The Coastal State's and the Port State's Legislative Competence Concerning Foreign Ships to Prevent Pollution. Looked at in the Light of Existing Conventions on Pollution Prevention

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Summary: Based on existing conventions on enforcement of pollution prevention rules, the extent of the Coastal state's and the Port state's legislation competence over foreign ships is examined. It is said in existing conventions, that they are also to be enforced against non-parties to the conventions. As written law in public international law is based on the autonomy of the parties, enforcement of the rules implies legislative competence of every party to the convention. An examination of the conventions shows that the enforcement is based on the ship being situated in or acting in the port, the internal waters or the territorial sea. Unlike demands to acts, such as discharges and dumpings, which are limited in time, demands to the standard of the ship, such as construction, reach beyond the stay of the ship in the port, the internal waters or the territorial sea.

1. The Content of the Article

In article 1, 1 of the 1958-convention1 “on the Territorial Sea and Contiguous Zone” and article 2, 1 of “The United Nations Convention on the Law of the Sea” (in the following refered to as the 1982-convention) the sovereignty2 of the states and, among other things, their legislative competence, on the sea is specified. The legislative competence inferred from article 1, 1 of the 1958-convention and article 2, 1 of the 1982-convention, does not relate to any specific field and it therefore concerns the state's general legislative competence. On the other hand the legislative competence relates to the ports, the internal waters and the territorial sea. The state's general legislative competence is locally limited to these areas.3

Both the 1958- and the 1982-convention have specific rules relating to the state's legislative competence to prevent pollution. The 1958-convention only has three rules concerning this, cf. article 5, 7 of the “Convention on the Continental Shelf” and

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article 24 and 25 of the "Geneva Convention on the High Seas", while the 1982-convention has a whole section, section XII.

The special rules in the 1958- and the 1982-convention on the state's legislative competence to prevent pollution will not be examined. However, the existing conventions on pollution prevention will be analysed. The extent of the port and the coastal state's legislative competence will be ascertained in the light of the existing conventions. The examination of the port and the coastal state's legislative competence covers the competence to make rules to prevent pollution. Thus it is only the competence to make preventive rules and not repressive rules in situations where pollution has taken place that will be considered.

The reason why the existing conventions can be used for determining the port and the coastal state's legislative competence is, that the conventions specify that they shall also be enforced against parties who have not ratified them. It is a usual rule in public international law that written law is based upon the autonomy of the parties. Thus an enforcement of convention rules to non-parties implies that every party to the conventions has legislative competence. The interest for the existing conventions is due to the fact that the enforcement concerns rules the content of which cannot be limited to the port, the internal waters or the territorial sea. Last, but not least, ascertaining legislative competence from enforcement rules means that the competence concerns rules that can be enforced.

2. Materials

The examination of the existing conventions on pollution prevention will concentrate on the Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft" from 1972 (in the following referred to as the Oslo-convention), the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter" from 1972 (in the following referred to as the London-convention) and the International Convention for the Prevention of Pollution from Ships" (in the following referred to as the MARPOL-convention).

The MARPOL- and the London-convention are the two only international conventions dealing solely with the protection of the marine environment. Many other conventions e.g. "the International Convention on the Safety of Life at Sea" from 1960 and "the Convention on the International Regulations for Preventing Collisions at Sea" from 1972 have either few rules concerning this matter or have rules indirectly relating to the protection of the marine environment.

The MARPOL-convention is the successor to "the International Convention for the Prevention of Pollution of the Sea by Oil" from 1954 (in the following referred to as the 1954-convention). In a case where a state has ratified both the MARPOL- and the 1954-convention the rules of the 1954-convention are replaced by the rules of the MARPOL-convention, cf. article 9, (1) of the MARPOL-convention. As the MARPOL-convention, despite the relative few ratifying countries (43), covers 80 percent of the worlds tonnage, I will confine my examination to the MARPOL-convention.

The Oslo-convention differs from the two other conventions by being a regional