THE INTEGRATION OF REGIONAL RESPONSE REGIMES IN THE ASIA PACIFIC

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Abstract

There are a number of regional response regimes operating in the Asia Pacific region focused on oil spill preparedness and response. Majority of these are government-led initiatives started by a number of countries which share the same risks by activities passing within their national borders. Although each country has its own national plan to respond to oil spills, the regional response regime ensures that large spills are dealt with and resources are available when and as needed.

In the Gulf of Thailand, for example, the three countries of Thailand, Vietnam and Cambodia have agreed in principle to helping each other out if a spill occurs within the Gulf and threatens to impact any of the three countries. Although this is essentially a "soft" document in that it only gives general statements and principles as agreed upon by the countries but not the details on how these could be achieved, it is a step forward to a more binding agreement.

Other examples of response arrangements are the formation of the Tripartite Technical Experts Group (TTEG) on the Safety of Navigation in the Malacca and Singapore Straits by Indonesia, Malaysia and Singapore and the ASEAN-OSRAP (Oil Spill Response Action Plan), which was set up in 1993 by six ASEAN countries, namely Brunei Darussalam, Indonesia, Malaysia, the Philippines, Thailand and Singapore.

These response regimes have certain overlaps with some countries belonging to more than one regime and there are also some gaps where the regimes do not operate in. This is an issue in itself but the bigger concern lies in the integration of the different regional response mechanisms. How do they tie in together? Is there a formal mechanism of two regimes working side-by-side?

This paper will explore the possible synergies of the different major response regimes and will also take into account the larger framework of international or multilateral environmental agreements on how they are organized and work together.

Introduction

The Asia Pacific region or more commonly known as APAC covers a very wide geographic area covering the littoral countries of East Asia, South Asia, Southeast Asia

and Australasia. Some of these countries like Malaysia, Singapore and Indonesia lie along the maritime corridors used to transport large quantities of oil. Presently, close to 2 billion tons of oil is transported annually via the international marine oil network. The increasing number of ships, especially large tankers like VLCCs (Very Large Crude Carriers) and ULCCs (Ultra Large Crude Carriers) has brought a sense of heightened concern to these countries living along or close to these maritime highways.

Figure 1. Tanker spills pose one of the greatest risks for oil spills in the marine environment

The region has been hit by several recent spills including the Hebei Spirit in South Korea, the Solar 1 in the Philippines and more recently the Pacific Adventurer in Australia. Although none required a huge international response they highlight the vulnerability of the region because of its increasing economic activities, especially of developing economies, driving a big demand for imported oil.

Major causes for concern are the thriving biodiversity in the region and environmentally-sensitive areas particularly in the coastal zones where most of the population in these countries live. Fittingly, it hosts several environmental regimes that focus on the protection and preservation of these large marine ecosystems and include oil spills as a focal theme.

The first part of this paper presents broadly the development of MEAs including the concept and creation of international environmental regimes. The next part outlines the global response framework for oil spills to put into context the discussion on the regional cooperation. Lastly, the regional response regimes operating in Asia are discussed using the Regional Seas Programme of UNEP as the main example.

Multilateral Environmental Agreements and Regimes

The rising concern over global environmental protection has given rise to a multitude of multilateral environmental agreements or MEAs[1]. This heightened awareness came to fore during the landmark 1972 United Nations Conference on the Human Environment held in Stockholm and again during the 1992 Rio Conference.

MEAs have proliferated for two reasons. First, major environmental problems cannot be solved or taken care of by a single country or state. Secondly, these problems tend to be transboundary in nature. Thus it would make sense for countries sharing these problems to cooperate with one another through various MEAs that tackle the environmental concerns. In relation to the prevention of oil pollution in the marine

[1] MEAs are defined as "an intergovernmental document intended as legally binding with a primary stated purpose of preventing or managing human impacts on natural resources (*Kanie, 2007*).

environment, the following are some of most relevant MEAs:

- United Nations Convention on the Law of the Sea (UNCLOS, 1982)
- International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC 1990)
- Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (also known as the London Convention, 1972)
- International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78)
- International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (1969)
- International Convention on Civil Liability for Oil Pollution Damage (CLC, 1992)
- International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund Convention 1992)

The above MEAs (and their associated protocols) form the core of a larger social institution known in international relations theory as the regime which is a persistent set of rules, both formal and informal, that prescribes behavior roles, constrains activity and shapes expectations (*Kline and Raustiala, 2000*). Young and Levy (1999) goes on to define an international environmental regime as the "social institutions consisting of agreed upon principles, norms, rules, procedures, and programs that govern the interactions of actors in specific issue areas."

