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Deserted and Wrecked Ships

Investigation of Swedish and international maritime
law

LAGF03 Essay in Legal Science

Bachelor Thesis, Master of Laws programme
15 higher education credits

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Term: Spring term 2017

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Summary

Shipping has historically been important for societal development and recreational appreciation of the sea has for a long time been popular amongst all ages and nationalities. Moreover the shipping industry is constantly evolving due to increased global trade. The excitement and the adventures of the seas are unlimited but so are also the dangers of the sea. Naturally these dangers cause accidents that are legal matters and need rules. The regulations regarding the liability of the shipowner for wrecks and deserted ships are complex. In Swedish national legislation the provisions are spread out in several regulations whereas in international law they are mainly gathered in a few bigger conventions.

In Sweden the regulations regarding wrecks have been complex for a long time and as this thesis is being written a proposal to improve this legislation has been presented for the second time. The bill is based on The Nairobi International Convention on the Removal of Wrecks that many other countries have acceded, amongst other countries our neighboring countries Denmark and Finland. The Convention fills a big gap that existed in legislation. However there still exists room for future improvements and developments in regulation. With new conventions entering into force and more international legislation the differences in national legislation become fewer. More states get a uniform legislation and the approach to legal matters becomes more alike. A bill with several similarities to the IMO wreck removal Convention was presented in 1975, but it was rejected.

This thesis discusses the legal aspects of deserting a ship both on international waters and Swedish territorial water. The main focus is on discussing and investigating the actual action of deserting a ship and the legal consequences.

Sammanfattning

Sjöfart har historiskt varit viktigt för samhällsutvecklingen i världen och uppskattning för havet under fritiden har länge värdesatts av alla åldrar och nationaliteter. Dessutom är sjöfarten ständigt under utveckling i och med den växande globala handeln. Spänningen och äventyren som haven har att erbjuda är obegränsade men med priset att så är även farorna. Dessa risker för självklart med sig olyckor vilka blir rättsliga frågor som kräver regler. Regleringarna kring ansvar för vrak är mycket komplexa. I svensk rätt finns de utspridda i ett flertal rättsakter medan de i internationell rätt huvudsakligen finns samlade i ett par större konventioner.

Inom svensk rätt har regleringen kring vrak varit komplex under en längre tid och under tiden som den här uppsatsen har skrivits så har ett lagförslag om ändring av detta lämnats in för andra gången. Lagförslaget är baserat på The Nairobi International Convention on the Removal of Wrecks vilken har tillträtts av flera andra stater, däribland våra grannländer Danmark och Finland. Konventionen fyller ett stort hål som funnits i den existerande lagstiftningen dock finns det fortfarande luckor som behöver fyllas genom framtida vidareutvecklingar av lagstiftningen. Med nya konventioner som antas av ett flertal länder och mycket annan internationell lagstiftning blir det färre skillnader mellan olika staters lagstiftningar. Av detta följer att fler länder får en mer enhetlig lagstiftning och deras angreppssätt blir allt mer likt. Ett lagförslag med ett flertal likheter med IMO wreck removal Convention lades fram redan 1975, dock ledde aldrig förslaget till någon lagstiftning.

Denna uppsats diskuterar de rättsliga aspekterna av att överge ett skepp både på internationellt vatten och på svenskt territorialvatten. Med huvudfokus på diskussioner och utredningar av den faktiska handlingen att överge skeppet och de rättsliga följderna.

Abbreviations & Definitions

Exclusive economic zone – a zone up to 200 nautical miles from the baseline (most often the low-water line along the coast), from which the territorial water is measured. Each state has the right to establish the breadth of its exclusive economic zone but it may not exceed 200 nautical miles.

Gross Tonnage – a measure of the overall internal volume of a ship.

HFO - Heavy Fuel Oil

High Seas – also referred to as international water, are waters outside of national jurisdiction.

IMO – the International Maritime Organization

Maritime Casualty – a seagoing vessel that has experienced severe machinery or structural damage likely to be declared a total loss.

Nautical Mile – 1852 meters

Shipowner – the owner, manager, charterer and operator of a seagoing ship.

Territorial water – a zone up to 12 nautical miles from the baseline (most often the low-water line along the coast). Each state has the right to establish the breadth of its territorial water but it may not exceed 12 nautical miles.

1 Introduction

1.1 Background

Each day, there are a vast amount of ships out on the seas. There are two main categories of ships, commercial ships that transport goods or people and non-commercial ships that are cruising or racing the high waters for pleasure of the crew.

The sea can be extremely dangerous for all ships and holds a force that no one can predict or control. The dangers of the sea and the consequences concerning ships present some legal questions regarding responsibility and liability. What is the legal situation when a ship cannot cope with the power of the sea and the crew is forced to desert the vessel?

This thesis will explain the causes and investigate the legal consequences of deserting a ship, both on international waters and on Swedish territorial water. The Swedish legal framework regarding these issues today is not fully clear, with several aspects that cause doubt and insecurity. This insecurity makes the topic interesting to investigate and review.

Although the focus of this thesis is the legal framework around abandonment of a ship because of accident, it is important to point out that there also exist other reasons to desert a ship. Vessels are also abandoned at sea after being stolen or when the burden to take care of a run-down ship is considered too big or hazardous and the owner's solution would be to let the ship "disappear". A deserted ship can pose a threat both after grounding or purely when floating around abandoned.

