

INTERNATIONAL LEGAL MEASURES FOR AVOIDANCE OF SEA POLLUTION WITH PETROL

МЕЖДУНАРОДНОПРАВНИ МЕРКИ ЗА ПРЕДОТВРАТЯВАНЕ НА ЗАМЪРСЯВАНЕТО НА МОРЕТО С НЕФТ

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Abstract: *The problem for pollution of sea environment is universal and has diverse aspects and indications. At its solving is worked in two directions. On the one hand - by establishment and elaboration of the technical methods and on other hand-by preparation, coordination and approval of legal acts.*

Keywords: LEGAL MEASURES, AVOIDANCE, SEA POLLUTION, PREVENTIVE MEASURES,

1. Introduction

The problem for pollution of sea environment is universal and has diverse aspects and indications. At its solving is worked in two directions. On the one hand - by establishment and elaboration of the technical methods and on other hand-by preparation, coordination and approval of legal acts.

The different countries are interested in different degree of the fight against pollution depending on their natural and economic resources. At them belong: access to the sea coast, demographic density of this coast, level of economic development, need of petrol. The measures taken individually by the countries do not guarantee safety. It is possible unilaterally taken measures not to be approved or respected. Less or generally not interested countries may not respect regulations stipulated by international agreement.

2. Problem discussion.

Therefore one of the special features in this field is expressed in diversity of interests and the arising difficulty for finding balance between them.

1. Technical methods

The countries as well as the specialized international organizations and institutions investigate and apply particular technical methods, aim to implement new technologies with the purpose to eliminate or at least to minimize the pollution risks. It is appropriate for their assessment to be made according the method of integral risk^{1 2 3}

The used traditional technical methods for fight against the petrol fallen into the marine environment occurred ineffective from ecological point of view. The petrol cover processed by chemical means may visibly disappear. However the solvents used for neutralization of the pollution source are very often more hazardous for the sea flora and fauna than the petrol itself⁴.

The coagulants (chalk, different types of shavings etc.) do not remove the petrol spilled on the water surface. At the same time its burning is practically impossible as it is ignited very hard.

The method of pumping the petrol at the sea surface is applied by absorption and pouring in the cisterns of tankers or in light

rubber tanks. But this method is not sufficiently efficient due to the limited flow rate of the pumps. There are also used specially constructed ships equipped with absorption devices which pump the spilled petrol.

However the practice shows that the use of technical methods may not solve the problem for the sea pollution completely. Moreover there is not yet developed and implemented satisfactory method for efficient cleaning of polluted sea waters. Even the most perfect devices in particular cases may not be used rationally and with their full capacity due to concrete atmospheric conditions, specific sea flows, wind force and direction, condition of the spilled petrol etc⁵. In addition the simple and harmless mechanical cleaning is difficultly applicable at very large water areas polluted with petrol.

The use of technical means for fight against pollution of sea environment with petrol does not belittle the legal aspect of the PROBLEM, because the activity of countries by sea is regulated by the norms of international law. The chemical, mechanical and other applied methods for fight against pollution may and shall be used mainly at incidental petrol spillages, i.e. at absolute necessity-after all conscientiously taken precautions for avoidance of pollution have already been undertaken.

2. Legal methods

The preparation, coordination and approval of legal norms for protection and preservation of the sea of pollution also meets many difficulties⁶. It may be noticed that until recent times the international law showed great restraint regarding pollution. The laconism in this field is explained with the different statements on this issue some of which are due as L. Kavare notes "to the lack of international solidarity and of the resistance showed by the countries".

In order to be more precisely and more correctly estimated the attempts undertaken for solving the sea pollution problem, it shall be noted that it has double aspect. It may be concerned on one side for pollution of the country coasts and for recovery of the caused damages. On other side it may concern for pollution of the deep sea which is declared for "common possession of the humanity". But unfortunately still nobody may claim recovery of damages caused by the deep sea pollution. There are no provided and maybe is difficult to be provided the rules for damages recovery, caused by the pollution of the deep sea.

The intentional spillage of petrol and petrol waste became frequent occurrence. It led to undertaking conventional measures in

⁵ Belgium, Great Britain, Denmark, Norway, France, Federal Republic of Germany, the Netherlands and Sweden

⁶ Tomov, V. Risk theory. Monography, Ruse, University of Ruse, 2003, page 440

¹ Held in the period 24.02-27.04.1958

² See Al. Yankov, Towards new international legal regulation..., page 40

³ Art. 24 of the Convention on the Deep Sea

⁴ See. L. V. Speranskaya, Международно-правовая охрана морской среды, М., 1978, с. 80-81; Материалы по морскому праву и международному торговому мореплаванию, вып. 11/1976, page. 38-39.

international aspect with the purpose to avoid the devastating effects of the marine environment pollution. First positive result in this regard was achieved by the approval of the Convention dating 1954.