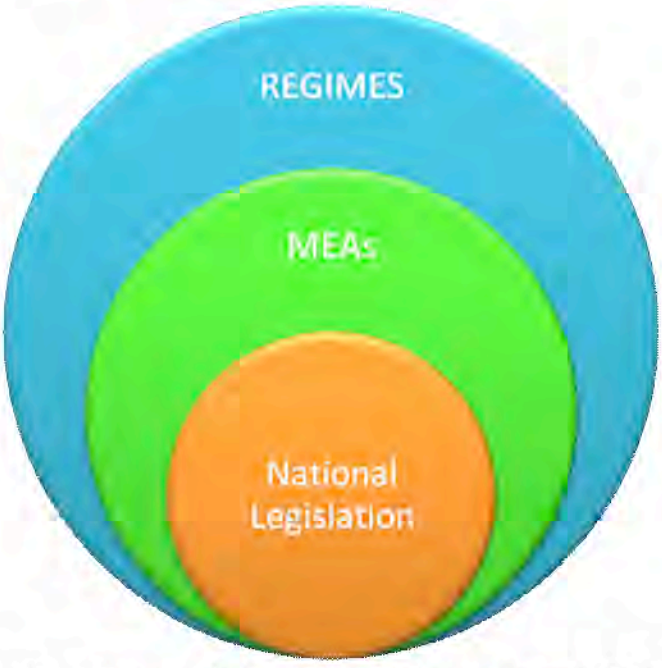

Figure 2. A simplified diagram on the interrelationship between regimes, MEAs and national legislation

The evolution of international environmental regimes is largely tied to framework treaties. And in terms of oil pollution, the milestone convention is the OPRC which outlined the global response framework to oil spills but did not set any for compensation

and liability; this is achieved through the 1992 CLC and Fund Conventions. The OPRC together with MARPOL form the international legal framework aimed at the protection of the marine environment from pollution from ships.

The global regime that established the international legal order for the oceans is the UNCLOS. It was adopted on 12 December 1982 and entered into force on 16 November 1994. In the 12 years that has passed from its adoption to entry into force, some of its provisions of UNCLOS had matured into customary international law and became binding on all states (*UNEP, 2007*).

The Global Response Framework for Oil Spills

The global oil pollution regime has developed through series of actions at various diplomatic conferences and within an international organisation known as IMCO[2] (International Maritime Consultative Organization) established in 1954 during the OILPOL conference (*Mitchell et al, 1999*). To put things in perspective, Figure 3 presents how this regime came about.

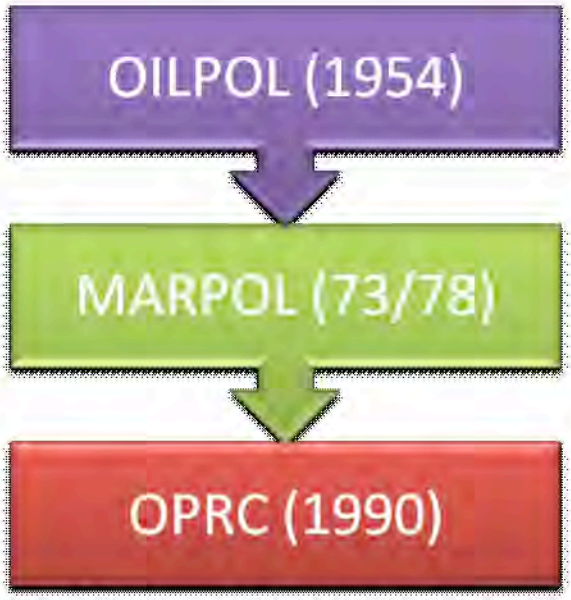

Figure 3. Development of the global oil pollution regime

International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL) was adopted in 1954 and applied to tankers engaged in the transport of oil. The Convention dealt exclusively with intentional oil pollution and achieved only low levels of compliance. Amendments were made to the discharge standards in 1962 and again in 1969. Then in 1973, all discharge standards were incorporated under MARPOL (*Mitchell et al, 1999*).

[2] IMCO was a specialised United Nations (UN) agency mandated to address all international shipping issues, including safety, working conditions, loadlines, and pollution. It was renamed in 1982, but not fundamentally restructured, to what is now known as the IMO or International Maritime Organization (*Mitchell et al, 1999*).

