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LEGAL REQUIREMENTS FOR SPECIAL AREAS AND PARTICULARLY SENSITIVE SEA AREAS

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ABSTRACT: Special areas is the designation for certain sea areas in which for reasons relating to their oceanographic and ecological condition and to sea traffic taking place thereon, the adoption of special mandatory methods for the prevention of sea pollution is required. The legal analysis is made of the concept of special areas regulated by the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78) in comparison with International Maritime Organization (IMO) guidelines dealing with identification and designation of particularly sensitive areas. In this respect, in author's opinion, special areas and particularly sensitive sea areas are bodies of water which call for additional protection in a proper legal framework.

KEY WORDS: sea, special areas, particularly sensitive areas, marine pollution prevention, legal framework

PRAVNI ZAHTJEVI ZA POSEBNA I POSEBNO OSVJETLJIVA MORSKA PODRUČJA

SAŽETAK: Posebna područja označavaju određena morska područja u kojima se radi njihova oceanografskog i ekološkog stanja te pomorskog prometa zahtjeva primjena obvezujućih metoda sprječavanja onečišćenja mora. Dana je pravna analiza pojma posebnih područja propisanih Međunarodnom konvencijom o sprječavanju onečišćenja s brodova iz 1973. te izmijenjenih Protokolom iz 1978. godine (MARPOL 73/78), u poredbi s smjericama Međunarodne pomorske organizacije (IMO) koje se bave identifikacijom i proglašavanjem posebno osjetljivog morskog područja. U tom smislu, po mišljenju autora, posebna područja i posebno osjetljiva morska područja su morski dijelovi koji traže dodatnu zaštitu uz primjereni pravni okvir.

KLJUČNE RIJEČI: more, posebno područje, posebno osjetljivo područje, sprječavanje onečišćenja mora, pravni okvir

1. FOREWORD

Environmental hazard associated to shipping include operational discharges, accidental and intentional pollution and physical damage to marine habitats and organisms [8]. Shipping activity can constitute an environmental hazard to the marine environment in general and consequently even more so to the environment of ecologically special areas and particularly sensitive sea areas.

Special areas are provided with higher level of protection than other seas for technical reasons relating their oceanographical and economic condition and their sea traffic. A particularly sensitive sea area (PSSA) is an area that needs special protection through action of International Maritime Organization (IMO) because of its significance for recognized ecological or socio-economic or scientific reasons and which may be vulnerable to damage to international maritime activities [6].

The criteria for the identification of special areas and particularly sensitive sea areas are not mutually exclusive and in many cases a special area may be identified within a particularly sensitive area and vice versa.

In addition, nowadays, it is becoming difficult to make multilateral treaties on protecting the marine environment. Contrary to the evolution of event, which is ever more accelerating, multilateral negotiation is slow.

2. MAIN SOURCES OF LAW FOR SPECIAL AREAS AND PARTICULARLY SENSITIVE SEA AREA (PSSA)

2.1. THE INTERNATIONAL CONVENTION FOR THE PREVENTION OF POLLUTION FROM SHIPS, 1973, AS MODIFIED BY THE PROTOCOL 1978 RELATING THERETO (MARPOL 73/78)

The important feature of MARPOL 73/78 is the concept of special areas which are considered to be vulnerable to pollution by the oil that discharges within them have been completely prohibited, with minor and well-defined exceptions [1]. The 1973 Convention identified the Mediterranean Sea, the Black Sea, the Baltic Sea and the Gulfs, as special areas. All oil-carrying ships are required to be capable of operating the method of retaining oily wastes on board through the "load on top" system of discharge to shore reception facilities. Oil tankers, for which the building contract was placed after 31 December 1975 of 70.000 tons deadweight and above, must be fitted with segregated ballast tanks large enough to provide adequate operating draught without the need to carry ballast water in cargo oil tanks. Furthermore, those tankers are required to meet certain subdivision and damage stability requirements so that, in any loading conditions, they can survive after damage of collision or stranding.

2.2. REVISED GUIDELINES FOR THE IDENTIFICATION AND DESIGNATION OF PARTICULARLY SENSITIVE SEA AREA

The purpose of the Guidelines is to provide guidance in formulation and submission of application for designation, ensure that all interests are thoroughly considered and provide for the assessment of such application [2].

In order to be identified as a particularly sensitive sea area the area should meet ecological criteria, social, cultural and economic criteria as well as scientific and educational criteria.

Ecological criteria cover uniqueness or rarity of the area, critical habitat, dependency on biotically structured system, representativeness, diversity, productivity, spawning or breeding grounds, naturalness, integrity, fragility and bio-geographic importance.

Social, cultural and criteria comprise social or economic dependency of the area, human dependency and cultural heritage because of the presence of significant historical and archaeological sites.

Scientific and educational criteria comprise research, baseline for monitoring studies with regard to biota or environmental characteristics and education as an area that offers an opportunity to demonstrate natural phenomena.

The Revised Guidelines for the Identification and Designation of Particularly Sensitive Sea Area A.982 (24) supersede those of Annex 2 of Resolution A.972 (22) Guidelines for the Designation of Special Areas under MARPOL 73/78 and Guidelines for the Identification and Designation of Particularly Sensitive Sea Areas [3].

A PSSA can be protected by ship routing measures within defined limits in which either navigation is particularly hazardous or it is exceptionally important to avoid casualties and which should be avoided by all ships, or by certain classes of ships.

3. LEGAL GROUNDS FOR PSSA

In order to be identified as PSSA a careful study must be carried out by a proposing state. The burden is on coastal state to justify why it is necessary to protect the proposed PSSA.

