging. Most of the obstacles encountered by national authorities fall under three main themes. They could be: purely legal (e.g. transposition of the provisions in the international framework into national law); more institutional (e.g. definition of the competent national authority and operational contact points for oil pollution preparedness and response); or even technical, especially with regards to secondary regulations or rules to address technical aspects of preparedness and response (e.g. approval of response techniques).

The GI regional project teams are familiar with these challenges, which are regularly encountered. To overcome the difficulties, each Project has developed solutions together with governments and local business units of the industry.

This paper seeks to discuss challenges encountered by countries in meeting their obligations, within the different geographical regions covered by the GI programme. The authors will share their experience and observations from programme implementation, and recommend good practice to enable the domestication of international instruments.

The domestication of international regulation as a fundamental step to developing a preparedness and response framework

IPIECA, the global oil and gas industry association for advancing environmental and social performance, and the International Maritime Organization (IMO) have worked together for decades to enhance oil spill preparedness and response capacity at priority locations around the world. This collaboration is called the Global Initiative (GI), which aims to assist countries to prepare for, and respond to oil spills. Launched in South Africa in 1996, the Global Initiative is now implemented through three main regional projects: OSPRI for the Black Sea, Caspian Sea and Central Eurasia; GI WACAF for West, Central and Southern Africa; and GI SEA for Southeast Asia.

To achieve their mission, the regional project teams set up and deliver activities in close liaison with their networks of dedicated government and industry focal points. Since the launch of the GI programme, more than two hundred activities have been implemented. All these efforts have resulted in a wealth of experience, guided by a deep understanding of international good practice. A key lesson learnt is the importance of legislation and regulation as a fundamental step to developing a preparedness and response framework; indeed, a cornerstone of the success of the GI programme is the outreach and support given to countries to encourage and enable ratification, and implementation, of key international instruments. In this regard, the GI project teams are well-placed observers, working closely with government actors.

The main objective of this paper is to benefit from their experience, and highlight the importance of legislation and regulation to build a strong preparedness and response system, especially as this is often overlooked by the oil spill and response community, which usually focuses on the technical dimensions.

This paper will briefly present the international regulatory framework in Part I, and its influence over the national framework applicable to oil spill preparedness and response. In Parts

II and III, obstacles typically faced by national administrations will be discussed, along with possible solutions to overcome them. The importance of technical cooperation will be emphasised. This reflection will benefit from inputs provided by the GI teams, as first-hand observers of the situation in each region.

Part I: The regulation of oil spill preparedness and response: from an international regulatory framework to national implementation

The potential sources of oil spills considered in this paper are all seaborne. The picture today is one of intense maritime activities across the world. The 2019 Review of Maritime Transport from the United Nations Conference on Trade and Development (UNCTAD) disclosed that global maritime trade expanded by 2.7 percent in 2018, with volumes reaching eleven billion tons of goods carried by sea. In parallel, oil and gas offshore production activities remain dynamic, and oil companies continue to explore offshore resources, using new technologies and processes to reach reserves not exploitable before.

Two conclusions can be drawn from the above: firstly, where there is exploration, production and transport of oil, either as cargo or bunker oil, there is a risk for oil spill; secondly, all these activities are regulated: by international regulations, in particular the IMO Conventions, as well as national legislation, which mainly aims to domesticate provisions of the International Conventions into national law, and ensure they are properly enforced.

a. Overview of the international regulatory framework for oil spill preparedness and response: from high level Conventions to specific regulatory instruments

The key role played by the United Nations Convention on the Law of the Sea (UNCLOS)

The United Nations Convention on the Law of the Sea (the Convention, or UNCLOS), when entered into force in 1984, embodied in one instrument, traditional rules for the uses of

the oceans, and at the same time, introduced new legal concepts and regimes (such as the role and responsibility of the coastal state) and addressed new concerns - amongst these was the protection of the marine environment. The Convention incorporated and formalised concepts developed for more geographically-focused instruments, such as the Bonn Agreement, adopted in 1969 to protect the marine environment of the North Atlantic, or the Helsinki Convention, adopted in 1974 to protect the Baltic Sea. The Convention also incorporated some concepts of instruments addressing thematic issues, such as the IMO's International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78).

