



UNIVERSITY OF TROMSØ

Faculty of Law

EXAMINATION IN THE COURSE ENVIRONMENTAL LAW AND LAW OF THE SEA JUR-3603

Autumn 2007
29 October – 2 November

The *Crete* Case

Factual background

Increased international navigation along the Norwegian coast between ports in northwest Russia and ports in Western Europe and North America has been identified by the Norwegian government as one of the major threats to the marine environment of its coastal areas. Acute oil pollution following shipping accidents (collisions or stranding) may have major harmful effects, *inter alia*, on the marine life, the economy of coastal communities and recreational values.

Norwegian authorities have taken several measures to reduce this risk: by requiring that international navigation is performed further seaward, monitoring the navigation, higher oil spill preparedness and by increased towboat capacity. In 2004 the territorial sea was extended from 4 till 12 nautical miles (nm) also establishing an obligatory traffic separation scheme under Article 22 of the UN Law of the Sea Convention (LOSC).

However, Norway wanted to move international navigation even further seaward. Late in 2006 IMO approved a Norwegian proposal to establish a mandatory ships' routeing system in the Norwegian EEZ off the north and west coast of Norway between Vardø and Røst. The decision was made under the SOLAS Convention Chapter V, Regulation 10 (see attachment 1) and entered into force and became binding on the Contracting Parties to SOLAS on 1 July 2007. According to this SOLAS Regulation V/10, the Contracting Parties are required to comply with the adopted routeing measures and the vessels flying their flags are required to use the routeing systems in accordance with its provisions. Norway has from the same date established regulations to implement the routeing system.

The SOLAS obligatory routeing system consists of 8 points or areas (see map in attachment II) which include two sea lanes (one for westward and one for eastward traffic) with a zone of separation of 2 to 10 nm between them. Vessels are requested to use recommended lanes between these 8 areas. The routeing system is situated approximately 30 nm from the coast, in some areas even further seawards to prevent the traffic from entering fishing grounds and areas with petroleum activities.

The SOLAS routeing system measure applies to all tankers and to cargo vessels above 5000 gross tonnes in international navigation; i.e. passing through the EEZ on the abovementioned distance. SOLAS regulation V/10 does not have separate enforcement provisions but stipulates that "...actions taken to enforce compliance should be consistent with international law, including the relevant provisions of the United Nations Convention on the Law of the Sea". The Norwegian regulation makes violations of the routeing system an offence.

On 13 September 2007 the Greek flagged *Crete*, a 25 year old oil tanker of 125.000 gross tonnes was traversing the Norwegian EEZ off the county of Finnmark en route from Murmansk to Rotterdam. Its passage was monitored by the Vardø Vessel Traffic Services Centre (Vardø VTS) by the use of radar and AIS (Automatic Identification System). On the night of 13 September, Vardø VTS discovered that the vessel had changed course and come closer to land. It was well outside both the recommended sea lanes and the obligatory areas on this part of the coast, but the vessel was still in the Norwegian EEZ.

The vessel was contacted by the Vardø VTS and made aware that it was well outside the SOLAS obligatory routeing system and warned that it was entering a fishing ground where several Norwegian fishing vessels were operating. The vessel was requested to resume its previous course. The captain of *Crete* acknowledged the call but did not comply with the request. Several unsuccessful attempts were made to contact the relevant Greek authorities to have them intervene in the matter. Eventually, the Norwegian Coast Guard vessel KV *Tromsø* was ordered to proceed to the area to repeat the request for the *Crete* to steer further seawards and to resume its navigation through the SOLAS obligatory routeing system. The *Crete* was now in the same area as the fishing vessels, which had to stop fishing in order to avoid collisions. As the *Crete* obviously did not comply with the request, a Coast Guard patrol boarded the vessel and ordered it to navigate seawards toward the obligatory routeing system, followed by the KV *Tromsø*. The *Crete* resumed the recommended sea lane and passed through the remaining obligatory areas. The Greek authorities were subsequently informed that the *Crete* had violated Norwegian regulations and would be escorted by the Coast Guard through the remaining part of the obligatory routeing system. The Coast Guard patrol left the *Crete* in the morning of 15 September in the Norwegian EEZ off the island of Røst.

Legal claims

On 14 September the Greek Foreign Ministry protested to Norwegian authorities claiming that through the actions of the Norwegian Coast Guard Norway was in a blatant violation of international law. It required the Norwegian authorities immediately to remove the Coast Guard patrol from the *Crete*.

The legal basis referred to by the Greek authorities is the freedom of navigation of the high seas which is applicable to the EEZ under Article 58 of the LOSC. The LOSC is binding on both Norway and Greece as State Parties.

Greece argued that, consequently, Norway as the coastal State did not have jurisdiction over the *Crete* as she was exercising the freedom of navigation in the Norwegian EEZ. According to the Greek Foreign Ministry, Greece, as the flag State, enjoys exclusive jurisdiction over the *Crete* while in the Norwegian EEZ.

