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# The State's Response to Wrecks Causing Environmental Risks – a Comparison of Roles and Responsibilities of North European "Intervention Enforcers"

## 1. Introduction

After the *Torrey Canyon* disaster of 18 March 1967, the British Government gave orders for the destruction by aerial bombing of the vessel and its cargo in order, by burning off as much of the oil as possible, to prevent an even greater environmental catastrophe resulting from the spill.[1] The disaster led to the adoption of the 1969 International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, or the so-called Intervention Convention. Initially, in Britain, governmental activities within the scope of the Convention were undertaken by a salvage committee on behalf of the Secretary of State. However, two other disasters, *Braer* in 1993 and *Sea Empress* in 1996, paved the way for the creation of the office of the Secretary of State's Representative for Maritime Salvage and Intervention (the SOSREP), which is a one-person public authority attached to the Maritime and Coastguard Agency. The SOSREP exercises, on the basis of Ch. 21, Section 137(5) of the Merchant Shipping Act 1995, the powers of the Secretary of State, that is, a Minister of the UK Government.[2]

The SOSREP, a civil servant, takes control at salvage incidents where there is a threat of significant pollution of UK waters and has powers to give statutory directions on the basis of Section 137(2), on behalf of the Secretary of State, to the ship owner, master, pilot, salvor or harbour master. These directions are normally sufficient to eliminate the risk. However, if in the opinion of the Secretary of State (that is, the SOSREP) the powers conferred by subsection (2) are, or have proved to be, inadequate for the purpose, the Secretary of State (that is, the SOSREP) may, under subsection (4), take, as respects the ship or its cargo, *any action of any kind whatsoever*, for the purpose of preventing or reducing oil pollution, or the risk of oil pollution. The measures that can be taken include, according to explicit provisions in the Act: any such action as he has power to require to be taken by a direction under the relevant section; operations for the sinking or destruction of the ship, or any part of it, of a kind which is not within the means of any person to whom he can give directions; and operations which involve the taking over of control of the ship.

Depending on the exigencies of the case, the powers of the SOSREP are wide, to say the least, ranging from the giving of directions to the shipowner to the complete destruction of the shipowner's property and the cargo of the ship (normally owned by a third party). For pollution control, the powers extend to the UK Pollution Control Zone, which is 200 miles offshore or the median line with neighbouring states. On the basis of the provisions in the Act, the SOSREP

[1] Norman Hooke, *Modern Shipping Disasters 1963 – 1987* (London, New York, Hamburg, Hong Kong: Lloyd's of London Press, 1989, p. 481: "The British Government gave orders that the Torrey Canyon be destroyed by bombing in the hope that all the estimated 40,000 tons of oil still remaining on board would be burnt off."

[2] I am greatly indebted to a number of persons for advice and materials, including Mr. Colin de la Rue, Legal Consultant and specialist on maritime law, Mr. Pekka Parkkari, Maritime Safety Advisor, the Finnish Coast Guard, Mr. Mathias Buch, Special Advisor, at the Joint Command of the Danish Armed Forces, Mr. Pekka Piirainen, Co-ordinator for the Survey and Inspection Unit at the Civil Aviation and Maritime Department of the Swedish Transport Authority, and Adjunct Professor, Dr. Henrik Ringbom. Dr.(in spe) Anna Barlow has kindly performed the language-check. All remaining errors are, of course, the responsibility of the author.

is empowered to make crucial and quick decisions without recourse to higher authority, where such decisions are in the overriding UK public interest.[3] From a Nordic perspective, at first sight this may amount to unfettered discretion, but the powers have a clear statutory basis, in particular the most dramatic powers of the SOSREP, rooted in the *Torrey Canyon* case. It seems clear that the SOSREP is empowered to engage the full force of the state to deal with pollution within the ambit of the Intervention Convention.

A general intervention arrangement of this kind is by no means unknown in other countries. Counterparts to the SOSREP exist in many countries, such as the *Préfet Maritime* in France, a civil servant who exercises authority over the sea in a particular region of France but who at the same time is attached to the military forces.[4] Similarly, in the Baltic Sea area, States have set up public authorities for intervention actions to respond to environmental risks caused by wrecks. In Denmark, there is the Joint Command of the Armed Forces/Maritime Assistance Service (MAS), in Finland, there was formerly the Duty Officer at the Finnish Environment Institute (FEI), now replaced by the Border Guard, and in Sweden, there is the Duty Officer of the Swedish Transport Agency (TA). These "intervention enforcers" are the focal point of our inquiry.

The question here is, from the point of view of public law, in particular administrative law,[5] the following: how have these three Nordic states implemented the intervention regime? This general question can be broken down into more specific questions. What is the institutional and material scope of the intervention regime in the three countries and can criticism be levelled at the Nordic arrangements? What is the range of powers established in the law of the three Nordic countries that constitute the content of intervention measures? At its most extreme, this question addresses whether the intervention enforcer of the State has the right to order aerial bombing of an oil tanker in order to bring about its complete destruction or sinking. Given that the FEI in Finland was not generally authorized to exercise any powers of a significant nature concerning the environment (and is in that respect a very "soft" public institution, with the exception that the Duty Officer of the FEI was a civil servant with particular intervention tasks), the question is how the other Nordic states have resolved the organizational placement of the intervention function and how the new organizational solution in Finland with the Border Guard fits into the picture. Methodologically, this article tries to answer these questions by using a comparative law approach, which means that the comparison is mainly of a horizontal nature between the relevant legislation in Denmark, Finland and Sweden against the background of the arrangement in the UK. However, there is also an element of vertical comparison here, because the national law is, in part, assessed in light of the relevant international law.

Obviously, the general wish is that it would never become necessary to activate powers intended for intervention enforcement. As has been pointed out, "state intervention has generally been for the purpose of asserting a supervisory role, and has only rarely involved the use of force or

[3] Louise Butcher, 'Shipping: Marine Safety Act 2003'. *Standard Note*, SN/BT/2156. London: Library of the House of Commons, 2010, at http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN02156 (accessed on 9 Oct. 2017).

[4] As a civil servant, the *Préfet Maritime* reports to the Prime Minister of France, but because the officer is at the same time in charge of military operations in the region, the *Préfet Maritime* also reports to the chief of the general staff.

[5] We will not deal in this article with specific constitutional issues that may arise in relation to the right to property, freedom of movement, etc., but the reader may, while reading the text, come to the conclusion that the intervention enforcement may have constitutional implications, e.g., for the rights of individuals.

other active steps that affect the ship".[6] The matter is, however, not entirely theoretical, because further situations of the kind that led to the establishment of the Intervention Convention have occurred. In May 1978, the British Government decided "to sink the bow section of *Eleni V*, which had broken in two following a collision in the North Sea",[7] by using two tonnes of explosives placed in position by Navy divers.[8] A fire on *Castillo de Bellver* on 6 August 1983 caused the ship to break into two parts off the western coast of South Africa, with the oil drifting towards open sea, after which the stern section exploded. The bow section with an estimated 60,000 tonnes of light crude oil, however, "was towed out to deep water and deliberately sunk (…) with the use of controlled explosive charges".[9] In the United States, a disaster was unfolding off the coast of Oregon on 4 February 1999, threatening a wildlife refuge. US authorities made the decision to complete the destruction of *New Carissa*, a wood chip carrier that had broken into two parts, by launching a torpedo and by other fire by the US Navy that led to the sinking of the bow part of the vessel in deep ocean water some 400 km off the coast, while at least a portion of the bunker oil in the stern part was burnt off on shore by means of napalm rockets.[10] In February 2001, MV *Kristal*, carrying a cargo of sugar molasses, which in itself is not harmful as a pollutant but would nonetheless have spread on the rocks of the Spanish coast, was torpedoed by Spanish authorities after having broken in two.[11] There are indications that other situations of a similar kind have also occurred.

Burning off oil might be a relevant measure in some situations, although it can be criticized because toxins and carbon dioxide are released into the atmosphere and in all likelihood also into the water. Sinking in very deep water may cause oil to congeal in the low temperature,[12] although dumping and scuttling is generally prohibited,[13] which means that intentional sinking of vessels should as a rule be avoided.[14]

It appears that none of the Nordic intervention enforcers have so far been placed in a situation where they would have had to activate the full force of the state for the purpose of eliminating a threat of oil-pollution in a manner similar to the *Torrey Canyon* measures. However, incidents of a less serious nature do take place and lead from time to time to the activation of at least

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[6] Colin de la Rue & Charles B Anderson, *Shipping and the Environment*. London: Lloyd's of London 2009, p. 904. For a four-step categorization of increasing intensity of intervention measures, see de la Rue & Anderson 2009, pp. 904-905.

[7] de la Rue & Anderson 2009, p. 905.

[8] Hooke 1989, p. 146.

[9] Hooke 1989, p. 93.

[10] de la Rue & Anderson 2009, pp. 66, 905. See also de la Rue & Anderson 2009, p. 1012, for the scuttling of MV *Stanislaw Dubois* off the Dutch coast in 1981 and the barge *Coastal Express* off British Columbia in Canada. Regarding *Stanislaw Dubois*, see also HELCOM Response Manual, Volume 2 ANNEX 3, 1 December 2002, p. 31, at http://www.helcom.fi/Lists/Publications/HELCOM%20Manual%20on%20Co-operation%20in%20Response%20to%20Marine%20Pollution%20-%20Volume%202.pdf

[11] de la Rue & Anderson 2009, p. 1013.

[12] de la Rue & Anderson 2009, p. 1013.

