

LEGAL REGULATION OF PREVENTION AND ELIMINATION OF OIL**SPILL INCIDENTS IN THE ARCTIC REGION**Alexandra V. Kripakova¹

Abstract: Nowadays, as the significance of the Arctic is increasing, the international community faces new challenges. At the present time, Arctic states (Russia, USA, Canada, Denmark and Norway) continue to prepare to the beginning of the large-scale oil and gas resource development of the Arctic offshore. However, discovering and exploitation of the hydrocarbon deposits endanger the fragile ecosystem of the region. In this type of economic activity, oil spills present the greatest hazard to the environment. The article considers activity of the Arctic Council in this area, as well as the international and national legal regulatory mechanisms to ensure environmental security in the Arctic.

Keywords: Arctic, oil spills, environmental security, Arctic Council

1. Introduction

Modern world is extremely dependent on

oil. For this reason, oil companies continue to move into the little-developed areas of the Arctic region looking for the last drops of oil and ignoring hazards that oil and gas reclamation poses to the fragile Arctic nature.

For how long is the Arctic region to remain one of the cleanest places on earth? What will happen when extraction of oil leaves the level of the first timid attempts to develop recently discovered fields and moves to the international industrial level of petroleum products turnover? Will the unique, and, consequently, especially vulnerable ecosystem of the Arctic region outlast for long without an appropriate interference into the support of ecological safety? These issues move to the forefront in parallel with the growth of the Arctic region energy potential evaluation.

Arctic states and big oil companies are engaged, with all their might, in the

¹ Far Eastern Federal University, avkripakova@mail.ru Phone number: +7-964-438-96-30

development of work plans aimed at increasing oil production in the Arctic region and proceed gradually to their immediate realization. In this sphere, Norway made more headway than anybody else.

However, along with that, Norwegian representatives claim that it is necessary to find a balance between the economic development of the region and the timely resolution of its ecological problems. Due to the fact that Norwegian Arctic region is densely populated, strategic emphasis is placed, in the first turn, on interests of the Arctic region population while following a stable development. Accordingly, a significant share of the Arctic political activities is aimed at dealing with ecological problems, including prevention and elimination of accidents resulted from oil products spills.

The central place in the Norwegian strategy belongs to proactive and preventive work. Indeed, even well-developed systems of emergency situations elimination will not be able to prevent all destructive consequences.

In spite of the obviousness of such arguments, recognition of catastrophic consequences of a failure to act in the

environmental protection sphere comes only after some emergency situations.

The accident with Exxon Valdez oil tanker near Alaska shores on March 23, 1989, showed that one country is not enough to prevent incidents of such kind. Residual oil that hit the environment as a result of the accident remained there for much longer than it had been initially predicted. In 2005, it was discovered that the oil had only slightly inspissated on the shoreland along the oil spill zone.

2. Results and Discussion

Being an industry of high environmental risks, oil production significantly affects the ecological state of the region and poses a big threat to the vulnerable Arctic ecosystem. Elimination of oil spills requires big expenditures and efforts in any circumstances, and Arctic conditions create additional difficulties associated with low temperatures and ice cover. It is noted that at low temperatures oil has a lower propagation speed, but there is a danger of oil freezing into ice with a subsequent return of oil onto the surface during a spring thaw.

Under such conditions, ensuring regulatory management of international cooperation and coordination of states'

efforts in the sphere of prevention and elimination of sea oil spills in the Arctic Ocean becomes the primary objective.

At present, a leading role in ensuring such cooperation is played by the Arctic Council, establishment of which was marked by the declaration, in the first turn, of ensuring the interstate cooperation on issues of stable development and protection of the Arctic environment as the main objective of this organization.

In 2013, within the framework of the given international organization activity, Arctic states undertook a number of joint steps aimed at coordination of actions in the sphere of oil spills prevention and elimination. At the Eighth Meeting of the Arctic Council a target group was created for preparation of the Plan of actions on prevention of oil contamination. It was decided to develop national, bilateral and multilateral plans of actions in emergency situations, train personnel and conduct drills, develop effective response measures. An agreement on cooperation in the sphere of preparedness and response to marine oil pollution in the Arctic Region was signed, which nowadays is actively applied by Arctic states, including when

conducting exercises.

But it is noteworthy that these documents touch upon the issues of the states cooperation in cases when an incident causing oil pollution has already happened.

The next stage of the Arctic Council efforts to prevent emergencies was the adoption in 2015 of a framework plan of cooperation in the sphere of prevention of Arctic sea areas oil pollution resulted from oil and gas activity and navigation, the objective of which is to strengthen interstate cooperation including exchange of information with a view to environmental protection in the Arctic.

In compliance with this plan, to prevent incidents on the sea that can lead to the oil pollution, the participants intend to establish a catalogue of existing resources that can play an important role in minimization of a threat of incidents on the sea leading to oil pollution, as well as to estimate sufficiency of such resources.

Adoption of these documents by the Arctic Council laid the foundation for the establishment of an integrated system for regulation of the considered problems.