1.2 Purpose

The main focus of the thesis is to investigate and discuss the legal aspects of the actual action and decision to desert a ship on international water or Swedish territorial water, and with a comparison between these two types of scenario.

1.3 Questions of research

The main research question is:

- In the event of an abandoned ship, what are the legal aspects?

The sub-questions that are used to support the research are:

- Which laws and regulations are applicable to investigate the liability, in the case of a deserted ship?
- What are the legal consequences, for the shipowner, after deserting a ship?
- What are the legal differences between deserting a ship on international water and on Swedish territorial water?
- Does the legal aspects differ whether the ship has commercial or non-commercial purposes?

1.4 Delimitations

The thesis will not cover situations where non-commercial ships are used for commercial purposes and vice versa as well as situations where deserting a ship is caused by piracy. Moreover, the legal situation around ships with ties to armed forces will not be included in the thesis.

The thesis will focus on the instances when ships are deserted out on the sea and not investigate cases when ships are left in a harbor or similar places such as sites assigned for mooring along the shore. Therefore the thesis will not bring up specific regulations for municipalities in regards to those described above. Moreover, situations related to deserted ships in connection with the shore that are not assigned for mooring will not be included in this thesis.

The thesis will not go deeper into environmental aspects of deserting a ship. It will only bring to the reader's attention some instances when the question of environmental impacts is closely related to the question of liability.

1.5 Perspective and method

The methodology used is the legal dogmatic method, which can be explained as a legal analytical method that interprets and systematizes existing law. The starting point for the legal dogmatic method is often the question of research. When using the method a

lot of effort is often put in analyzing the relevance of the question before examining the regulations that are brought up in the primary analysis of the question of research.¹

The perspective of this thesis is to investigate the legal framework concerning deserted ships and present the relevant information regarding wrecks on both international water and on Swedish territorial waters. The intention is to cover dual perspectives, both from the user of the law and from the regulation that covers the area. The user perspective covers that of the shipowner and the regulations that the entity must act by in a situation of a deserted ship. The regulatory perspective covers the law perspective and also discusses whether the regulations concerning deserted ships are updated and well regulated from a modern standpoint.

1.6 Research setting

During the course of research of this thesis it has become clear that it is a rather complex subject and that it is a topic that has not been discussed to any further extent. The doctrine is limited and even though several voices have been raised about the need to have clearer regulations in the area not much has been done. Hopefully through the attention that international and national organizations have given to the topic, the need for more stringent international and national regulations will be brought to public and legislative attention.

1.7 Materials

In the literature and doctrine about the abandoning of maritime vessels it becomes clear that the legal situation unfortunately is unclear. Thus, the thesis will focus on aspects that are more discussed in doctrine. Information is retrieved from both Swedish and international sources of law. Statistics about shipping and its implications is retrieved from reports from Swedish authorities whereas international statistics mainly comes from the reports of larger international insurance markets and their detailed reports on the subject.

When using the information mentioned above it is natural to believe that the information lifted from reports made by Swedish authorities are more objective than the reports from the international insurance market. The statistics that the insurance

¹ Korling and Zamboni (2014) p. 21 ff.

market has shown in their reports is not found anywhere else. Therefore the thesis will use the information from the reports of the insurance market but with caution concerning their objectiveness, since they most likely take into account the business perspective. Thus, a selection bias may exist regarding the included raw data.

1.8 Outline

Initially the thesis will introduce the reasons for deserting a ship to give the reader an understanding of the background of the situation. Subsequently the thesis will give the reader a presentation of the legal framework that can be actualized and present differences in Swedish and international regulations and the differences in deserting a ship on different waters. Furthermore it will present the differences for ships with a commercial or non-commercial purpose. Finally the thesis will discuss the information presented and sum up the main issues regarding the legislation around the topic.

2 Thesis

2.1 Reasons for deserting a ship

In Swedish legislation the term ship (fartyg) is not specifically defined but can indirectly (by reading chapter 3 §1 of the Swedish Maritime Code) be defined as a vessel with a hull and a steering device.² In international legislation the term ship is commonly used for seagoing vessels of all types. This definition is e.g. used in the 2007 Nairobi International Convention on the Removal of Wrecks.

Even though the developments in shipbuilding techniques and navigation systems lead to improvements in the quality and safety of ships there still exists a large number of casualties. An estimate is that 75% of all casualties at sea are due to human factors. Examples of such human factors are sleep deprivation, communication errors, insufficient knowledge, poor handling and insufficient maintenance.³ Deserting a ship by the crew and the captain is generally regarded as the last option and only performed

² Karnov online, Swedish Maritime Code (1994:1009), chapter 1 §2, annotation 11, visited 2017-05-15.

³ James Herbert, Lloyd's: "The Challenges and Implications of Removing Shipwrecks in the 21st Century", p.17, <<https://www.lloyds.com/~media/lloyds/reports/emerging%20risk%20reports/wreck%20report%20final%20version%20aw.pdf#search='fleet%20statistics'>>, visited 2017-04-03.

when it is absolutely necessary in a situation that can be life threatening for the crew/captain or any third person. Nevertheless the reason for deserting the ship in a vast majority of cases arises from a situation where an accident of some type has occurred. Although it should be noted, as previously mentioned, that casualties are not the only cause to desert a ship.

