

THE NATIONAL DESIGNATION OF PLACES OF REFUGE IN THE BALTIC SEA AREA.

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The national designation of Places of Refuge in the Baltic Sea Area.

Executive summary:

This report presents a study of national measures for the designation of places of refuge (PoR) in the Baltic Sea area in light of International Maritime Organization guidelines, European Union legislation and to recommendations made by the Helsinki Commission. To this end a series of research visits was made by the author Mr John Ohlson of Kalmar Maritime Academy, Sweden, to the nine Baltic states concerned between April 4th and July 28th 2006, the particular department of each state is outlined in each case.

As regards the designation of PoRs two important levels are considered, namely the preparatory phase and the emergency phase. In the preparatory phase the question is posed as to whether the designation of PoRs was made solely by governmental concerns or whether consultation was made with local and regional bodies and other stakeholders before the decision to designate PoRs was made. Alternatively, the question was raised as to whether national PoRs were on the public domain and if so whether the decision to designate these areas as PoRs was made in conjunction with local and regional concerns.

In the emergency phase of directing or bringing a vessel to a PoR, due to the urgent nature of the case in hand, no such consultation can exist. The chain of events that unfolds in the event of a vessel making a request for a PoR is outlined in the study as the chain of command and precedes two other important areas of interest: cooperation with neighbouring states and financial warranties and compensation procedures.

The results of the study show that there are four main groupings of states. Those that have pre-designated PoRs which are on the public domain include Denmark, Estonia, Lithuania, Latvia and Kaliningrad. Those that have an inventory of the PoRs which is not on the public domain include Poland and Germany, and those states that officially use a case-by-case system (thereby without any pre-designated PoRs on the public domain) as in Sweden. The fourth grouping involves a system combining some of the above i.e. whereby part of the coast presently has pre-designated potential places of refuge charted whilst another part of the coast is ruled by a case-by-case system, although officially a

case-by-case system can also prevail throughout the entirety of the coastline. This is the case in Finland. It should also be pointed out that these groupings are not mutually exclusive i.e. a state such as Denmark with clearly defined PoRs can also use a case-by-case system. It was found that as regards public consultation in the preparatory phase only one state, namely Denmark, exhibited any form of consultative procedure. The conclusion section includes a quick-reference guide that briefly summarises each state's standpoint on the PoR issue.

In its conclusion, the report suggests a model that could serve to accommodate future stakeholder influence in the policy-making processes involved in the preparatory phase for designation of places of refuge thereby offering a possible counterbalance to any real or perceived democratic deficit in this sector. The American Psychological Association (APA) referencing system is used throughout.

As this issue is of a contemporary nature the author strives to guarantee the validity of information at the time of writing and has where necessary provided additional information to the report since the final state interview was held in the summer of 2006.

Part One: Task description and problems to be solved.

Task description:

As a result of information sharing and the exchange of opinions within the subject of maritime safety in the Kalmar area, an ad-hoc working group comprising three members was formed at the Baltic Master Kick-off Conference in Gdansk, 2005. The initial impetus, development and the dissemination of results of the group's workload resulting in The Report on Sludge and Waste Management in Medium-sized Ports in the Baltic Sea by A. Sjöblom and the present report have been greatly enhanced by R. Wahlberg, a member of the Political Committee of Baltic Master and of the ad-hoc group.

Problems to be solved.

At the Marine Environment Protection Committee's 53rd session in July 2005, the Baltic Sea was designated by the IMO as a Particularly Sensitive Sea Area (PSSA), (IMO, 2005). Supranational institutions such as HELCOM, the IMO and the EU have each produced legislation, guidelines and procedures for the improvement of safety and the environment in the Baltic prior to its PSSA status and more recently, moves towards better enforcement regulations regarding oil transport have been voiced by EMSA perhaps echoing growing public stakeholder concern for its well-being (EMSA, 2006, p.3). Within this complex political and legal environment the quantity of oil transported in the Baltic Sea region is steadily on the increase and concerns for another major oil spill affecting its coasts are continually being voiced (Pourzanjani, 2006).

As regards recent developments, issues raised on the local coastal level throughout Europe have included the assumption that the Prestige incident had occurred off the coast of the local area and questions as to what steps would have been taken if such were the case were levelled. An example of this concern in the Baltic area is the Trelleborg Declaration. Declaring that "recent ship accidents demonstrate the need for further action in maritime safety in the Southern Baltic Sea" (Trelleborg Declaration, 2004, p.1) the declaration forwarded by three regional organizations; Sydsam, B7 and Euroregion Baltic pointed to the fact that regional and local areas directly bear the consequences of

maritime incidents ecologically, economically, socially and politically. It proposed that a political steering committee be set up the goal of which was to be to:

“discuss and define the most useful role of the regions in the maritime safety system ... and to exchange experiences, collect information of similarities and differences in the regions systems and organisations and propose interregional and cross border cooperation programmes and projects aiming at maritime safety” (Trelleborg Declaration, 2004, p.2).

This Declaration proved to be the forerunner of the Baltic MaSTER project recently mentioned in the Green Paper on an EU Maritime Policy, the first official version of which was adopted by the European Commission on June 7, 2006:

“Legislation can also be backed up by other types of action. As the Baltic Sea States Subregional Cooperation (BSSSC) puts it, “The immediate participation of over 40 regional authorities in an Interreg supported project, “Baltic Master”, is the best example for this growing awareness about managing maritime safety and accidents at this level.” This is an example of how Community funds can be used to support the implementation of policy measures” (Commission of the European Communities, 2006, p.11).

Local as well as regional steps to combat the effects of a major spill have then been taken in the area of places of refuge. The meetings held in Trelleborg, Sweden, in mid-May 2004 and originally the Sea our Future: Maritime Safety Conference Baltic 2004 earlier held in Kiel, Germany, on May 3-4 during which the Maritime Safety Proposals BALTIC 2004 were put forward (the two conferences having been arranged in close cooperation) led to the creation of the Baltic MaSTER programme (Baltic Master, 2005a). In turn, this project had its first working conference in Gdansk on 7-8 November, 2005. Here, representatives from the European Commission, regional authorities, universities and politicians from seven of the nine Baltic coastal states joined forces in a bid to amalgamate existing legislation into a coherent united strategy for the protection of the Baltic Sea environment (Baltic Master, 2005b).

Within this environment of maritime safety the politically sensitive issue of the designation of places of refuge has created a niche of its own. The IMO Guidelines A.949 (23), Resolution A.950 (23) and Article 20 of EU Directive 2002/59/EC and its subsequent Amendment (condensed versions of which are available in the Annex to this thesis) striving to affect the creation of places of refuge in the Baltic Sea area highlight this fact.

With the Proposed Amendment to 2002/59/EC now publicly available but with information regarding the designation of national places of refuge partly remaining elusive (any detailed state-by-state information on the visits to EU member states made by the Commission and EMSA during 2006 in order to check on developments as regards adherence to 2002/59/EC as yet unpublished), the author seeks to examine how far each Baltic state has come in its work in this field. To this end, and due to the complex political structure of the area three main sources of legislation will be considered; the EU, the IMO and HELCOM, the importance of local and regional influences on the designation of places of refuge being an important issue that is addressed in this context.

It should be mentioned at this point that the generic term of “maritime administration” is taken to encapsulate a broad range of governmental bodies inclusive of the following: environmental protection agency, environment institute, coast guard, maritime safety inspectorate, maritime safety administration, port authority, maritime office, maritime traffic safety department, environmental inspectorate, maritime department and central command for maritime emergencies all of which were present in the study operating either on a centralised administrative or municipal (or port authority) level, terminology for the two former levels borrowed from Schroeder (2006a). In conducting the research for this report five areas have been considered, the first of which provides for the backbone of the study itself:

1. A clarification of the national designation of places of refuge in states bordering the Baltic Sea is put forward. As the majority of Baltic Sea states are members of the European Union, the question is asked whether the any steps have been taken for the transposition of EU Directive 2002/59/EC Article 20 and thereby the nature of IMO Res.