Specifically, Part XII of UNCLOS focuses on the protection and preservation of the marine environment and sets out several articles which, albeit generic in nature, are considered to form the bedrock for oil pollution preparedness and response. Article 194, for instance, describes measures to prevent, reduce and control pollution; within the article, paragraph 3 mentions the minimisation of pollution from vessels (3b) and offshore oil and gas facilities (3c). More precised provisions are set out in articles 208 (pollution from seabed activities subject to national jurisdictions, i.e offshore oil and gas production and exploration) and 211 (pollution from vessels). Articles 217, 218 and 220 detail the role and responsibilities of flag States, port States and coastal States, respectively, in relation to preventing, reducing and controlling pollution. Of even greater relevance to this paper are Article 198, which requires a State to notify other States it deems likely to be affected by an imminent or actual damage resulting from marine pollution, and Article 199, which encourages States Parties to develop and promote contingency plans for responding to pollution incidents in the marine environment.

This is further reinforced by the general principle of part XII, which states that national measures could not be less efficient than global rules and regulations to prevent, reduce and control pollution. Part XII also makes a constant reference to the role of countries and of

“relevant international organisations” to regulate marine activities; amongst the list of organisations is the IMO, which has developed focused and detailed regulatory instruments.

IMO and the “Galaxy of Maritime Conventions”

The IMO is the specialised United Nations agency with responsibility for the safety and security of shipping, and prevention of marine pollution by ships. Its responsibilities include: to provide a forum and mechanisms for Member States to coordinate and decide on regulations applicable to shipping, without imposing or enforcing rules; to encourage ratification and implementation of international instruments; and, to provide assistance through technical cooperation. Since its first meeting in 1959, IMO has updated existing regulation (such as the International Convention for the Prevention of Pollution of the Sea by Oil of 1954) and developed new regulatory instruments. It is now responsible for more than fifty International Conventions and agreements, for which numerous protocols and amendments have been adopted.

No matter the level of pollution preparedness of the responsible party, an oil spill will result in negative impacts; while it is important to be prepared, prevention is equally vital, and as well, compensation to financially support stakeholders affected by an oil pollution. These three aspects - prevention, mitigation and compensation - are reflected in the IMO Conventions, and elaborated as follows:

Prevention: Preventive regulation deals with vessel construction, safety, training of seafarers and management of operational pollution. Examples of key IMO Conventions in this category include Safety of Life at Sea (SOLAS) or MARPOL;

Mitigation: Mitigative regulation is aimed at reducing the impact of large accidental pollution. To reduce the potential impact of an oil spill, efforts should be made to strengthen preparedness and response capacities; in this regard, the most important legal instrument is the

International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC 90);

Compensation: Compensatory legislation was developed to compensate those affected by the pollution. The current international compensation regime for pollution resulting from oil spills is founded upon two Conventions: the 1992 Civil Liability Convention; and the 1992 Fund Convention, enhanced by the Protocol of 2003.

Individually, these Conventions adopt a thematic and focused approach but globally; they form a thorough regulatory system that covers many dimensions of marine oil pollution. The global regulatory system, as it relates to marine oil pollution, could be thus considered, in a way, a “Galaxy of Conventions”, where the Conventions are interwoven and structured around OPRC 90.

The centre of this regulatory galaxy is OPRC 90 . This concise legal instrument focuses on mitigation (preparedness and response), and provides a global framework for international co-operation to combat major incidents or threats of marine pollution. States party to OPRC 90 are required to establish measures to prepare for, and deal with pollution incidents, either nationally, or in co-operation with other countries. Specific requirements are highlighted, as follows:

- Require that ships, offshore units, and ports and oil handling facilities have oil pollution emergency plan developed in coordination with the national system (article 3);
- Set up a national system for preparedness and response to oil pollution incidents, which includes the designation of the authority in charge and the development of a national contingency plan, amongst other provisions (article 6);
- Establish, either individually, or through cooperation with other States or with the industry, pre-positioned oil spill combating equipment, commensurate with the risk exposure (article 6); and

- Establish arrangements for bilateral or multilateral co-operation in preparedness and response, and take necessary measures to facilitate the circulation and utilisation of necessary equipment, and personnel engaged in the response to an incident (articles 7 and 10).

Regional agreements: a first step towards the domestication of International Conventions

UNCLOS, OPRC 90 and other relevant International Conventions provide a global regulatory framework for oil spill preparedness and response. These global legal instruments are often complemented at regional levels by other instruments, such as the Regional Seas Conventions and associated Protocols, developed under the auspices of the United Nations Environment Programme (e.g.: the Teheran Convention for the Caspian Sea, the Bucharest Convention for the Black Sea or the Abidjan Convention for the West coast of Africa), or other kind of legally binding or non-binding instruments developed by relevant international organisations (e.g.: regional cooperative mechanism for oil spill preparedness and response in Southeast Asia).

These geographically-focused instruments are developed by neighbouring countries within each region, in close collaboration; the instruments are therefore tailored to each region's needs, with the ultimate goal to enable ease of implementation at the national level.

b. From international to national regulation

International and regional organisations which draft and develop the Conventions do not undertake the responsibility of enforcement. This is the responsibility of the State once it becomes Party to these legal instruments. To give domestic effect to a Convention or treaty, the international regulation has to be transposed into national legislation or regulation. The rationale is clear: no international regulation could be invoked before the courts, or while national administrative processes are applied, if it is not domesticated and incorporated into

national law and regulation. The transposition of International Convention into national legislation is therefore fundamental.

To satisfy the above, a number of requisites have to be met; the processes will differ from one State to another, subject to its national legal system. In most cases, the following are required:

1. Establish a legislative and regulatory framework to enable the transposition of provisions in International Conventions (including technical provisions) into national legislation, with specific laws written to deal with breaches;
2. Organise public authorities and agencies by clearly establishing roles and responsibilities, with regards to implementation, control, policing and sanctions; and
3. Establish and maintain the human and material resources to regulate, administer and enforce those Conventions.

National authorities have a key role to play during the process of domestication, both at political and administrative levels. In general, domestication is a particularly complicated process with a large variety of stakeholders involved. The whole process has to be completed keeping in mind, the general principle of UNCLOS which states that national measures could not be less efficient than global rules and regulations to prevent, reduce and control pollution. It requires expert work and clear leadership both at the political and administrative levels. Political leadership is ultimately responsible for all the legislative process – typically, a piece of international regulation has to be deliberated by Parliament to be transposed. As with any legislation, it will then be interpreted, and clarified by the public administration using regulatory instruments.

c. A clear national regulatory and legal framework benefits all stakeholders

Domestication is the cornerstone of a national system for oil spill preparedness and response; a large part of the relevant national legislation would ultimately be modelled after the international legal framework. It is in the interest of all stakeholders, private and public, to have a clear and well-developed national regulatory framework on preparedness and response. It is against a robust structure that governments would find their levels of oil spill preparedness enhanced, to better protect their people and coastal communities; industry would also benefit from improvement to the legal and institutional framework, which mitigates regulatory and associated economic risks, and eases the dialog with relevant national authorities.

It is within the remit of the GI project teams to support respective States in the full implementation of International Conventions pertaining to oil pollution. The crucial but complicated step of domestication is therefore a topic that GI regional projects are working on, hand-in-hand with their partner countries.

Part II: Obstacles and challenges – GI regional projects share their experience

Whilst the provisions of OPRC 90, and other relevant international legal instruments, are clear, their domestication has proven to be challenging. In Part II, the authors will explore the challenges faced by countries, to better understand the dynamics at stake. Starting from a regional perspective, with observations shared by the GI project teams, the authors will then define common challenges faced by States globally.

a. Obstacles and challenges: report from the GI programmes

In the following text, project teams from GI WACAF, OSPRI and GI SEA will share their observations on obstacles and difficulties witnessed in their respective regions. This first-

hand material, which captures the different perspectives of the respective authors, reflects the vast array of challenges.