Greece recognized that the SOLAS routeing system measure adopted through IMO is binding and obligatory for it as a flag State and party to the SOLAS Convention and that the *Crete* was required to use this routeing system. However, it is the responsibility of Greece as the flag State under Article 94 of the LOSC to exercise its jurisdiction to ensure that the *Crete* complied with this SOLAS routeing system measure. As indicated by the relevant SOLAS regulation, these have to be implemented through the LOSC. Norway was required to approach Greece when the *Crete* did not comply with the SOLAS routeing system measure and to ask it to exercise jurisdiction.

Under any circumstances, the violations of the *Crete* did not necessitate Norway to take these enforcement measures and the Coast Guard patrol should have left the vessel well before the Røst Island, at the time when it resumed navigation through the SOLAS obligatory routeing system.

In its reply of 15 September, the Norwegian Ministry of Foreign Affairs did not dispute that Greece as the relevant flag State has the main responsibility under the LOSC for ensuring that vessels flying its flag comply with its international obligations. But Norway argued that it, as coastal State, has jurisdiction over foreign flagged vessels exercising the freedom of navigation in its EEZ, referring to Article 56 of the LOSC. Norway is consequently competent to legislate and enforce in respect of foreign vessels. The flag State is required to ensure that vessels flying its flag comply with the legislation according to Article 58(3) of the LOSC.

The legislation was in accordance with the LOSC as Norway had merely implemented the SOLAS routeing measure within the limits of its jurisdiction under LOSC Article 211 paragraph 5. Subsequently, the request for leaving the vessel was rejected.

Greece, in its response of 18 September, contested that Norway had jurisdiction under LOSC in relation to the SOLAS obligatory routeing measure as its jurisdiction is restricted to "...the protection and preservation of the marine environment" while the routeing measure concerned navigational safety, which is within the sole jurisdiction of the flag State. Greece found support for this contention in Article 211 paragraph 5, which gives the coastal state competence to adopt legislation aimed at preventing and controlling pollution of the marine environment from vessels.

Besides, Greece claimed that Norway could not adopt its legislation under this provision as the SOLAS routeing system measure did not qualify as "generally accepted international rules or standards". This routeing system measure applied to a limited geographical area and was not universal, as required by Article 211. In this case Norway was required to follow the special procedures of LOSC Article 211(6) to be competent to legislate and enforce in respect of foreign vessels.

Norway later replied to this Greek objection by maintaining that LOSC Article 211 paragraph 5 was the adequate legal basis for its legislation. The purpose of establishing separate sea lanes was not only to ensure safety of navigation but also to prevent acute oil pollution

following collisions or other maritime accidents involving tankers or larger cargo vessels, as is evident from SOLAS Regulation V/10.

In the same reply, Norway also rejected the second claim of Greece that it could not base its legislative jurisdiction on LOSC Article 211(5) and argued that the SOLAS routeing system measure adopted is based on rules developed by the IMO to be generally applicable and not to meet special circumstances. IMO has adopted such systems under SOLAS regulation V/10 for many heavily trafficked areas.

In its reply of 15 September 2007, Norway further contended that irrespective of having competence under Article 211(5), it is competent to enforce this SOLAS routeing system measure under Article 220 in its EEZ because the *Crete* had violated an international rule binding and applicable to both states.

Also, Norway was competent under Article 73 of the LOSC to take enforcement measures against the *Crete* since it was disturbing the fishing activities of Norwegian vessels. Anyhow, the lack of response of Greece necessitated Norway taking action to prevent accidents from happening due to the negligent behaviour of the *Crete*. The enforcement measures taken by Norway are not explicitly prescribed by the LOSC but they were less radical than arresting the *Crete* which was the lawful alternative to Norway. The decision not to terminate the enforcement measures when *Crete* had resumed its original course was based on an evaluation that there was a high risk that the vessel again would violate the SOLAS routeing system measure.

Greece, in its response of 18 September, rejected the Norwegian claim to be competent to take enforcement measures against the *Crete*. The violations of the *Crete* did not qualify for any coastal State enforcement measures under Article 220 and under no circumstances those undertaken by Norway. Also, Article 73 is not applicable since the *Crete* was not involved in any fishing activities and merely exercising the freedom of navigation. Greece rejected that the situation was of such a character that there was an urgent need for Norway to take measures pending a response from Greece and reiterate that the measures should have been ended on a much earlier stage.

Discuss all the legal questions raised by the communications between Greece and Norway.

Formal requirements

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Det er valgfritt om besvarelsen skrives på norsk eller engelsk.