[13] See, e.g., the Finnish Act on the Protection of the Sea (1415/1994), which establishes a general prohibition of dumping in Section 7(1) and a prohibition of scuttling in Section 7(2), but permits in Section 7(3) both of these measures in certain emergency situations that threaten, e.g., the life of human beings and the security of vessels is threatened. This means that intervention measures may at least in principle end up in conflict with the prohibition of dumping and scuttling.

[14] Drastic measures of the kind used in relation to *Torrey Canyon*, *Eleni V*, *Castillo de Bellver*, *New Carissa* and *Kristal* should probably be avoided also with a view to the Helsinki Convention, Annex VII, article 7 on response measures, according to which the Contracting Party shall, when a pollution incident occurs in its response region, make the necessary assessments of the situation and take adequate response action in order to avoid or minimize subsequent pollution effects mainly by using mechanical means to respond to pollution incidents. However, burning off of oil is not ruled out in this context.

some of the mechanisms. The need for a reactive mechanism for intervention enforcement is likely in practice to be diminished by the use of proactive measures by States, such as the creation of the VTS system and the establishment of traffic separation lanes.[15] Technological developments may thus reduce the potential for incidents that would trigger the Intervention Convention.

## 2. Intervention Convention and Domestic Law

The Intervention Convention was adopted on 29 November 1969 and entered into force on 6 May 1975.[16] It was supplemented by the Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil,[17] which was adopted in 1973 and entered into force in 1983. The noxious substances listed in the annex to the Protocol have been increased in number by means of subsequent additions to the list.

The second paragraph of the Preamble to the Intervention Convention underlines the gravity of situations that may arise from oil-related disasters by pointing out that measures of an exceptional character might be necessary to protect the environment from catastrophic consequences. This general idea is elaborated upon in Article I, according to which "[p]arties to the Convention may take such measures on the high seas as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat of pollution of the sea by oil, following upon a maritime casualty or acts related to such a casualty, which may reasonably be expected to result in major harmful consequences".[18] The provision contains a similar reference to necessary measures to that in the preamble paragraph and connects them in Article I(1) with prevention, mitigation and elimination of grave and imminent danger to coastline or related interests that oil can cause.[19] The use of the term "eliminate" in the provision may perhaps be understood as a reference to the measures taken in conjunction with the *Torrey Canyon* disaster, while the Convention itself is applicable beyond the territorial sea of the coastal state.

The Convention, however, does not contain any specific examples of measures that a State might have to take in such a situation, but only a reference in Article V, subsection 1, to the fact that measures taken by the coastal State in accordance with Article I shall be proportionate to the actual or threatening damage. The implementation of this proportionality principle is specified in subsections 2 and 3 of the Article. The measures shall not go beyond what is reasonably necessary to achieve the end mentioned in Article I and the measures shall cease as soon as that end has been achieved. In addition, in considering whether the measures are proportionate to the damage, account shall be taken of the extent and probability of imminent

[15] I thank Mr. Mathias Buch, Special Advisor, at the Joint Command of the Danish Armed Forces, for drawing my attention to the reactive and proactive measures and to the indicated development. Perhaps such measures can be viewed as measures of prevention under Article I(1) of the Intervention Convention.
[16] 970 UNTS-I-14049.
[17] 1313 UNTS-I-21886.
[18] However, under the limitation clause of subsection 2 of the Article, "no measures shall be taken under the present Convention against any warship or other ship owned or operated by a State and used, for the time being, only on government non-commercial service".
[19] In the Swedish government report *Ny lag om åtgärder mot förorening från fartyg*, SOU 2011:82, p. 206, the opinion is presented that the UN Convention on the Law of the Sea contains similar or parallel powers in Article 221 as in the Intervention Convention, but strictly speaking, this is incorrect, because Article 221 merely sustains measures of the coastal state on the basis of the Intervention Convention or customary law and does not create any powers for the State that would be parallel to or separate from the measures of the Intervention Convention.

damage if those measures are not taken, the likelihood of those measures being effective, and the extent of the damage which may be caused by such measures. Therefore, it remains somewhat unclear on the basis of the Convention what it mandates in terms of the use of force. The measures undertaken can be minor, but they could also, if need be, include dramatic actions, such as the elimination of an entire vessel and its cargo. It is left to the State to decide what such measures could contain, both generally and specifically, in an emergency. The measures identified in the UK Merchant Shipping Act, including the complete destruction of the vessel and its cargo, seem to invoke the entire range of measures permitted by the Intervention Convention.

It is plain that, on the basis of the Intervention Convention, the State may take necessary action over a broad range of different measures. At the same time, however, the Convention imposes necessity and proportionality conditions so as to limit the State's discretion. In addition, the measures undertaken by the State on the basis of Article V, subsection 2 of the Intervention Convention must not unnecessarily interfere with the rights and interests of the flag State, third States and of any concerned persons, physical or corporate. These stakeholders should normally be informed and consulted under Article III of the Convention, but the coastal State may, in cases of extreme urgency requiring measures to be taken immediately, take measures rendered necessary by the urgency of the situation without prior notification or consultation or without continuing consultations already begun.

All the Nordic countries are dualistic in their relation to international law, which means that in addition to ratification of a treaty, it has to be brought into effect in national law if it is to have legal effect in the national jurisdiction. Denmark ratified the Intervention Convention on 18 December 1970, Finland on 6 September 1976 and Sweden on 8 February 1973. For Denmark, the Convention entered into force on 6 May 1975, for Finland on 5 December 1976 and for Sweden on 6 May 1975. However, the approach to incorporation of the Intervention Convention varies between the three Nordic countries.

In Denmark, the possibility of intervention is mentioned in Sections 42, 42a and 43 of the Act on the Protection of the Marine Environment.[20] The provisions are placed in a chapter of the Act entitled "*Indgreb*". The term used in the chapter heading is thus the same as the Danish term in the ratified Intervention Convention, so the language used in the chapter heading as well as the material provisions established in the provisions (see below) indicate that material incorporation of the Convention takes place by means of these provisions. The text of the intervention convention has been published in Danish in the official journal for legislation of Denmark,[21] but it does not appear to be adopted at the level of an Act of Parliament as national legislation. Therefore, incorporation has materially taken place by means of transformation of national law in the above mentioned Act in order to bring about coherence with the international obligation.[22]

[20] Lov om beskyttelse af havmiljøet, LBK nr 1033 af 04/09/2017.

[21] Bekendtgørelse af international konvention af 29. november 1969 om indgriben på det åbne hav i tilfælde af olieforureningsulykker. (BKI nr 66 af 27/06/1975; Gældende; Offentliggørelsesdato: 15-08-1975).

[22] On incorporation of treaty law in Denmark, see Henrik Zahle (ed.), *Danmarks riges grundlov*. København: Jurist- og Økonomforbundets Forlag, 1999, pp. 99-100, where it is pointed out that treaties are not normally incorporated as such in the Danish legal order and that ratified treaties cannot be directly used as sources of national law, although national provisions should be given an interpretation which is in harmony with the international commitment. For this reason, it seems the Intervention Convention is not, as such, part of the domestic legal order of Denmark.

In Finland, those parts of the Convention that require formal legislation were approved at that level by an Act of 27 May 1976 on the Approval of Some Provisions in the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties.[23] The President of Finland resolved on the same day to ratify the Convention. The incorporation of the entire Convention into the legal order of Finland, including those parts of the Convention that do not belong to the area of legislation, was effected by a Decree on the Bringing into Force of the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties.[24] This means that the text of the Convention, including Article I(1), is in principle part of national law both at the level of an Act of Parliament and a Decree. According to the Government Bill leading to the adoption of the Act on Oil Pollution Response (1673/2009) (the OPR Act), Section 25(1) of the OPR Act and Section 6 of the previous Act on the Prevention of Pollution from Ships (the PPS Act),[25] both of which are now revoked by amendments in 2018 to the Rescue Act (379/2011),[26] are based on the Intervention Convention. Therefore, Section 36b of the Rescue Act now contains the domestic material law of intervention, as supplemented by other provisions in the Rescue Act.

In Sweden, the Intervention Convention was approved for the purposes of ratification by the Parliament in 1972,[27] but national rules of a material nature by way of transformation were required in order to establish the provisions of the Convention in the Swedish legal order.[28] Such rules were originally included in the Act (1972:275) on Measures against Water Pollution from Ships. This Act was replaced by the current Act on Measures against Pollution from Ships,[29] wherein Sections 5 and 5a of Chapter 7 on special measures against pollution identify, at the national level, measures that appear to fall within the purview of the Intervention Convention.[30] The more specific identification of actual measures in terms of intervention is found in Chapter 7, Section 4, of the Decree on Measures against Pollution from Ships.[31] The Decree specifies that, for cases identified in Article I(1) of the Intervention Convention and the Protocol thereto, Articles I(2), II, III and V of the Convention must be taken into account when Section 5 of the Act on Measures against Pollution from Ships is being implemented. Hence the Decree directs the implementation of national material law facilitating interventions and links this implementation to the provisions in the Convention.