A.949 (23) and IMO Res. A. 950 (23) into national legislation. In the case of the Russian Federation, concentration is made on the IMO Guidelines. As part of the research four main areas were discussed in each state; the preparatory stage of PoR designation i.e. whether local communities were consulted and whether the actual location of PoRs is on the public domain, the emergency stage of PoR designation i.e. the chain of command involved with the designation of a vessel to a PoR, co-operation with neighbouring states and financial warranties.

2. The interplay between the international actors in the Baltic Sea area working within the sphere of places of refuge is examined. The European Union, the International Maritime Organization and HELCOM and the proposals for the allocation of places of refuge within this sphere is discussed.

3. In the absence of any directly relevant theory within the field of Maritime Affairs, an examination of the theoretical interplay between the fields of Political Science and Maritime Affairs is made. To this end, a link is sought between the fields of European Integration Theory which includes Multi-level Governance (and the associated concept of Policy Networks), Intergovernmentalism and Neo-functionalism and the field of academic studies that come under the umbrella term of Maritime Affairs, and specifically the maritime management model of Integrated Coastal and Ocean Management (hereinafter termed as ICOM).

4. Interlinked with the foregoing subsection, a study is made of the potential influence of multi-level networks on the creation of EU maritime policy. More specifically, can a model, utilising existing mechanisms and based on stakeholder participation be created to enable local and regional concerns to have a direct influence on maritime policy-making? It should be noted that with the expansion of the European Union into the Black Sea within the near future, new perspectives are being sought to improve stakeholder involvement, the EU Green Paper providing references to an “integrated approach to maritime affairs” (Commission of the European Communities, 2006, p.36), that is to include stakeholder involvement (Ibid, p. 13) set within a sphere that is to involve expansion to include the Black Sea, with the accession of Romania and Bulgaria (Ibid, p.

41). These notions are mirrored by EU initiatives such as the Refuge Area Best Practice: Identification, Planning and Stakeholder Involvement seminar hosted by the Interreg IIIB Maritime Safety Umbrella Operation (MSUO) between February 23-24, 2006 in order to discuss methodologies, best practice and the involvement of stakeholders. Also the very existence of EMSA, as part of a (tentatively put) “emerging regional legal regime” (Jenisch, 2004, p. 79) with a possible role as coordinator of proactive measures within the industry (Jenisch, 2006, p. 478) should also be considered.

5. Finally, analysis is made of the EU Interreg IIIB, Baltic MaSTER project as a research platform.

Connection to the project.

As part of Baltic Master WP2 the study targets the issue of Places of Refuge (PoR) in an area recently classified as a Particularly Sensitive Sea Area (PSSA). More specifically, it aims to clarify the stance of each coastal state on the PoR issue and thereby contribute to the development of a vision of the PSSA framework for the Baltic Sea in 2020 as well as provide some fuel for, in particular, the ongoing debate in this sphere. Within its subject area it seeks to offer a basic framework for further development on the Action Plan for The Baltic Sea Region.

Responsible partner.

Kalmar Maritime Academy.

Co-partner: World Maritime University.

Introduction and Background Information.

The following section is arranged according to the British Standard project life cycle model discussed at the Project and Risk Management course, at the World Maritime University between June 19 and July 7, 2006 (Shroeder, 2006b).

1. The conception phase.

The Baltic Master introductory conference was held in October 2005 in Gdansk, Poland. More than one hundred delegates from the seven different states involved in the Baltic MaSTER project attended the Conference as well as representatives from the MSUO. A spill-over effect of this conference was an informal meeting held between Mr. Rolf Wahlberg Deputy Chairman of the Kalmar Harbour Board as well as a member of Baltic Master's Political Committee, Capt. Anders Sjöblom, Harbour Master, Kalmar Harbour and the author. The discussion that followed centred on concentrating efforts on waste management in Kalmar Harbour and of places of refuge issues both in the area and in the Baltic Sea region in general. It was agreed that a subsequent meeting should be organised in order to define goals and further elaborate on the structure of this newly formed working group. This was held in November 2005 in the premises of Kalmar Harbour and it was decided that a pilot questionnaire should be constructed dealing with the issues in hand - of waste management and places of refuge. The pilot questionnaire was sent to Trelleborg and Halmstad Harbour Port Authorities besides being answered by Kalmar Harbour itself.

2. Feasibility phase.

In the same month a meeting was held with the Project Leader for the Baltic Master project, the working group as well as other officials involved in the Baltic MaSTER project including the Coordinator for Cooperation in South Sweden (SydSam). Acceptance was made of the plans presented and a provisional division of the two different tasks into subdivisions of the same Work Package was agreed upon.

By March 2006 the pilot questionnaires had been returned and evaluated (see Annex) and the continued study was decided within the same group along with the Baltic MaSTER Project Leader. At this stage the two embryonic topics had now split into two independent project entities, waste management had created its own structure and from the author's point of view planning started for research based on visits to the nine states of the Baltic with places of refuge as the theme for the visits.

In mid-March 2006 a strategy meeting was held in Lund between the Baltic MaSTER Project Leader and the author, during which a further meeting was suggested with a member of the Department of Sociology of Law at Lund University, Dr Mattias Baier. As a result of these discussions a final strategy was decided upon. Research methodology was to be based upon making contact with individuals taken from the Helcom Response Manual – Volume 1 Chapter 1 – Information by the Contracting Parties updated June 2005 (hereafter termed as the HELCOM List).

3. Implementation Phase.

The state visits began in early April and were completed in July 2006. The response rate was 100% in the sense that all of the planned nine visits were conducted and the officials were interviewed in their place of work in their respective state.

4. Operation and Termination Phases.

To date, the author has been an invited speaker on the topic of places of refuge at a number of international conferences in the Baltic Sea region. This report and its results comprise the termination phase of this part of the Baltic Master project although the author has plans to continue research into the PoR issue at Doctorate level, initially examining the possible importance of Motorways of the Sea in this context. It is hoped that research planning for this stage can mirror the further development of Baltic Master.

Part Two: Definitions.

Place of refuge.

This has been the term of art for a protected area for a vessel in distress or in need of assistance since 2001 when the International Maritime Organisation laid the grounds for its revitalised usage (Roman, 2006, p.122). Before this the term place of refuge itself as well as port of refuge, safe haven, sheltered area, safe harbour or even safe shelter had been used to denote the various forms of protection that could be afforded ships in distress, namely sheltered bays, roadsteads, ports, harbours and safe anchorages amongst others. A place of refuge is an area that is used to guarantee the security of the cargo of a vessel thus enabling it to proceed with its voyage.

International organisations.

The International Maritime Organization (IMO) is the main actor on the international maritime sphere and is part of the United Nations. It acts as the originator of international maritime conventions which then may be implemented by its member states.

In response to recent incidents involving oil tankers in European waters, the European Union's own body, termed the European Maritime Safety Agency (EMSA) was created in 2002 in line with Directive 1406/2002. Also of interest in this field are the Interreg IIIB programme which encapsulates the EU's maritime regional policy, the Maritime Safety Umbrella Operation (MSUO) which acts as a project enhancer in this respect and the Baltic MaSTER project which is one of a number of maritime projects aimed at focusing on local and regional issues within the sphere of maritime safety and transport. The European Union's legislation 2002/59/EC dealing in part with the issue of PoRs, along with the IMO Guidelines form the legal basis for this study.