2.1.1 International waters

Internationally there is a report from Lloyd's, an international insurance market, which describes the challenges and implications of removing shipwrecks in the 21st century.⁴ This report, over the shipping casualties, shows the causes for casualty from salvage cases during the years 2000-2010. Figures in the report show that the main causes are grounding (45%) and engine/mechanical breakdown (23%).⁵

2.1.2 Swedish waters

By Swedish law the Swedish Maritime Administration (Sjöfartsverket) is responsible for maritime search and rescue. Their operations are predominantly carried out by the aid of the Swedish Sea Rescue Society (Sjöräddningssällskapet), the Swedish Coast Guard (Kustbevakningen), and the Swedish Armed Forces (Försvarmakten) with the Swedish Navy (Svenska Marinen). The Swedish Sea Rescue Society are involved in numerically the largest number maritime searches and rescues in Swedish waters. In 2015, the Swedish Maritime Administration reported a total of 936 accidents where assistance was needed. The main reasons for need of assistance were issues with the engine/propeller (approximately 22%), grounding (approximately 16%) or medical transportation from ships (approximately 13%).⁶ In many of these cases the ship would have been deserted if a rescue mission would not have been carried out or successful in terms of bringing the ship to a safe harbor.

⁴ Lloyd's: What is Lloyd's?, <<https://www.lloyds.com/lloyds/about-us/what-is-lloyds>>, visited 2017-04-11.

⁵ James Herbert, Lloyd's: "The Challenges and Implications of Removing Shipwrecks in the 21st Century", p.17, <<https://www.lloyds.com/~media/lloyds/reports/emerging%20risk%20reports/wreck%20report%20final%20version%20aw.pdf#search='fleet%20statistics'>>, visited 2017-04-03.

⁶ Swedish Maritime Administration: Sjöräddningstjänst Insatser 2015, p. 8-10, <<http://www.sjofartsverket.se/pages/22561/Sjöräddningsstatistik%202015.pdf>>, visited 2017-04-11.

2.2 Laws and regulations that could be used, as to investigate the liability, in the case of a deserted ship

2.2.1 International legislation:

The present regulatory framework concerning deserted ships is a combination of domestic laws of coastal states and international conventions.⁷ A great part of the international conventions regarding the shipping industry have been created by the International Maritime Organization (IMO), an agency within the United Nations that specializes in security and safety of shipping and the avoidance of marine pollutions by ships.⁸

Until recently, there was a gap in the international framework regarding the obligations to remove wrecks. Due to these inconsistencies, IMO encouraged the creation of a more consistent legal structure. In 2007 The Nairobi International Convention on the Removal of Wrecks was adopted at an international conference held in Nairobi, Kenya. Article 1 of the Convention clarifies that the Convention only is applicable on wrecks that follow upon a maritime casualty. The Convention entered into force April 15 2015.⁹ As of April 21 2017, the Convention involved 34 contracting states.¹⁰ Some of the countries that have acceded the Convention are Denmark, Finland, United Kingdom and Germany. This is in contrast to Sweden and its neighboring country Norway that has not yet made a decision whether to accede the Convention or not.¹¹ The IMO wreck removal Convention intends to lead to a greater consistency regarding how states approach wrecks. Furthermore it intends for shipowners and their insurers to pay for the removal

⁷ Ibid.

⁸ International Maritime Organization: Introduction to IMO,

<<http://www.imo.org/en/About/Pages/Default.aspx>>, visited 2017-04-04.

⁹ International Maritime Organization: Nairobi International Convention on the Removal of Wrecks,

<<http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/Nairobi-International-Convention-on-the-Removal-of-Wrecks.aspx>>, visited 2017-04-07.

¹⁰ International Maritime Organization: Status of Treaties,

<<http://www.imo.org/en/About/Conventions/StatusOfConventions/Documents/Status%20of%20Treaties.pdf>>, visited 2017-04-24.

¹¹ Government Offices: Skärpt ansvar för fartygsvrak, p.24,

<<http://www.regeringen.se/rattsdokument/lagratsremiss/2017/03/skarpt-ansvar-for-fartygsvrak/>>, visited 2017-04-07.

of wrecks.¹² The Convention applies to the state's exclusive economic zone, 200 nautical miles from shore, article 1.1 of the IMO wreck removal Convention. The application of the Convention could be extended to the territorial sea, 12 nautical miles from the shore, where national laws otherwise would apply, article 3.2 of the IMO wreck removal Convention.

Furthermore the European Union has recognized the problem of abandoned vessels. In 2011 the European Commission published *Guidelines on and recommendations for dealing with Abandoned Vessels* after it was recognized as a matter of concern by a number of EU member states, e.g. Greece and UK.¹³ It should be pointed out though that the guidelines from the European Commission is only what is referred to by judicial terms as soft law, which means that it is a normative provision in a non-binding text.