The main limitation of OILPOL is that it dealt strictly with oil and excluded other pollution sources or contaminants from ships that might be discharged during sea transportation activities. It also did not address several other issues concerning marine pollution such as measure to avoid tanker accidents, safety at sea, compensation, vessel design and construction, crew standards and marine rescue systems all of which have an influence on marine pollution (*IMO, 2007*).

The increased need to regulate more aspects of marine pollution with comprehensive measures led to the development of MARPOL, which superseded OILPOL when it entered into force in 1983. The main regulatory measures of MARPOL are contained in its six Annexes[3] that deal with all types of marine pollution excluding dumping: (I) oil, (II) noxious liquid substances in bulk, (III) harmful substances carried in packaged form, (IV) sewage, (V) garbage, and (VI) air pollution.

The increasing vessel traffic and size of vessel (i.e. oil tankers) lead to a corresponding increase on the threat of a large oil pollution incident threatening the marine environment. Subsequent work by IMO on vessel accidents and emergencies led to the International Convention on Oil Pollution Preparedness, Response and Co-operation more commonly known as OPRC. It is the MEA considered as the global response framework for oil spill response.

Regional Seas Programme

The Regional Seas (RS) Programme was initiated in 1974 by UNEP (United Nations Environment Programme), after the landmark 1972 United Nations Conference on the Human Environment in Stockholm, with the basic aim of protecting the coastal and marine environment through the use of Action Plans although some, like the Pacific Region, negotiated the Noumea Convention[4] among the 26 member states.

Figure 4. Coastal areas are especially vulnerable to the impacts of a large oil spill

For many years before the adoption of the OPRC Convention, the IMO and UNEP together with other organisations have actively campaigned and cooperated in the development of regional arrangements for combating marine pollution including oil (*IMO, 2002*). At present, 140 countries are participating in 13 Regional Seas Programmes worldwide. There are 4 Regional Seas Programmes in the Asia Pacific Region. These are shown in Table 1.

[3] Annexes I and II are an integral part of MARPOL 73/78: all States Parties to MARPOL 73/78 are also parties to Annexes I and II. Annexes III, IV, V and VI are optional Annexes. At the moment of accepting the Convention, States can declare that they do not accept any number of these Annexes (IMO).

[4] The Convention was adopted on 22 November 1986 and entered into force on 22 August 1990.

Table 1. Regional Seas Programmes in Asia Pacific

REGIONAL SEAS	GOVERNING INSTRUMENT/S	MEMBERS
South Asian Seas	South Asian Seas Action Plan (SASAP) No Convention as of yet. The Law of the Sea is considered as the umbrella convention.	Bangladesh India Maldives Pakistan Sri Lanka
East Asian Seas	Action Plan for the Protection and Development of the Marine and Coastal Areas of the East Asian Region There is currently no convention for this region.	Australia Cambodia China Indonesia Korea, Republic of Malaysia Philippines Singapore Thailand Vietnam
Pacific	Convention for the Protection of Natural Resources and Environment of the South Pacific Region (Noumea Convention) Action Plan for Managing the Environment of the Pacific islands Region: 2001-2004 Protocol for the Prevention of Pollution of the South Pacific Region by Dumping Protocol Concerning Co-operation in Combating Pollution Emergencies in the South Pacific Region	Australia Cook Islands Fiji France Kiribati Marshall Islands, Republic of Micronesia, Federal States of (US) Nauru New Zealand Niue Palau Papua New Guinea Solomon Islands Tonga Tuvalu United States of America Vanuatu Samoa American Samoa Northern Mariana Islands French Polynesia Guam New Caledonia Tokelau Wallis and Futuna
Northwest Pacific	Action Plan for the Protection, Management and Development of the Marine and Coastal Environment of the North-West Pacific Region There is currently no convention for this region.	People's Republic of China Republic of Korea Japan Russian Federation

These programs follow or are strongly influenced by the UNEP RS template which started with the Barcelona Convention in 1976. The common origin and the overwhelming influence of UNEP create an informal uniformity in the process and structure of these programs (*Lejano, 2006*). Figure 5 depicts the archetype UN RS model template.