HELCOM is an abbreviation of the term Helsinki Commission, its true meaning deriving from the Baltic Marine Environment Protection Commission. It serves as "the intergovernmental organisation responsible for overseeing of the protection of the Baltic marine environment" (Helsinki Commission, 2006, p.1). Its Baltic Sea Action Plan

launched on March 7, 2006 involves all the nine Baltic coastal states and representation from the European Commission. The EC is itself a member of HELCOM and enjoys observer status at the IMO symbolising the interconnectedness of the three main bodies of the Baltic maritime sphere.

The Erika, the Castor and the Prestige.

These are the three vessels that have caused most concern in European waters as regards oil pollution and the allocation of places of refuge in recent times. In quick succession the Erika incident occurred in December 1999 with devastating consequences to the French Atlantic coast. This was followed by the oil tanker Castor which, in December 2000, developed a structural problem in the Mediterranean Sea and raised increased controversy between coastal state and place of refuge interests. Finally, in November 2002 the sinking of the Prestige further exacerbated the European and international arena's concern for improved legislation as regards places of refuge.

The Baltic Sea.

For the purposes of this report the Baltic Sea encompasses all sea waters within the enclosed sea area that begins to the south of the southern limit of the Skaggeiak, which is determined east of the Skaw by latitude 57°44'43" N. The states that border this area and those that shall be addressed are therefore the following: the Kingdom of Sweden, the Kingdom of Denmark, the Republic of Germany, the Republic of Poland, the Russian Federation, the Republic of Lithuania, the Republic of Latvia, the Republic of Estonia and the Republic of Finland.

Compensation and liability.

Central to the issue of a coastal state providing a place of refuge to a ship, and extensive in scope, the contents of this section are dealt with in the Annex section to this report.

Part Three: Theory

European Integration Theory and Integrated Coastal and Ocean Management.

Intergovernmentalism.

According to this branch of European Integration theory, true authority lies in the hands of the nation state whereby any representatives of the government or any appointee would have a purely implementational function with no power to create an independent agenda. Inherent in this approach is the role of the nation state as a 'gate-keeper', not allowing any other power other than that of the nation state to have any influence on policy making. So whilst sub-national spheres of influence can be tolerated within this system, no real policy-making authority will ever be afforded them by the mechanisms of this gate-keeper function (Ohlson, 1999, p.14).

Neo-functionalism.

Based on the original work by Haas this theory juxtaposes the power of the nation state as present in Intergovernmentalism (Jonson, 2006, p. 33). Its main mechanism being spill-over, Neo-functionalism sees political elites attempting to realise policy goals at a supranational level, or a cross-national or regional level in the sense that the region combines different nation states. Inherent in this logic is the transference of allegiances from the strictly national state centric Intergovernmentalist level to a regional one with both state and non-state actors. This theory is directly applicable to the situation whereby regions would work together with foreign counterparts towards a common goal. In a nutshell, the theory proposes that political elites or groupings pursue their policy goals at the supranational level rather than seeking purely national solutions, its logical conclusion as regards European integration being a new type of political community operating around the confines of nation state influence (Jonson, 2006, p. 33).

Multi-level governance.

In essence, multi-level governance purports to a move away from a hierarchical, state-centred form of government towards a broader, more accessible form of governance. It allows for an intricate picture of political connections and as such sees power as spreading both horizontally and vertically producing the model's multi-level character. Vertical connections can be seen between national, supranational, regional and local governments and the horizontal aspect of public and private sector concerns account for the rest of the equation (Börzel, 1997, p.8). Linked closely to Policy Networks.

Policy Networks.

The use of Multi-level governance as a model to explain integration has widened with the expansion of the EU. The move away from formerly rigidly structured forms of hierarchical state centrism has allowed for the emergence of a new of policy-making involving policy networks in the European domain which can be classified as:

“a state of relatively stable relationships which are of non-hierarchical and interdependent nature linking a variety of actors, who share common interests with regards to a policy and who exchange resources to pursue those shared interests acknowledging that co-operation is the best way to achieve goals” (Börzel, 1997, p. 1).

Integrated Coastal and Ocean Management (ICOM).

Although afforded a plethora different identities since the emergence of the United Nations Convention on the Law of the Sea (UNCLOS) in 1984 such as Integrated Coastal Zone Management (ICZM) or Integrated Coastal Area Management (ICAM) (Linden, 2005, p. 63), Integrated Coastal Management (ICM) and Integrated Marine and Coastal Area Management (IMCAM) as well as the pre-UNCLOS terminology of the United States such as Coastal Zone Management (CZM) (Cicin-Sain & Knecht, 1998, p.11), the term ICOM has become synonymous with the management of coastal and marine areas within a politically defined area. Other systems of planning that were developed before any of the above do however still hold sway in national decision making within this sphere, the all-encompassing Swedish National Physical Planning being a good example

(Linden, 2005, p. 63). The generic use of ICOM can therefore be defined as the following:

“ICOM and other similar terms, can be defined as an evolving process of managing coastal and marine resources with the goal of achieving sustainable utilisation of space and resources while protecting threatened resources. The concept involves attempts to integrate and balance the wishes of the different stakeholders in the coastal areas” (Linden, 2005, p. 63).

Stakeholder influence is, then, of great importance:

“Integrated coastal management can be defined as a continuous and dynamic process by which decisions are made for the sustainable use, development, and protection of coastal and marine areas and resources. First and foremost, the process is designed to overcome the fragmentation inherent in both the sectoral management approach and the splits in jurisdiction among levels of government at the land-water interface. This is done by ensuring that the decisions of all sectors (e.g. fisheries, oil and gas production, water quality) and all levels of government are harmonized and consistent with the coastal policies of the nation in question. A key part of ICM is the design of institutional processes to accomplish this harmonization in a politically acceptable manner” (Cicin-Sain & Knecht, 2002, p. 39).

Application of European Integration Theory to ICOM.

The theoretical models perhaps most applicable to ICOM are Multi-level governance and the related field of Policy Networks since, within them, inclusion is provided for the existence of stakeholders at different levels in the decision-making process:

“Responsibility for the management of coastal and ocean resources rarely falls exclusively on one level of government. Typically, the landward parts of the coastal area are under the jurisdiction of a local or provincial government or both, whereas activities

in much, if not all, of the adjacent water area are controlled by the national (central government)” (Cicin-Sain & Knecht, 2002, p. 139).

This passage taken from the section “Intergovernmental Considerations”, in the proceeding subsection entitled “Nature of the Problem: Harmonizing Local and National Levels of Government” the following is added:

“If an ICM program could be operated by either the local or national government alone, a problem would not exist. But in general, it cannot. An effective ICM program, especially one that is integrated in scope and process, demands that both the national and local governments be involved” (Cicin-Sain & Knecht, 2002, p.140).

Whilst these references do lean towards a Multi-level governance stance there is mention of the State-Centric nature of the nation state and although Cicin-Sain & Knecht regard European governance as a force to be reckoned with, it is considered that the nation state remains the sovereign rule-maker. Aspects of all three integration theories can be recognised in this following reference:

“National governments believe themselves to be at the pinnacle of power and prestige in the broad spectrum of domestic and international governance arrangements. They believe that it is they (individual national governments acting collectively) that create international or global institutions – it is they that create and empower their domestic provincial and local governments, levy taxes, print money, and raise and deploy armies. Although some observers see signs that the concept of the all-powerful, sovereign nation-state is beginning to lose ground as international institutions become stronger and as some regional groupings of nations (such as the European Union) move closer to political unity, nonetheless, for the foreseeable future, the nation remains the primary government actor” (Cicin-Sain & Knecht, 2002, p. 144).

