

Le droit maritime international et le transport des hydrocarbures

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SUMMARY

Preventive and curative fight against oil spills through International Maritime Law is an undeniable fact nowadays. The law system of prevention of oil spills regulates the construction of ships and emissions of hydrocarbons. It establishes the double hull principle and the requirement of on shore reception facilities. At the regional level, precisely in America and Europe, the emphasis is put on the fight against substandard ships and the prohibition of such ships. Concerning polluting discharges of oil, MARPOL 73/78 prohibits them and entrusts contracting States to repress violations to its pertinent provisions. As for the STCW 1995, it focuses on the safety of the ship as to terms of control and training of crew.

Curative international legal instruments dealing with oil spills, particularly those set at the African, European and U.S. level reveal themselves under operational measures and compensation rules for victims of oil spills. Concerning fight against oil spills, International Law grants coastal states and flag states competence to intervene against marine pollution that occurs in their internal waters, territorial sea and their Economic Exclusive Zone (EEZ).

Rules of compensation have evolved favourably to victims. This evolution is perceivable through the institution of a strict liability of the polluting ship owner. In addition, the Supplementary Convention of 2003 expands the base of compensable damage and enhance substantially the compensation amounts awarded to oil spills victims. Compensation of oil spills victims is guaranteed by the principle of the channelling of liability to the shipowner and the institution of a compulsory insurance. Finally, victims take advantage of the disqualification, under certain circumstances, to capping and exemption from liability of the shipowner.

However, the current legislative effort is thwarted by the persistence of obstacles to the effectiveness of International Maritime Law. Deficiencies are perceivable at the prevention of marine pollution level, as well as operational measures against oil spills. The difficulties in applying international legal instruments manifest themselves in Africa by the lack of integrated emergency response plans against marine pollution. Côte d'Ivoire, particularly the Plan Pollumar, suffers from a lack of material and financial resources that would permit to fight efficiently against marine pollution. In addition, repressive rules against marine pollution are ineffective due to the lack of appropriate means to detect acts of pollution.

In the analysis, the rules of compensation for oil spills victims contain shortcomings. The indemnification procedure is characterized by choosing exclusively judicial settlement of disputes arising among victims and shipowner. Compensation rules are sufficiently underdeterrent against polluters in comparison with classic rules of evidence of oil pollution damages and the causal link between these damages and the polluter ship activity. It is obvious that International Maritime Law implicitly encourages acts of pollution by establishing systems of capping and exemption of the shipowner liability. This regime is likely to hinder a satisfactory compensation of oil spills victims.