In addition to national law, the European Union has activated itself as a law-maker in the area of intervention, although the EU is not a party to the Intervention Convention. According to Article 19(1) of the Directive 2002/59/EC of the European Parliament and of the Council of 27

[23] Act (810/1976). The Act entered into force upon publication in the Statutes of Finland on 6 October 1976, and on the same date, the Act was published in the Finnish Treaty Series (62/1976).
[24] Decree 811/1976. The Decree entered into force upon publication in the Statutes of Finland on 6 October 1976, and on the same date, the Decree was published in the Finnish Treaty Series (63/1976) together with the text of the Convention.
[25] Government Bill No. 248/2009, p. 108.
[26] Räddningslag (379/2011).
[27] Government Bill No. 1972:106.
[28] On incorporation of treaty law in Sweden, see Joakim Nergelius, *Svensk statsrätt*. Lund: Studentlitteratur, 2014, p. 171 f., where the system is explained against the background of the European Convention on Human Rights, which is probably one of the few treaties incorporated as such, implying for the Intervention Convention that this is not the case.
[29] Lag (1980:424) om åtgärder mot förorening från fartyg. The Intervention Convention was published in the series International Agreements of Sweden in SÖ 1973:2 and the Protocol in SÖ 1976:12.
[30] Chapter 11 of the Act contains intervention measures for foreign ships concerning interrogation and other pre-trial measures.
[31] Förordning (1980:789) om åtgärder mot förorening från fartyg. In addition, there is a Decree on Removal of Wrecks that Prevent Shipping or Fishing (2011:658).

June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC,[32] which deals with measures relating to incidents or accidents at sea, Member States shall, in the event of incidents or accidents at sea as referred to in Article 17 of the Directive, take all appropriate measures consistent with international law, where necessary to ensure the safety of shipping and of persons and to protect the marine and coastal environment. Article 19 of the Directive is thus apparently an independent exercise by the EU of legislative powers of the European Union, not an implementation measure in relation to the Intervention Convention under Article 218 TFEU.

As a consequence, Member States have a separate duty under EU law to take appropriate measures in relation to an incident, because according to Article 3 of the Directive, the term "relevant international instruments" include, *inter alia*, the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 and its 1973 Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil. Therefore, instead of formal incorporation of a treaty in EU law by means of a decision of the Council of Ministers, the Directive appears to utilize a method of material incorporation of a (non-ratified) treaty, perhaps perceived as customary international law binding on the EU, by means of reference in a legislative act. In the former case, the Convention would have received a heightened position in the hierarchy of norms of the EU, one between the primary law and secondary law, but because the latter situation is the case, the provisions concerning appropriate measures remain at the level of secondary law.

## 3. Material Powers of Intervention

### *3.1. Denmark: Relatively Specific Powers in an Act*

In Denmark, the possibility of intervention is mentioned in Sections 42, 42a and 43 of the Act on the Protection of the Marine Environment and placed in a chapter of the Act entitled "*Indgreb*".[33] The term used in the chapter heading is thus the same as the Danish term for intervention in the ratified Intervention Convention (although other forms of intervention than those on the basis of the Intervention Convention are also included in the chapter). On the basis of the Act, it appears that competence to take intervention measures against vessels is divided between the Minister of Defence and the Minister of the Environment and Foodstuffs, in particular as Section 43b of the Act grants to the latter Ministry the normative power to establish more specific rules on the use of Sections 42 and 43 after negotiations with the former Ministry. According to information from the Ministry of Environment and Foodstuffs, no such additional rules for the implementation of the said sections have been issued by the Ministry.[34] This means that the intervention competence is, in reality, entirely a matter for the Ministry of Defence. This has been the case since 2000, when the administrative responsibilities in this area were transferred from the Ministry of Environment and Foodstuffs to the Ministry of Defence,[35] a

[32] Official Journal L 208, 05/08/2002 P. 0010 – 0027.

[33] As of 1 May 2003, legislative competence in the area of marine environment of the Faroe Islands is held by the Legislative Assembly of the Faroe Islands on the basis of an agreement between the Danish government and the government of the Faroe Islands of 17 January 2003. According to Section 68(1), the Danish Act on the Protection of the Marine Environment is not applicable in Greenland, unless implemented there pursuant to a Royal Decree, which has taken place by Decree nr 1035 of 22 October 2004, recognizing those exceptions that the specific conditions of Greenland indicate.

[34] E-mail message on 26 October 2017 from Director Anne-Mette Hjortebjerg Lund (on file with the author).

[35] On the administrative agreement between the two ministries on the transfer of responsibilities, in effect from 1 January 2000, see Aftale mellem Miljø- og Energiministeriet og Forsvarsministeriet om forsvarets opgaver og

change necessitated by practical issues, such as the lack of sufficient capacity to act and the lack of an around-the-clock emergency function at the Ministry of Environment and Foodstuffs.

Situations foreseen in the Intervention Convention are coveredin Section 43, where subsection 1 grants to the Minister of Defence authority to impose the mild end of the range of measures, such as to forbid the ship to continue its voyage or other activities or to order that the voyage or other activities shall comply with particular instructions, provided that a prohibited spill from the ship has taken place or could take place and the prohibition or order is necessary for preventing or countering pollution that may lead to serious damage to the maritime environment. According to the provision, these are measures that *can* be taken, which leaves a large amount of latitude to the Minister of Defence in deciding whether measures should be taken and, if so, which measures. An implementation manual for action against oil pollution and other harmful pollution in the sea also lists the measures, but with greater specificity, such as emptying the tanks of the ship and bringing the ship afloat from being grounded.[36]

In Section 43, subsection 2, of the Act a more open-ended characterization of measures is given by providing that the Minister of Defence *can* (Dan.: "kan") take measures in addition to those mentioned in subsection 1, if it is necessary to prevent or to counter pollution that may cause serious damage to the marine environment. It appears that this provision makes available to the Minister of Defence the more stringent end of the range of possible measures, but by using the term can, the provision also opens up a field of discretion for the Minister of Defence as to what the exact measures applied might be. Particularly intrusive measures would thus not be delegated to the JCAF, which is perhaps also indicated by the delegation provision, which only makes reference to Sections 1 and 3 of the Decree of the Minister of Defence, not to Section 2.[37]

According to Section 43, subsection 3, of the Act, decisions concerning prohibitions or injunctions on the basis of subsections 1 and 2 must be brought to the attention of the captain of the ship or the owner or user of the ship as soon as possible. Such prohibitions or injunctions can be issued orally, but must as soon as possible thereafter be issued in writing, and must provide information about any conditions imposed for release of the ship. Under Section 51a of the Act on the Protection of the Marine Environment, decisions of this kind can be appealed to the Appeals Board of Maritime Matters within four weeks from the decision. However, the more concrete instructions in the implementation manual, concerning the available measures, suggest an intention that such measures should be used rarely or never. The manual specifically states that it is not expected that exercise of public power should take place in relation to interventions for the protection of the marine environment.[38] The assumption seems to be that instructions by the competent authorities are followed without there being any need to issue formal decisions. The Act nevertheless foresees formal decisions, and if the party subject to the decision fails to comply, a variety of administrative consequences, such as administrative fines, can follow.

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beføjelser på havmiljøområdet som overført fra Miljø- og Energiministeriet, established on the basis of the Royal Resolution of 11 June 1999.

[36] Beredskapsplan for det statslige danske beredskab til bekaempelse af forurening af havet med olie og andre skadelige stoffer – Beredskapsmanual (del II), pp. 102 f.

[37] See Section 1, para. 9, of Bekendtgørelse om henlæggelse af opgaver og beføjelser efter lov om beskyttelse af havmiljøet til Forsvarskommandoen, BEK nr 992 af 06/11/2000. A clean-up is at the local level the responsibility of local rescue services.

[38] Beredskapsplan for det statslige danske beredskab til bekaempelse af forurening af havet med olie og andre skadelige stoffer – Beredskapsmanual (del II), p. 106.

*3.2. Sweden: Provisions in Act with Implementation Guidance in Decree*

The Swedish Transport Agency (or another public authority identified by the Government, which has not occurred, except in the case of the Coast Guard on a temporary basis; see below) is empowered, under Ch. 7, Section 5(1) of the Act (1980:424) on Measures Against Pollution from Ships to issue those prohibitions and obligations that are necessary to prevent or limit pollution in situations where oil or some other harmful substance has been discharged from a ship or if there is reason to believe that this will happen. In addition, it is necessary that Swedish territory, Swedish air-space or other Swedish interests are at risk of suffering significant damage. The provision lists the measures that can constitute prohibitions and obligations as follows: the prohibition of departure or continued voyage of the ship; the prohibition of commencement or continuation of loading, unloading, lightering or bunkering; the prohibition of the use of certain equipment; the obligation for the ship to follow a certain course; the obligation for the ship to sail into or depart from a certain port or other site; obligations concerning the steering or operation of the ship; and the obligation to lighter oil or other harmful substances.

Again, these measures are ones that *can* be ordered (Swe.: "kan"), but the explicit list of measures appears to be more limited than in the case of Denmark and Finland. Certainly, this list covers the lighter end of measures and also some more intrusive measures, and it seems that this list is the most specific in comparison with Denmark and Finland. The effect of the enumeration of measures is apparently that the Swedish Transport Agency has to choose the appropriate measure from among the listed options. However, the most serious measures are not at all indicated in Swedish law in the same manner as in Denmark or Finland, because the list indicates that the range of measures is limited to those that do not imply the exercise of physical force in relation to the ship. This would also seem to mean that the enumeration falls short of providing a basis in law for all those measures that are implied by Article I(1) of the 1969 Intervention Convention, including the complete destruction of the ship.[39] For this reason, it might be possible to argue that the transformation into Swedish law of the material provision of the Convention is not complete.