It is interesting, although a little confusing, to note that in the context of this section the term Intergovernmental is used in a national context whereby reference is made to

national and regional levels of government within the same state affording the term a Multi-level governance identity, one that is in opposition to its more supranational meaning as defined in this report:

“Intergovernmental integration, or integration among different levels of government (national, provincial, local)” (Cicin-Sain and Knecht, 2002, p. 45)

and of the following:

“Hence, it is not surprising that an air of superiority is sometimes perceived within national governments, especially by those at the ‘lower’ levels of government. Clearly, the presence of such an attitude makes more difficult the creation of intergovernmental partnerships of this kind required by coastal management programs” (Cicin-Sain and Knecht, 2002, p.144).

The system of ICOM can thus be viewed as one that can include some aspects of all three theories; Intergovernmentalism with the central role of the nation state as the primary actor, Multi-level governance with discussion of integration at all levels of government and Neo-functionalism with ICOM’s recognition of principles of governance and the spill-over effects that are intrinsic to this. However, four key features are outlined as being central to the ICM approach with points two and three clearly advising an approach similar to that found in Multi-level governance; its application therefore seen as directly relevant:

- “1. The use of a set of principles based on the special character of the coasts and oceans to guide ICM decision making.
2. The need to ultimately work on ICM from both directions – bottom up (involving the local community level) and top-down (involving the national government).
3. The need to have a coordinating mechanism or mechanisms to bring together coastal and ocean sectors, different levels of government, users, and the public in the ICM process.

4. The need to have good (relevant) science available on a timely basis to inform the ICM decision-making process” (Cicin-Sain and Knecht, 2002, p. 240).

A hybrid approach of Multi-level governance and Integrated Coastal and Ocean Management can thus be envisaged since the two bear intrinsic similarities to each other. In this context the term MLG/ICOM is used and evidence of its existence is examined in the case of each state.

Part Four: Methodology.

Eleven interviews were conducted with seventeen officials in nine states between the first interview held in Germany on April 4, 2006 and the last held in the Russian Federation on July 28, 2006. All interviews were tape-recorded and interviewees were asked if they would like to remain anonymous. In all cases it was explained verbally that results would be presented to the Baltic MaSTER project and this fact was also explained in the letter sent to prospective interviewees. The same questionnaire was addressed to the four new states following accession in 2004 as the pre-enlargement member states. In the case of the Russian Federation, concentration on the IMO Guidelines was made.

As regards the organisation of interviews, the introductory letter was sent by either electronic mail, or the regular postal system or in some cases both prior to telephone confirmation of its delivery being made some days afterwards. Arrangements were then either made by telephone or by electronic mail. The questionnaire was sent prior to the interview date although the interviewee was free to hold a presentation of their own disregarding the questionnaire if they wished. Each interview was scheduled to last 45 minutes, a time limit that was kept to throughout within a margin allowing for arrival to and leaving the interview room. The interview that was conducted covered the themes of the questionnaire namely the national interpretation or ratification on the places of refuge issue, the allocation of a place of refuge from the ship's master's perspective and the allocation of places of refuge from a land-based perspective. These discussion topics covered the four main points outlined in part one of the problem section of this report namely; the preparatory stage of PoR designation i.e. whether local communities were consulted and whether the actual location of PoRs is on the public domain, the execution phase of PoR designation i.e. the chain of command involved with the designation of a vessel to a PoR, co-operation with neighbouring states and financial warranties.

Part Five: Results.

The research collected is presented in the proceeding section with states arranged in pairs with the Russian Federation presented alone.

Whilst the length of these individual reports does differ the structure remains the same and for each state interview details and an introduction (including details of the preparatory stage of PoR development) are followed by three sections presented under the subtitles of chain of command (which presents the emergency stage of PoR designation), co-operation with neighbouring states and financial warranties dealing with Article 20 and 26 of 2002/59/EC as well as covering the IMO Guidelines. These three sections offer a summary content to the scenario and questionnaire (present in the appendix) that were provided and discussed at interview, mention is therefore also made of the preparatory phase in each state and whether local communities had been consulted. At the end of each paired section a concluding discussion of the two states and their relation to one another is put forward.

The legal framework to the designation of places of refuge can be found in Article 20 of the European Union Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system Member States shall draw up plans to accommodate, in the waters of their jurisdiction, ships in distress, and as part of this the IMO Guidelines should be taken into consideration. Chapter XII of the Helcom Copenhagen Declaration also stresses the need for its member states to comply with EU and IMO legislation.

The Federal Republic of Germany and the Kingdom of Denmark.

The Federal Republic of Germany.

The two interviews involving four interviewees carried out in this section were held in Cuxhaven, Germany at the headquarters of Germany's *Havariekommando* the Central Command for Maritime Emergency (CCME) and later on the same day at Maritime Emergency Reporting and Assessment Centre (MERAC), part of the same HQ on April 4, 2006. The specific interviewees are not named in this report.

Introduction (including preparatory phase):

In 1989 the Dutch-flagged vessel *Oostzee* found a safe haven in the industrial port of Brunsbüttel on the west coast of Germany. Questions levelled and discussions taken in the German state Schleswig-Holstein's regional parliament on this issue highlighted the importance of specially equipped places of refuge capable of handling the transference of chemicals and dangerous goods (personal communication, April 4, 2006). The chemical Epichlorhydrin was being shipped by the vessel at the time (Bonn Agreement, 2006).

A number of other incidents have added to developments in the German debate. The case of the *Pallas*, nine years later in 1998 was investigated by the Maritime Court in Cuxhaven in August 1999 concluding that "the concerned Danish authority was not fully aware of the seriousness of the incident and thus the German National Reporting Centre was not informed satisfactorily about the dangerous situation, when the abandoned ship drifted southerly towards German waters" (Bonn Agreement, 1999) gesturing towards increased international cooperation and training in complex maritime emergency situations. The resulting report from the Maritime Court concluded that information on ports of refuge with clarified rights of access under national and international law should be made available (Jenisch, 2005, p. 472).

The Baltic coast has also had its share of incidents. On March 29, 2001 the *Baltic Carrier* and the *Tern* collided causing oil slicks to coast onto the Danish islands of Bogø, Møn and Falster affecting a 50 km stretch of coastline. Whilst the *Tern* continued onto Rostock under her own engines for repairs and the *Baltic Carrier* was lightered at sea and

later towed to a repair yard. The investigation into the incident undertaken by HELCOM, highlighted the importance of international cooperation (in line with the IMO Guidelines), praising the level of collaboration between the German, Swedish and Danish authorities. However, the incident itself illuminates the applicability of the term Place of Refuge as opposed to the now dated term Port, a distinction that was made official in the IMO Maritime Safety Committee in 2001 (Roman, 2005, p.121) and one presently used in Germany and derived from the German *Notliegeplätze* (personal communication, April 4, 2006):

“The good relations established through the Danish Armed Forces' participation in the different international forums, including The Helsinki Commission, The Bonn Agreement, European Commission and the Copenhagen Agreement and the particularly good relations with the German and Swedish Environmental Protection Authorities, were crucial to the success of the operation” (Helsinki Commission, 2002).