GI WACAF –West, Central and Southern Africa

In March 2019, GI WACAF organised a workshop in Abidjan, Cote d’Ivoire, to assist the administrations of the invited States (six in this case) in transposing and implementing relevant international regulatory instruments. Most of the challenges described below were identified during the workshop, and focused on the ‘how’, in the domestication and implementation of international regulation. However, these do not necessarily concern all the six countries; every case is unique at the national level. Trends which emerged during the workshop are transcribed below:

Challenges met during the accession phase:

- The lack of synergy between actions of the Foreign Affairs Ministry and technical ministries during the ratification process; and
- The lack of appropriation and visibility of these problems, including at the highest political and administrative levels.

Challenges met during the domestication phase:

- The lack of collaboration between maritime administration bodies, and between other authorities with general oversight;
- The lack of training amongst maritime lawyers and technical personnel regarding the drafting of national maritime legislation; this leads to an insufficiency of legal and technical capabilities regarding domestication-related matters; and
- The lack of consistency between the laws and other legal provisions prepared by the different ministries concerned.

Challenges met during the implementation phase:

- The lack of monitoring mechanisms to ensure relevant follow-up on updates to regulatory framework and progress made by the IMO;
- The absence of a platform for consultation and coordination among focal points for various IMO Conventions located in the different ministries - often transport, environment and oil;
- The existence of several instruments for implementing the same Conventions, which fall under the responsibilities of several authorities in charge of enforcement; and
- The absence of administrative instruments for clarifying the content of the Conventions.

General lack of priority on preparedness and response aspects:

- Low level of priority, on account of the very low frequency of occurrence of oil pollution; and
- Need for technical and political advocacy with decision-makers on issues related to oil pollution.

Low efficiency of regional cooperation:

- The arrangements or mechanisms for organising assistance, within the framework of the Emergency Protocol to the Abidjan Convention, are not functional, according to the State Parties.

OSPRI – Black Sea, Caspian Sea and Central Eurasia

Challenges and obstacles faced in the implementation of key IMO Conventions can be categorised into several themes:

1. *Political situation.* Crises related to political conflicts and territorial disputes present challenges to provide sufficient state development towards oil spill preparedness and response. The priority is on the upkeep of tolerance and stability to ensure in any particular country.

2. *Administrative and management changes and appointments.* Examples of management and administrative challenges include: appointment of a new Minister; merger and division of authorities; or the abolishment of an authority and dividing its scope of work

between different authorities. All these changes can result in delays, misunderstanding, and often, conflicts of interests. This confuses the implementation as personnel are shuffled and responsibilities take time to re-establish; a proof in case is how the environmental function in a particular government has undergone four different organisational changes in six years.

3. *Stability of priorities.* Priorities determine the way and direction for any country's development and resourcing. Experience has shown that they can be prematurely changed or terminated; for instance, an identified lead country has, on several occasions, skipped the conduct of the biennial 'Delta' exercises, scheduled under the regional co-operation arrangements to cater for oil pollution for the Black Sea, which requires a full mobilisation of equipment and personnel.

4. *Readiness to accept international practice and guidance.* Oil spill preparedness usually raises a lot of interest: what is preparedness; what and how should the authorities be prepared; what is required to implement it, etc. All these questions, and beyond, can be addressed through the sharing of international good practice. However, it can be challenging to embed good practice into national frameworks where different approaches are already established. For example, a country drafted a guidance document on 'Oil Spill Response Toolbox' and 'Net Environmental Benefit Analysis' which differs from internationally accepted good practice.

