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PREVENTING DISASTER AS THE ARCTIC SEAS OPEN FOR BUSINESS

by Michael W. Lore*

Vessels navigate freely in the port of Helsinki, Finland this winter as the usually busy icebreakers standby idle.¹ The retreating ice is creating the once-fabled Northwest Passage, allowing goods to travel between Western Europe and Eastern Asia with a 4,000-mile shortcut through the Canadian Arctic.² The Russian Northeast Passage is also becoming more accessible, creating a huge potential for increased shipping and fishing traffic throughout the entire Arctic region. As traffic increases, countries with jurisdiction over the Arctic should consider international agreements to protect against catastrophic oil or chemical spills in the region's fragile ecosystems.

A looming environmental concern is that to save time and fuel, irresponsible or inexperienced crews on vessels of unregulated countries could crash single hulled containers in the shallow Arctic waters and spill oil or hazardous chemicals into the fragile sea and land ecosystems. A huge oil or chemical spill, under existing circumstances, would be difficult to prevent and practically impossible to clean up. Moreover, Arctic wildlife consists of a few varieties of species that are found nowhere else on Earth.³ These species mainly breed in clustered groupings, which expose them to extremely high risks from potential oil or hazardous chemical spills.⁴

In anticipation of the melting ice, Russia has staked its claim to a huge area of the Arctic for oil and gas exploration,⁵ and Canada has asserted sovereignty over the Northwest Passage.⁶ However, the Arctic environment requires more protection than any individual state or existing international legal arrangements provide.⁷ Russia does not possess the capacity to clean up oil spills in temperate areas,⁸ let alone in the more difficult conditions that exist for oil clean-ups in the frigid Arctic waters.⁹ Canada is constructing three new ships to monitor the Arctic and has plans to lay a cable to detect passing vessels this summer, but these resources may not be adequate to monitor all vessels and will not greatly help in alleviating shipping accidents.¹⁰ Maps of the shallow Arctic seafloor are improving but they are far from adequate.¹¹ Furthermore, there are no international environmental agreements to set standards to safeguard against the rising threat of hazardous shipping disasters in the Arctic.

Unlike Antarctica, which the UN declared non-commercial international territory with an enforceable protocol, the Arctic does not have an international protected status.¹² The United

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Polar bear tracks found near the Kapitan Dranitsyn.

States has been actively pushing the international community to consider the Canadian Arctic waters an ‘international strait,’ permitting international commerce to pass through the Canadian waters freely under international law, while Canada argues that the environmental protection of the Arctic is better in their hands.¹³ International law defines an international strait with geographical and functional qualifications. The geographical standard is not so much in dispute as the functional qualification, which would require international travel between the Canadian straits.¹⁴ However, Canada does not currently have the resources to patrol the waters adequately to deter international usage.¹⁵ Therefore, Canada may lose sovereignty over the waters as usage increases with the melting ice and there are insufficient enforceable international standards to protect the Arctic waters.

The Ministers of Arctic countries in 1993 signed a ‘non-binding’ declaration in Nuuk, Greenland to address the “special role and responsibilities of the Arctic Countries with respect to the protection of the Arctic environment.”¹⁶ In the draft declaration, the United States emphasized the “Arctic uniqueness” in the effort to protect “the integrity of the aquatic, terrestrial, atmospheric and ice environments of the Arctic and their interdependent ecosystems as whole to the region itself and to the global environmental processes.”¹⁷ Swedish officials proposed an Arctic Sustainable Development Strategy and noted that the future of the Arctic environment requires that environmental pressures and emergencies be prevented rather than reacted to.¹⁸ This proposal was not adopted, however, and the actual Declaration on the Establishment of the Arctic Council dropped its connection with the environment and stated that the declaration

only “is directed to the unique aspects of the Arctic and the special relationship and contribution of indigenous people and their communities.”¹⁹ In order to prevent the foreseeable environmental pressures and emergencies stemming from the increasing traffic in the Arctic, Arctic countries should formulate binding multilateral environmental agreements.

The eminent increased human activity in the Arctic should spur Arctic countries to collectively create and monitor enforceable environmental regulations to mitigate the impending environmental pressures on the Arctic. Prevention of ecological disaster in the Arctic must be actively pursued. A reactionary response to an oil or chemical spill in the Arctic will amount to a frantic endeavor that will teach us how careless we must have been to allow the accident to occur in the first place. Failing to prevent this foreseeable environmental disaster would be international negligence.



Endnotes:

- ¹ Jesper Hansen, *No Ice in Southern Finland*, Arctic Council, Feb. 21, 2008, available at http://arctic-council.org/article/2008/2/no_ice_in_the_southern_finland (last visited Feb. 22, 2008).
- ² Erica Westly, *Arctic Land Grabs Could Cause Eco-Disaster*, DISCOVER, Aug. 30, 2007, available at <http://discovermagazine.com/2007/aug/arctic-land-grabs-could-cause-eco-disaster> (last visited Feb. 22, 2008).
- ³ DAVOR VIDAS, *PROTECTING THE POLAR MARINE ENVIRONMENT* 11 (Cambridge Univ. Press 2000).
- ⁴ VIDAS, *id.*
- ⁵ Westly, *supra* note 2.
- ⁶ Westly, *supra* note 2.
- ⁷ MONICA TENNBERG, *ARCTIC ENVIRONMENTAL COOPERATION* 6 (Ashgate Publishing Co. 2000).
- ⁸ RICK STEINER SPEAKS WITH JOHN YDSTIE, *Russia Not Prepared to Clean Oil Spill*, NPR, Nov. 20, 2007, available at <http://www.npr.org/templates/story/story.php?storyId=16452566> (last visited Feb. 22, 2008).
- ⁹ Oil Spills, Air & Waste Management Association, May 1, 2000, available at http://www.awma.org/enviro_edu/fact_sheets/oil_spills1.html (last visited Feb. 22, 2008).
- ¹⁰ CBS News, *Canada to monitor water traffic in Northwest Passage* (Sept. 24, 2007), available at <http://www.cbc.ca/canada/story/2007/09/24/technology-passage.html> (last visited Mar. 1, 2008) [hereinafter *Canada to monitor Northwest Passage*].
- ¹¹ Jesper Hansen, *Mapping creates new scientific results*, Arctic Council, Feb. 18, 2008, available at http://arctic-council.org/article/2008/2/mapping_creates_new_scientific_results (last visited Feb. 22, 2008).
- ¹² Protocol on Environmental Protection to the Antarctic Treaty, Oct. 4, 1991, 30 I.L.M. 1455 (entered into force Jan. 14, 1998).
- ¹³ Doug Struck, *Dispute Over NW Passage Revived*, Nov. 6, 2006, A18, WASH. POST, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/11/05/AR2006110500286.html> (last visited Mar. 1, 2008).
- ¹⁴ United Nations Convention on the Law of the Sea, art. 38, Dec. 10, 1982, 1833 U.N.T.S. 397.
- ¹⁵ *Canada to monitor Northwest Passage*, *supra* note 10.
- ¹⁶ Nuuk Declaration, 1993, available at <http://arcticcircle.uconn.edu/NatResources/Policy/nuuk.html> (last visited Feb. 22, 2008).
- ¹⁷ TENNBERG, *supra* note 7, at 95.
- ¹⁸ TENNBERG, *supra* note 7, at 85.
- ¹⁹ Arctic Council, Declaration on the Establishment of the Arctic Council, Sept. 19, 1996, available at <http://www.arcticcouncil.org/filearchive/Declaration%20on%20the%20Establishment%20of%20the%20Arctic%20Council.pdf> (last visited Apr. 18, 2008).