To date, Germany has decided not to make available the geographical position of its places of refuge on the public domain and if such specific demands were made at the EU level, objections would be levelled from the German national state (personal communication, April 4, 2006). The difficulties and simplicities connected with this standpoint are the following. As is the case in the United Kingdom any area along the German coastline could be used as a place of refuge. In the case of the *Oostzee*, for example, the most efficient method of cargo transferral was used in a port environment. A case-by-case approach is preferred, the logic of which presents itself at the CCME. According to a CCME official:

“This harbour protects its vessels from the strong currents on the Elbe and is situated in a comparatively densely populated area. It stands to reason that a gas carrying vessel experiencing manoeuvring difficulties would not necessarily be brought into Cuxhaven – the risks to the local population would be far too high. A multitude of different aspects must be taken into consideration before refuge operations can take place, which is where

highly developed contingency planning comes into operation.” (personal communication, April 4, 2006).

The point is also made that local resistance to any public list of places of refuge could conceivably undermine recovery operations.

Chain of command (including emergency phase):

At present the CCME in Cuxhaven and within that organisation the MERAC together act as the MAS. The Head of the CCME has overriding authority on the designation of places of refuge deriving from the National Agreement Chapter 7 although interestingly has no jurisdiction over Hamburg, the details and reasons for which are outlined in the same agreement in Chapter 6. It is the Head of CCME then that has access to the inventory of places of refuge but as mentioned previously these have not been made available on the public domain (personal communication, April 4, 2006).

Cooperation with neighbouring states:

Germany is part of the SweDenGer network that dates back to an agreement made in November 2002 between Denmark, Sweden and Germany and deals with cooperation in combating pollution by oil or other dangerous substances. This trilateral agreement comprises in part of a bilateral component, the Denger Plan. In those parts of Denmark and Germany that are situated in the western part of the Baltic Sea, the Swedenger Plan takes precedence and therefore supercedes the older Denger Plan which was concluded on 14 September 1982 and the substance of which is to provide for German-Danish cooperation in light of incidents occurring along the border between the two states. It is divided into two zones namely the Quick Response Zone consisting of Flensburg fjord, Sønderborg bukt and Vadehavet and the Exterior Zone consisting of all other border areas. Whilst it has served its purpose well since the 1980s, the existence of the Denger Plan is somewhat doubtful in that the new Dengerneth Plan is presently under discussion between the governments of Denmark, Germany and the Netherlands and when finally concluded will supercede the Denger agreement (Søværnet, 2006).

Germany is also a member of the Bonn Agreement, an international agreement between North Sea states. Since in Germany's case however the area of operation does not cover any area that has been defined for the purposes of this paper as part of the Baltic Sea it will not be covered here. A cooperation agreement also exists with Poland and Germany is instrumental in many initiatives within HELCOM.

Financial warranties:

The existing IMO Conventions as described in the Annex apply.

The Kingdom of Denmark.

The interview carried out for this section was held at the Danish Environmental Protection Agency, a branch of the Danish Ministry of the Environment in Copenhagen, Denmark on April 6, 2006 with Mr. Ivan Andersen, Head of Section.

Introduction (including preparatory phase):

Andersen points out that due to its geographical position Denmark acts as the bottleneck of the Baltic with approximately 60,000 vessels passing through its waters annually, with only 4,000 taking a pilot (personal communication, April 6, 2006). Perhaps due to this enormous density coupled with the sandy nature of the coastline in the past refuge was often found before the authorities had any chance to allocate a place of refuge (Liljedahl, p.456, 2006). Denmark has not been without its share of incidents with the *Pallas* in 1998 and the *Baltic Carrier* collision with the *Tern* in 2001 providing cause for both concern and, in the case of the latter, optimism as regards successful clean-up operations (White, 2002, p. 51).

However, it was perhaps the most recent incident involving the *Fu Shan Hai* and *Gdynia* on May 31, 2003 that really accelerated the Places of Refuge issue in Denmark. Amidst arguably unfair popular claims from Sweden at the time that the Danish response to the incident could have been handled more professionally (Liljedahl, 2006, p. 458) and extensive media coverage especially in the south of Sweden (*Fu Shan Hai läcker fortfarande olja*, 2003) the ghosts of the past have been re-envisaged in an exchange from

the Swedish Ministry of Transport to their Polish counterparts regarding the re-routing of Polish oil and chemical tankers to the north of Bornholm, the general area of the *Fu Shan Hai* – *Gdynia* collision. The following press release was made available in June 2006 by the Swedish Parliament (translated from Swedish by the author):

“We fear that this Polish policy will lead to increased congestion in an area which accounts for the most heavily trafficked waters along the south coast of Sweden. Linked to this is the increased risk of collision ... we all have recollections of the collision between the bulk carrier *Fu Shan Hai* and the cargo carrier *Gdynia* in 2003. If the weight of traffic is permitted to increase in this area the chance of a new collision increases. It is our hope that in discussions with Poland we can come to an agreement that takes into account both the (environmentally protected) special areas as well as the traffic situation in the southern Baltic area, whereby one special area is not protected at the expense of another” (Messing & Björklund, 2006).

As arguably the forerunners of the EU Baltic states in terms of public designation of its places of refuge, Denmark made its plans available to the Commission by 30 June 2003 and on 4 February 2004 it made public the now within the industry well-known “Danish designated places of refuge January 2004” chart depicting 22 places of refuge around the Danish coast including both those for ships with high pollution potential and those with low potential, thereby complying with the provisions of the EU Directive 2002/59/EC. It is noted that at the time of interview none of these pre-designated 22 places of refuge, consisting of both ports and roadsteads or anchorages had been used, and that other ad hoc sites were also possibilities in the event of any requirement. The list then is not final and can be altered in the future in response to changing trade patterns or for example, new oil platforms being built (personal communication, April 6, 2006).

Andersen further makes the point that the designation of the 22 places of refuge came as a result of work carried out in a Working Group consisting of personnel drawn from five departments: the Danish Environmental Protection Agency, the Danish Forest and Nature Agency, the Danish Maritime Authority, the Danish Defence Command and the Royal

Danish Administration of Navigation and Hydrography (personal communication, April 6, 2006) which in August 2003 preliminarily drew up a list of environmental areas that were not to be used as well as other possible ad hoc areas. Special areas of conservation for bird life were therefore avoided (Redegørelse fra Miljøstyrelsen, 2004, p. 24). Whilst this original plan was considered favourable in that areas of environmental concern were to be avoided it was thought that the ad hoc nature of designation would not afford optimum response and a more structured approach was undertaken. Finally, I. Andersen points out that all of the designated 22 places of refuge were decided upon with cooperation and consultation with local communities, harbours, environmental organisations as well as shipping interests. In all cases also a contingency plan has to be in place keeping in line with the IMO Guidelines, these contingency plans are now finalised and work is starting on creating a computerised version linking the various sectors of each place of refuge (personal communication, April 6, 2006).

He adds that in the consultations with the local communities the main concerns from the local level were of compensation to the local community for any salvage operation and whether the reputation of the harbour, if used, would be tarnished by negative media (personal communication, April 6, 2006).

Chain of command (including emergency phase):

The head of the chain of command is based in Århus at the Admiral of the Danish Fleet or Sørværnets Operative Kommando (SOK) on Jutland and information regarding allocation of places of refuge is channelled here through the MRCC. Based at SOK a team of one of six former Naval Captains in contact with the Ministers from the three ministries of Defence, Environment and Trade is constantly in position to deal with ships in distress requiring a place of refuge. The team that works upon this designation at any one time is one of the team of six Naval Captains, the regular Århus surveillance team, SAR Sea, SAR Air and there is also contact with the three Ministers. The ultimate responsibility for designation of a place of refuge is the Captain's - one of six on duty at any one time (personal communication, April 6, 2006).

