



Arctic shipping and liability for harm to natural resources

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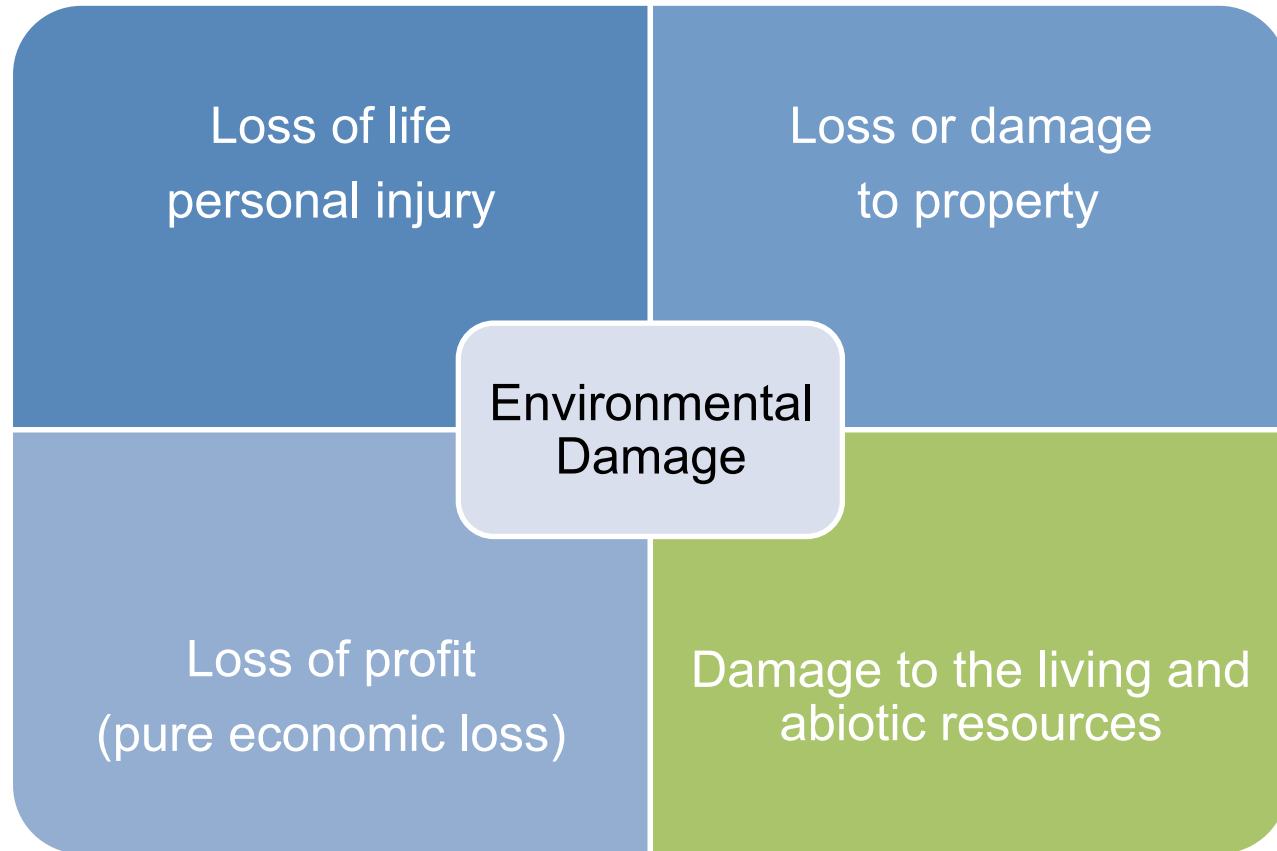
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Environmental Damage





Damage to the environment *per se*

Damage **to** the environment as such
&
Damage **through** the environment





Damage to the environment *per se*

Pure ecological damage
Harm to natural resources
(natural resources without commercial value)

*This is damage caused by the hazardous activity
to the environment itself with or without
simultaneously causing damage to persons or
property*

ILC Draft principles on the allocation of loss...



Regimes (the Arctic)

International

- UNCLOS
- CLC
- Bunkers

EU / EEA

- Environmental Liability Directive (2004/35)

National

- national legislation:
US: OPA 1990, etc.



International law & the Arctic

1. General framework
 - 1982 United Nations Convention on the Law of the Sea (UNCLOS)
2. Maritime safety
 - SOLAS, ...
3. Maritime labour law
 - ILO Conventions, ...
4. Marine environmental rules and standards
 - MARPOL, ...
5. Private maritime law
- 6. Liability and Compensation**
 - CLC, FUND, LLMC, Bunkers, ...
7. Other
 - Insurance, Salvage, etc.



Liability & compensation

1. Fragmented

- 1992 Civil Liability Convention (**1992 CLC**)
- 1992 Fund Convention (**FUND**)
- International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (**1996 HNS Convention**)
- 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage

2. Limited

- oil pollution liability and compensation
- bunker fuel spill liability
- hazardous and noxious substance spills from ships
- compensation of environmental damage limited only to restoration costs



1992 CLC

Pollution damage means:

- (a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship (...), provided that **compensation for impairment of the environment other than losses of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken;**
- (b) the costs of preventing measures and further loss or damage caused by preventive measures



IOPC Fund Claims Manual

Claims for the costs of measures of reinstatement of the environment will qualify for compensation **only** if the following criteria are fulfilled:

- The measures should be likely to accelerate significantly the **natural** process of recovery.
- The costs of the measures **should not be out of proportion** to the extent and duration of the damage and the benefits likely to be achieved.

Compensation is not paid in respect of claims for environmental damage based on **abstract qualification calculated in accordance with theoretical models**.



Compensation?

Uncertainty over the extent of damage, lack of market value, problems with damage assessment, should not be a reason for excluding compensation.



CLC 1992 shortcomings

1. is not focused on damage to the environment as such, but rather on economic losses and property damage
2. does not satisfy the polluter-pays principle
3. imbalances regarding liability of various entities
4. no full reparation
5. no alternatives to restoration costs (e.g. equivalent resources)
6. does not provide adequate / sufficient compensation for environmental damage
7. the greater the damage, the less reasonable would be restoration



Arctic challenges

1. All measures in the Arctic could not meet the criterion of reasonability.
2. Unstable political situation
3. Unresolved maritime boundary issues
4. „One damage”, but several legal regimes.
5. Different legal culture and tradition (US – Canada – EU – Russia)
6. Arctic Ocean is the least sampled ocean
7. Lack of legislation pertaining to high seas
8. Fragmentation of regimes



Conclusions

1. The current legislation is not focused on damage to the environment as such.
2. The legislation framework is inadequate and unsatisfactory to sufficiently address the harm to natural resources
3. The shortcomings of the system are further emphasized by the governance challenges in the Arctic
4. The greater the damage, the more probable it is that the reinstatement costs would not be „reasonable”, and, therefore, there would be no compensation.
5. It is worth considering a separate regime for the Arctic which could then be starting point for developing the contemporary international environmental liability regime.



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Thank you!

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