

Per W. Schive
Deputy Director General
Department for industry, water management and waste
Ministry of the Environment
NORWAY

THE CO-OPERATION AGREEMENTS ON OIL SPILL COMBATTMENT IN THE NORTH SEA AND THE BARENTS SEA

PAJ Oil Symposium 1997

Abstracts

This paper presents the Bonn Agreement of 1969 which is an agreement of co-operation between the North Sea countries on oil spill combattment. Further it presents the Copenhagen Agreement of 1970 which is a similar agreement between the Nordic countries. Finally it presents the bilateral agreement between Norway and the Russian Federation of 1992, dealing with oil spill combattment in the Barents Sea. After a brief individual presentation of the agreements the paper focuses on the common features of the agreements, such as the obligation to respond to an oil spill incident and the obligation to assist the other Contracting Parties when an oil spill incident occurs.

Introduction

The Torrey Canyon oil spill in the English Channel in 1967 led to growing public awareness and a strong political demand for action with regard to oil spill combattment. Building up national systems for dealing with oil spill is, however, a strong organisational, legal and economical challenge. It soon became evident that international co-operation in this field would be of considerable benefit for all the countries involved, in particular with regard to the possibility for access to more personnel and equipment in the case of a major oil spill incident.

This paper deals with the co-operation agreements which have been agreed between the North Sea countries (the Bonn Agreement of 1969), the Nordic countries (the Copenhagen Agreement of 1970) and the bilateral agreement between Norway and the Russian Federation in 1992. The first two of these agreements are at the same time among the first international agreements on environmental protection. We may say that they were the introduction to the new field of international co-operation that has been and still is of growing importance, namely the international co-operation on environmental issues.

The primary focus will be on the agreements as such. A consideration of each agreement and a comparison between them may give a picture of which basic elements that generally should be included in international co-operation agreements on oil spill combattment. However, there will also be a brief evaluation of the agreements on the basis of how they have functioned, or in other words how they have fulfilled their objectives.

II Basic information

1. The Bonn Agreement:

Adopted: 9 June 1969

Contracting Parties: Belgium, Denmark, France, the Netherlands, Norway, United Kingdom, Sweden, Germany, the European Commission

Entry into force: 1970

Amended: 1983 to include marine pollution from other harmful substances than oil

Secretariat: Permanent secretariat jointly with the Oslo and Paris Commissions. Located in London.

Characteristics: The objective of the Bonn Agreement is to co-operate in combating pollution of the marine environment by oil and other harmful substances resulting from an accident. A particular contingency plan called <<The Bonn Agreement Counter Pollution Manual>> is adopted under the agreement together with a particular pollution report plan (POL-REP). The primary purpose of the Bonn Agreement Manual and the POL-REP is to secure extensive notification in the case of a major oil pollution incident and that efficient international co-operation related to the clean-up operation is secured. The Manual also includes a description of each of the Contracting Parties' domestic emergency services and available equipment.

In order to implement the Agreement, a particular Working Group is established (Bonn - OTSOPA). On annual meetings of the Working Group i.a. joint airborne surveillance operations are discussed, the statistics on oil spills are compiled, joint exercises are planned and new methods and technologies for recovery of oil are discussed. A Manual for Gathering of Evidence has been developed. This is now applied by the prosecuting authorities of all the Contracting Parties.

2. The Copenhagen Agreement:

Adopted: 16 September 1971

Contracting Parties: Sweden, Denmark, Iceland (from 1993), Finland and Norway.

Entry into force: 1971

Amended: 1993, to include marine pollution from other harmful substances than oil

Secretariat: Rotates every second year between the Contracting Parties (at present: Norway)

Characteristics: Very similar to the Bonn Agreement. A particular Contingency Plan is adopted and exercises are arranged on a yearly basis. In addition there is a close co-operation and exchange of information related to i.a. different techniques in oil spill combatment, the use of chemical dispersants, biological remedies, development of equipment.

