

Oil Spill Intervention in the Bay of Bengal: A Pivotal Redux

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Torrey Canyon (1967), Amoco Cadiz (1978), and Exxon Valdez (1989) oil spill antecedent events have galvanized international movements against marine pollution and corresponding deleterious effects – but what is needed to allow “oil spill intervention” best be embraced at the regional level?

Patently, “operational discharge” and “accidental spills” are two prominent categories of marine pollution that reside parallel to “dumping”, and it is within the very ambit of those two that one could insightfully unveil the breadth and scope of intervention-governance dos and don'ts about ship sourced oil spill. Admittedly, the threads of intervention-governance, more specifically, have been weaved into a range of international conventions developed by International Organizations (IO). The role of IO in prescriptive and enforcement jurisdictions through “applicable rules and standards” has its roots in the United Nations Convention on the Law of the Sea of 1982 (UNCLOS).

While general obligations are succinctly embedded in relevant parts, UNCLOS through the "rule of reference" requests Member States (MS) to implement Generally Accepted International Rules and Standards (GAIRS). In evaluating the role of GAIRS, scholars note the word “compatible” found in articles 311(2) and 311(3) aims to strike a coherent and consistent balance with the rules promulgated by UNCLOS. Undoubtedly, rules of reference proffer cohesion and adaptability, especially with IMO code, conventions, and guidelines.

At the outset, explicit reference to the term “intervention” is observed in the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties of 1969 (Intervention Convention). Despite the reference, unfortunately, the application of the Intervention Convention limits itself to the high seas and does not accompany prescribed measures for an actual intervention in the texts. Ergo, heavy

reliance is made on the prescribed provisions of the International Convention on Oil Pollution Preparedness, Response and Cooperation of 1990 (OPRC), and Regulation 37 of Annex I of the International Convention for the Prevention of Pollution from Ships (MARPOL). While both Conventions endorse the development of a "shipboard emergency plan", a distinct attribute inherent to the OPRC is how it details the obligation of State parties to take stock of equipment, conduct exercises and develop pertinent plans at the national level, and cooperate with counterparts from other countries, as deemed fit.

Cooperation manifests through bilateral or multilateral agreements, which venture into the hallways of nitty-gritty details. Examples of this are ripe in multiple regional strategies enshrined in, inter alia, the Agreement for Cooperation in Dealing with Pollution of the North Sea by Oil and Other Harmful Substances; Convention on the Protection of the Marine Environment of the Baltic Sea Area; Convention on the Protection of the Black Sea Against Pollution; Convention for the Protection of The Mediterranean Sea Against Pollution; and Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic. These agreements are characterized as being the merger of individual proactive strategies while maintaining the brisk momentum of joint intervention processes. Joint review of oil pollution incident response, exchange of information, joint exercise and training, mutual assistance, and joint guidelines are to name a few exemplary elements that simultaneously serve as key takeaways from international best practices.

Turning to the focal point of discussion, i.e., the Bay of Bengal - the first strand that is axiomatic is the region's interaction with commercial ships, especially tankers and cargo ships that traverse the waters at regular intervals. Interactions are many, to

say the least. In addition, the same region that is characterized by unique geographical features is also marked with natural anomalies, e.g., storm surges, strong tidal currents, and wide tidal fluctuations. Evidence-based research points to the fact that semi-diurnal tides in certain areas of the Bay of Bengal can attain the highest and or double amplitudes owing to the coastline's geometrical configuration and the width of the continental shelf. Indeed, consequently, the Bay is no stranger to oil spill incidents. In retrospect, the 2014 collision between a small coastal oil tanker and another vessel in the Sundarbans, the 2017 collision of LPG vessel MT BW Maple and oil tanker MT Dawn Kanchipuram near the Chennai harbor, the 2021 incident developed as a result of underwater crack on the Portuguese flagged Devon, and the 2022 incident between Haian City and Orion Express are perhaps stark cautionary tales for the coastal states bordering the Bay of Bengal.

Unique is also the ecosystem services provided by the Bay to the coastal inhabitants. Recognized as the largest Bay on earth, the Bay of Bengal is home to one of the most distinguished, diverse, and dynamic natural ecosystems and untapped hydrocarbon resources. A complex but highly productive area, the waters of the Bay of Bengal Large Marine Ecosystem (LME) nurture six million tonnes of pelagic and demersal species and shrimp fisheries that supplement approximately seven percent of the global supply of seafood-based nutrition. It stands to argue that stakes are high for coastal states if large quantities of crude oil, fuel oil, sludge, oil refuse, or generic substances contaminate the LME that buttresses the economic pillar of the region.

Government protocol and penchant for precise action rendered Coast Guards of respective coastal nations of the Bay of Bengal the sentinels of oil spill

intervention. For example, s. 7 of the 2018 Coast Guard Act of Bangladesh empowers the Coast Guard “to guard against polluting activities in the territorial waters and take measures to prevent such activities”. While the Bay of Bengal littoral states are parties to both MARPOL and OSPAR, there is an observed discrepancy in how international guidance has trickled down to the national levels of respective countries. More importantly, while national capacities continue to struggle with a timely intervention using state-of-the-art equipment, in some cases, the absence of a response policy, let alone a contingency plan, has left a question mark on the Bay of Bengal's campaign towards cooperation in the likelihood of large-scale oil spill intervention.

Turning to the regional side of things, the South Asia Co-operative Environment Programme (SACEP) consolidated a Regional Oil and Chemical Contingency Plan in August 2016, which aligns with the spirit of "cooperation" according to OPRC. However, in the present discourse, one may find oneself concerned with the materialization of the term "cooperation" taking into account the impacts of protracted resolutions on the bilateral relationship between and among parties to maritime boundary disputes. Notwithstanding, the efforts of SACEP are commendable as it resonates with international best practices.

Ocean governance through stakeholder engagement is indubitably a well-established concept. The Bay of Bengal, when faced with oil spill challenges and the like, remains under the auspices of that

concept. Those that purport to support collaborative engagement, present ocean management through a unique and modern prism salient to all ocean stakeholders working within the complex architecture of contemporary ocean governance. For the Bay of Bengal littoral states, this could entail cooperation with the right political mindset when adhering to SACEP recommendations in oil spill interventions that extend to the “grey areas” of the boundary.

The answer to the question of opening this pivotal redux is not an easy one. The best way forward could be a careful consideration of collateral arrangements on the margins of other initiatives that could bolster support for the wants and needs of regional cooperation at large. Cooperation, as it exists today, could ideally detail the feasibility of establishing a regional contact point, integrating "places of refuge" as a part of the contingency plan, developing a protocol for assistance from "vessels of opportunity", and reaping the advantages of remote technologies and Robotics and Autonomous Systems (RAS) for intervention. Farfetched as it may seem, the aforementioned options are, being explored at other regional levels. Whether or not funding an established mechanism to facilitate advanced "oil spill intervention" is doable, rests upon further discussions aimed at protection sustainably and collaboratively.

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