Multiple Risks and Limited Law: Compensation for Oil Spills in the Context of Long-Term Damages to Arctic Coastal Communities

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Introduction

The view from land of the shipping industry is often not based on facts, but rather on an overly romantic idea of life at sea. In the shipping industry on the other hand, we often tend to see the land only from a distance, but literally and in a manner of speaking. There is a sense of mutual blindness here. Maybe blindness is too strong a word, but we certainly see each other through different lenses. This article seeks to shed light on the rules for the maritime sector from the perspective of coastal communities. This is a particular concern in the Arctic, but this topic will also be of interest for non-indigenous coastal communities. This research is focused on the international legal situation as it applies to the European part of the Arctic Ocean due to the different legal situation in, for example, the United States.

Many readers will associate oil spills with pictures provided by the media, such as those of oil-covered sea birds in the wake of the Exxon Valdez oil spill in 1989. But such pictures, while important to draw attention to the issue at hand, are also dangerous because they can only represent one place and one moment, while the effects of oil spills are long-term in nature and the implications go far beyond such a snapshot. This is particularly true in the Arctic context, where far less photo-oxidation occurs than in the Gulf of Mexico, for example.

The Arctic Ocean is a highly fragile natural area that for some time now has become the object of intense economic interest.¹ Transforming this interest

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into economic benefits introduces risks to this ecosystem. The focus of this text is not prevention, but the question of what comes after an oil spill has happened. We will look at oil spills caused by oil tankers, bunker fuel and other oils, but also at drilling in the Arctic and the phenomenon of transporting some types of oils, such as hydraulic oil, in containers that needs more attention from a legal perspective. The question that will always be asked is, how can coastal communities be compensated in case of damage? Given the amount of potential damage, the compensation due will often exceed the capabilities and assets of the actors in question, which is why international law uses obligatory insurance schemes to ensure minimum levels of financial protection.

After looking at different sources of oil pollution damage and different current and future compensation schemes, the article will end with a look at Greenpeace’s Arctic Sanctuary concept and a recently made proposal concerning high seas fisheries. It will be argued that seemingly radical measures are not necessarily unrealistic from the perspective of international law, provided that all potential tools are considered and used.

Oil Tankers

**International Law**

The starting point for this discussion is damage caused by oil tankers. The International Convention on Civil Liability for Oil Pollution Damage 1969 was the first international instrument negotiated with the objective of providing compensation to the victims of oil spills. Subsequent developments to the legal regime governing compensation led to the eventual adoption of the

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