The main purpose of the EU guidelines is to ensure that an improvement concerning management of abandoned vessels (both commercial and recreational) is taking place with increased safety concerning navigation and that this will lead to increased protection of the environment. Furthermore it aims for vessels to be used in a sustainable manner. A ship should be regarded as a resource and should not just be abandoned. Instead the owner should always have the objective to keep the vessel well maintained to preserve its value and enhance the chances of it having a long life. At the end of its lifetime it should be properly disposed. The guidelines present checklists for the management of abandoned vessels, with both actions for vessel owners and actions for local authorities/ports and harbors/marinas.¹⁴

The EU guidelines strive for prevention of abandonment. This would include a control system for abandoned vessels, a clear role for authorities and it also proposes a scheme

¹² James Herbert, Lloyd's: "The Challenges and Implications of Removing Shipwrecks in the 21st Century", p.11, <<https://www.lloyds.com/~media/lloyds/reports/emerging%20risk%20reports/wreck%20report%20final%20version%20aw.pdf#search='fleet%20statistics'>>, visited 2017-04-03.

¹³ European Commission: Guideline on and recommendations for dealing with Abandoned Vessels, <http://ec.europa.eu/environment/waste/ships/pdf/Guide_Recyc_Abandoned%20Vessels_Final_Ver03.pdf>, visited 2017-05-04.

¹⁴Ibid.

for managing abandoned vessels. The control system for abandoned vessels should be established to simplify a safe identification and removal of abandoned ships.

Furthermore, as mentioned above, the guidelines point out that a local authority or the authority that is responsible for the waterway should have a plan to put measures, which will reduce the incidence of and the impact of deserted vessels, into place. The authorities are recommended to do so by establishing conditions for vessels being disposed in an inappropriate manner.¹⁵

Another regulation that bears relevance to the subject is the International Convention on Salvage. This Convention was adopted in 1989 and entered into force 1996.¹⁶ As of May 11 2017, the Convention involved 69 contracting states, including Sweden.¹⁷ The Convention replaced an older convention from 1910, which only awarded a salvor in the case that the operation had been successful.¹⁸ The current Convention on salvage states that it desires to establish uniform international rules on salvage, to ensure that there exist satisfactory incentives for those who undertake salvage operations. Thus, incentives should not be in place only when an operation has been successful, this is stated in the introductory passage of the Convention.

The 1989 Convention introduces compensation that could be paid out to a salvor in the case that the salvor had not earned a reward the usual way (by salvaging the ship and cargo). This compensation should be based on the expenses of the salvor and is meant to be paid out in the case that the salvor, through his or her efforts, has minimized or prevented environmental damage. In the case of the salvor being negligent or if the salvor has consequently failed to prevent or minimize the extent of the environmental

¹⁵Ibid.

¹⁶ International Maritime Organization: International Convention on Salvage, <<http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-on-Salvage.aspx>>, visited 2017-05-15.

¹⁷ International Maritime Organization: Status of Treaties, <<http://www.imo.org/en/About/Conventions/StatusOfConventions/Documents/Status%20of%20Treaties.pdf>>, visited 2017-05-15.

¹⁸ International Maritime Organization: International Convention on Salvage, <<http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-on-Salvage.aspx>>, visited 2017-05-15.

damage the compensation can be reduced or denied. A tribunal or an arbitrator assesses the size of the compensation.¹⁹

2.2.2 Swedish legislation

Swedish legislation, concerning abandoned maritime vessels, as of today has certain rules pointing out that both the public and private citizens have an obligation to take care of any risks that might occur when deserting their ship. In most cases the shipowner is responsible for any costs that might occur when taking required measures to bring the vessel back to safety or the costs for any harm that might be done by the ship.²⁰ Regulations that can be actualized will be discussed in the following sections.

2.2.2.1 Search and rescue

The state has an obligation to provide for search- and rescue-services and to intervene in the case of accidents or instances that may carry a risk of accident in order to ensure minimal injury to people, items or the environment. This is regulated in chapter 1 §2 law on prevention of accidents (2003:778) and applies to when it can be motivated in relation to the need of speedy assistance, the severity of the threat, the cost of the assistance and other surrounding elements. The Coast Guard is furthermore in authority of the emergency protection of the environment at sea and the shoreline. This can be exemplified by larger accumulations in the sea of oil or of any other toxic and potentially environmentally damaging substance. This responsibility is regulated in chapter 4 §5 law on prevention of accidents and in chapter 4 §12 regulation on prevention of accidents (2003:789).²¹

2.2.2.2 Pollutions from ships

In the event that oil or other hazardous substances leak from a deserted ship or a shipwreck or in cases of a risk of leakage the Swedish Transport Agency (Transportstyrelsen) may issue an order or a prohibition concerning the ship. This is in the case that there is a founded reason to suspect that Swedish interests can be severely

¹⁹ Ibid.

²⁰ Government Offices: Skärpt ansvar för fartygsvrak, p.19-22, <<http://www.regeringen.se/rattsdokument/lagadsremiss/2017/03/skarpt-ansvar-for-fartygsvrak/>>, visited 2017-04-07.