5. *Multiagency jurisdiction.* It is the prerogative of a country to decide the authority with primary responsibility for oil spill preparedness and response. There is no unique approach; typically, these responsibilities are split between several authorities or concentrated in one of the authorities such as maritime administration, environment protection or emergency management. In practice, it is observed that preparedness, incident reporting, and response are separated, and delegated to different authorities with overlapping jurisdiction. It would be noted that 'preparedness' is not about just having contingency plan; more importantly, it should

address key issues such as procedures for a prompt border control and visa access; custom clearance; monitoring; waste and wildlife management, etc. It remains a significant challenge to achieve a smooth integration of responsibilities between different authorities, without either overlap or gaps – a proper level of communication is key.

6. *Equipment oriented preparedness.* Countries may consider equipment (in particular, mechanical recovery resource) as the primary pillar of preparedness. This orientation can lead to a false sense of security and neglects other key elements of preparedness, including: clarity in legislation; response policy which enables the use of full response toolkit; and a clear command and coordination framework.

GI SEA – Southeast Asia

The remit of GISEA includes all ten Member States of the Association of Southeast Asian Nations (ASEAN). The diversity of the region – geographically; politically; culturally; socioeconomically – must be taken into context when attempting to address obstacles faced by the respective countries.

While the region desires to benefit from global trade and the oil and gas sector, countries are not necessarily equipped to manage the risks. Clearly, the level of oil spill preparedness and response capability varies across the ASEAN Member States. The following themes will be considered, in addition to the preceding discussion on GI WACAF and OSPRI:

1. *Disparate geography.* While Southeast Asia is predominantly a maritime region, the disparate geography with the remit of GISEA is evident, compared to that of GI WACAF or OSPRI. It is noteworthy that two of the five Archipelagic States, as legally defined in UNCLOS - the Republic of Indonesia and Republic of the Philippines – are part of ASEAN. This naturally gives rise to a risk profile which varies significantly across the countries, and consequently, differences in priority of each country to address marine pollution.

2. *Risk perception and experience from previous incidents.* Adding to the preceding point, while the risk of oil pollution from shipping and oil and gas activities is recognised, not surprisingly, States which have experienced major oil pollution incidents, in particular, trans-boundary pollution, demonstrate higher levels of preparedness. What is clear is that windows of opportunity were created in the wake of each incident to enhance the national framework within the affected States, and strengthen bilateral or sub-regional cooperation, and access to means of compensation.

3. *Governance and maturity in policy-making.* The recent history of the region has to be taken into perspective when one considers the systems of governance and maturity in policy-making across the politically-diverse region. Often, the lack of institutional capacity is a reality; without long-term and sustained commitment, progress is often stalled, despite a good start. An example in case would be the attempt by a country, since 2005, to draft the required legislation which establishes the national framework for oil spill preparedness and response, and in tandem, the national oil spill contingency plan; in the period since, numerous management and administrative changes within the government have set back previous efforts.

4. *Access to economic resources.* Economic resources are clearly required for governments to invest in oil spill preparedness, against conflicting priorities; compounding to the challenge is the disparity in economic development across the ASEAN Member States. Historically, States which have benefitted from targeted foreign/international aid are more advanced; however, such assistance cannot be sustained in the long run. Countries will need to channel resources, independently, to grow and maintain their capacity in oil spill preparedness and response; it would be apparent that this is contingent upon strong governance and institutional capacity (highlighted above).

5. *Presence and integration of industry.* Where there is significant presence of industry, a higher level of technical expertise, in-country, is expected. Typically, a larger capacity in oil

spill preparedness and response exists; the pooling of resources, through industry-funded arrangements or mechanism for mutual assistance among operators presents an obvious advantage. The challenge is then one of integrating industry resources into the national framework and building trusting relationships with the government. In this regard, the National Oil Companies can play a significant role.

b. Common findings and differences on obstacles faced in these different regions

Most of the obstacles faced by national authorities fall under three themes. They could be: purely legal (e.g. dealing with the domestication as a legal process; a lack of legal expertise on maritime issues, etc.); more institutional (e.g. definition of the competent national authority at various stages of domestication: accession, transposition, implementation; stability of priorities, given that preparedness requires significant funding for incidents that do not happen often - low priority on the political agenda for these); or even technical, especially on issues concerning secondary regulations or rules to address technical aspects of preparedness and response (e.g. approval for response techniques; procurement of oil spill response equipment, etc.).