3. The Norwegian/Russian Agreement:

Adopted: 16. June 1992

Signatories: the Russian Federation and Norway

Entry into force: 1994.

Characteristics: Different from the other agreements is this a bilateral agreement. There is no specific Secretariat. The agreement includes the adoption of a joint contingency plan against oil pollution in the Barents sea (the Plan). The Plan gives further instructions related to notification, exercises and other consultations. A <<Joint Planning Group>> is established between the competent authorities for the further development and implementation of the Agreement and the Plan. Through regular meetings and exercises it is the task of the Group to maintain, co-ordinate and develop further the procedures, notification systems, resources and the co-operation. The authorities represented in the Group are the Russian Marine Pollution Control Authority (MSPCA) which is subordinate to the Russian Ministry of Transport and the Norwegian Pollution Control Authority, subordinate to the Ministry of the Environment.

III. Common features:

The agreements contain some common features. The following will give a description and a brief evaluation of these features.

1. Objective:

The general objective of all the agreements is to guarantee and facilitate assistance between the Contracting Parties in the case of a major oil spill. To this end the agreements require co-operation between the competent authorities of the Contracting Parties in the development of joint contingency plans, exchange of information etc. The general objective is most explicitly spelled out in the Bonn Agreement where in the preamble it is stated that the Governments are <<Convinced that an ability to combat such (oil) pollution as well as active cooperation and mutual assistance among States are necessary for the protection of their coasts and related interests>>.

2. Commitments:

The Contracting Parties accept a number of commitments laid down in the agreements. The main commitments are the following:

a.) to develop and maintain a national system:

Certainly a Party cannot solely base its contingency system on the assistance it may get from the other Parties. This may be seen as self-evident. Nevertheless there are laid down specific provisions in the different agreements for this purpose. The Copenhagen Agreement states specifically in art.4 that the <<Contracting Parties undertake to establish a contingency system for the combatment of major oil pollution incidents at sea>> (art. 4.a). The Bonn Agreement says in article 4 that the Contracting Parties <<undertake to inform the other parties i.a. about their national organisation for dealing with (oil) pollution>> (art 4.a) as well as about <<their national means for dealing with (oil) pollution, which might be made available for international assistance>> (art 4.c). The Norwegian /Russian Agreement also says explicitly that <<the Parties commit themselves, within their capabilities, to the development of national systems that permit detection and prompt notification of the existence or the imminent possibility of the occurrence of oil pollution incidents, and to providing adequate means within their power to eliminate the threat posed by such incidents and to minimise the adverse effects to the marine environment and the public health and welfare>> (art .III).

b.) Information /notification.

Notification in the case of an accident is a basic element. For many purposes it is crucial that proper notification is communicated to the other Contracting Parties i.a. for them to be able to make their own evaluation of the situation and prepare for possible assistance. This relates both to an accident which in the actual situation only threatens the interests of the Contracting Party concerned, as well as when a Contracting Party is aware of an oil spill which threatens the interests of another Contracting Party. The Bonn Agreement says in article 6.3 that <<The Contracting Party concerned shall immediately inform all the other Contracting Parties through their competent authorities of its assessments and of any action which it has taken to deal with the oil or other harmful substances and shall keep these substances under observation as long as they are present in its zone>>. Art. 5.1 of the Bonn Agreement covers the other aspect: <<Whenever a Contracting Party is aware of a casualty or the presence of oil or other harmful substances in the North Sea area likely to constitute a serious threat to the coast or related interests of any other Contracting Party, it shall inform that Party without delay through its competent authority>>. The Copenhagen Agreement has similar provisions in art. 4, 5 and the Norwegian/Russian Agreement has similar provisions laid down in art. IV.

