

Coastal State Jurisdiction over Vessel-Source Pollution

by

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Kluwer Law International
THE HAGUE / BOSTON / LONDON

Library of Congress Cataloging-in-Publication Data

ISBN 90-411-1127-1

Published by Kluwer Law International,
P.O. Box 85889, 2508 CN The Hague, The Netherlands.

Sold and distributed in North, Central and South America
by Kluwer Law International,
675 Massachusetts Avenue, Cambridge, MA 02139, U.S.A.

In all other countries, sold and distributed
by Kluwer Law International, Distribution Centre,
P.O. Box 322, 3300 AH Dordrecht, The Netherlands.

Printed on acid-free paper

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Printed and bound by Antony Rowe Ltd, Eastbourne

Preface

Being born in the Netherlands, it is almost impossible not to be fascinated by the seas and oceans. My work as a civil engineer in places like Istanbul and the Sea of Marmara, Guadeloupe, Le Havre and in Ismalia along the Suez Canal, certainly reinforced that fascination. It is therefore not surprising that when, after completing my Masters in Netherlands Law with the specialization International Law at Utrecht University, I was given the opportunity to do PhD research at the Netherlands Institute for the Law of the Sea (NILOS), I grabbed it with both hands. To prefer this above a possibility to pursue a career in the Netherlands diplomatic service, is certainly something which took several people by surprise. I never regretted my decision and still enjoy the fruits of the four years that I worked on this PhD.

My research has from the very beginning been closely connected with the work of the International Law Association's Committee on Coastal State Jurisdiction Relating to Marine Pollution, to which Professor Kari Hakapää is currently the Chairman and Professor Erik Franckx the Rapporteur. I was very fortunate to have access to the information which the (alternate-) Members of the Committee gathered by way of Questionnaires. I also gained a lot of experience by acting as Secretary at meetings, a task formalized by my appointment as Assistant Rapporteur in 1997. Due to unexpected circumstances I was responsible for drafting the Second Report of the Committee, in cooperation with the Chairman. In addition to Professor Hakapää and Professor Franckx, I wish to thank those Committee Members that have been particularly helpful in providing information: David Anderson, Kaare Bangert, Daniel Bodanksy, Patrick Daillier, David Freestone, Maria-Teresa Infante, Rainer Lagoni, Said Mahmoudi, Ted McDorman, Dolliver Nelson, John Noyes, Donald Rothwell, George Sarpong, Tullio Scovazzi, Anastasia Strati, Michael White and Hui Yu.

My research also owes a great deal to people that were so kind to provide information on state practice, answer questions or to comment on drafts of the manuscript. Although some have certainly made a more substantial contribution than others, I will here list them in alphabetical order: Craig Allen, Winston Anderson, Jonathan Benner, Alan Boyle, Anne-Christine Brusendorff, Ige Dekker, Michèle Foré (IMO), Magnus Göransson, Moritaka Hayashi, Grant Hewison, Vladimir Jares (DOALOS), Günther Handl, Kees Hellingman, Ellen Hey, André de Hoogh, Henk Huibers, Lee Kimball, Brian McGrath, Angelo Meriardi, André

Nollkaemper, Rob Polle, Jan Rinzema, Ashley Roach, Bill Thomas, Tullio Treves and Alexander Yankov.

Particularly stimulating was the more permanent exchange of thoughts that I had with a few friends: Kari Hakapää, Max Herriman, Glen Plant, Henrik Ringbom and Mario Valenzuela-Lafourcade. Email proved to be a particularly effective medium for this intellectual discourse.

My special thanks go out to my two supervisors, Professor Alfred Soons and Professor Barbara Kwiatkowska, who shared their abundant insight and experience in the Law of the Sea with me. I am also grateful to my other colleagues at NILOS for the pleasant and stimulating environment in which I was so fortunate to work, in particular Alex Oude Elferink who also made huge efforts in reading, providing comments and discussing my manuscript.

Thanks are also due to the members of my Reading Commission, Dr Harry Post and Professors Erik Franckx, Kari Hakapää, Albert Koers and Fried Van Hoof.