²¹ Government Offices: Skärpt ansvar för fartygsvrak, p.19-22, <<http://www.regeringen.se/rattsdokument/lagadsremiss/2017/03/skarpt-ansvar-for-fartygsvrak/>>, visited 2017-04-07.

hurt or if there is cause to believe that either the coastal areas or the waters of other states can be damaged. If the one responsible on such a ship neglects to take action the authorities may take action, chapter 7 §§ 5 and 9 Water Pollution Act (1980:424).²²

2.2.2.3 Removal of wrecks that hinder shipping, fishing or other operations in the harbor

If a ship has sunk in a maritime fairway and it can be an obstacle or a danger for shipping, the Swedish Maritime Administration may make sure the wreck is removed. They may also, in certain cases, remove ships and other items that hinder fishing. Regulation regarding this is found in the regulation of removal of wrecks that may interfere with shipping or fishing (2011:658).²³ This regulation replaced the Royal Ordinance (1951:321), which authorized the Maritime Administration to remove wrecks obstructing shipping or fishing.²⁴ In the case of a ship that hinders the operations in the harbor or a ship that for a longer period of time is placed in a manner that is prohibited, the regulation above states that such a ship can be removed by the port holder.²⁵

2.2.2.4 The liability for costs for the shipowner

The party that salvages a ship or other property on sea that has had a major accident or is in danger can in some cases receive compensation from the shipowner. This is regulated in chapter 16 of the Swedish Maritime Code (1994:1009). In the event of starting such salvage operation, the salvor obtains certain obligations in the manner of which the operation is carried out, according to chapter 16 §4 of the Swedish Maritime Code. The right to receive compensation can be eliminated and in general the salvor is only entitled to compensation if its actions have resulted in a positive outcome concerning the salvage operation. The compensation cannot be higher than the value of the object that has been removed, chapter 16 §3 and §5. In the event of that the ship or

²² Ibid.

²³ Government Offices: Skärpt ansvar för fartygsvrak, p.19-22, <<http://www.regeringen.se/rattsdokument/lagratsremiss/2017/03/skarpt-ansvar-for-fartygsvrak/>>, visited 2017-04-07.

²⁴ Government Offices: Avlägsnande av vrak, p. 31, <<http://www.regeringen.se/sb/d/108/a/256804>>, visited 2017-04-07.

²⁵ Government Offices: Skärpt ansvar för fartygsvrak, p.19-22, <<http://www.regeringen.se/rattsdokument/lagratsremiss/2017/03/skarpt-ansvar-for-fartygsvrak/>>, visited 2017-04-07.

its cargo can cause environmental danger, the salvor can also be entitled to extra compensation for costs, chapter 16 §9.

The shipowner is liable for costs that the Swedish Transport Agency has had when preventing any pollution, chapter 7 §9 Water Pollution Act. The shipowner is furthermore liable for costs that the port holder has had to remove a ship, §5 in the Removal of Vessels in Public Ports Act (1986:371).

Removal of a ship can in some instances also be seen as a precaution to prevent an accident with oil or HFO, chapter 10 and chapter 10a of the Swedish Maritime Code. In such a scenario the shipowner has a strict liability, in other words no matter who is to blame, for all costs. In order to be a case of preventive measure that can lead to a liability for costs, the measure must have been taken to prevent a damage that would have entitled compensation. In cases concerning environmental damage, the shipowner is only liable for lost profits and costs that are reasonable with regards to the costs to restore the damage. Moreover, the preventive measures must have been reasonably warranted to prevent damage.²⁶

2.2.2.5 Liability for costs caused by a wreck

The shipowner has a responsibility for pollution from a wreck and for other damages caused by a wreck. Additionally, the shipowner is strictly liable for all damages related to oil or HFO, chapter 10 and chapter 10a the Swedish Maritime Code. The liability must in most cases be determined with support from general tort regulations or the shipowner's general responsibility for damages caused by negligence from the ship, chapter 7 §1 the Swedish Maritime Code. Special regulations from maritime law concerning transport of people or ship collisions can also be used, chapter 15 of the Swedish Maritime Code and Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents.

²⁶ Government Offices: Skärpt ansvar för fartygsvrak, p.19-22, <<http://www.regeringen.se/rattsdokument/lagratsremiss/2017/03/skarpt-ansvar-for-fartygsvrak/>>, visited 2017-04-07.

2.2.2.6 Obligation of insurance and limits to the responsibility

The owner of a larger ship (with a gross tonnage of over 300 tons) is obligated to have liability insurance or a guarantee of some other type. This insurance should cover, amongst other things, claims due to measures taken to lift, remove, destroy a ship and all that was onboard it and has sunk, been stranded or become a wreck, chapter 7 §2 and chapter 9 §2 the Swedish Maritime Code. The shipowner has the right to limit these obligations in accordance to the global limiting rules in chapter 9 of the Swedish Maritime Code. In addition, there exist specific regulations concerning the obligation to be insured for damages caused by oil or HFO, chapter 10 §§ 12 and 13 and chapter 10a §§ 11 and 12 of the Swedish Maritime Code.²⁷

2.2.2.7 Other regulations concerning wrecks

Also other regulations can be actualized when taking measures with a shipwreck. For example, the salvor of a wreck is obliged to report this activity to the police, an officer at the Coast Guard or the Swedish Customs. The findings can, if the shipowner does not make any claims, go to whoever salvaged the ship. This is regulated in the law of certain regulations concerning material discovered at sea (1918:163). It should be noted that a wreck that is regarded as an ancient monument is covered by certain special rules, Cultural Heritage Act (1988:950).²⁸ In general, the term ancient monument is related to wrecks without an owner and which can be presumed to have sunk before 1850, chapter 2 §4, paragraph 4.

