

Article by former UN Legal Counsel Hans Corell in the Swedish daily Svenska Dagbladet on 21 December 2007

Translation from Swedish by the author.

As Coastal State Sweden Has An Exclusive Right ¹

International Law determines. The question of the gasline in the Baltic, which is discussed today in the Riksdag, must be determined on the basis of applicable law. It is counterproductive to invoke security policy arguments. To make political capital of the gasline and security policy misleads the general public and undermines Sweden's credibility, writes Hans Corell, former UN Legal Counsel for ten years.

As chairman of the Swedish delegation during the final negotiations in the 1980s with the then Soviet Union about the delimitation in the Baltic east of Gotland and as UN Legal Counsel for ten years with responsibility directly under the Secretary-General for the Law the Sea, I have followed the Swedish debate lately about the gasline in the Baltic with amazement.

What I have noted in particular is that the matter by some is presented as almost a matter of convenience which can be determined with regard to Swedish interests only – not least security policy interests.

It is therefore important to clarify that the question must be determined on the basis of applicable law.

It is regretful that the question has become something of a political stick. The matter has obvious foreign policy dimensions, but precisely because of this it is important that Sweden operates in as great unity as possible.

Even if the gasline is not a matter for the Riksdag, it is important to have an open and trusting discussion across party lines, in particular since a possible gasline in the Swedish exclusive economic zone becomes a matter also for future governments.

In addition, the general public must have correct information about the subject matter and the scope for action that Sweden has when the matter is to be determined.

An assessment must be founded primarily on the United Nations Convention on the Law the Sea, i.e. one of the most significant agreements that have been negotiated under UN auspices. The Convention lays down the rights and obligations that States have and how disputes relating to the law of the sea shall be determined.

Its importance for the strengthening of peace and security in the world cannot be emphasised enough. It must be a keen Swedish interest that it is applied correctly by all parties. Sweden must therefore set a good example.

¹ Please note that the title was formulated by the newspaper, not by the author.

The point of departure of the Convention is that the high seas are open to all States, whether coastal or land-locked. In principle, this freedom applies also in the exclusive economic zone.

The freedom entails among other things the freedom to lay and maintain submarine cables and pipelines.

The point of departure is that the delineation of the course for the laying of such a pipeline is subject to the consent of the coastal State, in this case Sweden. With respect to the establishment and use of installations and structures in the exclusive economic zone, the coastal State has an exclusive right, which is of importance with respect to the so called compression tower.

The coastal State has exclusive jurisdiction over such arrangements. Consequently, it is the coastal State that issues for example safety regulations.

Consequently, as the coastal State, Sweden has obligations vis-à-vis other States when it comes to the question how the exclusive economic zone may be used.

Correspondingly, in exercising their rights in the zone, other States shall have due regard to the rights and duties of the coastal State.

They must also respect the rules adopted by the coastal State in accordance with the Convention and other rules of international law.

At the national level, several provisions are applicable, among them the Environmental Code, the Decree on Environmental Impact Assessments and the Law on the Exclusive Economic Zone.

The latter contains an explicit provision to the effect that it does not imply any limitation of the rights that follow from generally accepted principles of public international law. Also EU law would come into the picture.

A final application for permission to lay the gasline shall be dealt with as an administrative matter. In accordance with the Constitution the Riksdag must not determine how the Government or another administrative authority shall determine such a matter.

Needless to say, an application for the laying of a gasline must be well supported and be accompanied by a thorough environmental impact assessment. In my view there are primarily two questions that emerge in connection with the examination.

The first is obviously environment, not least fishery. But there are many issues that must be taken into consideration here.

A disquieting element that requires particular attention is to what extent war material that has been dumped must be neutralized. and in what manner.

If extensive blasting of such material proves necessary, it must be carefully examined what environmental consequences this may entail. Representatives for the Navy have expressed concern on this point.

The other question is connected to the environment but may be considerably more difficult to assess from a legal point of view.

If a land-based pipeline from the Russian Federation to Germany would be an alternative, which weight should this be given if at the same time the environmental consequences of a pipeline on the seabed proves to be so difficult to assess that the admissibility of the project is in peril?

The purpose of this contribution is to point to the main rules that apply and to the most important questions that must be examined when an application arrives. The result of this assessment must be an open question until the necessary material has been presented.

It is hardly necessary to point out that the respect for existing rules that Sweden shows, and the seriousness and the precision with which this matter is handled on the Swedish side, is of determining importance for our credibility if in the final analysis it proves that the project cannot be realized for environmental reasons.

Against this background it is counterproductive to invoke security policy arguments against the gasline.

It is difficult to imagine that a rejection of an application with reference to such deliberations would be accepted by an international tribunal; in a global perspective the acceptance of such an approach would open up for all kinds of frivolous objections.

One can well understand that many are uneasy with the entire project and with the prospect of having Russian ships patrolling along the line pipeline.

Personally, I am deeply disappointed that the development in the Russian Federation towards what we mean by democracy and the rule of law has not made greater headway.

But we must be clear about the fact that the Law of the Sea Convention means that Russian vessels already now have freedom of navigation in our exclusive economic zone.

A possible gasline therefore really does not make a difference from a security policy point of view.

To try to make political capital of security policy in this context is therefore to mislead the general public and to undermine our credibility when the matter is to be determined.

HANS CORELL