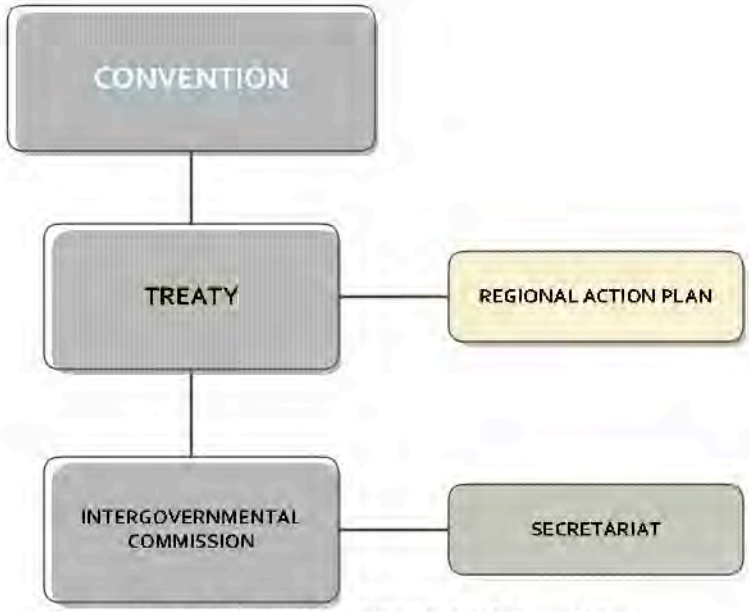

Figure 5. Typical UNEP RS Model (*Lejano, 2006*)

Enabling Regional Cooperation in Marine Pollution

The problem of marine pollution is a complex one. It involves many stakeholders and transcends national boundaries. That's why global, and certainly regional, cooperation for the prevention of marine pollution is tackled under the conventions that form the international regime for marine environmental protection.

Part XII of UNCLOS is entirely dedicated to the protection of the marine environment. Section 2, Article 197 set out the general provisions on global and regional cooperation. Articles 6 (Section 2), 7 and 10 promotes international and regional cooperation through the use of bilateral or multilateral agreements. And while these are binding and set the framework, the statements are broad and contain little or no specific details on how to achieve these.

East Asian Seas Programme

We take the example of the East Asian Seas to illustrate the essential elements that need to be present and processes that need to take place in order to facilitate regional cooperation. One of the most important is integration. There are two types of integration here; functional integration and operational integration.

Functional[5] integration has two elements – vertical and horizontal integration. Vertical integration refers to the integration of a RS program with that of the mother program – the UNEP RS Programme. This is achieved through the creation of formal institutions that carry out the actions to meet the objectives of the program. This is usually the function of the secretariat, the Regional Coordinating Unit (RCU) or the coordinating

[5] Functional in this sense relates to the neo-functionalism theory in international relations by Ernst Haas.

body established by the participating states. Figure 6 presents this clearly.