Guidance on the interpretation of Ch. 7, Section 5, of the Act is included in Ch. 7, Section 4, of the Decree (1980:789) on Measures against Pollution from Ships. According to the Decree, Articles I(2), II, III and V of the Convention have to be taken into account when Ch. 7, Section 5, of the Convention is implemented. However, none of these provisions of the Convention specify in any way the measures that can be taken, but have instead the function of limiting the sphere of action of the coastal State by requiring certain consideration and consultation by the State proposing to undertake measures against a ship. The Decree does not, therefore, provide any additional basis for intervention measures in Sweden.

The relevant legal provisions appear to depart from the understanding that any decision issued on the basis of the powers listed in the relevant provision is issued in writing as an administrative decision. According to Ch. 7, Section 7, decisions according to Ch. 7, Section 5 shall contain information on what measures should be taken by the party to which the decision is issued in order to remedy the situation, and issuances shall also include the time within which the measures are to be effectuated. According to Section 7a, a prohibition of departure of a ship

[39] It was confirmed by Mr. Pekka Piirainen, Co-ordinator for the Survey and Inspection Unit of the Transport Agency, in a telephone interview on 21 November 2017 that the Swedish Transport Agency would not have the power to order, e.g., the complete destruction of the ship.

on the basis of, *inter alia*, Section 5, shall stay in force until the required remedial action has taken place and payment has been made or a guarantee issued for the costs of detention of the ship which have been established as falling to the shipowner. In addition, Ch. 7, Section 8, creates the legal basis for the issuance of administrative fines on the basis of Section 5, which provides that a directive or a prohibition joined with an administrative fine can be issued to the captain of the ship or the shipowner. In addition, Ch. 7, Section 9, creates the additional possibility that if the party defaults on a measure ordered on the basis of Section 5 (or if the party cannot be reached without a delay that jeopardizes the aim of the decision), the Transport Agency may execute the measure at the cost of the shipowner. In practice, parties follow all directives and prohibitions, which means that there is normally no need to use administrative force of this kind.[40] However, the addressee of the decision of the Transport Agency is entitled under Ch. 9, Section 2, to lodge appeals against the decisions of the Transport Agency at a general administrative court, with the possibility of further appeals to the administrative court of appeal, provided that the court grants leave to appeal.

### *3.3. Finland: Unspecific Powers in an Act*

In Finland, Section 36b of the Rescue Act, a general enactment on rescue activities of all kinds, including regular fires in apartment blocks, etc., provides that when a ship causes a situation where a risk of an oil spill or leakage of any other noxious substance is apparent, the Border Guard can order such rescue or other measures directed at the ship and its cargo as are considered necessary to prevent or limit the pollution of water. The powers of the Border Guard are in principle formulated as optional, because it *can* (Fi.: "voi"; Swe.: "kan") order such measures, and not as unconditional in a way which would indicate that the Border Guard would have an obligation to take action. However, the context of Section 36b of the Rescue Act reveals a specific obligation for the Border Guard to take action under Section 32(3) of the Rescue Act, supported by the provision in Section 20 of the Constitution of Finland concerning responsibility for nature.[41]

Section 32(3) states that the public authority leading rescue efforts related to oil and chemical damage must without delay commence measures to prevent or limit damage by taking all necessary measures that do not result in expenses and damages evidently disproportionate to the economic and other values that are threatened. According to the provision, the prevention measures must be carried out so that no unnecessary complication is caused for reinstating nature and the environment in the condition in which it was prior to the accident. The obligation of Finnish authorities to take measures is also indicated by the Government Bill that led to the enactment of the original 1979 Act on the Prevention of Pollution from Ships (300/1979) (PPS Act),[42] which appears to proceed from an understanding that, prior to the enactment of the 1979 Act, measures concerning vessels had, with the exception of damages caused by oil, depended on the shipowner or the insurance company. The implication of this is that from 1979 on, there

[40] As pointed out by Mr. Pekka Piirainen, Co-ordinator for the Survey and Inspection Unit of the Transport Agency, in a telephone interview on 21 November 2017, administrative fines can be used to make potentially defaulting parties to function as the Transport Agency wants, but in practice there is no need to do so, because everybody follows the prohibitions and issuances. In case a prohibition of use of a ship is issued, the Transport Agency recovers all the costs from the shipowner before the prohibition is withdrawn.

[41] Section 20 - Responsibility for the environment: "Nature and its biodiversity, the environment and the national heritage are the responsibility of everyone. The public authorities shall endeavour to guarantee for everyone the right to a healthy environment and for everyone the possibility to influence the decisions that concern their own living environment."

[42] Hereinafter: the PPS Act. See Government Bill 228/1978, p. 6.

is a legal obligation on the part of the authorities of Finland to react, and Government Bill 18/2018 connects the provision explicitly to the Intervention Convention.[43]

The nature of measures envisioned by the law-maker is, however, not clear on the basis of Government Bill 18/2018, because according to the Bill, the provision in the Rescue Act corresponds, in the main, to the 2009 OPR Act and its provisions on authority to take measures. However, the nature of the measures is not spelled out in that Act, nor in Government Bill 248/2009 concerning the 2009 OPR Act, as according to that Bill, the provision corresponds, in general, to the 1979 PPS Act.[44] This former Act envisioned originally, when being enacted on the basis of Government Bill 228/1978,[45] that such measures, as mentioned in the Bill, include the salvage of the ship, the unloading of the cargo and in extreme cases even the destruction of the vessel and its cargo by blowing it up. It is not clear on the basis of the Government Bill to the 1979 Act what positive consequences for the environment would result from the complete destruction of a wreck,[46] but the examples included in the Government Bill indicate that a broad range of different potential measures should exist. The measures were, however, not explicitly listed in the 1979 Act. What the measures could consist of is, nevertheless, blurred by the fact that it is not Government Bill 248/2009 to the OPR Act nor Government Bill 18/2018, that is, the bill to the current Act, which lists them, but instead the bill to the 1979 PPS Act, which is long since repealed. In any event, the precise powers to undertake measures are not delineated in the current Rescue Act, except that according to Government Bill 18/2018, the supervisory authority can, on the basis of its special knowledge, assess the stability and other aspects of the condition of the vessel, determine whether the measures that are planned cause danger to other traffic and whether it is possible to move the vessel from the site of the accident.[47]

The somewhat unclear situation is nevertheless clarified to an extent by means of Section 36a of the Rescue Act, which outlines the powers of the accident response authority. According to that provision, where necessary for preventing and responding to oil spills or chemical spills from ships, and for limiting the consequences of such spills, the accident response authority shall be entitled to 1) temporarily commandeer any equipment and supplies suitable for accident prevention and response, any necessary communications and transport equipment, machines and tools, as well as premises and space needed for loading, unloading or temporary storage; 2) disembark and move about on another person's property; 3) order earth and water construction measures to be undertaken on another person's property; 4) limit waterborne traffic; and 5) *take other measures necessary* for preventing and responding to oil spills and chemical spills from ships. As can be seen, this list contains many powers that interfere with the rights of individuals.[48] In spite of this listing, the contents of para. 5 should still be understood in the context of the Government Bill to the 1979 PPS Act, because the revoked Act of 1979 was originally enacted to implement the Intervention Convention. The normative situation concerning the range of measures is not satisfactory if at least part of the definition must be retrieved from the *travaux preparatoires* of a law that was repealed a decade ago.

[43] Government Bill 18/2018, p. 52.
[44] Government Bill 248/2009, pp. 107-108.
[45] Government Bill 228/1978, p 6.
[46] See Hooke 1989, p. 481, dealing with the *Torrey Canyon* disaster in 18 March 1967, when the destruction of the vessel and its cargo was ordered to prevent an even greater environmental catastrophe.
[47] Government Bill 18/2018, p. 51.
[48] However, the 2018 amendments to the Rescue Act have not been evaluated in the Constitutional Committee of the Parliament of Finland for their compatibility with, e.g., the right to property in Section 15 of the Constitution of Finland.

On the basis of Section 36b of the Rescue Act, it is for the Finnish Border Guard to identify the measures to be taken, which in their most lenient form could be to restore the ship to its owner for ordinary use and in their most extreme form might lead to the complete destruction of the ship and a total loss for the owner (although the latter is specified in the Government Bill leading to the repealed PPS Act of 1979, not in the current law). Measures between these extremes include emptying possible oil or other containers and tanks that are on board a sunken ship, the isolation of the location of the incident by use of oil restraints on the surface of the water and active cleaning measures for the surface of the water, shores, and even the sea floor (if technically possible),[49] the cleaning of birds as well as the recovery of the ship and the cargo.[50] The measures can in principle be ordered on the basis of an administrative decision or order of the Border Guard, but the Border Guard is expected to negotiate with the Finnish Traffic and Communication Authority and to hear the relevant environmental authority before taking measures, unless the exigencies of the situation indicate otherwise.

In its capacity as a leading agency for rescue operations, the Border Guard coordinates preparations for operations the planning of which shall, on the basis of Section 47(2), include public authorities that are under the duty to give executive assistance to the Border Guard. According to Section 46, para. 13, of the Rescue Act on co-operation in rescue operations, the Finnish Environment Centre, the Traffic and Communications Agency and the Defence Forces participate in the prevention of damage caused by oil spills and chemical discharge from vessels. The manner of their cooperation is detailed in the Rescue Act and in other legislation.