Andersen adds that in the likely scenario presented in the correspondence to potential interviewees the MRCC would become aware of the condition of the situation via either a direct call from the vessel, or in the Great Belt by the vessel traffic service. The MRCC could also receive the ship's position by means of the SHIPPOS system or other surveillance air and sea craft. The call from the ship in distress is primarily dealt with by the surveillance team and the RCC which together form a team to solve the problem in hand. If the situation deteriorates and the designation of a place of refuge has to be considered, the Naval Captain on duty is called in and contact is made with the three ministries. The final decision is made on a team basis but the final authority and responsibility is that of the Naval Captain's (personal communication, April 6, 2006).

Cooperation with neighbouring states:

Denmark is a member of the Swedenger cooperation as outlined in the preceding section. There is also planned development within Helcom for a network involving databases in Sweden, Germany and Denmark in a linked computerised system, an international version of the national version similar to the one being developed in Denmark which includes data from all 22 Places of Refuge. If this is finalised a trilateral database including the contingency plans and all relevant details of possible places of refuge, environmental areas, rescue services and other information will be directly available to any three of the Swedenger states, thereby enabling more effective steps to be taken in the event of a trilateral designation of a place of refuge. Work is to continue on this plan during the summer of 2006 (personal communication, April 6, 2006).

Financial warranties:

Denmark opposed the proposed COPE Fund which was put forward as part of the EU's Erika packages the reason for this being that it was not thought correct that citizens of the European Union should be forced to compensate for actions that could be taken by non-European Union personnel (personal communication, April 6, 2006).

Denmark is however party to a number of conventions and protocols as outlined in the Annex with IOPC and CLC funding expressed as particularly important. Andersen also

makes the point that the Danish state would intervene financially in the event of any major incident (personal communication, April 6, 2006).

Discussion:

The IMO Guidelines were already present in existing Danish legislation passed in 1993, there being therefore no need to create any new law in this respect (personal communication, April 6, 2006). In paragraph 43 of the National Maritime Law (Lov om beskyttelse af havmiljøet, 1993) here, translated from Danish and summarised by the author, it is stated that the Minister of the Environment can stop a vessel from continuing its voyage through Danish waters or can enforce strict regulations to be followed in that voyage dependent on other restrictions which are present in paragraph 58 of the same Act which in its turn generally deals with exceptions including the jettison or dumping of cargo in order to save human life or the taking of all possible measures to limit the extent of the damage done to the ship, aircraft or platform in question. In the explanatory note to Paragraph 43 mention is made of the authority provided to Danish authorities to take control of Danish flagged vessels in all waters and of foreign flagged vessels in cases in line with the 1973 Protocol to the MARPOL Convention if pollution at sea occurs or is imminent.

As regards contingency plans, also fundamental to the Guidelines, as mentioned, work is being carried out on paper-based plans that are presently in the process of being converted to computerised versions available by download and the even wider task of linking these databases to the Swedenger network has been mentioned, illustrating very important interaction between the two states on the cooperation field. As regards the EU Directive, note has been made of Denmark's punctual adherence to the deadline for submission of plans for designation and on 4 February, 2004 she announced the places of refuge thereby coming in line, in time, with the provisions of 2002/59/EC. As regards Germany, who also submitted to the Commission in time (Jenisch, 2006, p. 478), the IMO Guidelines are present in NLPV (Notliegeplatzverinbeirang).

The Kingdom of Sweden and the Republic of Finland.

The Kingdom of Sweden.

The interview carried out for this section was held at the Swedish Coast Guard Headquarters in Karlskrona, Sweden on May 3, 2006 with Commodore T. Fagö, Commodore of the Response Department.

Introduction (including the preparatory stage):

According to T. Fagö there are three main bodies in Sweden that deal with the designation of a place of refuge. These are the Swedish Maritime Safety Inspectorate (SMSI or 'the Inspectorate') which is a division of the Swedish Maritime Administration (SMA) based in Norrköping and the Swedish Coast Guard (SCG) based in Karlskrona.

The SMA deals primarily with matters involving Search and Rescue (SAR), and the Inspectorate, working within it deals with ships threatening to pollute or actually polluting Swedish waters. As regards the SCG, this unit deals primarily with combating pollution from ships. The relationship is then tri-polar and attempts to accommodate the provisions of 2002/59/EC and the IMO Guidelines have worked within the framework of this situation (personal communication, May 3, 2006).

A history of developments in Sweden as a result of 2002/59/EC should therefore be read with the existing relationship in mind. On February 17, 2003 in an exchange between the Inspectorate and the Commission (SMSI, 2003), mention was made of existing Swedish legislation in force that could conceivably be linked to the places of refuge issue. Two Acts along with their accompanying Ordinances were mentioned, the Rescue Services Act (1986:1102) and its accompanying Ordinance (1986:1107) and the Pollution Prevention Act (1980:424) and its Ordinance (1980:789). The conclusion drawn on the former Act and Ordinance, by the Inspectorate itself was the following:

“...it can be concluded that the Rescue Services Act (and Ordinance), the aim of which is to set up a regulatory framework for society's rescue services, has not had in mind the

situation where a place of refuge is needed for a ship in distress (as this situation is reflected in IMO's Guidelines and EC Directive 2002/59/EC)" (SMSI, 2003).

It goes on to mention that the Act is limited to SAR situations and where the environment is at risk, when oil or other harmful substances have been discharged in certain sea areas. The overlying conclusion is drawn however that not even in situations whereby a place of refuge would be sought in SAR situations would the Act or Ordinance be able to fully cater with the situation. Consideration must also be made here to the fact that according to the Guidelines in a situation where safety of life at sea is involved the SAR Convention shall apply and take priority over the Guidelines.

Attention is then turned to the Pollution Prevention Act where special attention is afforded to Chapter 7 Section 5 that deals with measures that can be taken against a ship that is about to discharge oil or any other harmful substance or where it is feared that such a discharge is imminent. It is pointed out however that:

"this Act does not have provisions corresponding to those in the Rescue Services Act about the right to use the property of others and the right to compensation... A decision according to Chapter 7:5 is taken by the SMA or, in cases where urgent measures are needed and this decision cannot be waited for, by the SCG. A decision by the SCG shall immediately be submitted to the SMA" (SMSI, 2003).

A revision of the existing Swedish legislation was therefore required and mention was made of the possible addition to the Pollution Prevention Act provisions corresponding to those of the Rescue Services Act regarding the use of the property of others and of the right to compensation thereby adapting them to the places of refuge situation. The need for a clarification of responsibilities in this tri-polar relationship was the underlying message, the core to this challenge being the rights of local coastal communities in Sweden to independent decision-making. To broaden on this last point, it is the role of the local community's Harbour Master and of the local community's jurisdiction over their respective harbour areas that acts a bone of contention in discussions of

responsibility. The roots of local authority power lie in the Fire Act 1974:80 (*Brandlagen 1974:80*) where it is stated that the a 300-metre limit outside areas where oil is loaded or discharged comes under the jurisdiction of the local community. Interesting to note is that life-saving responsibilities are not covered in this Act since it deals with fire and not SAR.

The next stage in this process came later on in 2003 when the SCG and SMA suggested in writing to the Swedish Ministry of Industry that amendments should be made to present Swedish legislation regarding places of refuge and the chain of responsibility that should exist (personal communication, May 3, 2006). The amendments suggested included the rescue commander in charge or the responsible authority being given the necessary executive authority to decide upon a suitable place of refuge for a ship in distress, as this decision should be taken on a case-by-case basis, bearing in mind the prevailing circumstances such as type of ship and the sea state. As a result of this communication, on May 27, 2004, the SCG and SMA were together presented with the task of carrying out a study to this end. The reasons given by the minister, U. Messing and the responsible government official, J. Meri, being the following (translated by the author from Swedish):

“In light of the several major incidents involving oil tankers in European waters in recent years, and with respect to the EU Vessel Traffic Monitoring Directive, the Swedish government is keen to promote a study into as to how ships in distress can be accommodated in the most efficient manner. Within this the division of responsibilities between state and local authority (*kommunal*) rescue services should be studied and suggestions made as to whether procedures should be changed to avoid any practical problems occurring in the event of any sea or environmental rescue service action. In addition, suggestions are invited as to how improvements could be made within the scope of the Pollution Prevention Act (1980:424) regarding pollution from ships” (Regeringen, 2004).