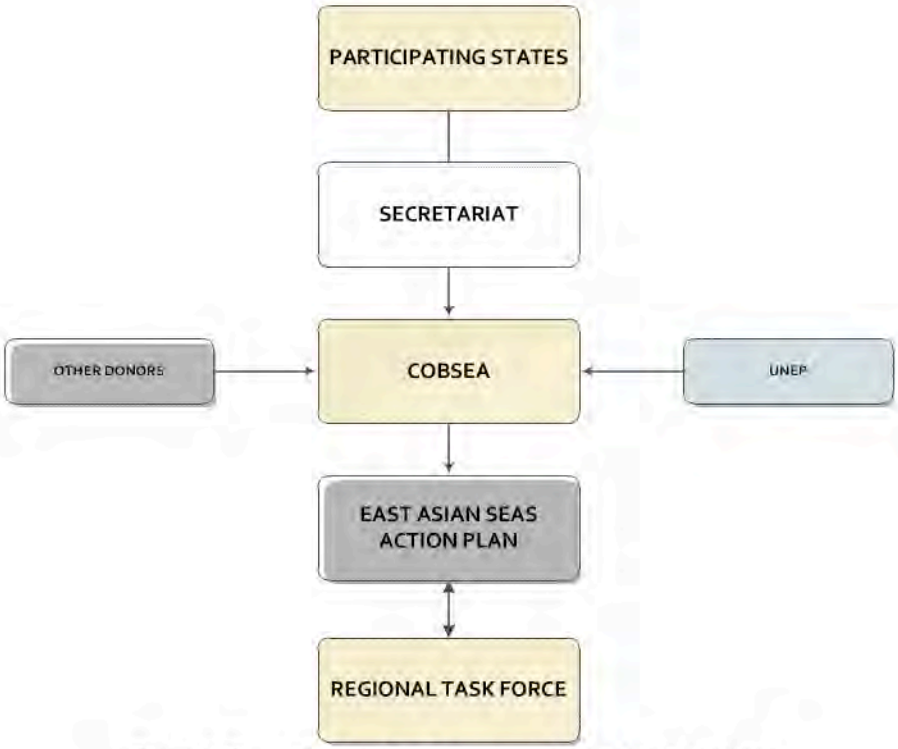

Figure 6. East Asian Seas RS Programme institutional structure

Functional horizontal integration is how the EAS RS Programme relates to the other RS programs in the Asia Pacific Region (Figure 7). Although in theory the UNEP could facilitate this via a subregional agreement[6] or 'soft law'[7] it is more challenging in practice because of two fundamental reasons: consensus and sovereignty (although the two are related).

Consensus is essential in international decision-making because of the sovereignty[8] of states. Before any of these agreements are put in place, MEAs are carefully negotiated through a diplomatic process that can last for many years. One of the main causes for the slow progress of these political negotiations is the fact that there is necessity to gain consensus among all the participating states.

[6] The problem with this approach is that it can lead to "treaty congestion" a condition in which the overwhelming number of agreements (environment or otherwise) create inefficiencies with overlapping provisions inconsistencies in obligations, gaps in coverage and duplication of goals and responsibilities (*Kelly, 1997*).

[7] Soft law refers to quasi-legal instruments in international law that lacks the legal binding force as that of conventions and their associated protocols.

[8] It can be argued that the concept of sovereignty is a manifestation of the concept of private property in capitalistic societies and that this is of the main causes of the ineffectiveness of MEAs (See *Kelly 1997*).

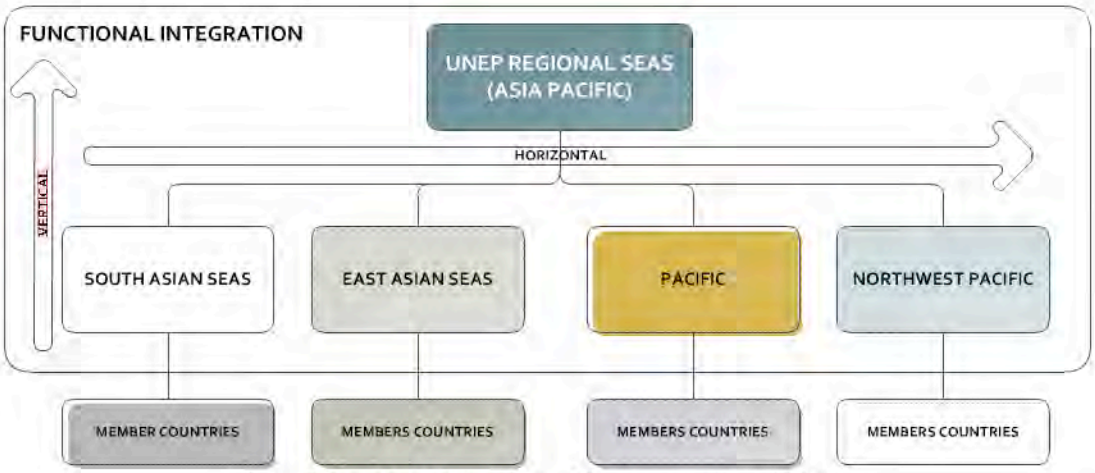

Figure 7. Functional integration of RS programs in Asia Pacific

Consensus then becomes a double-edged sword; on one hand it allows every party to an agreement to have their say but at the same time may dilute the terms and conditions because oftentimes these negotiated instruments reflect a 'lowest common denominator' in which the state or states that seek to do the least influence the accord disproportionately (*Kline and Raustiala, 2000*). As a result, the commitments contained in the agreements are sometimes minimal or worded in broad terms. Whether these commitments become binding or not is another story.

The *IMO/UNEP Forum on regional arrangements for cooperation in combating marine pollution (2002)* concluded that while most of the regions share the view that legally binding agreements are needed some countries are not yet ready to adopt legally binding agreements and prefer to have instead more flexible arrangements (i.e. soft law) as the absence of a legally-binding agreements is not an impediment to successful cooperation. A good example is Cambodia, Thailand and Vietnam[9].