The Geneva Convention on the Law of the Sea⁷ (important from the point of view of the attempt for codification of its principles) in fact has not brought anything new on the issue for avoidance of pollution of the marine environment⁸. It shall be noted that at this Conference was not determined the definition of this occurrence, its action and indication mechanisms in the time and space. The Conference also has not provided what shall be the measures which the countries may undertake for fight against pollution. As for the issue about water areas in which the countries may interfere for pollution avoidance the conventions approved at the Conference also kept silence. So art. 24 of the Convention on the Territorial Sea and the Contiguous Zone as well as art. 6 of the Convention on Fishing and Conservation of the Living Resources of the Deep Sea represent only principle declarations containing general provisions.

As a result of more frequent incidental petrol spillages (very indicative in this regard was the case with "Torrey Canyon" in March 1967 which became reason for serious drawing of the attention of the global publicity on the arisen legal problems at such spillages), occurred the necessity for entitlement of the countries to interfere in the deep sea in the cases of incident leading to petrol pollution. This was expressed in concrete form by approval of the Convention on the Right of Interference.

In the rules included in Appendix I at the MARPOL 73 Convention the greatest attention is drawn to the requirements regarding ships (and especially the tankers) for removal of the reasons for petrol pollution at the different types of sea operations, related to their normal operation.

3. Preventive measures undertaken at national level

The undertaking of such measures is of the jurisdiction of the countries taken individually. The general rules are that "every country undertakes to issue Ordinances for avoidance of sea pollution with petrol of ships..."⁹. Within their jurisdiction the countries provide respective measures for avoidance of sea pollution. These measures are related to the activity exercised by the country within its jurisdiction. The coastal country has as the right as well as the obligation to avoid the pollution of its territorial sea. It is bridge between the deep sea and the territory. That is why the coastal country shall require observance of its cleanliness as on behalf of its citizens as well as on behalf of the citizens of foreign countries.

However when it is about the waters of the deep sea which due to its specific nature may change its location for some reason, the internal legislation may not provide specific measures against their pollution and even less to prevent it as it may occur in indefinite part of the sea areas. Moreover, according internal legal order is practically difficult to be established efficient system for control over pollution and to be determined the range of its statute. The individual and isolated initiative may not preserve the interests of the country at pollution, no matter what is the preciseness of the undertaken legal measures. This is due to the fact that the modern international law even acknowledging sovereign prerogatives of the countries, is limiting their place of effect. Also due to the actual unity of the sea waters any of the countries may delimitate a particular coastline completely protected by pollution risks. On the

other hand the status of deep sea is not regulated by national laws but of international regulations which until recently in considerable degree were limiting the jurisdictions of the particular countries. At this the deep sea remains zone in which the pollution risks are significant.

Individual, isolated initiative shall be undertaken only at absence of international regulation or in the cases of incompleteness of the last. In any case is necessary the same to be conformed to the common obligation of the countries to undertake the respective measures for avoidance of the sea environment pollution.

4. Preventive measures undertaken at regional level

The United Nations Organization, its specialized organizations and authorities are not the only one which deal with the issues on sea pollution. Between the countries was established cooperation and in more limited frameworks (regional or affecting particular geographic surface, favorable for the undertaking of collective preventive measures). It had proven to be very effective because it is realized between countries which are directly interested in the fight against sea pollution, on whose coasts they are located.

Another agreement at regional level was the signed 22.03.1974 in Helsinki between the seven Baltic countries¹⁰ Convention on Protection of Sea Environment in Baltic Sea Area. In the provisions of the Convention as well as in the appendixes at it are comprised different types of marine environment pollution (including also at research and exploitation of the sea bottom and its bowels-art. 10) and the fight against them. The contracting countries undertake to take the necessary measures for avoidance and removal of pollution. (art. 3, p.1). They shall cooperate at the investigation of breaches of conventional prescriptions for pollution avoidance – check of the boarding documents, sample taking etc. An important part of the regulations included in the Convention is dedicated to the problem of pollution of sea waters by ships (art. 7 and the measures provided in Appendix IV). After the example of MARPOL 73 Convention, in these rules is also made delimitation between the different cargo components, waste water and sediments. Each Baltic country undertakes the obligation to equip its ports and terminals with the respective reception devices for waste of the ships visiting them (petrol sediments, hazardous substances etc.)- art. 7. The Parties by the Convention undertake the obligation to render assistance to IMCO at preparation of navigation rules for the straits and shallows of Baltic Sea, in order to avoid the cases of incidents.