The Border Guard shall, under Section 34(2) of the Rescue Act, appoint the person in charge of the rescue operations concerning oil spills and discharge of chemicals from vessels when such incidents happen in the territorial waters of Finland or on the open sea.[51] It is, however, possible on the basis of Section 34(1) of the Rescue Act that the regional Emergency Services Authority (that is, the fire brigade), which is present in each region, ten of which are coastal regions, appoints its own rescue leader to deal with oil spills and clean-up efforts in the inner waters and on the actual coastline. How the exact distribution of authority between the Border Guard and the Emergency Services Authority is managed is not spelled out, and therefore, there appears to exist a territorial delimitation of competence of the Border Guard to the outer waters of Finland, while the Emergency Services Authorities are in charge of the inner waters. This may be confusing from the point of view of the implementation of the Intervention Convention and would probably warrant clarification in the provisions of the Rescue Act.

As explained above, a person in charge of rescue operations has, on the basis of Section 36a, certain explicit powers, but also the power under para. 5 to take other necessary measures to prevent damage from an oil spill or chemical discharge from a vessel and also, according to subsection 2, to appropriate necessary equipment and request the assistance of persons in using such equipment. The person in charge of rescue operations has, according to Section 34(1) of the Rescue Act, the legal liability of a civil servant, which in this case should refer, in particular,

[49] Jouko Tuomainen, *Vastuu saastuneesta ympäristöstä*. Helsinki: WSOY Lakitieto, 2001, p. 283.
[50] According to Tuomainen 2001, p. 286, immediate prevention and cleaning measures taken by public authorities do not require any additional environment permit.
[51] The territorial waters of Finland consist, based on Section 3 of the Act on the Borders of the Finnish Territorial Waters (463/1956), of inner and outer territorial waters. The former are parts of the relevant municipality (and thus belong to the jurisdiction of a regional Emergency Rescue Service) and the latter are also called the territorial sea. The outer border of the inner territorial waters is constituted by a border-line drawn via base points. These base points are the outermost points of the territory, sometimes on the mainland, but in most cases on islands, islets or rocks. The outer territorial waters or the territorial sea extends itself 12 nautical miles beyond this base-line.

to the criminal liability of a civil servant, as outlined in Chapter 40 of the Penal Code (39/1889). On the basis of Section 1.2. of the Order of the Border Guard on the System for Leading Rescue Operations regarding Maritime Rescue and Rescue in relation to Environmental Damage (see section 4.3.2 below),[52] a specific Rescue Commander (RC) exists in each of the two Maritime Rescue Coordination Centres (MRCC). Therefore, this RC can be viewed as the person in charge referred to in Section 34(2) of the Rescue Act, but as pointed out above, an RC may be appointed by the regional Emergency Services Authority for the rescue operations in the inner waters, in which case the RC is a civil servant of the Emergency Services Authority. However, we will here only consider the RC of the Border Guard.

On the basis of Section 4(3) of the Act on the Administration of the Border Guard, the Chief of the Border Guard may, however, take up a matter from a subordinate official and make a decision about it, while Section 5(2) places decision-making authority on matters of social and economic importance with the Ministry of the Interior. In addition, Sections 7 and 8 of the Act support decision-making by which matters of a military nature are forwarded to the President of the Republic or, through the President, to the Council of State for a decision. Furthermore, decisions involving armed response with armaments that are more powerful than a staff person's personal weapon are made pursuant to the procedure established in Section 32(2 and 3) of the Act on the Armed Forces (551/2007), which means that the decision should be made by the President or the Council of State. When such a decision is made, the Minister of the Interior and the Chief of the Border Guard have the right to be present and give their opinion about the matter. There is thus support in various provisions for forwarding intervention matters that require military grade action to the political decision-makers of the state, to the Minister of the Interior and even to the entire Council of State. If an incident were to take place, say, around the island of Utö in the northern part of the main basin of the Baltic Sea, it is likely that the decision to use the stronger measures envisioned on the basis of the Intervention Convention would not be made at the MRCC of Turku/Åbo, but at the governmental level, probably by the President in the Council of State.

In principle, administrative decisions should normally be given in written form pursuant to the Administration Act (434/2003), but it appears that under the exceptional circumstances of situations foreseen in the intervention context, oral decisions would also be possible under Section 43 of the Administration Act. Such decisions should, however, when circumstances permit, be issued in writing. Because the Border Guard is not a civilian authority, but organized in a military manner, it is possible to argue that a decision on intervention measures is not an administrative decision at all, but an order of a military nature which is, under Section 4(1) of the Administration Act, excluded from the application of the provisions in the Act. However, because the impact of such decisions is directed at private parties and their property during times of peace, a decision of the Border Guard about intervention measures should properly be understood as an administrative decision. This is supported by Section 34(4) of the Rescue Act, according to which the leader of the rescue operation shall make an explicit decision about the commencement and termination of the rescue operation, if such a decision is necessary for the clarification of liabilities and powers of the different public authorities and parties. The decision shall be communicated to the relevant public authorities and parties as soon as is possible and, if requested, the decision must be confirmed in writing.

[52] Order of 18 December 2018 on "The System for Leading Rescue Operations regarding Maritime Rescue and Rescue in relation to Environmental Damage" (Meripelastustoimen ja avomerialueen ympäristövahingon pelastustoiminnan johtamisjärjestelmä, in force from 1 January 2019 to 31 December 2023; RVL1834849; 04.01.40; RVLDno-2017-2123; RVLPAK C.16).

At the same time, it is evident on the basis of Sections 6 to 11 of the Act on the Border Guard that decision-making within the Border Guard is circumscribed by a number of administrative principles, namely objectivity, impartiality, conciliation and proportionality as well as by the principle of least harm, and the principle of using powers only for their established purpose. Also, if there is a range of alternative actions, a border guard must choose the alternative that is best for the fulfilment of constitutional rights and human rights. Thus even if the Administration Act were not applicable, in its decision-making concerning intervention measures the Border Guard would not be operating entirely on the basis of its own discretion as to the range of measures. In a situation where the President and the Council of State would have to make intervention decisions at the more serious end of the range of measures, the Administration Act might again become applicable, unless excluded by the definition of the decision as a military command matter or military order.

In principle, the decisions of the rescue authority are appealable under Section 104(2) of the Rescue Act. With reference to prompt action that needs to be taken,[53] Section 104(3) provides that even if there is an administrative appeal, which would normally delay the implementation of a decision until a final court decision has been handed down decisions of the rescue authority can be implemented immediately after the decision has been made. Section 36b departs from the position that the relevant parties should be involved in the measures by providing that the Border Guard shall negotiate with the shipowner, the salvor and the representatives of the insurance company, but only if such negotiations can take place without undue delay. The need for quick action in the environmental context would also, on the basis of Section 31(2), para. 4 of the Administration Act, create a legal basis for not hearing the parties.[54]

Section 49(1) of the Rescue Act, dealing with executive assistance to the Border Guard from other public authorities, mentions that upon request and as far as possible, state authorities are obliged to provide executive assistance to the accident response authorities. The Rescue Act does not mention any public authorities from whom such executive assistance could be requested, but the Government Bill mentions that the Finnish Defence Forces have been approached by public authorities when executive assistance has been needed,[55] which seems to indicate the possibility of using the army for implementing measures (see below). However, the provision requires that the Government regulates such instances by a Decree. It is thus not entirely clear on the basis of the provision that the full force of the state could be put behind whatever measures are ordered by the Border Guard,[56] even though the result of the actions of

[53] Government Bill 228/1978, p. 6, underlines the fact that the measures to be undertaken should be extremely swift.

[54] According to the provision, an administrative matter can be decided without hearing the party if the delay caused by the hearing may result in significant damage to the health of human beings, public safety or the environment.

[55] Government Bill 18/2018, p. 54.

[56] According to the former administrative system within this area in effect until the end of 2018, explained in the Letter of Instruction of the Finnish Environment Institute of 15 December 2006 (SYKE-2002-P-126-044), a request of executive assistance presented by the Duty Officer of the Institute was valid and official even if made by phone and the Institute was be liable for such a request. The Duty Officer should have confirmed the request by a fax message or in some other way, although the validity of the request of executive assistance does not require this. In addition, the Letter makes the point that the Finnish Environment Institute should have covered the expenses caused by a request of executive assistance on the basis of a bill presented by the public authority that has given executive assistance. See also Peter Wetterstein, *Redarens miljöskadeansvar*. Åbo: Åbo Akademis förlag, 2004, p. 327, who concludes that the Act gives the public authorities broad powers to take measures. Tuomainen 2001, p. 276, concludes that the public authorities have been granted fairly broad powers to carry out damage control and other measures and that there exists no uncertainty about the right to act of public authorities. It should be taken into account that at least remotely, there could emerge a conflict with the protection of property

the Border Guard could, under Sections 36a and 36b of the Rescue Act, be the removal of the wreck and cargo or the rendering harmless of the wreck or cargo.[57]

A more specific legal basis for engaging the Defence Forces as a provider of executive assistance is, however, found in Section 79 of the Act on the Border Guard (578/2005), which prior to April 2019 ruled out the use of military force in executive assistance to the Border Guard. However, from April 2019 on, that restriction concerning the use of force is repealed, although on the basis of the relevant Government Bill, the context in which the repeal has an impact is not environmental,[58] but general in relation to border security and particularly geared towards responses towards threats at harbours resulting from terrorism. Nonetheless, the general regulation of executive assistance from the Defence Forces to the Border Guard is more permissive than it used to be. According to Section 78(2), a request for executive assistance is decided by the chief of the administrative unit of the Border Guard or a specifically designated border guard who as a minimum would have the rank of lieutenant.