2.2.2.8 Future legislation in Sweden

Sweden has not hitherto consented to the previously mentioned IMO wreck removal Convention but there have been suggestions from the government to accede the Convention and implement any legal changes that must be done to have a legal framework in accordance to the Convention. These legal changes are recommended to consist of alterations leading to a greater responsibility for shipowners, making them responsible of removing any shipwrecks that endanger the environment, shipping or navigation of other vessels. Alternatively shipowners can use other precautions to prevent the danger. In most cases the cost for these measures should fall on the shipowner. Owners of bigger ships will also be obliged to have insurance, or a security

²⁷ Government Offices: Skärpt ansvar för fartygsvrak, p.19-22, <<http://www.regeringen.se/rattsdokument/lagratsremiss/2017/03/skarpt-ansvar-for-fartygsvrak/>>, visited 2017-04-07.

²⁸ Ibid.

of some kind, covering the responsibility. Furthermore, the government recommends that the Swedish Maritime Administration should, in line with the convention, be responsible of marking out any shipwrecks that are seen to be a danger and also issue any warnings needed. If the shipowner fails to remove the wreck, or take alternative measures to remove the danger, the Swedish Maritime Administration should be responsible of taking the measures, however on the expense of the shipowner. In case of any acute action that must be taken, it is suggested that the Swedish Maritime Administration should intervene immediately. At the time of writing this suggestion from the government has just recently (March 16, 2017) been sent to the Swedish Council on Legislation (Lagrådet), for analysis of the draft bill before it will be submitted to the parliament. Consequently, presently no decision has yet been made concerning whether Sweden should accede the IMO wreck removal Convention or not.²⁹

It should be mentioned that concerns about lack of regulations of responsibility for removal of shipwrecks were raised in Sweden already in 1975 (SOU 1975:81) when a bill was presented. This suggestion consisted, amongst other things, of provisions stating that owners of a wrecked ship had an obligation to remove the wreck and be liable for some of the costs that the authorities had in the case. The bill did not have any suggested provisions regarding insurance though. This suggestion did not have any connection to any international convention.³⁰ The bill was never passed.³¹

2.2.3 Discussion

As seen from the information presented above there exist several national regulations that can be actualized in the case of an abandoned ship. However, with stipulations spread out in different regulations it is also hard to acquire clear and comprehensive knowledge of all provisions that could be actualized. Due to this regulatory situation, with several national and international regulations that may apply to a specific situation, it is more complicated than necessary for shipowners to know what is

²⁹ Government Offices: Skärpt ansvar för fartygsvrak, p.1, <<http://www.regeringen.se/rattsdokument/lagratsremiss/2017/03/skarpt-ansvar-for-fartygsvrak/>>, visited 2017-04-07.

³⁰ SOU 1975:81, p.17-18.

³¹ Government Offices: Avlägsnande av vrak, p. 54, <<http://www.regeringen.se/sb/d/108/a/256804>>, visited 2017-04-07.

expected of them in a case of their ship being abandoned and thereby becoming a wreck. This issue would be partially handled though if Sweden would accede the IMO wreck removal Convention. In the event of that Sweden accepted to be a party of the Convention we would be a part of the international rules ensuring a quick and effective removal of wrecks with provisions in place to regulate the liability for costs. The provisions of the Convention though would only be applicable to vessels becoming wrecks after the acceding of the Convention, and consequently there would not be any retroactive applications of the provisions.

Furthermore, as explained in chapter 2.2.1, the provisions would only be applicable to ships becoming wrecks after marine casualties. There is still a shortage of regulations regarding wrecks that are not caused by maritime casualties. Moreover the scope of Convention is limited since it does not cover international waters. The Convention does not include any provisions about what should be done with a wreck after the removal either. All these points show that although the Convention would make a great improvement to legislation it does not fill all uncertainties of today in this specific area.

2.3 Legal consequences for the shipowner when deserting a ship

2.3.1 International regulations

Internationally there is the flag state principle, which is stated in article 91 of the United Nations Convention on the Law of the Sea (UNCLOS). It is stated therein that the ship has the nationality of the state whose flag it is entitled to fly. Article 92.1 UNCLOS states that a ship should be subject to the exclusive jurisdiction of the specific flag state when on the high seas, except in cases where something else is stated in either UNCLOS or international treaties. In article 94.1 UNCLOS it is explained that states exercise their jurisdiction and control in administrative, technical and social matters over ships that fly their flag. These provisions apply to the high seas, which are all parts of the sea that are not included in the exclusive economic zone, the territorial sea or the internal waters of a state, article 86 UNCLOS. Even though the main principle is that the flag state holds jurisdiction over the ship, there are international conventions with provisions concerning the ships also when they are on the high seas and flying a flag. States can become parties to these conventions. An example of such a convention is the LLMC which provides limitations for liability.

The Convention on Limitation of Liability for Maritime Claims (LLMC) with its amendment with a protocol from 1996 entered into force May 13, 2004. The original LLMC, before the protocol from 1996, replaced the International Convention Relating to the Limitation of the Liability of Owners of Seagoing Ships. This older convention was signed in Brussels in 1957 and entered into force in 1968.³² As of April 21 2017 the LLMC, in the version of today, has 52 contracting states.³³ LLMC gives shipowners and salvors, with the definitions that are stated in the Convention, a limit to their liability in accordance to the rules of the Convention for the claims that are set out in article 2 of the Convention (article 1.1 LLMC). The Convention gives a practically unbreakable system for restricting the liability for maritime claims, with one exception. That exemption is mentioned in article 4 of the Convention, and states “if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such a loss, or recklessly and with knowledge that such loss would probably result”.

2.3.2 Swedish national regulations

According to Swedish law the “operator” (redare) has a strict liability, chapter 7 §1 paragraph 1 of the Swedish Maritime Code. This person may be the owner of the vessel but does not necessarily need to be.³⁴ The liability is attached to the maintenance of a specific maritime vessel and not to the operator in the capacity of being the employer.³⁵ No matter which person on the ship that causes the damage it is the responsibility of the operator to pay for the damages. However, the operator has the right to subsequently claim recourse from whoever caused the damage, chapter 7 §1 paragraph 2 of the Swedish Maritime Code. As mentioned above the owner of a larger ship is obligated to have liability insurance.

³² International Maritime Organization: Convention on Limitation of Liability for Maritime Claims (LLMC), <<http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/Convention-on-Limitation-of-Liability-for-Maritime-Claims-%28LLMC%29.aspx>>, visited 2017-05-07.

³³ International Maritime Organization: Status of Treaties, <<http://www.imo.org/en/About/Conventions/StatusOfConventions/Documents/Status%20of%20Treaties.pdf>>, visited 2017-04-24.

³⁴ Tiberg (2004) p. 201-208.

³⁵ Karnov online, Swedish Maritime Code (1994:1009), chapter 7 §1, annotation 165, visited 2017-05-05.

It should be noted that there are limits to the responsibility of the operator. There are two different types of limits relating to the monetary amount that the operator is liable for. First there exist rules that limit the operator responsibility to an absolute maximum, which is called a *global limit*.³⁶ The purpose of this global limit is to ensure that the responsibility is in line with what is reasonable seen to what is insurable.³⁷ Furthermore there are rules that limit the operator responsibility of damage to any cargo goods and passenger injuries, a so-called *individual limit*.³⁸

In Swedish law the global limits are regulated in chapter 9 of the Swedish Maritime Code, and are based on the LLMC.³⁹ The individual limit on the other hand is regulated in chapter 13-15 of the Swedish Maritime Code.

2.3.3 Discussion

The information presented above shows that both in Swedish national law and in international law there are regulations for the liability of the shipowner in case of a deserted ship or a shipwreck. In Swedish law it is clearly stated that the shipowner has a strict liability but with some regulated limits, which have been presented above. However it is not distinctly regulated how a wreck should be removed and assured that it is no longer harmful for individuals or the environment or what measures are necessary to prevent potential harmfulness. The regulated limits are based on the LLMC, in the version we have today.

In international law the main principle is the one of the flag state, which “passes on” the jurisdiction to the state of the flag that the ship is flying. This shows that when deciding upon the legal consequences for deserting a ship one has to see to the national legislation of the flag state. National legislation will in most cases vary from state to state but can have some similarities when states have become parties to the same conventions and thereby adjusted their national legislation in accordance to the convention.

³⁶ Tiberg, Schelin and Widlund (2015) p. 142.

³⁷ Karnov online, Swedish Maritime Code (1994:1009), chapter 9, annotation 196, visited 2017-05-07.

³⁸ Tiberg, Schelin and Widlund (2015) p. 142.

³⁹ Karnov online, Swedish Maritime Code (1994:1009), chapter 9, annotation 196, visited 2017-05-07.

2.4 Legal differences in deserting a ship on international water and on Swedish territorial water

2.4.1 Presentation of provisions

Even though Sweden does not hold a legislation that by itself covers all aspects of wrecks it does have several provisions in different regulations, as presented in chapter 2.2.2 and 2.3.2, that in different ways hold regulations actualized in the case of a deserted ship.

On Swedish territorial water Sweden has sovereignty, article 2.1 UNCLOS. Sovereignty is a term commonly used in international law and applies to a state's independence in relation to other states and its monopoly when it comes to power within its territory.⁴⁰ This principle conceptualizes that if a ship is deserted on Swedish territorial water, Swedish national provisions are actualized, no matter which flag the ship is flying. However there is an exception to the possibility of using national provisions on territorial water. It is stated in article 2.3 UNCLOS that the sovereignty over the territorial sea is exercised subject to both UNCLOS and other rules of international law. With this in mind one has to first check whether international law and any related provisions regulating the case that has arisen, are applicable.

On international water, also named the high seas, one is referred to what has been presented above. Namely the flag state principle, which is described in chapter 2.3.1, and with this principle applicable, the flag state will determine what national regulations should be followed.

2.4.2 Discussion

The thesis has shown that the legal situation around deserted ships and shipwrecks in Swedish territorial waters and on international waters is under big transformation. As presented numerous times in the thesis, Swedish legislation is likely to soon change if Sweden decides to accede the IMO wreck removal Convention. It is not clear why Sweden has not already acceded this Convention from 2007 that has been consented by 35 nations, including neighboring nations with sea borders to Sweden, such as Denmark and Germany. This Convention aims to a more effective and uniform way of

⁴⁰ Ove Bring, Nationalencyklopedin: suveränitet, <<http://www.ne.se.ludwig.lub.lu.se/uppslagsverk/encyklopedi/lång/suveränitet>>, visited 2017-05-11.

approaching wrecks. However, as covered in this thesis the Convention does not cover all aspects of handling wrecks but it will certainly lead to improved legislation in many countries, including Sweden. As a consequence of that this specific topic is brought up in media and discussed among politicians it is most likely that we can expect improvements in the legislation concerning this specific issue in the nearby future.