Observations by the GI project teams highlight challenges which appear to be specific, or more frequently encountered in some regions. For example, the GI WACAF examples highlighted the low efficiency of regional cooperation, or the lack of training amongst legal personnel involved in the transposition of International Conventions into national legislation. Challenges around the transfer of international good practice into the existing national framework of some countries are apparent in the OSPRI region. In the ASEAN region, covered by GI SEA, the examples brought forth the significance of historical and socioeconomical context, in explaining level of oil spill preparedness and response capacity in the respective countries and across Southeast Asia.

Notwithstanding, general trends common to the three regions are readily identified; while some issues are region or country-specific, it would be fair, based on evidence, to extrapolate that similar challenges are faced by different countries in the world. This leads to the following question: how can GI develop scalable solutions that would help to solve these challenges?

Part III: Solutions, good practices and recommendations

GI project teams are daily practitioners of technical cooperation. To answer the challenges discussed in Part II, they had to envision possible solutions, develop concepts and test processes, and leverage on the expertise, and experience, of governments and industry alike.

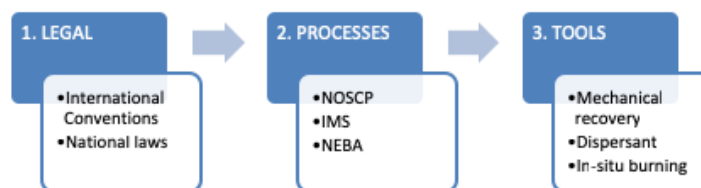
Part III follows the same structure as Part II. The authors will first discuss some of the solutions proposed, following which, recommendations will be made on the approach to assist countries in the domestication of International Conventions.

a. Overview of the solutions developed by the GI programmes

GI WACAF – West, Central and Southern Africa

Following the Regional Conference in Ghana in 2015, a general trend of enhanced oil spill preparedness and response capability is observed across the region. However, the rate of development varies significantly between countries, with some advancing more rapidly than others. To ensure the proper development of preparedness and response capacities, the GI WACAF Project has defined a new concept to capture the systemic and evolutive dimensions of oil spill preparedness and response. Named “the three steps approach”, it highlights the fact that domestication of international regulation is the foundation to an effective national preparedness and response system.

Chart 1: The three steps approach chart



Since then, GI WACAF has been using this approach to steer discussions with its partner countries, to enable more tailored assistance. More technical cooperation activities have been dedicated to policy and regulatory issues; in 2019, for the first time, GI WACAF organised a sub-regional legal assistance activity fully dedicated to the domestication of International Conventions. Going further, the majority of recommendations emanating from the 8th GI WACAF Regional Conference, which took place in South Africa in October 2019, are about institutional and regulatory aspects directly linked to the domestication of International Conventions. The recommendations presented below could be seen as possible solutions for different stakeholders to explore, in West, Central and Southern Africa, and beyond. They are addressed either directly to the countries, or technical cooperation partners.

For partner countries:

1. The conference recognised the key aspect of inducing the creation/development of national forums, which would gather all the relevant stakeholders, to debate and discuss ratification and implementation of the IMO and International Conventions. This would foster good cooperation, promote a “working together” spirit, and reduce the risks of conflict of jurisdiction between ministries and agencies;
2. The conference invited countries to perform a proper national consultation before ratifying a Convention, in order to give full and complete effect to the Convention by having all stakeholders onboard, including the maritime industries;

