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# *Marine pollution preparedness, response and cooperation*

- *Professor Erik Røsæg*
- *Scandinavian Institute of  
Maritime Law, Oslo*
- *[erik.rosag@jus.uio.no](mailto:erik.rosag@jus.uio.no)*
- *[folk.uio.no/erikro](http://folk.uio.no/erikro)*

# *Different types of pollution legislation*



***Prevention and safety***

***Preparedness and response***  
***-pollution, drifting objects, wrecks***  
***Liability***

# *Principal instruments*

- *OPRC: International Convention on oil pollution preparedness, response and cooperation, 1990 (111 ratifications)*
- *OPRC-HNS Protocol: Protocol on preparedness, response and co-operation to pollution incidents by hazardous and noxious substances, 2000 (37 ratifications)*
- *Convention on assistance in the case of a nuclear accident or radiological emergency, 1986 (115 ratifications)*


# *Secondary instruments*

- *Rio Declaration Report para 17.33  
A/CONF.151/26 (Vol. II)*
- *Regional and sub-regional cooperative mechanisms*
  - <https://tinyurl.com/kanxgqg>
  - *EU*
- *Bilateral treaties*



# *Someone, please do something!*

The background of the slide features a faded image of a large oil tanker ship sailing on the ocean. A thick, horizontal yellow brushstroke underline is positioned below the title.

- *Inefficient remedies*
  - *The ice problem, etc.*
  - *Harm caused by cleanup*
  - *Currents and politics*
  - *Environmental bombs (safe haven)*
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# *A "Polluter prepare principle"?*

- *Private response*
  - *Difference between petroleum and shipping activities*
  - *Plans (OPRC Art 3)*
  - *Resources on board*
  - *Cooperation resources*
  - *Class resources*
  - *Pre-contracted assistance*
- *State response*
  - *Organization (OPRC Art 6)*
  - *Depots*
  - *Preparedness of trawlers, etc*

# OPRC Art 6

*(2) In addition, each Party, within its capabilities either individually or through bilateral or multilateral co-operation and, as appropriate, in co-operation with the oil and shipping industries, port authorities and other relevant entities, shall establish:*

*(a) a minimum level of pre-positioned oil spilt combating equipment, commensurate with the risk involved, and programmes for its use;*

*(b) a programme of exercises for oil pollution response organizations and training of relevant personnel;*

*(c) detailed plans and communication capabilities for responding to an oil pollution incident. Such capabilities should be continuously available; and*

*(d) a mechanism or arrangement to co-ordinate the response to an oil pollution incident with, if appropriate, the capabilities to mobilize the necessary resources.*



# *The benefits of cross-border cooperation*

- *Utilization of resources*
- *Utilization of competence (OPRC Art 8-9)*
- *Exercises*
- *Phone directory*
- *Financing (OPRC Art 7(2))*



# *UNCLOS background*

- *UNCLOS distributes wealth and jurisdiction*
  - *Environmental management*
  - *Not general environmental competence (Art 56, 77)*
  - *ITLOS Case No. 19 The M/V "Virginia G" Case (Panama/Guinea-Bissau) para 217*
- *Neighbor rights*
- *No harm principle*
  - *Rio Declaration, Principle 2*
  - *UNCLOS Art 194*

## *Article 56 Rights, jurisdiction and duties of the coastal State in the exclusive economic zone*

*1. In the exclusive economic zone, the coastal State has: ...*

*(b) jurisdiction as provided for in the relevant provisions of this Convention with regard to: ...*

*(iii) the protection and preservation of the marine environment;*

# *Article 77 Rights of the coastal State over the continental shelf*

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*1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.*

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# *The right to assist*

- *Relationship to coastal state - access*
  - *OPRC Art 7(3)*
  - *International Convention on Maritime Search and Rescue, 1979, as amended, Ch 3*
  - *Convention on nuclear assistance Art 8-9 - immunity (NB Art 8(9))*
- *Relationship to flag state*
  - *OPRC Art 1(3)*
- *Intervention*
  - *UNCLOS Art 221*
  - *International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969*
  - *Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil, 1973*
- *Salvage*



# *UNCLOS Art 221-Measures to avoid pollution arising from maritime casualties*

- 1. Nothing in this Part shall prejudice the right of States, pursuant to international law, both customary and conventional, to take and enforce measures beyond the territorial sea proportionate to the actual or threatened damage to protect their coastline or related interests, including fishing, from pollution or threat of pollution following upon a maritime casualty or acts relating to such a casualty, which may reasonably be expected to result in major harmful consequences.*
- 2. For the purposes of this article, "maritime casualty" means a collision of vessels, stranding or other incident of navigation, or other occurrence on board a vessel or external to it resulting in material damage or imminent threat of material damage to a vessel or cargo.*

# *A breather*

## *Covered*

- *Instruments*
- *Remedies are inadequate*
- *Benefits of cross-border cooperation*
- *The relationship to UNCLOS*
- *The right to assist*

## *Coming up*

- *Details of OPRC*
  - *Geographic scope*
  - *Reimbursement*
  - *Information management*

# *Geographic scope*

- *General scope*
  - *No provision in OPRC*
  - *Convention on nuclear assistance Art 2*
- *Regional conventions may exclude the high seas, etc*
  - *Agreement on cooperation on marine oil pollution preparedness and response in the Arctic, 2013, Art 3(1) (but see Art 3(2))*



# *Reimbursement for requested assistance*

- *Basis*
  - *OPRC Annex*
  - *Convention on nuclear assistance Art 7*
- *"Express request"*
- *Choice of law and its implications*
  - *Reg (EC) No 593/2008 Art 4(1)(b)*
  - *Reg (EC) No 864/2007 Art 4(1), 7, and 11(3)*
- *Limitation*
  - *Limitation of cleanup actions*  
*the "Server" HR-2017-331-A (Norway)*



# *OPRC Annex - Reimbursement of costs of assistance*

*(1) ...*

*(i) If the action was taken by one Party at the express request of another Party, the requesting Party shall reimburse to the assisting Party the cost of its action. ...*

*(ii) If the action was taken by a Party on its own initiative, this Party shall bear the costs of its action.*

*...*

*(2) Unless otherwise agreed, the costs of action taken by a Party at the request of another Party shall be fairly calculated according to the law and current practice of the assisting Party concerning the reimbursement of such costs.*

# *Reimbursement for unrequested assistance*

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- *State liability*
    - *Do the conventions exclude other liabilities for States Parties?*  
*OPRC Annex Sec 1(ii)*
    - *Pollution*
    - *Legislation*
    - *Lack of preparedness*
  - *Polluter*
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# *Reimbursement for accidents while cleaning up*

- *Convention on nuclear assistance*

*Art 10 (NB Art 10(5))*

- *General international law (ILC)*

- *The scope of polluter pays principle*

- *Responder immunity*

- *Universally applicable?*

*Norwegian Nature Diversity Act, 2009, §§ 2(3) & 11*



# *Information management*

- *Polluter's duty to report*
  - *OPRC Art 4, etc*
- *Early warning between states*
  - *OPRC Art 4 "discharge or probable discharge"*
  - *Convention on early notification of a nuclear accident, 1986*
- *Media handling and confidentiality*
  - *Convention on nuclear assistance Art 6*
- *Public right to know*
  - *Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, 1993, Ch III*
- *Post event fact finding*



A large cargo ship with a blue hull and white superstructure is sailing on the ocean. The ship has multiple masts and cranes. The text "TAKE-HOME POINTS" is overlaid in a bold, orange, italicized font. Two thick, horizontal orange brushstrokes are positioned above and below the text.

# *TAKE-HOME POINTS*