I am also indebted to the staff of the G.J. Wiarda Institute of Utrecht University, in particular Marlon Steine en Carla Groenestein, who polished my English and made the manuscript camera ready.

Finally, I would like to emphasize here the fundamental role played by Margriet, my family and my other close friends. Completing a PhD without having them around would have been impossible.

Erik Jaap Molenaar
Utrecht, August 1998

Abbreviations

ACOPS	Advisory Committee on Oil Pollution of the Sea
ACSIL	Annals of the Chinese Society of International Law
AdV	Archiv des Völkerrechts
AFDI	Annuaire Français de Droit International
AJIL	American Journal of International Law
ASL	archipelagic sea lane
ASMAs	Antarctic Specially Managed Areas
ASPAs	Antarctic Specially Protected Areas
ATCPs	Antarctic Treaty Contracting Parties
AYIL	Australian Yearbook of International Law
Basel Decl. upon Acc.	Declaration upon Accession to the 1989 Basel Convention, <i>UN Treaty Database</i>
Basel Decl. upon Sign.	Declaration upon Signature of the 1989 Basel Convention, <i>UN Treaty Database</i>
BCICLR	Boston College International & Comparative Law Review
BYIL	British Yearbook of International Law
CDEM	construction, design, equipment and manning
C.F.R.	Codes of Federal Regulations of the United States
CILJ	Cornell International Law Journal
CJTL	Columbia Journal of Transnational Law
CLJ	Cambridge Law Journal
CLP	Current Legal Problems
CMI	Comité Maritime Internationale
Cmnd.	Command Paper of the Government of the United Kingdom
cofr	certificate of financial responsibility
COW	crude oil washing
C.S.C.	Consolidated Statutes of Canada
C.R.C.	Consolidated Regulations of Canada
CTS	Consolidated Treaty Series
CYIL	Canadian Yearbook of International Law
DOALOS	UN Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs
DOALOS Homepage	Homepage of DOALOS on Internet at: http://www.un.org/Depts/los
EELR	European Environmental Law Review
EEZ	Exclusive Economic Zone

EFZ	Exclusive Fishery Zone
ELR	Environmental Law Reporter
ELQ	Ecology Law Quarterly
EPL	Environmental Policy and Law
FoEI	Friends of the Earth International
F.R.	Federal Register of the United States
FSA	formal safety assessment
FSI	IMO's Sub-Committee on Flag State Implementation
GAIRAS	generally accepted international rules and standards
GATT	General Agreement on Tariffs and Trade
GESAMP	UN Joint Group of Experts on the Scientific Aspects of Marine Pollution
GIELR	Georgetown International Environmental Law Review
GJCL	Georgia Journal of International and Comparative Law
GMDSS	Global Maritime Distress and Safety System
GYIL	German Yearbook of International Law
HELCOM	Homepage of the Helsinki Commission on Internet at: <i>http://www.helcom.fi</i>
HILJ	Harvard International Law Journal
HSSC	Harmonized System of Survey and Certification
IACS	International Association of Classification Societies
ICAO	International Civil Aviation Organization
ICJ	UN International Court of Justice
ICJ Reports	Reports of Judgments, Advisory Opinions and Orders of the International Court of Justice
ICLQ	International and Comparative Law Quarterly
ICS	International Chamber of Shipping
IIL	Institute of International Law
IJECL	International Journal of Estuarine and Coastal Law
IJIL	Indian Journal of International Law
IJMCL	International Journal of Marine and Coastal Law
ILA	International Law Association
ILC	UN International Law Commission
ILJS	International Law Journal of Syracuse
ILM	International Legal Materials
ILO	International Labour Organization
ILO Homepage	Homepage of the ILO on Internet at: <i>http://www.ilo.org</i>
ILR	International Law Reports
IMCO	UN Intergovernmental Maritime Consultative Organization (presently IMO)
IMO	UN International Maritime Organization
IMO Homepage	Homepage of the IMO on Internet at: <i>http://www.imo.org</i>
INTERTANKO	Independent Tanker Owners Association
INSROP	International Northern Sea Route Programme
ISNT	Informal Single Negotiating Text
ITLOS	International Tribunal for the Law of the Sea

