

The logo for the Asian Development Bank (ADB), consisting of the letters 'ADB' in white serif font on a dark blue square background.

STRENGTHENING CAPACITY FOR ENVIRONMENTAL LAW IN THE ASIA-PACIFIC : DEVELOPING ENVIRONMENTAL LAW CHAMPIONS
Siem Reap, Cambodia, 26 November – 1 December 2017

SESSION THIRTEEN : CASE-STUDY IN TRANSBOUNDARY POLLUTION – THE MONTARA OIL SPILL, TIMOR SEA (2009)



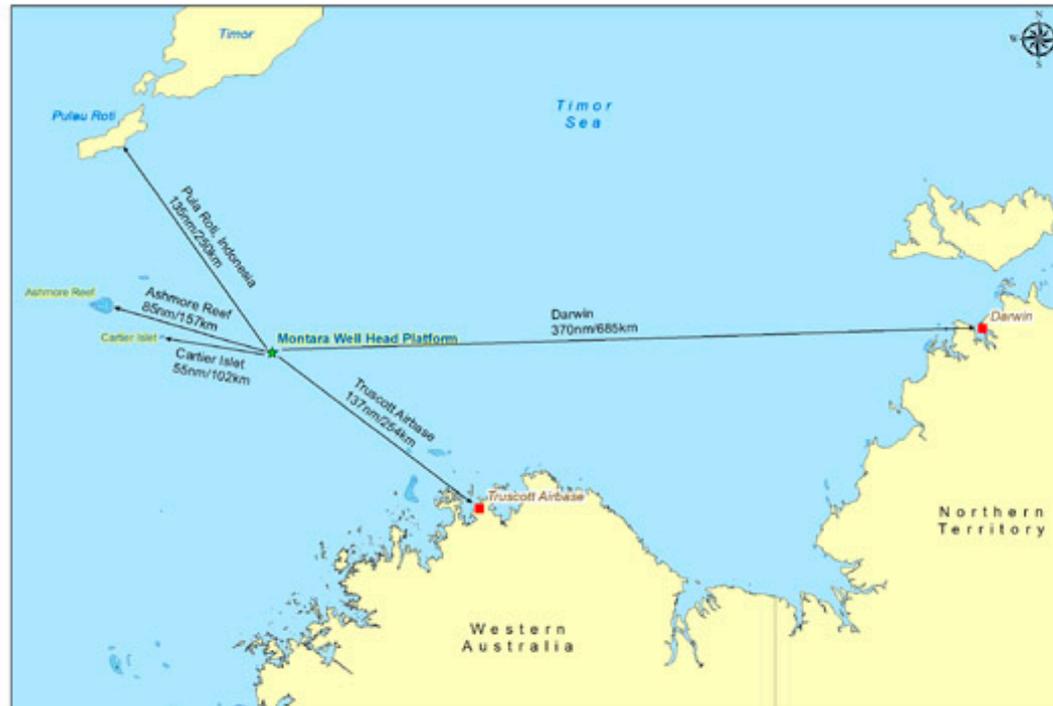
Professor Rob Fowler, Law School, University of South Australia

MONTARA OIL PLATFORM SPILL 2009



LOCATION OF THE MONTARA OIL PLATFORM

- 254 kilometres from Australian coastline & within Australian EEZ, but very near Indonesian EEZ and fishing waters



OWNERSHIP OF THE MONTARA OIL PLATFORM

- The Montara Wellhead Platform is owned and operated by PTTEP Australasia (Ashmore Cartier) Pty Ltd (“PTTEP AA”)
- PTTEP AA is a Perth-based Australian subsidiary of PTT Exploration and Production Public Company Limited (PTTEP) - a Thai government-owned, public company listed on the Thai stock exchange
- PTTEP AA was operating the Montara oil well pursuant to a petroleum licence granted by the Australian government under Australian petroleum legislation.

THE MONTARA OIL SPILL EVENT

- On 21 August 2009, during drilling operations at the Montara Rig and Platform, an uncontrolled release of oil and gas occurred; all 69 personnel were safely evacuated;
- On 1 November 2009, the leakage from the well was successfully halted by PTTEP AA after bringing in a mobile oil rig from Singapore;
- During operations in November to complete the 'well kill', a fire broke out on the rig and platform and was not extinguished until 3 days later;
- Dispersant was sprayed by air by the Australian Maritime Safety Authority (AMSA) from 23/8 – 1/11/2009
- Containment and oil recovery operations were also undertaken by AMSA from 5/9 – 30/11/2009

IMPACTS OF THE SPILL IN INDONESIA

- Montara oil field is situated south of Indonesia's Nusa Tenggara province, where fishing and sea weed farming are common economic activities;
- By early November 2009, there were reports claiming dramatic declines in the number of fish caught by Indonesian fishermen, with 7,000 allegedly suffering an income loss;
- The Indonesian President announced at this time that his government would seek compensation from PTTEP AA for Indonesian fishermen and seaweed farmers affected by the oil spill; the East Timorese President also indicated that Timor would bring a similar claim
- On 2 September 2010, after meeting with Indonesian government officials, PTTEPAA stated it would not accept any claim by Indonesia because no verifiable scientific evidence had been presented to the company to support the claims presented by the Indonesian government .

LEGAL AFTERMATH OF THE SPILL

- In 2011, after an investigation, the Australian government decided to allow PTTEP AA to continue its operations under stricter controls;
- In 2012, PTTEP AA was fined A\$510,00 for the oil spill by an Australian court
- In September 2014, the Indonesian government formally requested the Australian Maritime Safety Authority to assist in approaches to PTTEP AA for **compensation** for Indonesian fishers and sea-weed farmers
- See ABC News Report: <http://www.abc.net.au/news/2014-09-29/indonesia-pleads-for-australias-cooperation-on-montara-oil-spill/5777840>

LEGAL AFTERMATH OF THE SPILL

- On 3 August 2016, a class action was filed by Australian lawyers in the Federal Court of Australia against PPTep AA, seeking A\$200 million compensation for financial loss and property damage suffered by approximately 15,000 Indonesian seaweed farmers allegedly caused by the Montara Wellhead Platform oil spill.
- Action could take several years to complete, with legal argument currently focused on a preliminary issue as to whether the limitation period for bringing such an action can be extended
- On 15 November 2017, Justice David Yates granted the lead applicant in the class action, seaweed farmer Daniel Sanda, an extension of time to bring the claim. He can therefore proceed to lead the claim for affected farmers.
- See further: <https://www.mauriceblackburn.com.au/about/media-centre/media-statements/2017/another-important-win-in-montara-oil-spill-class-action/>

Query role of international /regional law in this context ?

- Australia is not a member of ASEAN and there are no relevant regional agreements with Indonesia or East Timor that are applicable
- Could the Australian government be held responsible under IEL for having failed to adequately regulate the Montara operations or respond to the spill?
- See: Hunter, T., “The Montara Oil Spill and the National Marine Oil Spill Contingency Plan: Disaster Response or Just a Disaster?”(2010) available at: http://epublications.bond.edu.au/law_pubs/381/
- Could the Thai government be held responsible under IEL for the actions of its wholly-owned corporation, PTTEP AA?