It is to be noted that intervention measures on the basis of Sections 36a and 36b are not referred to in Section 105 of the Rescue Act, where the use of administrative force is regulated. It appears that the Border Guard cannot issue administrative fines to shipowners or captains, nor issue an administrative threat that a measure is taken with the risk that the shipowner or the captain will later be required to pay the costs of measures. This is a regrettable omission that may limit the efficiency of the measures that can be ordered.

### *3.4. European Union: Reminding the Member States of Measures*

EU law also has some bearing on the measures that can be taken in case of an oil spill of the kind regulated through the Intervention Convention (although the EU is not a party to the Convention, as explained above). Article 19(1) of the Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002, establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC,[59] envisions measures from Member States relating to incidents or accidents at sea. According to the provision, Member States shall, in the event of incidents or accidents at sea as referred to in Article 17, take all appropriate measures consistent with international law, where necessary to ensure the safety of shipping and of persons and to protect the marine and coastal environment.

"All appropriate measures" is a very wide definition of the powers that a Member State might use in case of an incident, but Article 17 contains a reference to Annex IV of the Directive, which sets out a non-exhaustive list of measures available to Member States pursuant to Article

under Section 15 of the Constitution. When balanced against Section 20 of the Constitution on responsibility to nature, especially in an emergency situation caused by a sunken ship, such a conflict should not arise.

[57] However, it should be stated that prior to the transfer of competence to the Border Guard, the Finnish Environment Institute appears not to have used its powers even once under Section 6 of the PPS Act to make a formal decision concerning measures. It seems that the threat of such measures has the (unintended or perhaps even intended?) side-effect that the responsible party takes voluntary action. Nonetheless, this article treats the matter as if such decisions could be made. A similar arrangement with a public authority furnished with broad discretionary powers is in place in most if not all EU member states.

[58] Government Bill 201/2017, pp. 19, 51-52.

[59] Official Journal L 208, 05/08/2002 P. 0010 – 0027. According to Article 3 of the Directive, the term "relevant international instruments" include, *inter alia*, the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 and its 1973 Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil.

19. Appropriate measures include restricting the movement of the ship or directing it to follow a specific course; giving official notice to the master of the ship to put an end to the threat to the environment or maritime safety; sending an evaluation team aboard the ship to assess the degree of risk, helping the master to remedy the situation and keeping the competent coastal station informed thereof; and instructing the master to put in at a place of refuge in the event of imminent peril, or causing the ship to be piloted or towed. It appears that the measures envisioned by the Directive are towards the milder end of the range of possible measures (and in this respect similar to the Swedish provisions), because they do not contain any exceptional measures. At the same time, reference to the term "appropriate" may indicate that proportionality considerations are relevant in choosing the relevant measure in a specific situation. Nevertheless, the listing in the EU Directive is non-exhaustive, which should mean that other measures, too, could be considered, as long as they are in compliance with the relevant international law, that is, with the 1969 Intervention Convention.[60]

## 4. Institutional Locus of the Intervention Power

### *4.1. Denmark: Minister of Defence with Delegation to the Joint Command of Armed Forces*

The fact that the intervention powers of Section 43 of the Act on the Protection of the Marine Environment are entrusted to the Minister of Defence means that the institutional locus of those powers is the Ministry of Defence, at least in principle. However, the operative tasks are not exercised by the Minister, but have been delegated to the Joint Command of the Armed Forces (JCAF).[61] The main delegating provision is the Decree of the Minister of Defence on the Transfer of Tasks and Competences on the Basis of the Act to the Command of the Armed Forces.[62] Section 1, para. 9, of the Ministerial Decree contains those powers that are identified in Section 43 of the Act, at least those explicitly mentioned in subsection 1. It appears that further measures to implement the intervention regime, that is, the more serious end of the range of measures mentioned in subsection 2, might be reserved to the Minister of Defence and thus require a political decision by the Minister and, by extension, by the Government of Denmark. The carrying out of the tasks of the JCAF is further specified in an internal Directive of the JCAF.

In its capacity as the responsible agency in intervention matters, the JCAF simultaneously functions as the Maritime Assistance Service (MAS) of Denmark. It is situated in Copenhagen and has an around-the-clock capacity to function as the point of contact in order to carry operational responsibility. Amongst its staff, the MAS function of the JCAF has one daily

[60] However, a significant number of EU Member States have not ratified the Intervention Convention, among the land-locked countries even several important maritime nations: Austria, Cyprus, the Czech Republic, Greece, Hungary, Lithuania, Luxembourg, Malta, Romania and Slovakia.

[61] Section 1, para. 9, of Bekendtgørelse om henlæggelse af opgaver og beføjelser efter lov om beskyttelse af havmiljøet til Forsvarskommandoen, BEK nr 992 af 06/11/2000.

[62] According to Section 11 of the Defence Act (LBK nr 582 af 24/05/2017), the Chief of Defence has, on the basis of more specific provisions of the Minister of Defence, command over the army, the marine and the air force. See also the Ordinance of the Danish Maritime Board on the transfer of certain powers on the basis of the Maritime Act, such as measures in relation to grounding, estoppel, etc., to the then Marine Operative Command, Bekendtgørelse om henlæggelse af visse beføjelser på det maritime område til Søværnets Operative Kommando of 18 May 2006, BEK nr 443 af 18/05/2006. In Greenland, the Arctic Command is the operative agency, but in case of an incident, it notifies the administrative agency, which is the JCAF. For the Faroe Islands, the tasks are the responsibility of the Faroese Government on the basis of the Faroese Act on Maritime Environment (nr 59 of 17 May 2005), but the Faroese Government may request assistance from the JCAF.

leader, one daily MAS, seven leaders of watch, 14 marine assistants (marine specialists) and two administrative officers.

When an incident takes place, there is an obligation on the part of the captain of the ship, the shipowner, the pilot and other parties concerned to report the incident to the JCAF,[63] and reports can also arrive from public authorities, such as the Coast Guard. Such a report must contain the name of the ship, its position, the scope of the pollution and an estimation of the quantity. Upon receiving a report of an incident such as a grounding, the MAS estimates the risk of pollution and takes the necessary action, such as the appointment of an On-Scene Commander for the concrete management of the incident.[64] The JCAF/MAS has access to around 30 ships or boats for oil protection tasks and it performs airborne surveillance by regular airplanes contracted for the task, by helicopters and jet planes of the Danish Air Force and by satellite surveillance. Although the F-16 jet planes of the Danish Air Force are from time to time used for oil reconnaissance, it is doubtful whether the JCAS/MAS would have authority to use such planes for elimination operations of the kind that the UK Government ordered in 1967 in relation to the *Torrey Canyon* incident. For such operations, a decision by the Minister of Defence or the Government of Denmark would be required.

### *4.2. Sweden: Traditional Model of Independent Agency*

In Sweden, the Transport Agency is empowered, under Ch. 7, Section 5(1) of the Act (1980:424) on Measures Against Pollution from Ships, to issue such prohibitions and obligations as are necessary to prevent or limit pollution in situations where oil or some other harmful substance has been discharged from a ship or if there is reason to believe that this will occur.[65] The Swedish Transport Agency is an independent agency within the state administration and has, according to the Decree (2008:1300) on the Organization of the Transport Agency, a board and a Director General (Sections 15, 16, 17). This means that the agency is not within the framework of direct political decision-making of the Government of Sweden, including the Ministry of Commerce, although the agency is formally placed under that Ministry. The Transport Agency thus exercises its powers independently and under the constitutional principle of the prohibition of ministerial direction and guidance.[66] According to Section 2(2) of the Decree, oversight by the Transport Agency shall, in accordance with the applicable provisions elsewhere in the law, be exercised, *inter alia*, over civilian maritime activities, in particular as concerns safety at sea. The Transport Agency is, of course, under government control, for instance, in the sense that the Government can, on the basis of Section 5 of the 1980 Act, determine by Decree that some other agency than the Transport Authority shall carry out intervention tasks, but neither the Government nor the Ministry can make decisions on intervention measures, only the Transport Agency or some other public authority designated by Decree.

The Transport Agency, which also functions as the Maritime Assistance Service, is situated in Norrköping. At the Agency, there is a Duty Officer who is in charge around the clock and

[63] Bekendtgørelse 2016-06-27 nr. 874 om indberetning i henhold til lov om beskyttelse af havmiljøet

[64] A National On-Scene Commander for international incidents (and a Supreme On-Scene Commander to be in charge of all those National On-Scene Commanders that might be involved in the matter) may be appointed if the incident involves two or several states.

[65] The Transport Agency can also issue further provisions of a general nature, such as the Transport Agency's Provisions and General Advice (TSFS 2010:96) on Measures Against Pollution from Ships, but this particular set of rules and advice does not seem to have any bearing on such situations of intervention dealt with in this article.

[66] On the prohibition, see, e.g., Nergelius 2006, p. 240.

receives indications of transport-related accidents of any nature, which within the maritime area could include groundings, collisions and other failures that could cause an accident.[67] Such indications would normally arrive at the SOS centre of the Transport Agency from the Joint Rescue Coordination Centre (which manages the Maritime Assistance Service, placed in Gothenburg), from the VTS system, from the Swedish Coast Guard or from shipowners. The Duty Officer contacts the relevant regional branch of the Transport Agency, situated in Stockholm, Gothenburg and Malmö, where an Emergency On-call Engineer is located. The Emergency On-call Engineer is dispatched to the site of the accident and can be assisted by other staff, such as a ship construction engineer. The Emergency On-call Engineer decides on the measures to be taken in consultation with the Duty Officer, issues the necessary documentation with orders and prohibitions, and has the final say at the practical level.[68] In practice, the parties concerned, in most cases the shipowner, always follow the instructions of the Emergency On-call Engineer. In addition, this officer can issue a so-called SITREP order allowing a ship to leave for repairs at a shipyard in another state.