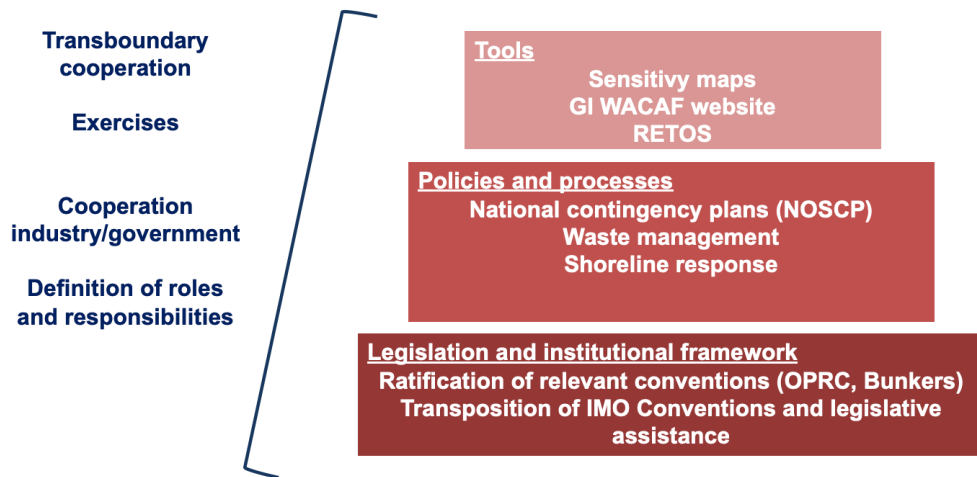
3. The conference recognised the lack of expertise to draft legislation and domesticate International Conventions in numerous countries of the region. There is an expressed need to organise training specifically dedicated to legal drafters, and more generally, to the legal profession; such training should be organised by the countries themselves, and if necessary, with the assistance of GI WACAF and other technical cooperation partners; and
4. The conference highlighted the importance of ‘legal watch’ to keep up-to-date with amendments to Conventions, and need to explore processes or information systems which could be used to perform this time-consuming task.

For GI WACAF and other technical cooperation partners:

1. Reinforce the ‘legislative assistance’ dimension of GI WACAF to assist countries in the transposition, domestication and full implementation of relevant IMO Conventions already ratified. Francophone countries which attended the GI WACAF sub-regional workshop dedicated to this topic in Abidjan in March 2019, highlighted the relevance of recommendations agreed upon during this activity; and
2. Increase visibility and awareness of the IMO and International Conventions related to oil spill preparedness and response, and liability and compensation, to higher political and public administration authorities, through engagement and awareness-raising campaigns.

Following the three steps approach, recommendations made by the conference are summarised below. It reflects the key aspects of the domestication of International Conventions, already identified as important topic to be addressed.

Chart 2: Graphical representation of the recommendations made by the 8th GI WACAF Regional Conference



OSPRI – Black Sea; Caspian Sea and Central Eurasia

OSPRI developed a series of recommendations to tackle the issue of domestication, based on their experience in the region. These are elaborated below:

1. Cultivate a champion within an authority which will lead the effort on oil spill preparedness and response, and to put forward proposals and suggestions; officers with direct access to high-level management are generally suited for the role; equally suited are in-house specialists, on the premise that management will enquire about technical details from these specialists, rather than external consultants;

2. An industry champion is needed as well, either from a specific company or group of companies; having industry onboard is essential to transmit international good practice; Governments are usually keen to adopt industry good practices and approaches to address their needs.

3. Share experience of neighbouring countries and regions; a healthy competition will raise and cumulate ideas, and inspire authorities to be as prepared as their neighbouring counterparts;

4. Seek expert support, for example, in developing argumentations for ratification, and drafting of laws and secondary legislation; it is key to have national and international consultants working hand in hand;

5. Conduct research at the national level; national research is a reliable approach to produce customised materials that would be deemed acceptable by governments, even if generic information is already available at an international level; this is particularly valid for secondary legislation and legal instruments emanating from the administration;

6. Organise workshops to share experience and good practice, and enable dialogue to clarify and better understand challenges and opportunities; and

7. Structure the representation of industry to attend regional activities, and speak with one voice in forums such as the ESAS group within the Black Sea Commission, or focal group on the implementation of the Aktau protocol for the Caspian Sea.