Research for the study was to be carried out by the SCG and SMA together and suggestions for improvement leveled by them. Additionally a risk analysis involving the potential effects of the introduction of any suggestions was also asked for. The report was also to include the economical consequences for both state and local level as well as the effect that any changes would have on the local government legislative machinery. In that any decisions made would have a direct impact on local authorities the SCG and SMA were asked to carry out the study in cooperation with the Swedish State Rescue Service (*Statens Räddningsverk*) and the Swedish Local Authority Association (*Svenska Kommunförbundet*) (Regeringen, 2004).

The final 28-page report was presented to the Ministry of Industry on February 24, 2005 and included 3 pages from the Swedish Local Authority Association (*Sveriges Kommuner och Landsting*) and an e-mail correspondence from Swedish State Rescue Service (*Statens Räddningsverk*).

An additional, complimentary report was then asked of the SCG and SMA to expand upon the possible solutions to the change in the levels of responsibility between state and local rescue services including the advantages and disadvantages of any altered delineation of responsibilities. Any effect that these would be likely to have on land-based rescue services should also be considered. Any alternative suggestions to the amendment of existing legislation should be considered, as well as the introduction of any new legislation. The working group was also asked to clarify the economic effects that a restructuring of the division of responsibilities would have at both state and local authority level and recommend how any change would be financed. A more thorough analysis of changes in legislation was also called for along with an analysis of the results of meeting and the general cooperation within the working group including input by the Swedish Local Authority Association (*Sveriges Kommuner och Landsting*) and the State Rescue Service (*Statens Räddningsverk*). The revised deadline for the submission of this new report was 31 January, 2006 and the final version was submitted by SMA and SCG to the Ministry of Industry one week early.

According to the original 28-page report the relationship between local authority and state rescue services has been addressed on a number of occasions since the 1970s culminating in the applicable Act of today - the Accident Prevention Act (2003:778).

The conclusions made in the additional report were the following as regards places of refuge. As regards possible changes to legislation two possible alternatives were mentioned – one from the SCG and SMA and another that was present in the original report by the Swedish Rescue Service, but for the sake of compromise the following was presented to the Swedish Ministry of Transport. It was suggested that this paragraph should be inserted after Chapter 4 Paragraph 3 of Accident Prevention Act (2003:778), and is translated from Swedish by the author:

“Whichever entity within the sea rescue services that leads a safety operation shall make the decision as to whether a vessel can receive refuge in a harbour. In which case the Head of the state rescue services who is responsible for the operation, without being bound by other regulations regarding responsibility for rescue operations, shall be responsible for the continued operation as regards any vessel” (Kustbevakningen, 2006).

For Chapter 4 Paragraph 5 of the Accident Prevention Act the following similar addition was suggested (again, translated by the author):

“Whichever entity within the environmental protection at sea services that initiates a safety operation shall make the decision as to whether a vessel can receive refuge in a harbour. In which case the Head of the state rescue services who is responsible for the operation, without being bound by other regulations regarding responsibility for rescue operations, shall be responsible for the continued operation as regards the vessel or any discharge from it” (Kustbevakningen, 2006).

The point was also made that the main problem area was the determination of a place of refuge with respect to state and local authority waters and areas of responsibility. The delineation made between these two was that whichever authority starts or initiates an

operation, be it state or local authority, should see that operation through to its conclusion. Therefore, hypothetically if a vessel on fire needs to be taken from a harbour to another place of refuge then the local authority rescue service that started the operation shall see that operation through to its conclusion, likewise a vessel at sea outside local authority waters shall be able to be directed into a harbour by state rescue services (either SCG or SMA based) and the operation shall be concluded by that service in the harbour although the harbour traditionally comes under local authority rescue service jurisdiction. The logical conclusion of this is that local rescue services should maintain their responsibility of dealing with fires in harbours. Cooperation between local and state rescue services is a given in this relationship and the point was made that all rescue entities would be able to work together to deal with any rescue situation and wherever the final responsibility lay.

The situation with this report is that it is presently being discussed at government level. In e-mail correspondence with the Ministry of Industry it was concluded that the report received from SCG and SMA had been revised and had received a new identity (Diary Number Fö2006/1264/CIV). The correspondence stated that at that time, July 7, 2006 the entire issue was being overlooked by the Ministry of Defence's Civil Defence Section with the Ministry for Industry's Transport Section also involved in the work on Fö2006/1264/CIV (a confirmation of this information was received by electronic mail on 23 August, 2006 from the Departmental Secretary of the Ministry of Defence Civil Defence Section). It was mentioned further that the Ministers of Transport of the European Union had on June 8-9, 2006 agreed on the wording of the Amendments to Directive 2002/59/EC, the next step being that the Council of Ministers and the European Parliament would together agree upon the agreed changes. Much will depend on the results of the Amendment to 2002/59/EC in the formation of Swedish policy as regards places of refuge. The notion of places of refuge and whether these must be pre-designated and named is perhaps the most important issue of all.

As regards final changes to present Swedish legislation Directive 2002/59/EC has led to Amendment 2004:416 of Ship Safety Act *Fartygssäkerhetslagen* (2003:364),

Amendment 2004:415 of Ship Safety Ordinance *Fartygssäkerhetsförordning* (2003:438) and amendments to the SMA's: Regulations and General Advice *Föreskrifter och allmänna råd* (SjöFS 2004:8) from January 1, 2006 now termed SjöFS 2005:19.

As mentioned above, work is also underway with amendments to the Accident Prevention Act (2003:778), the report presented to the Swedish Government suggesting amendments to clarify responsibilities between the state, local authorities, private ports, harbours and harbour masters as opposed to those responsibilities of the SMA and SCG. As this has not yet been finalised there today exists no formal arrangement between local government authorities or communities and the SCG or SMA (SMSI) as regards the allocation of places of refuge.

Chain of command (including the emergency phase):

In correspondence from the Inspectorate to the European Commission (on February 14, 2006) entitled Follow-up of the Implementation of Article 20 of 2002/59/EC information was provided clarifying Sweden's stance on the places of refuge issue. The authority formally designated to receive alerts and requests is pointed out as the Swedish MRCC based in Gothenburg which is part of the SMA and if called upon performs the function of a MAS. It is a state organisation and has a radio listening watch all day, every day, throughout the year covering the Swedish SAR area.

In point 2 of the letter the relationship between the SCG and the Inspectorate within the SMA is pointed out:

“The Swedish Maritime Safety Inspectorate is responsible for providing a place of refuge to a ship in distress. If the ship is causing pollution or there is an imminent danger that it will cause pollution, the Swedish Coast Guard may, according to the authority vested in it by law the law (2003:778) on protection against accidents also provide a place of refuge”(Swedish Maritime Safety Inspectorate, 2006).