The legal basis of various measures which could be implemented to protect PSSA is to be found in several IMO treaties. However, the problem emerges with the measures which are not yet establish in the treaty basis. In this respect, the legal basis for the establishment of the PSSA depends on the guidelines, which do not have a binding force on states.

The United Convention on the Law of the Sea (UNCLOS), 1982 includes international rules and national legislation to prevent, reduce and control pollution of the marine environment, particularly dealing with pollution from vessels pointing out the international rules and standards to prevent reduce and control pollution. In my opinion, Article 211 para 6 reflects more the provision of MARPOL on special area and may not provide comprehensive protection in all cases to provide adequate measures to protection in PSSA [4].

4. PROCEDURE FOR THE DESIGNATION, CRITERIA FOR ASSESSMENT AND IMPLEMENTATION OF PSSA AND THE ADOPTION OF ASSOCIATE PROTECTIVE MEASURES

The application should set forth the summary of the objectives of the proposed PSSA designation, the location of the area, the need for protection, the associate protective measures, and demonstrate how the identified vulnerability will be addressed by existing or proposed associated protective measures.

Each application should consist of the detailed description, pointing out the significance of the area and vulnerability of the area to damage by international shipping activities. Moreover, the application should identify the existing and/or proposed associated protective measures and describe how they provide the needed protection from the threats of damage posed by international maritime activities occurring in and around the area.

The submission should identify the legal basis for each measure in any already available

IMO instrument, or any measures that could become available through amendment of an IMO instrument or amendment of the new IMO instrument or any measure proposed for the adoption in territorial sea or pursuant to UNCLOS.

The application should set forth information of the constituency with legal instruments under which associated protective measures are being proposed, implication for vessel safety and impact of vessel operations, such as existing traffic patterns or usage of the proposed area.

In assessing the proposal, IMO should particularly consider the full range of protective measures available and determine whether the proposed or existing associated protective measures are appropriate to prevent, reduce or eliminate the identified vulnerability of the area from international shipping activities. Additionally, the assessment should judge whether such measures might result in an increased potential significant adverse effect by international shipping activities on the environment outside the proposed PSSA and the relation between the recognized attributes, the vulnerability of associated protective measures to prevent, reduce or eliminate that vulnerability and the overall size of the areas, including whether the size is commensurate with that necessary to address the identified need.

Once a PSSA secures final designation, all associated protective measures should be identified on a chart in accordance with the symbols and methods of the International Hydrographic Organization (IHO).

A proposing Member Government should ensure that any associated protective measure is implemented in accordance with the international law as reflected in UNCLOS [5].

Member Government should take all appropriate steps to ensure that ships flying their flag comply with the associated protective measures adopted to protect the designated PSSA. Those Governments which have received information of an alleged violation of an associated protective measure by a ship flying their flag should provide the Government which has reported the offence with the details of any appropriate action taken [7].

5. LEGAL ANALYSIS OF THE DIFFERENCES BETWEEN SPECIAL AREAS AND PSSAS

The guidelines address two different concepts of protection of marine areas, one being special areas which is regulated by MARPOL Convention, and the other PSSA which is not regulated in any of the IMO Conventions.

Firstly, special areas are designed for the enclosed and semi enclosed seas by prescribing operational discharge of oil. However, PSSA can be designed anywhere in the sea area such as territorial waters, exclusive economic zone (EEZ) or even straits used for international navigation.

Secondly, the criteria which must be satisfied for any sea area to be given special area status are grouped in categories of oceanographic conditions, ecological conditions and vessel traffic characteristics, whereas in order to be identified as a PSSA, the area must meet the criteria defined as ecological, social, cultural and economic or scientific and educational, provided that at least one of the criteria should be at a risk from international shipping activities. Therefore, it seems that the conditions for designation of special areas are more restrictive than those established for PSSA.

Thirdly, states can take protective measures in a special area only for the reasons of prevention of sea pollution under MARPOL Convention and existing instruments, while under the PSSA a state can propose associated protective measures which may include any measure that is already available in existing instrument or any measure that does not

yet exist but that should be available as a generally applicable measure that fall within the competence of IMO.

6. CONCLUSIONS

Shipping can cause damage to marine ecosystem, and coastal nations have only limited ability to impose and enforce their own environmental and national regulations to foreign ships [9]. Improving the state of environment in coastal areas is not a matter of coastal countries alone. Provisions are made and procedures are developed for placing more emphasis on early warning system and monitoring of changes.

MARPOL 73/78 defines certain areas as special areas in which, for technical reasons relating to their oceanographical and ecological conditions and their sea traffic, the adoption of special mandatory methods for the prevention of sea pollution is required. PSSA are a mechanism for strict control on international shipping activities within designed areas through the IMO. Countries can declare such areas, and then establish rules for their protection.

The remarkable of negotiated and signed marine environmental agreements raises a serious question whether significant progress could be achieved by further swelling their number or rather by consolidating the implementation of existing convention.

The strict compliance with obligations contained in agreements is far from satisfactory even in countries which do not lack human and financial resources. Experience show that new obligations are becoming stricter, targets more precise, deadlines more explicit, financial requirements higher in comparison with old conventions and agreements.

With expanding recognition of common interest shared by a mankind as a whole, these principles became more elusive, particularly when considering environmental issues of global significance. Gradually, states are more considered as being obliged to act within the limits of their jurisdiction on behalf of a mankind, and such considerations found a clear expression in some of the latest environmental laws.

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