But, unfortunately, some issues still remain unconsidered on the international

level, such as prevention of sea oil contaminations from stationary and floating oil and gas producing platforms, subsea pipelines, ground and port infrastructures at all stages of sea oil and gas resource development in the Arctic Region, which must be reflected in adoption of the next documents on the issues.

Before the foundation of the Arctic Council, problematic issues of ensuring ecological safety of the region were (and still are) handled through universal international agreements. The most “reputable” document in this sphere is the International Convention for the Prevention of Pollution from Ships of 1973, modified by the Protocol of 1978 (hereafter — MARPOL), which contains measures on reduction and prevention of environmental pollution with harmful substances transported by ships or formed in the process of their operation. As concerns oil and gas activity, the Convention contains requirements to engine rooms of ships and cargo districts of oil tankers, regulates prevention of pollution as a result of an incident causing contamination by oil, contains requirements to oil receiving facilities, etc. Governance mechanisms of ensuring

readiness for response to oil spills are also established by the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC-90), International Convention on Civil Liability for Oil Pollution Damage of 1969 (CLC), International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage dated 1971 (FUND), as well as by a whole row of other international documents. However, special requirements for activity in Arctic conditions are not specified in MARPOL. Also, subarctic states concluded a number of bilateral agreements, for example, the Agreement between the Russian Federation Government and the Government of Canada on Cooperation related to Environmental Issues of 1993; the Agreement between the Government of the USA and the Government of the USSR concerning Cooperation in Combatting Pollution in the Bering and Chukchi Seas in Emergency Situations of 1989; the Agreement between the Government of Russian Federation and the Kingdom Denmark Government about Cooperation in the Field of

Environmental Protection of 1993; the Agreement between the Government of Russian Federation and Government of Kingdom of Norway concerning Cooperation in the Combatment of Oil Pollution in the Barents Sea of 1994.

In its turn, working out of international norms within the framework of the Arctic Council activity entailed adoption of a number of national documents, including those in the Russian Federation. Thus, Federal Law “On the Continental Shelf of the Russian Federation” and Federal Law “On the Internal Sea Waters, the Territorial Sea and the Contiguous Zone of the Russian Federation”, Article 22.2 and Article 16.1, respectively, confirm that exploration and production of raw hydrocarbons, as well as transportation and storage of oil and oil products, is only allowed in case of availability of a plan, in compliance with which measures on prevention and elimination of oil and oil products spills in the sea environment are scheduled and realized.

In 2014, the Government decree confirmed Regulations for organization of measures on prevention and elimination of oil and oil products spills on the continental shelf of the Russian

Federation, in the internal sea waters, the territorial sea and the contiguous zone of the Russian Federation, which establish the procedure of formalization of the plan on prevention and elimination of oil and oil products spills.

For most Arctic ports, rules are established to ensure the ecological safety and observance of quarantine regulations in the seaport, which specify the sequence of actions in case of detection of an oil or oil product spill.

However, as is the practice now, the complex of changes introduced into the national legislation yet again replaced enacting of a unified federal law on this topic, namely, Federal Law “Concerning Protection of the Sea from Oil Pollution”, a draft bill of which was proposed as early as 2009.

3. Conclusion

So, at the present time, Arctic states move on from the stage of discussion to actions, which must be based on the principle of collectiveness for timely prevention of oil and oil products spills.

In this connection, the major task is formation of the international legal basis for realization of any activity, including oil and gas one, in the Arctic. This must

provide for a stable development and ecologically safe and effective use of the Arctic Region.

Therefore, subarctic states must continue the work on formation of the legal massif aimed at prevention of sea oil spills in the Arctic. It is also necessary to simultaneously support legal theory researches with technological developments that will help to timely prevent the emergencies.

One should also pay attention to the fact that legal documents on issues of ecological safety in the Arctic are rarely adopted. The Agreement on cooperation on marine oil pollution preparedness and response in the Arctic Region has become the second such document over the past years of the Arctic Council activity. The Agreement imposes responsibility for realization of special control over the state of affairs in the specified region. However, this Agreement holds the sides liable only in the sphere of the states cooperation, and not in the sphere of direct ensuring of ecological safety.

Thus, it is urgent to enact a legally binding document that would prescribe specific requirements to facilities for oil exploration, extraction, production and

transportation in Arctic conditions. Such document could ensure a uniform legal regulation of ecological safety provision in the sphere of oil spills prevention for all subarctic states.

The Arctic Region is also especially vulnerable due to the fact that today there is no strict special international legal management in the sphere of its resources use and protection. As opposed to the Antarctic, in respect of which there remains in effect a big number of conventions, all special international documents related to the Arctic have a “soft law” character, which must be completely re-examined.

References

Report to the Storting. The High North. Visions and Strategies (2011–2012). Norwegian Ministry of Foreign Affairs. Approved November 18, 2011. <http://www.regjeringen.no/nb/dep/ud/dok/regpubl/stmeld/2011-2012/meld-st-7-20112012.html?id=663433>.