GI SEA – South East Asia

Being the latest addition to the regional projects under the GI umbrella, GI SEA has had the benefit of learning from other regions. Similar to GI WACAF and OSPRI, GI SEA has focused much of its effort on the building of national capacities through technical cooperation activities. However, unlike GI WACAF, the Project does not host a regional conference – the merits of such an event for the ASEAN Member States will be given due consideration in future.

The approach taken by GI SEA is summarised as follows:

1. Maintaining outreach and engagement with key stakeholders, through the National Focal Points and local business units of Industry Members;

2. Supporting the delivery of capacity-building activities, primarily national workshops, to address the technical, administrative and institutional aspects of oil pollution preparedness and response; in 2019, ‘stakeholder engagement’ sessions were included to enable attendees to deliberate: either, the development of the national framework, where it is lacking, or updates and enhancements to existing arrangements; actions and deliverables from such discussion are considered, against which progress will be monitored.

3. Promoting the significance of the 3-tiered legal framework (Prevention, Mitigation, Compensation) and advocating accession to key International Conventions.

In addition, while emphasis is placed on national capacities, the importance of a regional framework is recognised. Following its launch, GI SEA has worked with the AESAN Maritime Transport Working Group (MTWG), through the IMO-ASEAN Partnership, and provided a platform for the ASEAN Member States to come together to address oil pollution preparedness and response.

Led by the IMO, the materialisation of the Memorandum of Understanding on ASEAN Cooperation Mechanism for Joint Oil Spill Preparedness and Response (ASEAN MoU), and its adoption by the ASEAN Member States, marked a significant milestone for the region. Subsequent to the MoU, the development, and adoption, of the Regional Oil Spill Contingency Plan (ROSCP), led by the ASEAN MTWG, with the support of GI SEA as a vehicle, represented another significant achievement.

The MoU and ROSCP, founded upon the basis of OPRC, provides impetus for the ASEAN Member States to ratify the International Conventions and transpose the provisions within, into domestic legislation, to fully benefit from the regional cooperation mechanism. To this end, countries are encouraged to integrate regional arrangements into their national framework; GI SEA continues to work with the respective countries to address identified gaps.

b. Main findings and recommendations

Each GI project has developed a different approach to deal with the issue of domestication; however, some key elements are shared. Firstly, there should be a systematic approach to oil spill preparedness and response, of which domestication is the foundation. This system is dynamic, and evolves with time and emerging risks (e.g. development of offshore oil and gas, rise in maritime traffic). The GI programme has to adapt to this constantly changing system to

be able to offer tailored assistance; this can translate to a need to revisit international regulations, and encourage countries to become Party to Conventions that are more relevant to the new situation, for example, the International Convention on Civil Liability for Bunker Oil Pollution Damage (BUNKER), following the downward trend for incidents involving oil tankers. It is also essential to pay attention to the needs expressed by the countries; according to the recommendations of the last GI WACAF Regional Conference, it is very clear that domestication aspects seat at the top of the priority list. This may be true for other regions.

The fundamental aspect of the domestication of international regulations calls for increased technical assistance in legal, regulatory and policy matters. Given its wide geographical coverage, and privileged working relations developed with governments and industry over time, the Global Initiative is well-poised to be a vehicle to implement this endeavour. The GI project teams are experienced actors in the field of technical cooperation, although not necessarily on the legal and regulatory matters. Strengthening the policy dimension of technical cooperation, particularly in legal assistance, requires a different set of skills, and a different approach; this implies a significant effort by the GI project teams is needed to adapt to the changing needs. Most of the domestication challenges faced will be similar from one region to another, as the core of the international regulatory framework steams from the same Conventions. This should lead to a harmonised approach between the various projects for technical assistance.

The history of the Global Initiative programme is one of constant adaptation to change, since it was established in 1996. This newly identified challenge of domestication is yet another obstacle to be overcome, to achieve further progress in of spill preparedness and response at a global level.

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