In addition to these notification/information obligations in the case of an accident, there are other obligations to inform the other Parties for the purpose of enhancing the co-operation. For example the Bonn Agreement says in article 4 (d) that <<Contracting Parties undertake to inform the other Contracting Parties about new ways in which such (oil) pollution may be avoided and about new means to deal with it>>.

c.) response/assistance

Certainly a Contracting Party will have an obligation according to all the respective agreements to respond to any oil pollution incident within their own waters. This is explicitly laid down in article VII of the Norwegian/Russian agreement: <<The competent authority of the Party in whose area of responsibility an oil pollution incident occurs, or whose area of responsibility is affected by such an incident, shall direct response operation within that area.>> This obligation is not directly spelled out in the other agreements, but should be considered as built into the agreements. Another Contracting Party's obligation to assist (see under) should be seen as limited to the case where the Contracting Party in which area the oil spill occurs, itself has undertaken a response operation.

The core of all the agreements is that any state may request for assistance from any other party to the agreement. It is an obligation for the state(s) which receives such a request to render assistance. The relevant article within the Bonn Agreement (art 7) contains both these elements: << A Contracting Party requiring assistance to deal with pollution or the prospective presence of pollution at sea or on its coast may call on the help of the other Contracting Parties. Contracting Parties requesting assistance shall specify the kind of assistance they require. The Contracting Parties called upon for help in accordance with this article shall use their best endeavours to bring such assistance as is within their power taking into account, particularly in the case of pollution by harmful substances other than oil, the technological means available to them>>. Such assistance has been requested according to the Bonn Agreement, for instance in the Sea Empress incident where France and the Netherlands assisted the United Kingdom.

The Copenhagen Agreement has the same rights and obligations laid down in article 3. Regarding the call for assistance it, however, includes a specific provision that: <<..... a request (for assistance) shall first be directed towards that state which also can be expected to be affected by the oil.>> This has to be seen in light of a particular difference between the Bonn Agreement and the Copenhagen Agreement. The Bonn Agreement includes only Contracting Parties that shares the same body of water while this is not the case for the Copenhagen Agreement. In the case of the Copenhagen Agreement it may be considered acceptable that for instance Finland may refuse to assist Norway if an oil spill in Norwegian waters also threatens to affect Sweden, if Norway has not first requested assistance from Sweden. Also under the Bonn Agreement in most cases a request will be directed to another state which also can be affected from the oil. However, other Contracting Parties cannot refuse to assist even this is not the case. The main benefit will be that this avoids any discussion between the Contracting Parties regarding to whom a request for assistance shall be directed.

In the Norwegian/Russian Agreement this is certainly not a crucial element because it has only two parties. On the other hand that agreement contains some more specific elements related to the assistance. For instance in article X it says that <<Requests for assistance by telephone shall be confirmed by telefax, telegraph or facsimile>>. The reason for such a clause in the agreement itself is mainly because of the potential language problems between the Parties.

d.) Joint exercises

An important element in order to implement the Agreements and facilitate joint operations is the obligation to undertake joint exercises. Most explicitly is this laid down in art. XII of the Norwegian/Russian agreement which says that <<The Parties shall periodically conduct joint oil pollution response exercises and meetings in accordance with the provisions of the Plan.>> There are no specific requirements to this extent in the Bonn Agreement and the Copenhagen Agreement. However, joint exercises are undertaken on a yearly basis under both agreements and is an important element of the co-operation. Therefore there are good reasons to consider this as a general obligation laid down also within these agreements.

e.) Reimbursement of costs.

An oil spill operation is certainly also costly in terms of economy. There are specific regulations contained in the agreements related to the reimbursement of costs in relation to a clean-up operation. This is in most detail laid down in the Bonn Agreement. In art. 9,1 it states that the general rule in the absence of any particular agreement is that <<Contracting Parties shall bear the costs of their respective actions>>. However it continues that <<if the action was taken by one Contracting Party at the express request of another Contracting Party, the Contracting Party requesting such assistance shall reimburse to the assisting Contracting Party the costs of its action (art.9, I a). It follows further that <<if the action was taken by a Contracting Party on its own initiative, this Contracting Party shall bear the costs of its action>> (art. 9,1 b) . In art. 10 the Agreement regulates that the costs shall be calculated <<according to the law and current practise in the assisting country>>. In art. 11 there is a particular provision that <<Article 9 of this Agreement shall not be interpreted as in any way prejudicing the rights of Contracting Parties to recover from third parties the costs of action to deal with pollution or the threat of pollution under other applicable provisions and rules of national and international law.>> Such rights follows from i.a. the International Convention on Civil Liability for Oil Pollution Damage of 1969 (CLC) and the International Convention of the Establishment of an International Fund for Compensation for Oil Pollution Damage of 1971 (the Fund Convention). These provisions may seem rather complicated, but in practise it has not been any problems between the Contracting Parties related to the costs.