However, the Coast Guard has authority under Section 3 of the Decree (1980:789) on Measures Against Pollution from Ships to issue decisions on the basis of Ch. 7, Section 5, of the Act on Measures Against Pollution from Ships, if the decision of the Transport Agency cannot be waited for because there is a need for expeditious measures to prevent, limit or combat pollution.[69] Hence the Coast Guard, with an around-the-clock service, has the task of containing the oil spill until the Transport Agency reaches the site. The Coast Guard also has the task of environmental clean-up and equipment such as boats for this task. Therefore, it seems that the measures which can be taken are organizationally divided between the Transport Agency and the Coast Guard so that the primary authority is with the Transport Agency, while the Coast Guard has complementary authority on site until the Transport Agency arrives and takes control of the incident.

### *4.3. Finland: Shift from a Civilian Authority to the Border Guard*

#### 4.3.1. An Historical Note: Independent Public Body with Statutory Powers as Intervention Enforcer

During the previous two decades, until the end of 2018, the intervention powers established in Section 25(1) of the Act on Oil Pollution Response (the OPR Act), were accorded to the Finnish Environment Institute (the FEI). In its capacity as the intervention enforcer of Finland, the FEI was able to order the commencement of such rescue or other measures directed at a ship and its cargo as were considered necessary for preventing or limiting the pollution of water. The reason for the placement of powers of intervention enforcement with the FEI seems to go back to the re-organization of the Finnish environmental administration in the mid-1990s, when responsibilities were transferred from the former agency, the Board of Water and Environment, to the FEI, at which point the powers of the environmental administration were generally

[67] The office of the Duty Officer is actually created on the basis of Section 12 of the Decree (2006:942) on Crisis Management Planning and High Alert that was repealed in 2016.

[68] According to Pekka Piirainen, Co-ordinator for the Survey and Inspection Unit at the Transport Agency (telephone conversation on 21 November 2017), the Transport Agency or its Duty Officer and Emergency On-call Engineer would not have powers to order, e.g., an aerial bombing of a ship in a situation comparable to the *Torrey Canyon* disaster.

[69] If the Coast Guard would have to make decisions on the basis of Ch. 7, Section 5, of the Act, it is necessary under Ch. 9, Section 1, of the Act that such decisions are immediately submitted to the Transport Agency for validation.

redistributed. It is probably fair to conclude that the FEI was left by default with oil pollution response tasks, as formalized by an amendment to Section 6 of the 1979 PPS Act, which now lives on as Section 25(1) of the OPR Act.[70] This may mean that the powers were never intentionally placed at the FEI; there are certainly no concrete reasons given in the Government Bill for such placement.

The Finnish Environment Institute is an independent public body in the central government of Finland, operating under the Act on the Finnish Environment Institute (1069/2009) and a Decree (1828/2009) of the same name. According to Section 1(1) of the FEI Act, the FEI is a research and development centre within the field of environmental matters, subordinated to the Ministry of Environment. The FEI supports the choice of objectives and means for sustainable development and for the implementation of environmental policy, but in addition has some tasks related to the use and protection of water resources which are within the scope of authority of the Ministry of Agriculture and Forestry. It also provides expert services for several other public authorities. Under Section 1(3) of the Act, the FEI carries out cross-disciplinary maritime research, is responsible for monitoring the condition of maritime territories and produces expert services within this field, but Section 1(4) makes it possible to also grant other tasks to the FEI. In general, it would be fair to say that the FEI does not have any significant public powers within the field of the environment, but is instead a consultative expert body.

In fulfilling its particular task as the intervention enforcer, the FEI was able to take action directly on the basis of the provision in the OPR Act and was independent in its exercise of public powers as well as liable for the exercise of those powers as established in the rule of law principle in Section 2(3) of the Constitution of Finland. This means that neither the Government of Finland nor the Ministry of Environment could exercise those powers, nor could they interfere in the exercise of those powers by giving orders to the FEI in individual cases.

At the FEI in Helsinki, there was (and still is for other environmental purposes than intervention matters) a Duty Officer on constant stand-by every hour of the day, seven days a week. While the FEI was the implementing agency of Section 25(1) of the OPR Act, the practical decision-making in case of incidents was placed with this civil servant. An alarm system existed by means of which information about an incident was fed to the Duty Officer in a manner that could lead to the recognition of a problem that might require action under Section 25(1) of the OPR Act. When an oil spill was observed at sea, a report was given to the nearest Maritime Rescue Coordination Centre (MRCC/MRSC) via coastal radio, pilot or Coast Guard stations. The MRCC/MRSC then informed the Duty Officer at the FEI with a view to taking action on the matter. The Duty Officer had a number of tasks after an incident because he or she represented the FEI and acted on the FEI's authority until otherwise prescribed. He or she had the right to call for executive assistance from other authorities; to dispatch recovery vessels and equipment; to initiate, co-ordinate and manage recovery efforts and to appoint the leader of the response operation; to acquire other necessary materials or staff as well as to be responsible for providing information about the incident according to international agreements (e.g. HELCOM) and in general; to request international assistance and to initiate the required investigations.

[70] See Government Bill 14/2000, pp. 5, 7, 9, leading up to the amendment of the PPS Act (489/2000). The Government Bill does not seem to contain any consideration of the anomaly that the FEI as a government body for research and development in the area of the environment would, at the same time, have the particular task of being the intervention enforcer in Finland.

In practice, the principle was that the wishes and requests of the Duty Officer were fulfilled even without formal decision-making on the basis of Section 25(1) of the OPR Act, but formally, the Duty Officer was in charge of the salvage operations and was directly authorized to activate 14 ships and two airplanes (but not military aircraft). The Duty Officer could also activate the necessary resources for clean-up work on the basis of the OPR Act in order to limit damage caused by oil. Over the years, a number of incidents have taken place, but in practice, the use of the severe end of the range of powers was not needed. This means that it is not really possible to know whether or not the more intrusive end of the range of powers could have been used.

The FEI was able to order the commencement of such rescue or other measures directed at the ship and its cargo as would be considered necessary for preventing or limiting the pollution of water. This would seem to mean that the FEI, in practice the Duty Officer, had to perform an instant risk assessment of whether there was an apparent risk of oil spill or release of a noxious substance. The FEI also appointed, as provided in Section 5, subsections 2 and 4, of the OPR Act, the leader of the oil response. According to Section 10, subsection 1, para. 1, of the OPR Act, the FEI and the leader of the response measures would function as response authorities under the OPR Act as concerns measures against oil and chemical spills from ships. A particular person was thus designated on the basis of the Act for the response function when an incident had taken place.[71]

### 4.3.2. Intervention Tasks with the Border Guard within the Ministry of the Interior

As of the beginning of 2019, tasks in relation to intervention enforcement were transferred from the FEI to the Border Guard of Finland by means of amendments to the Rescue Act, whereby Section 36b places the responsibility for intervention enforcement with the Border Guard. However, it was already the case, on the basis of Section 27a, that the Border Guard was generally in charge of rescue operations with respect to oil spills and chemical incidents involving vessels in the territorial waters of Finland and in the Finnish economic zone. The Government Bill leading to the change of host organization for intervention enforcement is not very explicit for the reasons behind the change, but it appears that the personnel transferred from the FEI to the Border Guard can, together with complementary training for personnel of the Border Guard reserved for marine rescue, ensure a better and more cost-efficient service on a 24/7 basis and an operative leadership for pollution prevention work.[72]

Organizationally, the Border Guard has a close relationship with the highest governmental powers of Finland, because on the basis of Section 5(3) of the Act on the Administration of the Border Guard (577/2005), the headquarters of the Border Guard is at the same time a department of the Ministry of the Interior. This means that the Border Guard is organizationally integrated with the highest echelon of government. This is apparent also on the basis of Section 3(1) of the Act: the Border Guard is a public authority that belongs to the central government and is under the direction and supervision of the Ministry of the Interior, where it is led by the Chief of the Border Guard. The Chief of the Border Guard leads, *inter alia*, those sections of the Border Guard that operate in the marine territories. These are the West Finland Coast Guard District (MRCC and at the same time MAS for Finland) located in Turku/Åbo and covering the northern part of the Baltic, the Åland Islands and the Gulf of Bothnia, and the Gulf of Finland

[71] As pointed out in Section 10, subsection 2, the person leading the oil response is under criminal liability, and it is also pointed out in the provision that tort liability is regulated under the Damages Act.
[72] Government Bill 18/2018, p. 28.

Coast Guard District (MRCC) located in Helsinki and covering the Gulf of Finland. These Coast Guard Districts are thus regional units of the Border Guard for the protection of the marine borders of Finland. Under Section 6 of the Act, the Border Guard is internally organized in a military manner, and as pointed out above, intervention measures of such severity that they might lead to the destruction of a vessel and its cargo would most likely be decided by the President and the Council of State, as the Defence Forces would have to be engaged.