IUCN	International Union for Conservation of Nature and Natural Resources
JAIL	Japanese Annual of International Law
JMLC	Journal of Maritime Law and Commerce
LCP	Law and Contemporary Problems
LEG	IMO's Legal Committee
LNTS	League of Nations Treaty Series
LOSC Decl. upon Acc.	Declaration made upon Accession to the LOSC, <i>UN Treaty Database; DOALOS Homepage</i>
LOSC Decl. upon Sign.	Declaration made upon Signature of the LOSC, <i>UN Treaty Database; DOALOS Homepage</i>
LOSC Decl. upon Succ.	Declaration made upon Succession to the LOSC, <i>UN Treaty Database; DOALOS Homepage</i>
LOSC Decl. upon Ratif.	Declaration made upon Ratification of the LOSC, <i>UN Treaty Database; DOALOS Homepage</i>
LOT	load on top
MEHRA	Marine Environmentally High Risk Areas
MEPC	IMO's Marine Environment Protection Committee
MOU	Memorandum of Understanding on Port State Control
MPB	Marine Pollution Bulletin
MPolicy	Marine Policy
MSC	IMO's Maritime Safety Committee
NAV	IMO's Sub-Committee on Safety of Navigation
NGOs	Non-Governmental Organizations
nm	nautical mile (1,852 metres)
NMFT-clause	no-more-favorable-treatment clause
NoTIR	Nordisk Tidsskrift for International Ret
NOx	nitrogen oxides
NSM	North Sea Monitor
NYIL	Netherlands Yearbook of International Law
NYUJILP	New York University Journal of International Law and Politics
OCIMF	Oil Companies International Marine Forum
OCM	Ocean & Coastal Management
ODIL	Ocean Development and International Law
OECD	Organization of Economic Co-operation and Development
OHLJ	Osgoode Hall Law Journal
OJ	Official Journal of the European Community
P.C.	Canadian Privy Council
PCIJ	Permanent Court of International Justice
PSSAs	Particularly Sensitive Sea Areas
RCADI	Recueil des Cours de l'Académie de Droit International
RGDIP	Revue Générale de Droit International Public
RIAA	UN Reports of International Arbitral Awards
RSNT	Revised Single Negotiating Text
SBTs	segregated ballast tanks
SDLR	San Diego Law Review

SOx	sulphur oxides
SPAs	Specially Protected Areas
SPAMIs	Specially Protected Areas of Mediterranean Importance
SRS	ship reporting system
TC	IMO's Technical Co-operation Committee
TIAS	United States Treaty and Other International Acts Series
TSS	traffic separation scheme
TSPP	International Conference on Tanker Safety and Pollution
Conference	Prevention, 1978
UKTS	United Kingdom Treaty Series
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNCLOS I	First United Nations Conference on the Law of the Sea, 1958
UNCLOS II	Second United Nations Conference on the Law of the Sea, 1960
UNCLOS III	Third United Nations Conference on the Law of the Sea, 1973-1982
UNCTAD	United Nations Conference on Trade and Development
UNEP	United Nations Environment Programme
UNGA	United Nations General Assembly
UNLS	United Nations Legislative Series
UN Treaty Database	United Nations Treaty Database on Internet at: <i>http://www.un.org/Depts/Treaty</i>
UNTS	United Nations Treaty Series
U.S.C.	United States Codes
UST	United States Treaties and Other International Agreements
UTLR	University of Tasmania Law Review
VJIL	Virginia Journal of International Law
VOCs	volatile organic compounds
VTs	vessels traffic service
WLR	Washington Law Review
WTO	World Trade Organization
WWF	World Wide Fund for Nature
YIEL	Yearbook of International Environmental Law
YJIL	Yale Journal of International Law
ZaöRV	Zeitschrift für ausländisches öffentliches Recht und Völkerrecht

Introduction

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