The same principles are laid down in the Norwegian/Russian Agreement. It says in art XIV that <<The requesting Party shall reimburse the assisting Party for expenses associated with response resources. The amount shall be reimbursed in accordance with the rates and currency determined by the assisting Party>>.

3. Geographical coverage

The Bonn Agreement and the Norwegian/Russian agreement contain explicitly certain limitations with regard to the geographical coverage.

Firstly, the two agreements applies only to a limited geographical area. The Bonn Agreement applies to the North Sea as defined in art. 2 of the Agreement. The Norwegian/Russian Agreement is limited to what is called the <<area of responsibility>> which in Art. 2 for a Party is defined as <<the waters within the Barents Sea which are the respective Party's internal waters or territorial sea, and the sea area beyond the territorial sea in which that Party exercises its sovereign rights and jurisdiction in accordance with international law.>>

Further there are also geographical limitations with regard to where each Contracting Party is considered to have the primary responsibility related to i.a. the obligations to respond to an oil pollution incident and call upon assistance from the other Parties. For this purpose the Bonn Agreement as laid down in art. 6 divides the North Sea into specific zones. These zones are defined in the Annex to the Agreement. It is the responsibility for the respective Contracting Party within whose zone a major oil spill occurs, to take the necessary steps in accordance with the obligations described above. In addition to such national zones of responsibility there are for the same purposes zones of joint responsibility which <<shall be the subject of special technical arrangements to be concluded between the Parties concerned. These arrangements shall be communicated to the other Contracting Parties>> (art. 6,4). It must be emphasised that these zones are established solely for the purpose of this Agreement.

The Copenhagen Agreement does not contain any specific limitation regarding geographical coverage. The main reason is, as mentioned above, that the Contracting Parties does not share the same body of water. It is not considered to raise any practical difficulties in each incident to agree which Contracting Party who has the primary responsibility. However, Norway and Sweden have a particular agreement regarding the responsibility in parts of the Oslo fjord where there is a shared body of water.

IV Evaluation and Conclusion

The obvious benefit of an agreement such as those discussed in this paper, is the access to additional resources in the case of a major oil spill incident. For instance, through the co-operation information on a detailed level is developed regarding such as what kind of recovery booms, offshore and inshore booms, recovery skimmers, heavy oil recovery systems and pumps that are available from other Contracting Parties if a major incident should occur. This will save important time in the course of an oil spill recovery operation. Equally important are the joint exercises and the regular contact that takes place between the Contracting Parties to discuss common problems and exchange information. The benefit of knowing each other will to a great extent facilitate any joint operation.

In this manner, the joint activities and co-operation that the agreements entails, is maybe more important than the specific legal content of the agreements. However, because of this outcome, it may be possible to conclude that the agreements does fulfil their objective.

At the same time the analysis in this paper shows that the three agreements to a large extent contains the same features and lay down similar rights and obligations. This is no surprise regarding the Bonn Agreement and the Copenhagen Agreement where the first has been the main model for the latter. With regard to the Norwegian/Russian Agreement, the models have in addition been similar agreements between Russia /USA and Russia/Canada. Because of their similarities and because of their ability to serve their objectives, a conclusion may be that they could serve as models for the negotiation of international agreements and co-operation regarding oil spill combattment also in other sea areas.