Peterson CH, Rice SD, Short JW, Esler D, Bodkin JL, Ballachey BE and Irons DB, “Longterm Ecosystem Response to the Exxon Valdez Oil Spill” (2003)

- 302(5653) Science 2082–2086.
http://www.afsc.noaa.gov/publications/misc_pdf/peterson.pdf.
- Potter S, Buist I, Trudel K, Dickins D, Owens E (ed. by D Scholz) *Spill Response in the Arctic Offshore* (American Petroleum Institute, Washington, 2012).
http://www.api.org/~media/files/ehs/clean_water/oil_spill_prevention/spill-response-in-the-arctic-offshore.ashx.
- Declaration on the Establishment of the Arctic Council, Ottawa 1996,
http://library.arcticportal.org/1270/1/ottawa_decl_1996-3..pdf.
- Kiruna Declaration: On the Occasion of the Eighth Ministerial Meeting of the Arctic Council 15 May 2013,
<http://www.state.gov/r/pa/prs/ps/2013/05/209405.htm>.
- Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic, Kiruna 2013,
<http://www.state.gov/r/pa/prs/ps/2013/05/209406.htm>.
- On Signing the Framework Plan of Cooperation on Prevention of Arctic Sea Areas Oil Pollution as a Result of Oil and Gas Activity and Navigation. Decree of the Russian Federation Government No 721-r of 23 April 2015.
<http://government.ru/media/files/pjRl37A6Ef25450xXFbBws3tvNrnC0cY.pdf>.
- International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 (MARPOL 73/78) (with amendments by September 26, 1997).
- International Convention on Civil Liability for Oil Pollution Damage (CLC), adoption: 29 November 1969; Entry into force: 19 June 1975; Being replaced by 1992 Protocol: Adoption: 27 November 1992; Entry into force: 30 May 1996.
[www.imo.org/en/About/conventions/listofconventions/pages/international-convention-on-civil-liability-for-oil-pollution-damage-\(clc\).aspx](http://www.imo.org/en/About/conventions/listofconventions/pages/international-convention-on-civil-liability-for-oil-pollution-damage-(clc).aspx).
- International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND), adoption: 18 December 1971; Entry into force: 16

October 1978; superseded by 1992 Protocol: Adoption: 27 November 1992; Entry into force: 30 May 1996. [http://www.imo.org/en/About/conventions/listofconventions/pages/international-convention-on-the-establishment-of-an-international-fund-for-compensation-for-oil-pollution-damage-\(fund\).aspx](http://www.imo.org/en/About/conventions/listofconventions/pages/international-convention-on-the-establishment-of-an-international-fund-for-compensation-for-oil-pollution-damage-(fund).aspx).

Agreement between the Government of Canada and the Government of the Russian Federation concerning Environmental Cooperation. Entry into Force 08 May 1993. <http://www.treaty-accord.gc.ca/details.aspx?id=101232>.

Agreement between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics concerning cooperation in combatting pollution in the Bering and Chukchi Seas in emergency situations. Entry into Force 17 august 1989. <http://treaties.un.org/doc/Publication/UNTS/Volume%202190/v2190.pdf>.

Agreement between the Government of the Russian Federation and the Kingdom Denmark Government about cooperation in the field of environmental protection

31
(framework agreement). Entry into Force 05 January 1993. http://iea.uoregon.edu/page.php?query=treaty_info&mitch_id=4807.

The Agreement between The Kingdom of Norway and The Russian Federation concerning Cooperation on the Combatment of Oil Pollution in the Barents Sea. Entry into Force 28 April 1994.

On the Continental Shelf of the Russian Federation. Federal Law No 187-FZ of November 30, 1995 (with the latest amendments of May 2, 2015). <http://www.kremlin.ru/acts/bank/8557>;
On the Internal Sea Waters, the Territorial Sea and the Contiguous Zone of the Russian Federation. Federal Law No 155-FZ of July 7, 1998 (with the latest amendments of June 7, 2013). <http://www.kremlin.ru/acts/bank/12742>.

On the Organization of the prevention and response to the oil and oil-product spills on the continental shelf of the Russian Federation, in internal sea waters, in territorial waters and in the contiguous zone of the Russian Federation. Decree of the Russian

Federation Government No 1189 of from
14.11.2014.

<http://government.ru/media/files/itTTFoW6OjM.pdf>.

On Approval of Stringent Regulations in the Seaport of Mezen. Order of Department of Transportation of Russia No 184 of July 9, 2014. On Approval of Stringent Regulations in the Seaport of Murmansk. Order of Department of Transportation of Russia No 222 of August 12, 2014. On Approval of Stringent Regulations in the Seaport of Varandey. Order of Department of Transportation of Russia No 464 of December 12, 2013; etc.
<http://pravo.gov.ru/proxy/ips/?docrefs.xml=&oid=102133358>.

Conception of the project of the Federal Law “On the protection of the seas of the Russian Federation from the oil pollution” developed by the working group organized by the Russian WWF (V. K. Gorokhov, V. L. Mishchenko, G. N. Semanov, A. Yu. Knizhnikov, E. N. Khmeleva). Moscow, 2009.
www.wwf.ru/data/pub/oil/concept_sea_oil.pdf