As described in Government Bill 18/2018,[73] the MRCC receives incident reports and immediately commences a marine rescue operation and an operation to prevent pollution from oil or chemicals, if there is a risk of environmental damage. For the practical implementation of this duty, the Chief of the Border Guard has issued an Order on the basis of Section 3(1) of the Act on the Administration of the Border Guard and on the basis of Section 2(2) of the implementing Decree (651/2005) about the internal organization of, *inter alia*, rescue work regarding oil spills and chemical discharge.[74] The Order takes as its starting point an incident involving oil or other noxious substances, which is reported by the captain of the vessel to the MRCC, the VTS Centre or other similar point of contact.[75] The operative part of the rescue involves the Commander of the MRCC, the Rescue Commander, the chief of sea operations, the site chief at the location of the incident, the coordinator of aerial operations, and rescue units.[76] The headquarters of the Border Guard supports the operative leadership as laid down in advance plans.[77] This means that the MRCC of Turku and the MRCC of Helsinki are in charge of rescue operations within their respective maritime areas and that national crisis response is actually decentralized to the two areas.

The Commander of an MRCC is responsible for ensuring that the MRCC has a functional environmental rescue system for areas of open sea, including the availability of a Rescue Commander, a chief of sea operations and site chief at the location of the incident. The Commander is also responsible for the use of the personnel, equipment and resources of the MRCC and for emergency planning. For this, the MRCC shall have sufficient and qualified personnel in each duty shift, coverage 24/7, and the equipment of the MRCC, such as vessels, shall be in good working order and the personnel shall be trained to use the equipment. The aerial reconnaissance unit can be used in response operations.[78] On the basis of the Order, it is possible to view the Rescue Commander of an MRCC as the person in charge of rescue

[73] Government Bill 18/2018, p. 28.

[74] Order of 18 December 2018 on "The System for Leading Rescue Operations regarding Maritime Rescue and Rescue in relation to Environmental Damage" (Meripelastustoimen ja avomerialueen ympäristövahingon pelastustoiminnan johtamisjärjestelmä, in force from 1 January 2019 to 31 December 20233; RVL1834849; 04.01.40; RVLDno-2017-2123; RVLPAK C.16). According to Section 27 a of the Rescue Act, the Marine Rescue Centre functions as the point of contact regarding treaties that deal with the prevention of international environmental damages on the sea and regarding the relevant EU directive, a task allocated under the Order to the MRCC Turku.

[75] Section 2.1. of the Order of 18 December 2018.

[76] For a visual illustration of the organizational relations concerning environmental rescue operations within the MRCC, see the Order of 18 December 2018, Appendix 1, where it is made clear that an MRCC has three modes of operation, one for maritime rescue, another for other field operations, and a third mode, environmental rescue or environmental operations. Environmental operations are led by a Rescue Commander.

[77] See Sections 2.1.1. and 3.2. of the Order of 18 December 2018. As pointed out in Section 1.2. of the Order, the outer border of the leadership responsibilities in prevention of environmental damages is the economic zone of Finland, which is not entirely overlapping with the area in which Finland is responsible for maritime rescue. Therefore, according to the Order, it is possible albeit very unlikely that a neighbouring State would lead the prevention of environmental damages after an incident, although the leadership in maritime rescue would be the responsibility of Finland.

[78] Sections 2.1.2. and 2.1.4. of the Order of 18 December 2018.

operations under Section 34(2) of the Rescue Act, although the Commander of the MRCC would appear to have general operational responsibilities within these functions.

## 5. Conclusions

It is clear that under international law, States have considerable latitude to choose the method by which international treaties such as the Intervention Convention are incorporated into and implemented in national law. This latitude is particularly wide as concerns institutional and administrative solutions. As a consequence, the national traditions of a State are likely to be reflected in the ways in which it organizes the fulfilment of its duties under international law. Thus, the Nordic parties to the Intervention Convention dealt with in this article, Denmark, Finland and Sweden, have identified different measures as being potentially necessary to prevent, mitigate or eliminate grave and imminent danger and placed the relevant powers with different public authorities.

In terms of specificity of regulation concerning the powers, it appears that the Swedish law contains the most specific powers, followed by the Danish law, while the Finnish law is least specific. In the case of Finland, the current powers for intervention enforcement are actually best explained in the *travaux preparatoires* to the repealed PPS Act of 1979, which is not a satisfactory situation. Regardless of how specific or unspecific the enforcement powers are, they are in all three states surrounded by a number of general administrative principles that have the purpose of limiting administrative discretion and ruling out capricious exercise of public powers. In the case of the Finnish Border Guard, several administrative principles have been mentioned in the relevant legislation. Enforcement decisions are also specifically appealable in all three states. In order to ensure implementation by captains and shipowners of decisions that the designated public authorities can make in relation to the Intervention Convention, administrative force in the form of fines and the threat of completing a measure at the expense of the shipowner can be used in Denmark and Sweden, while in Finland, the provisions of the Rescue Act do not appear to give the Border Guard the power to use administrative force.

Because of the technique of incorporation of international treaties into domestic law, the Finnish jurisdiction contains in its domestic legal order the provision in Article I(1) of the Intervention Convention according to which the States parties to the Convention may take such measures on the high seas as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests. This would not seem to be the case in Denmark and Sweden, where the obligations under the Convention have been inserted in material law by way of transformation, without incorporating the text of the entire Convention into the domestic legal order. In Finland, there is thus a double mechanism of legislation in place concerning the Intervention Convention, namely the 1976 incorporation act and the provisions in the 2018 Rescue Act. In theory at least, decision-making on relevant measures in Finland could therefore be based entirely on the incorporation act, although public authorities would normally look for a legal basis in relevant material legislation, not in an incorporation act. In Sweden, the transformation of Article I(1) of the Convention is arguably somewhat incomplete, because the measures that can be undertaken exclude the strongest measures.

As to governmental organization of where the more severe intervention powers are placed, the Danish arrangement and perhaps the Finnish one, too, appear to be closest to the UK arrangement, while Sweden forms a case of its own with an independent agency tasked with intervention enforcement. However, for Finland, this situation is relatively recent and is a result

of a transfer of powers from a Swedish-style independent agency at the central government level to the Border Guard incorporated in the Ministry of the Interior (save for the unclear competence line for inner territorial waters, where the regional Emergency Rescue Services operate). The Transport Agency of Sweden (as was formerly the case with the Finnish Environment Institute and its Duty Officer) exercises independent powers on the basis of the Act, not on behalf of the Minister or the Government, which is the case for the SOSREP in the UK and the Danish Joint Command of the Armed Forces. The position of the Finnish Border Guard can in this respect be viewed as a model that is a hybrid of some kind between the UK – Danish model and the Swedish model. In both Denmark and Finland, the governmental branch of the environment has been losing competence with regard to intervention enforcement, while defence in Denmark and the interior in Finland have been on the receiving side of competence.

It is possible to conclude that Sweden displays a traditional Swedish-Finnish understanding of the exercise of powers of this sort by vesting the powers with an independent agency at the central government level where the Government of the state cannot influence decision-making in individual cases. This is a situation that until recently prevailed also in Finland, but as of 2019, the powers are vested in the Border Guard, which appears to be a more appropriate institutional location for such powers than the FEI. Decision-making at the FEI would thus not become political, and at the same time, political accountability of a minister would normally not become an issue in relation to such independent decision-making where the agency such as the FEI and the individual civil servant carry the responsibility. What was particular for Finland in this context was that the FEI is not an institution which otherwise would exercise public powers, but is instead a research and development center. In spite of this, the broad powers of intervention enforcement were placed with the FEI, until transferred to the Border Guard and tied more closely to political decision-makers for more radical enforcement measures.

The designation of the decision-maker is relatively specific in the UK, where the powers of the Secretary of State shall also be exercisable by such persons as may be authorized for the purpose by the Secretary of State, but is perhaps somewhat less specific in the Nordic countries. In Finland, the Border Guard is designated as the institutional focal point, but the system departs from a regional decentralization of emergency response to two territorial entities and from the understanding in the Rescue Act that a person is designated, which takes place in an Order of the Border Guard. In Sweden, the designation is perhaps somewhat less specific than in the UK and depends on internal distribution of functions at the public agency and between the Transport Agency and the Coast Guard. In Denmark, the designation is specifically to the Minister of Defence, but dependent on ministerial delegation, which arguably makes the system less specific than the Swedish one. In Sweden (as in the UK), the public authority is a more regular civil service entity, while in Denmark and Finland, the public authority is military or of a military nature (except for inner waters, where the public authority is civilian).

In practice, the intervention enforcers relatively rarely, if at all, use their formal powers, because the parties concerned tend to follow their wishes and instructions even without formal decision-making. Let us nonetheless return to the *Torrey Canyon* scenario in 1969 and try to answer the most extreme question present in our inquiry: does the intervention enforcer of the State have the right to order aerial bombardment of an oil tanker in order to bring about its complete destruction or sinking?

It appears that the only one of the Nordic countries where this is not on the radar is Sweden, where the relevant provision in law is written so as to limit the measures of the Transport Agency to the lower end and the mid-part of the measures that could be envisioned on the basis

of the Intervention Convention. It is therefore be possible to conclude that Sweden has chosen not to use the entire range of measures envisioned under Article I(1) of the Intervention Convention when implementing the Convention in its national law. In Finland, the OPR Act created, until the end of 2018, a duty for the Finnish Defence Forces to assist the intervention enforcer, so it was not entirely unthinkable that the full force of the state could have been put behind an enforcement decision of the Duty Officer of the Finnish Environment Institute, however unlikely this sounds as an option. Under the current law established in the Rescue Act, the Border Guard would probably drive a matter involving the most radical enforcement measures all the way to the highest state organs for decision-making. The greatest likelihood of radical enforcement measures can perhaps be found in Denmark, where the Minister of Defence appears to be in control of the severe end of the range of measures in a manner that could be comparable with the measures of the UK Government in 1967 and – potentially - with the provisions in the current UK Merchant Shipping Act.