There is no doubt that the Helsinki Convention is very complete and comprises all aspects of the fight for avoidance, decrease and removal of pollution. It provides sufficient guarantees for preservation and improvement of the sea environment in the region of Baltic Sea.¹¹

In the beginning of 1976 in Barcelona was held Conference of the countries of Mediterranean Basin¹². On it was approved Convention on Avoidance and Limitation of Pollution of the Mediterranean. In its provisions is provided as the undertaking of measures against pollution caused by human activity by sea – by ships, aircrafts, research and operation of continental shelf as well as of any type of ground sources (art. 6-8). To the parties is imposed the obligation to undertake all necessary individual or joint measures for avoidance, limitation and fight against pollution of the Mediterranean. (art. 4). Unlike the Helsinki Convention this one does not provide rules additional to MARPOL 73. For it is satisfactory to declare that the contracting parties undertake to take

⁷Tomov, V. Diagnostics of environmental safety. Dissertation for obtaining academic degree "Doctor of Economic Science". Ruse, University of Ruse, 2006, page 445

⁸ Art. 1 of the Agreement

⁹German Democratic Republic, Denmark, Poland, USSR, Federal Republic of Germany, Finland and Sweden

¹⁰ See in details Л.В. Сперанская, quote. с.ч., page 63-8-. The text of the Convention in Материалы по морскому праву и..., вып. 21/80, page. 83 and the following.

¹¹Excluding Albania and Algeria. The Convention was signed on 16.02.1976

¹² Art. 2 of Geneva Convention of 1958 for deep sea

all measures provided by the international law for fight against pollution of the Mediterranean, caused by ship spillages.

The examples listed above for regional cooperation in the fight against marine environment pollution may be qualified as successful and appropriate forms for mutual cooperation within the global efforts for limitation and removal of the pollution hazard.

5. Preventive measures undertaken at global level

The international nature of the sea environment pollution problem is conditioned by the following circumstances:

- the reason for the possible damages of pollution may be accident in deep sea where the freedom of navigation is acknowledged to all countries¹³. And the navigation is international as regarding the ship flag as well as regarding its destination;

- interest of all countries in pollution avoidance notwithstanding if they are coastal or not. The pollution may concern any part of the Global Ocean and all countries have attitude to this problem, because in most of the cases of pollution are concerned in one or another degree the interest of the whole international community. The protection and preservation of the deep sea resources which belong to all countries including the ones without coast are of crucial importance. As source of resources the sea is beyond the control of the individual country. As source of resources it may be used efficiently on the way of international cooperation. Or as it is mentioned in art. 25, p. 2 of the Convention on Deep Sea, "all countries undertake to cooperate with the competent international organizations at taking measures for avoidance of sea pollution ...".

Every country is entitled to take individual measures within its jurisdiction but such measures may not lead to complete solution of problem having international legal nature. It is true that the exercising of this right may be of favor not only for this country because at undertaking measures in its own interest against occurred pollution hazard at the same time it acts in interest of the international community– the undertaken measures contribute for preservation of the sea environment cleanliness. Nevertheless there are no guarantees that the individual preventive measures shall be favorable for any other particularly interested country. They may have negative consequences also for third countries or for the common interests of humanity. That is why it would be impossible the initiative for these measures to be left entirely to the countries taken individually without exercising any control on them. Such control may be organized only within international conventions. As example in this regard may be indicated the Convention on the Right of Interference. The countries which are parties on it are entitled to undertake in deep sea the necessary measures for avoidance of the sea environment pollution (art. 1 of the Convention). At the same time they undertake to observe the limitations arising of art. 5 of the same convention and namely – proportionality between measures and damages, termination of measures by realization of purpose, criteria at estimation of measures.

However at all cases until the entry or entering into force of a particular convention the national legislations have key role for the application of the regulations provided in the convention concepts. It is realized by means of the preparation of respective internal legal norms.

3. Conclusion.

There is no doubt and is in common interest the international law to provide by its own means the protection and preservation of the sea by petrol pollution. By its nature the international legal regulations in this area have more expressed preventive nature and the institute of the liability provided by it has wider perimeter of the one of the established and applicable rules of responsibility for the

damages caused at sea transport. However the responsibility at pollution may find particular application by establishment of proper and specific procedures. Their task is to provide the observance and application of the formulated rules as well as their adaptation to all circumstances which may change very fast. It is typical that all entered conventions concerning the problems with petrol pollution of the sea aim to respond to this requirement.

LITERATURE

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