Tre eksemplarer av oppgaven leveres i ekspedisjonen innen fredag 2. november 2007 klokken 15.00. Et eksemplar sendes på e- post til følgende adresse: elektronisk_innlevering@jus.uit.no

Foreløpig sensur faller tirsdag 11. desember klokken 14.00 og kunngjøres på fakultetets oppslagstavle utenfor Informasjonen (telefon 77 64 41 97). Muntlig eksamen for de som består den skriftlige delen, avholdes onsdag 12. desember. Kandidatene får den endelige karakteren opplyst umiddelbart etter den enkeltes muntlige prøve.

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Three copies of the paper must be submitted to the reception for students, 2nd floor by Friday 2 November at 3 pm at the latest. One copy of the paper must be sent by email to the following address: elektronisk_innlevering@jus.uit.no

Preliminary examination results will be published at 2 pm on Tuesday 11 December at the reception for students, 2nd floor (phone 77 64 41 97). Oral examination of candidates who pass the written examination, will be arranged on Wednesday 12 December. The examination will take approximately 30 minutes.

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Besvarelsen skal være et selvstendig arbeid. Kildehenvisningene skal være presise og etterprøvbare.

Selvstendighet.

Kravet til selvstendig arbeid innebærer at den enkelte student selv skal ha bestemt og funnet frem til innholdet i sin besvarelse, og selv skal ha formulert besvarelsen. Det er i strid med selvstendighetskravet å få en annen til å skrive hele eller deler av oppgaven for seg, eller å skrive av hele eller deler av en annens oppgave. Det er heller ikke tillatt å sitere fra eller gjengi juridisk litteratur eller andre rettskilder uten å henvide til kildene, slik at argumentene eller synspunktene fremstår som ens egne.

Det er tillatt muntlig å diskutere hjemmeoppgaver med andre studenter og med hvem man måtte ønske. Herunder er det tillatt å diskutere oppgavens faktum, disponering av oppgaven og ulike rettslige spørsmål som oppgaven reiser.

Samarbeid som resulterer i helt eller delvis identiske besvarelser er ikke tillatt. Plagiering av andres arbeid anses som fusk og kan føre til reaksjoner etter reglene i universitets- og høyskoleloven §§ 4-7 og 4-8.

Kildehenvisninger.

Alle skriftlige hjemmeoppgaver skal inneholde så presise kildehenvisninger som mulig. Henvisninger til og sitater fra dommer, forarbeider, bøker eller artikler skal normalt angi nøyaktig tittel, utgave, årstall og sidetall. Også ved gjengivelser av argumenter eller synspunkter fra bestemte kilder skal det henvises nøyaktig til kildene. Det er ikke tilstrekkelig å vedlegge kildeliste.

Manglende kildehenvisning som gir grunn til å tro at studenten forsøker å gi inntrykk av selv å ha resonnert seg frem til noe som er hentet fra en kilde, er brudd på selvstendighetskravet og kan bli ansett som fusk, jf. uhl. §§ 4-7 og 4-8. Manglende eller utilstrekkelig kildehenvisning som gjør det vanskelig å kontrollere riktigheten av det som anføres, medfører trekk ved bedømmelsen selv om det ikke er grunn til å tro at det forelegger fusk.

Vedtatt av Studieutvalget 14.02.07 – SU sak 17-07

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The assignment must be an independent piece of work. Source references must be precise and re-checkable.

Independence

The requirement for an independent piece of work implies that all decisions relating to the assignment and the formulation of the wording is the candidate's own work. It is against the regulations concerning independence for another person to write your assignment in full or part, or for you to write another candidate's assignment in full or part. Quoting or reproduction of legal literature or other legal sources without source referencing, so that the arguments and views appear to be those of the candidate, is also forbidden.

Candidates are permitted to discuss their take-home examination with other people, including fellow candidates, including discussions relating to specific facts, utilisation of the assignment and various legal questions the assignment raises.

Collaboration which results in identical answers in full or part is not permitted. Plagiarism of other people's work is regarded as cheating and may lead to reactions in accordance with Sections 4-7 and 4-8 of the Act regarding universities and university colleges.

Source references

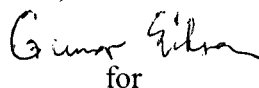
All written take-home examinations must contain source references which are as precise as possible. References to and quotations from judgements, preliminary works, books or articles shall normally state the exact title, edition, year of publication and page number. References to the exact sources must also be utilised when reproducing arguments and views from particular sources. Attaching a reference or literature list as an appendix is insufficient.

Missing source references which provides reason to believe the candidate is attempting to give the impression the something obtained from another source is their own work is a breach of the independence requirements and may be regarded as cheating, with reference to Sections 4-7 and 4-8 of the Act regarding universities and university colleges. Missing or inadequate source referencing, which makes it difficult to verify the accuracy of the stated material, will result in a lower grade being awarded even though there is no reason to believe cheating is involved.

Adopted by the Academic Affairs Committee 14.02.07 – SU (case 17-07)

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Tromsø, 29 October 2007



for

Per Christiansen

Leder for femteavdelingsutvalget