One major point that has been discussed in the thesis is that the flag the ship is flying decides which provisions are applicable to the wreck and these provisions can vary much from state to state. However with more and more coastal states acceding the IMO wreck removal Convention we will reach a more effective and uniform legislation.

In general, any international regulations that enter into force and are acceded by states are in most cases thereafter incorporated into the national legislation. This should also apply to shipwrecks and thereby the IMO wreck removal Convention is and will be of importance to bring international uniformity in this issue. Thus a plausible future scenario is that the national legislation on this matter will become more consistent and that nations will apply a similar approach to the questions regulated in international conventions and treaties regarding deserted ships and shipwrecks.

2.5 Discussion on differences in deserting a commercial or a non-commercial ship

In the regulations that have been studied in the thesis, regarding the handling of and removal of wrecks, no distinction has been made between commercial and non-commercial ships. As far as a vessel meets the requirements of being a ship both Swedish legislation and international conventions should apply. However, the number of deserted or wrecked non-commercial ships most likely outnumber the number of commercial ships in any nation's territorial water. Moreover, the potential damage in relation to pollution and oil spillage from smaller non-commercial ships is less than for commercial. Thus, there may be place for future separate regulations. However, at present there are no differences in the handling of shipwrecks for commercial or non-commercial ships in regulations. There are differences when it comes to other aspects of a ship though, e.g. more labor legislation can be actualized in a case concerning a commercial ship or the provisions regarding the handling of oil can be a question that is

actualized for a ship with commercial purposes (as they are often larger due to their commercial purposes).

2.6 Analysis

The information presented above shows that the provisions of the legal consequences of abandoning a ship are spread out in several regulations. Internationally there are a few conventions that regulate the topic, all of which have been mentioned above, but the one that most specifically regulates wrecks is the IMO wreck removal Convention that was adopted a decade ago. It created a more consistent legal structure and gives the acceding states a more harmonized legal attitude to wrecks. In the discussions above it has been presented though that there are flaws also in this new Convention.

As mentioned before, the IMO wreck removal Convention is only applicable for wrecks following upon maritime casualties. It does not regulate the cases of wrecks upon other causes. Neither does the IMO wreck removal Convention regulate what should be done after the removal of the wreck or the disposal of the wreck. These points are such matters that need further regulations in the future.

Moreover, the IMO wreck removal Convention does not state who is to decide which cases are a maritime casualty. One can therefore suspect that this is something that each state will have to take their own standpoint on and thereby the usage of IMO wreck removal Convention might easily not result in such a uniform approach to wrecks as was hoped when designing the Convention.

Another matter that has been presented in the thesis is that Sweden has already been close to accept a bill that brings up many of the points that today are brought up in the IMO wreck removal Convention. At the time, in 1975, the bill did not have any connections to international conventions or international legislation. The fact that the issue of wreck removal now, once again, is raised in a bill shows that it over a long period of time has been an issue that is believed to need more defined regulations and that is has not been solved through other types of regulations. This time around though there might be more incentives that make the bill desirable to pass. One factor that may affect the decision is that countries close to Sweden have acceded the Convention. Both

England and Germany, that are large countries in the shipping industry, have acceded the Convention and it is just natural to imagine that the decisions of countries that have an impact on the shipping industry and commercial ships affect the decision of other countries. Also the fact that the bill this time is based on an international Convention may facilitate the acceptance of it in more countries. Moreover the fact that the issue has once before been raised as a suggested change of legislation can be seen as a reasonable motivating factor to pass this latest bill.

As has been brought up in the thesis the flag state principle is very important in questions regarding legal consequences of issues occurring on international waters. This shows that things that happen at the same place and in the same manner can have different legal consequences depending on the flag that the ship is flying. This then leads us to understand that it may be more profitable to register a maritime vessel in certain states. Each state has their regulations for when and how a ship is entitled to be registered in that specific country. If a ship fills the requirements in these regulations it may fly the flag of that state and also fall under the jurisdiction of the same state. Hereby it is also the provisions of this state that will be followed unless there are provisions in international conventions saying otherwise. Legal issues on international water can hereby be resolved differently depending on which flag the ship is flying.

2.7 Conclusion

After reading all that has been presented in the thesis it is clear that the questions that it is aiming to answer are not as easily answered as one may have thought from the beginning, even for a person with knowledge in law and jurisdiction. To answer the questions of research one has to examine a number of regulations. In most cases the shipowner is liable for all damages caused by the ship. The liability can be limited though, as is seen in provisions presented in this thesis. In Swedish and international legislation there is no difference being made depending on the purpose of the ship.

The IMO wreck removal Convention does give a great amount of clarity in many of the questions that have been raised in this thesis and even though one can see that there is room for improvements or future legislation in the area it will give a more consistent legal structure in the topic.

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