

RESPONSIBILITY TO PREVENT AS A PART OF THE BALTIC SECURITY

PAWEŁ CHYC

Abstract: Responsibility to prevent is understood as an obligation of the coastal States to counteract instead of repairing. The Coastal States should protect the Baltic security from the hazards involved in the safety of navigation or terrorism. Occurrence of damage is not a necessary element to set the State responsibility in motion. In accordance with that, the States themselves are responsible for their own institutions. Furthermore, the States may be responsible for the acts done by legal and natural persons.

Keywords: Prevention at Sea, Safety, Security, State Responsibility.

The region of Central and Eastern Europe needs to be secured also from the side of the Baltic Sea. There is no doubt that Baltic routes of trade shipping – connecting directly Central Europe with the Far East – have a significant impact on economic development of the region. Risks related to substandard shipping or terrorism at sea may implicate grave consequences not only with regard to the Baltic environment, but can also endanger free trade exchange. International community needs to create rules which would enable to provide a new look at the concept of prevention as a legal tool in order to protect a free navigation or to preserve the marine environment. The main concept of prevention states that counteracting is always more effective than repairing. According to this principle, prevention (in particular in the range of the Baltic protection) requires to undertake a preemptive action. Unfortunately, there exist many examples where entire repair of environmental damage is impossible (examples of grand shipwrecks like S/S Torrey Canyon). Admittedly, in this case compensation should take place, but damage to the environment is long-lasting. Moreover, compensation is not a tool serving the Baltic protection, but more an instrument for imposing sanctions against the culprit. Examples of grand shipwrecks illustrate a real significance of prevention at sea. Now a question arises: who is responsible for undertaking preventive measures related to the obligation of counteracting?

At face value, the preventive responsibility should be borne by a subject that derives potential profits from activities at sea such as: ship operating, ship ownership, fishing, marine trading, etc. But in fact instead of individuals – the States are the main beneficiary and administrator of the seas. It means that coastal states should be responsible for undertaking counteracting measures at sea. Furthermore, the States should be responsible even indirectly – for the acts done by legal and natural persons. This creates a preventive responsibility. Regarding the definition of preventive responsibility, it is possible to indicate the following: preventive responsibility is the responsibility for the counteraction against damage. Coastal States should protect the Baltic area from hazards involved in the safety of environment and navigation and even provide security against terrorism. In contrast to responsibility built on fault or responsibility built on risk, in case of preventive responsibility the occurrence of damage is not a necessary element to set this kind of responsibility in motion (Brodecki and Рус, 2009).

Defined this way, prevention includes environmental safety, shipping safety and security against terrorism as a new kind of protection of the sea. Terrorism obviously concerns marine issues too. It is not hard to imagine a situation where for instance an oil tanker is used as a weapon obstructing the Baltic straits or damaging LNG terminals through a marine accident. Preventive responsibility should also include this kind of potential threat posed by terrorists. With regard to the Baltic protection, international community (as

a part of IMO) created a few meaningful conventions: MARPOL 73/78 related to the environmental safety and SOLAS 1974 related to the shipping safety. MARPOL regulates the tools for reduction of pollution of the oceans and seas from ships. Moreover, MARPOL recognises the Baltic Sea as a vulnerable area and, for that reason, Baltic States created HELCOM as a body of the Helsinki Convention. On the whole, MARPOL ensures basic instruments regarding environmental safety. Another convention – SOLAS (International Convention for the Safety of Life at Sea) is related to the shipping safety and ensures that ships flagged by signatory States comply with minimum safety standards in construction, equipment and operation. It is perceived as the most important of all international treaties concerning the safety of merchant ships. Thereby, SOLAS is forming a foundation towards shipping safety. Both conventions play a huge role in prevention at sea and include preventive rules which are forming a ground for the concept of “responsibility to prevent.”

Table 1. Comparison of types of responsibility in the international public law

responsibility built on fault	responsibility built on risk	preventive responsibility
<u>CAUSATION BETWEEN ACT AND RESULT</u>	<u>CAUSATION BETWEEN ACT AND RESULT</u>	<u>CAUSATION BETWEEN ACT AND RESULT</u>
<u>DAMAGE</u>	<u>DAMAGE</u>	
<u>FAULT</u>		
<u>ILLEGALITY OF ACT</u>		(OBLIGATION TO COUNTERACT DAMAGE)

In fact, responsibility to prevent is just the first step of the three-piece structure of protection of the sea called Responsibility to protect (R2P doctrine coming from the field of humanitarian intervention), and it consists of the following elements:

- Responsibility to prevent;
- Responsibility to react (control, in extreme cases humanitarian or armed intervention);
- Responsibility to rebuild – restitution of a former situation (responsibility for an illegal action & liability – compensation for damage).

According to R2P doctrine, only these three elements are forming the blanket structure of effective protection of the seas, and more broadly of all

laws including human rights. A negative example of the concept of Responsibility to Protect in the range of international relations may be responsibility for the Budapest Memorandum, where certain signatory States guaranteeing independence of Ukraine in exchange for nuclear weapon, violated Ukrainian borders without any serious international reaction.

Invoking literature tools serving the prevention are based on governmental supervision through: procedures (counteracting), monitoring, reporting (responsibility), assessments of the impact and the best green technologies. However, taking into account purely legal tools, one should point at preventive claims as well as preventive sanctions associated with such claims. The duty of the States to counteract a damage should be emphasised both in the international and domestic dimension. The importance of prevention was partly expressed in the UN Convention on the Law of the Sea (UNCLOS), and a number of IMO conventions as well. The normative basis for broad construction of responsibility to prevent is article 232 of UNCLOS, whereby the States are liable for measures undertaken to protect from losses and damages in environment. Another example of such tools functioning in practice is the MARPOL convention. Article 4 stresses that sanctions for violation of preventive rules shall be “adequate in severity” (Brodecki and Pyć, 2009). According to this regulation, the States are responsible for penalisation of anyone who will violate the MARPOL convention, even if the damage has not occurred. Proper procedure serving this State’s duty imposed by MARPOL is the Flag State Control and Port State Control.

The duty of protection of the oceans and seas belongs to the Coastal States. Nevertheless, considering global profits coming from the routes of trade shipping or clean marine environment, it is worth thinking about the participation of inland states in the process of constructing preventive mechanisms. Prevention perceived this way would allow the States situated in the Baltic Region to build a stable economic position and basis for further sustainable regional development leaning against diversification of natural resources. Even states without access to the sea (like Belarus), by turning to the Baltic Sea, can enhance their economic position. Cooperation of the States in administration, business and State strategy will, of course, give positive economic effects in relation to strategic benefits, but also to the protection of the Baltic Sea.

References

Brodecki, Zdzisław and Pyć, Dorota (2009). „Odpowiedzialność prewencyjna w prawie morza” (w:) Artur Kozłowski, Barbara Mielnik [red.], *Odpowiedzialność międzynarodowa jako element międzynarodowego porządku prawnego*, Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego.