

# The Helsinki Convention – a legal obstacle for carbon storage in the Baltic Sea?

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# Agenda

Background of Helsinki Convention

Relevant articles in Helsinki Convention (and other law/principles relating to it)

Questions for finding out if carbon storage in the Baltic Sea can be forbidden according to the Helsinki Convention

Way forward?



# Helsinki Convention - background



Originally signed in 1974 by all Baltic Sea coastal countries, entered into force 1980.

Includes the protection of the Baltic Sea from all sources of pollution from land, air and sea.

Measures on conserving habitats and biological diversity and for the sustainable use of marine resources.

Updated in 1992, then with ten Contracting Parties including the EU. Entered into force 2000.

# Helsinki Convention – relevant articles

## 2.4 a (definition of dumping)

- i. any deliberate disposal at sea or *into the seabed of wastes or other matter* from ships, other man-made structures at sea or aircraft;
- ii. any deliberate disposal at sea of ships, other *man-made structures at sea or aircraft*

# Helsinki Convention – relevant articles

## 2.4 b (what not constitutes dumping)

i) the disposal at sea of wastes or other matter incidental to, or derived from the *normal operations of ships, other man-made structures at sea or aircraft and their equipment, ...*

ii) placement of matter for a *purpose other than the mere disposal thereof*, provided that such placement is not contrary to the aims of the present Convention

# Helsinki Convention – relevant articles

## 11.1 (prohibition of dumping)

The Contracting Parties shall, subject to exemptions set forth in paragraphs 2 and 4 of this Article, prohibit dumping in the Baltic Sea Area.

## 11.4 (exception from the prohibition of dumping)

... the *safety of human life* or of a ship or aircraft at sea is threatened by the complete destruction or total loss of the ship or aircraft, or in any case which constitutes a danger to human life, if *dumping appears to be the only way* of averting the threat and if there is every probability that the damage consequent upon such dumping will be less than would otherwise occur ...

# Helsinki Convention – relevant articles

## 4.2 (implementation in National Law)

Without prejudice to its sovereignty each Contracting Party shall *implement the provisions of this Convention* within its territorial sea and its internal waters through its national authorities.

# Helsinki Convention – relevant articles and law/principles relating to it

## 29 (relation to other Conventions)

The provisions of this Convention shall be *without prejudice* to the rights and obligations of the Contracting Parties under existing and future *treaties which further and develop the general principles of the Law of the Sea* underlying this Convention and, in particular, provisions concerning the prevention of pollution of the marine environment.

## Conventions and principles relating to article 29

Vienna convention on the Law of Treaties, article 30 (4) a (when later treaties can “override” earlier treaties relating to the same subject matter)

## Principle of *lex specialis*

Special provisions prevail over general rules

## Principle of *lex posterior*

A later law “overrides” an earlier law



# Questions (for finding out if carbon storage can be forbidden according to the Helsinki Convention)

a. Can carbon storage be considered as disposal "*into the seabed*" and therefore constitute "dumping" according to article 2.4 a (i), which is forbidden according to article 11.1?

# Questions ...

b. Can carbon storage be considered as placement of matter for a purpose other than the mere disposal thereof, and is such placement not contrary to the aims of the present Convention? (In that case the storage cannot constitute "dumping", according to article 2.4 b (ii).)

# Questions ...

c. Can carbon storage constitute "dumping" according to article 2.4 but still not be forbidden, according to article 11.4 (safety of human life (at sea?) is threatened and dumping appears to be the only way of averting the threat, and there is every probability that the damage consequent upon such dumping will be less than would otherwise occur)?

# Questions ...

d. Can carbon storage constitute "dumping" according to article 2.4 in the Helsinki convention but still not be forbidden, according to article 29 (relation to other conventions) in the context of the amendment of the London Protocol from 2006 which allows carbon storage, and also in the light of article 30 (4) a in the Vienna convention on the Law of Treaties and the principles of *lex specialis* and *lex posterior*?

# Way forward?

Need of further discussion/negotiations to make sure that carbon storage in the Baltic Sea is in line with the Helsinki Convention

- interest for carbon storage in the Baltic Sea (for example the Geological Survey of Sweden has a government assignment 2023-2025 looking at future carbon storage potential in the Baltic Sea)
- obligation through the CCS-directive for member states of the European Union to make carbon storage possible

Helcom has started a discussion between it's signing countries to go further concerning this.

One way forward could be looking at how this was dealt with in the London Protocol.

# London Convention/Protocol - background

The "Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972"

One of the first global conventions to protect the marine environment from human activities

In 1996, the "London Protocol" was agreed

An amendment to the list of acceptable wastes was made in 2006 allowing carbon storage under the seabed, and entered into force 2007

# London Protocol – amendment in Annex I

## 1.8

*Carbon dioxide streams* from carbon dioxide capture processes for sequestration *may be considered for dumping* being mindful of the Objectives and General Obligations of this Protocol set out in articles 2 and 3:

## 4.

Carbon dioxide streams referred to in paragraph 1.8 may only be considered for dumping, if:

1. disposal is into a sub-seabed geological formation
2. they consist overwhelmingly of carbon dioxide ...
3. no wastes or other matter are added for the purpose of disposing of those wastes or other matter.

# Questions?

Thank you for listening!

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