There are some elements of a functional horizontal integration across the RS programs but completely lacking on details on procedures like notification, focal points, customs clearance and the like. Section 4.6 (Request for assistance from outside the Region) of NOWPAP's regional OSCP writes a single line on this:

> *"4.6.1 This Plan does not hinder requesting assistance from outside the Region or from the private sectors."*

SACEP's regional OSCP does a better job but, still, details are incomplete and not

[9] On 12 June 2006, Cambodia, Thailand and Vietnam signed a Joint Statement to protect the coastal waters and environment of the Gulf of Thailand from oil spills. More importantly, the Joint Statement endorsed the tripartite intergovernmental "Framework Programme for Joint Oil Spill Preparedness and Response in the Gulf of Thailand. The partnership's mission is to enhance national and regional capabilities on oil pollution prevention, preparedness and response through a Gulf-wide exchange of information, joint research and development projects, training, oil spill response exercises, and mutual assistance in response, collaborative arrangements, partnership building and implementation (*Guevarra, 2007*).

updated. One good thing is that both documents use the same template thus there is harmony in the way the plans are presented. The odd thing is that these provisions only look into member states requesting outside assistance but not non-member states requesting for assistance within the region.

Operational integration, on the other hand, deals with the individual country level and takes into account the legislative and legal measures put in place to implement commitments under the RS program. This includes the major operational elements like the National Oil Spill Contingency Plans (NOSCPs), the national focal points and any special arrangements (i.e. customs clearance, etc.) that will facilitate regional cooperation in oil spill response.

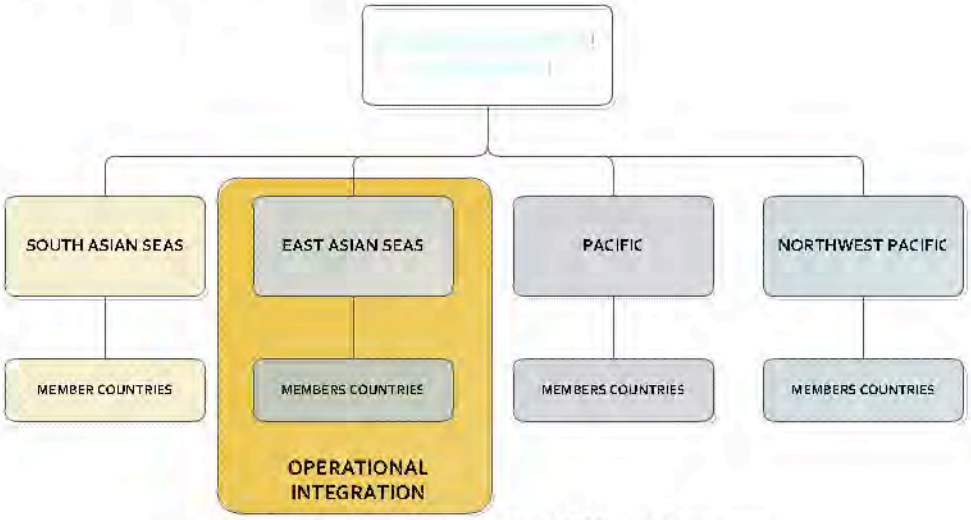

Figure 8. Operational integration of EAS RS Programme

Moving Forward

Joyner (2005) cites two rationales that are notable for managing the international environment:

> *"First, some goals may be better attained if sought broadly through cooperation among several governments. Second, the purposeful coordination of intergovernmental activities can be facilitated through obligatory normative institutions. Regimes can be viewed as social creatures that generate normative guidelines for their member governments. That is to say, international regimes represent efforts to make more predictable and controllable the activities of states and their nationals in affecting areas of the global commons."*

The political, social and economic context of regional cooperation is important and good environmental governance comes about through the complex synergies and interrelationships between actors (member states), institutions and structures. The UNEP RS Programme offers good opportunities for countries in Asia Pacific to

cooperate and assist each other on a regional level. But before this, certain hurdles – institutional, political and financial – need to be overcome. The existence of the global response regimes for oil spills provide the best framework to work on these barriers to cooperation.

The regional and multilateral institutions particularly UNEP and IMO need to ask the following:

- Which particular region or country is a high priority for strengthening regional governance systems for oil spill response (e.g. where existing structures are likely to be effective)?
- Should strengthening focus on notification, request for assistance, provision of assistance, all of these, or only a subset of issues?
- Which measures would strengthen regional governance structures?
- Which measure would most likely be of interest to regional governance structures?
- How are the designs of the institutional structures of the various regional regimes organised?

Once these are answered then there will be a much clearer picture on how to approach the matter.

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