



State's Response to Wrecks Causing Environmental Risks

Comparison of Roles and Responsibilities of the North European "Intervention Enforcers"

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Background

- Torrey Canyon 1967
- British Government
 - Aerial bombing
 - Burn off oil before it pollutes shores and the sea
- 1969 Intervention Convention
 - Article I(1): “Parties to the Convention may take such measures on the high seas as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat of pollution of the sea by oil, following upon a maritime casualty or acts related to such a casualty, which may reasonably be expected to result in major harmful consequences”
- Merchant Shipping Act 1995: Secretary of State -> SOSREP
 - “any action of any kind whatsoever”, including the sinking or destruction of the ship
 - Specifications of powers in the Act

Questions and method

- Administrative law
- Comparative law
 - Denmark, Finland, Sweden
 - United Kingdom
- How have the three Nordic states implemented the intervention regime?
- What is the institutional and material scope of the intervention regime in the three countries?
- What kind of critical remarks can be made concerning the Nordic arrangements?
- What is the range of powers established in the law of the three Nordic countries that constitute the content of the intervention measures?
- Extreme aspect: does the intervention enforcer of the State have the right to order aerial bombing of an oil tanker in order to bring about its complete destruction or sinking?

Intervention Convention in domestic jurisdictions

- Accession in mid-1970s
- Publication after ratification
- Methods of incorporation
 - Finland: Act of Incorporation + material provisions in law
 - Incorporation Act & Decree
 - 1979 PPS Act -> 2009 OPR Act
 - Denmark and Sweden: material provisions in law
 - Denmark: Act on the Protection of Marine Environment -> "indgreb"
 - Sweden: Act on Measures against Pollution from Ships
 - Decree with reference to provisions in the Intervention Convention -> interpretation guideline
 - [EU: Directive 2002/59/EC on establishing a Community vessel traffic monitoring and information system]

Material powers of intervention: Sweden

- Act on Measures against Pollution from Ships
 - Transport Agency (Board of Transportation)
 - Ch. 7, Section 5: list of measures: can be ordered
 - Prohibition of departure or continued voyage
 - Prohibition to commence or continue loading, unloading, lightering or bunkering
 - Prohibition to use certain equipment
 - Obligation for the ship to follow a certain course
 - Obligation to sail into or depart from a certain port or site
 - Obligation concerning steering or operation of ship
 - Obligation to lighter oil or other harmful substance
- Limitation of measures
- Formal decision issued
 - Appealable: general administrative court -> leave of appeal to administrative court of appeal

Material powers of intervention: Denmark

- Act on the Protection of Marine Environment, Sections 42, 42 a, 43 -> "indgreb"
 - Minister of Defence since 2000 + Minister of the Environment and Foodstuffs (for more specific rules)
 - Section 43, sub-section 1: prohibition of voyage, order to follow particular instructions, etc.
 - "can"
 - Delegated to the JCAF/MAS
 - Section 43, sub-section 2: Minister of Defence can take further measures
 - Formal decision issued
 - Appeals within 4 weeks at Appeals Board of Maritime Matters

Material powers of intervention: Finland

- Act on Oil Pollution Response, Section 25(1) -> can
 - Finnish Environment Institute: such rescue or other measures directed at the ship and its cargo that are considered necessary to preventing or limiting the pollution of water
 - Section 23
 - Temporarily commandeer any equipment and supplies
 - Disembark and move about in other person's property
 - Order construction measures in other person's property
 - Limit waterborne traffic
 - Take other measures necessary for preventing and responding to oil spills and chemical spills from ships
- Government Bill 228/1978 to the PPS Act, p. 6
 - Measures include, inter alia, salvage of the ship, unloading of the cargo and in extreme cases even destruction of the vessel and its cargo by blowing it up
 - Measures between extremes: emptying of oil from sunken ship, isolation of area of incident by oil restraints, active cleaning measures, recovery of ship and cargo
- Decisions of the FEI -> prohibition of appeals in Section 30, para. 5

Material powers of intervention: EU

- Member States shall take all appropriate measures
- Annex IV
 - Restrict the movement of the ship
 - Direct ship to follow a specific course
 - Give official notice to the master of the ship to discontinue with threatening activities
 - Send an evaluation team to the ship
 - Help master to remedy the situation
 - Instructing master to put in at a place of refuge
 - Have the ship piloted or towed
- Non-exhaustive -> also other measures that are in compliance with international law

Institutional locus of intervention powers

- Denmark
 - Minister of Defence
 - Original powers
 - Non-delegated powers of Section 43(2)
 - Joint Command of Armed Forces: 24/7
 - Delegated powers
 - Powers of Section 43(1)
- Sweden
 - Transport Agency or other agency determined by the Government
 - Independent agency
 - Duty Officer 24/7 -> regional Stand-by Engineer for Preparedness
- Finland
 - Finnish Environment Institute: development and research centre
 - Duty Officer 24/7 -> leader of response measures

Conclusions

- States have plenty of latitude for implementation
- Specificity: Sweden, Denmark, Finland
 - Denmark & Finland: complete destruction of ship not mentioned
 - Finland: understanding of the content of measures from 1978 Government Bill
- Use of the range of measures allowed: can -> discretion
 - Sweden: limited
 - Closest to UK in specificity
 - Denmark & Finland: probably full range, but somewhat non-specific
 - Closest to UK in range, but not specific enough
 - Finland: doubling -> incorporation act + material law
 - Prohibition of complaints
- Organisational placement of powers
 - Denmark: ministerial level
 - Closest to UK, link to political level
 - Finland & Sweden: independent agencies, no immediate political dimension
- Can the ship be bombed?