Any call made to the MRCC is taken by the operating crew and if this call involves a request for a place of refuge a senior ship surveyor with experience of ships in distress joins the team. The Director of Maritime Safety at SMSI delegates the authority to the senior ship surveyor to make decisions regarding designation and he is assisted if possible by another senior surveyor who boards the stricken vessel. The final responsibility for the entire operation for a ship in distress however is the Director's. The assumption here is that this logic applies if the SCG takes control of the situation although this is not strictly pointed out in the correspondence apart from the introductory reference to the 2003:778 Prevention of Accidents Act mentioned above. Much here, it must be said, depends on the work going on at the EU level as regards the amendments to 2002/59/EC, Swedish legislation likely to come strictly in line with it, and with the work presently under way as regards the SCG/SMA and Swedish Rescue Service report likely to mirror developments.

As regards the actual places of refuge, Sweden uses a case-by-case system and the potential areas of use are not on the public domain. It "has decided not to make up a list of places of refuge but has rather decided to use protected anchorages listed in the Swedish Pilot and the Swedish charts and ports" (Swedish Maritime Safety Inspectorate, 2006). Further on in the correspondence mention is made of Sweden's largely archipelagic coast and the relative simplicity with which it is to find a place of refuge. T. Fagö makes the point that following a meeting on May 22, 2006 between the Heads of SCG and SMSI two or more places would be named as possible examples of places of refuge (personal communication, May 3, 2006) although the preparatory work on the publication of this information at the time of writing has not yet been completed. Sweden it seems largely follows the UK's stance of a case-by-case approach as regards the allocation of places of refuge.

Co-operation with neighbouring states:

Apart from acting within Helcom's committees and various exercises Sweden has developed a trilateral relationship with Estonia and Latvia, the Swedish contact for this network based in Karlskrona at the Coast Guard Headquarters. Cooperation is also

carried out with Finland in the Gulf of Finland, and Sweden has an important role to play in the SweDenGer network particularly in light of Danish led plans to create a places of refuge computer network between the three states. Other important international agreements that Sweden is signatory to include the Copenhagen Agreement of 1969 between Sweden, Norway and Denmark and the Bonn Agreement, which due to its geographical limits operates outside the area defined as the Baltic in this paper:

Financial warranties:

As mentioned in the correspondence from the SMSI to the Commission, a lack of financial warranty does not affect the designation of a vessel to a place of refuge:

“Financial guarantee and liability procedures do not form part of the decision making process when a ship is to be brought to a place of refuge. If a ship needs assistance, this is rendered and financial and liability matters will have to be resolved afterwards. This ... is in the spirit with the proposal for the amendment of the directive” (Swedish Maritime Safety Inspectorate, 2006). Otherwise the IOPC Fund and the CLC Convention apply, although there is no specific Swedish national law in this respect. It should be mentioned also that all vessels in Swedish waters require protection and indemnity coverage.

The Republic of Finland.

The interview was held at the Finnish Environment Institute (SYKE) Headquarters in Helsinki, Finland on June 6, 2006 with Mr. Kalervo Jolma, Head of Unit, Expert Services Department: Environmental Damage Division.

Introduction (including preparatory stage):

Chapter 6 of the Finnish Prevention of Pollution from Ships Act dating from 16 March 1979 outlines the Finnish Environment Institute (SYKE) as the competent pollution response authority (SYKE, 2003). According to K. Jolma the General Director of SYKE may delegate the responsibilities of granting a vessel a place of refuge to the Duty Officer in charge who has the authority to order a vessel to a place of refuge by means of working through a checklist (personal communication, June 6, 2006). The Finnish State

compensation fund is an important factor here since not only is it the first of its kind in the Baltic but it is also serving as a spill-over effect in being used as a model for the developing Estonian model.

According to a newspaper article written by Mr. Timo Uusinitty in *Kyman Sanomat* Torstaina on December 21, 2006 ten potential PoRs have been charted in the Gulf of Finland (GoF) by a Mr Alfons Håkans working for a salvage company following public demands. These are named as the following (west to east): Hankoniemi itäpuoli, Koverhar, Inköo, Husunkivi, Vuosaaarenska, Svartbäckinselkä, Keipsalon lahti, Envikin lahti, Haapasaren pohjoispuoli and Hellitöksen selka.

The remaining Finnish coast west of Hankoniemi itäpuoli is regarded as a case-by-case zone. SYKE however, according to the above legislation, bears overall responsibility for case-by-case designation of a vessel to a PoR throughout the entire Finnish coast and would logically bear the ten potential GoF PoRs in mind in its determination for a vessel in that zone. No public consultation was conducted in the pre-designation of the PoRs in the respective zone although these pre-designated potential PoRs are on the public domain. The pre-designated potential PoRs in the case-by-case zone however, are not on the public domain.

Chain of command (including emergency stage):

According to Jolma the information flow in a distress situation the MRCC or MRSC is the authority that receives the first information of a vessel in distress if the vessel asks for assistance. If however, the vessel finds itself in trouble but does not ask for assistance it would be monitored and if not, the MRCC/MRSC or VTS centre will monitor the vessel's actions and make contact with it if it is seen to be acting in an incorrect manner. In either case the SYKE will be contacted (personal communication, June 6, 2006).

Contact is then made with one of the SYKE's Oil Duty Officers, of which there are three working on shift with one always available. Each has constant computer access to a GIS map application (Environmental Atlas) including oil drifting models and also with

Internet and e-mail access. Decisions on the allocation of a place of refuge are based upon reference to a checklist and the Environmental Atlas which involves a sea chart including protected areas for example Natura 2000, IBA, national parks, water intakes, nuclear power plants and response vessels (SYKE, 2006, pp. 8-9). It is explained that oil spreading risk scenarios can also be imported to overlay with other GIS data, and as with its neighbour Sweden, and for similar reasons with regard to the archipelagic coast, there are no pre-designated places of refuge and allocation is performed on a case-by-case system the decisions for which are based to a very great extent on environmental concerns, the work on the GOFMEC project being of importance in this respect (personal communication, June 6, 2006).

Co-operation with neighbouring states:

Finland plays a major role in cooperative action within HELCOM, where points of contact have been established and operational procedures for assistance and information exchange formed. K. Finland also has bilateral agreements with Estonia, Russia and with Sweden (personal communication, June 6, 2006), and is party to the 1969 Copenhagen Agreement with Sweden, Norway and Denmark. As mentioned above it also cooperates with the Russian Federation and Estonia in GOFMEC.

Financial warranties:

As regards compensation Finland is a party to the IOPC Fund and the CLC Fund. It has also formed a national fund termed the Finnish Oil Pollution Compensation Fund which was established by the FOPC Fund Act (1406/2004) and the Governmental Decree on the FOPC (1409/2004) (Jolma, 2006). This is an extra budgetary governmental fund which is administered by the Ministry of the Environment and all decisions are taken by the FOPC Board which consists of a personnel of two working in government service. Only Estonia as shall be seen later has considered this type of national fund in the Baltic Sea area.

Discussion.

As regards the Swedish Constitution with regard to local authority and state rescue services and the relevant spheres of responsibility that this encompasses, changes were

needed to clarify the structure of the delineation of responsibility. In particular, attention needed to be focused on the role of the harbour master with regards to the legal sphere under the Fire Act 1974:80 (*Brandlagen 1974:80*) contra state rescue service responsibilities. Realising this the SCG and SMA contacted the Ministry of Industry with a suggestion for the amendment of laws governing the responsibilities and after being asked to supplement their final report this matter is now in the hands of the Ministry of Defence. This matter then is work in progress. Simultaneously, work is still going on at the European level on the amendments to Directive 2002/59/EC and although a Final Version of the Third Maritime Safety Package was made available on November 23, 2005 along with the accompanying annex including a Commission Staff Working Paper (Commission of the European Communities, 2005), as yet since nothing has been finalised, all any state has to go by are the proposals to the amendment of the Directive and the IMO Guidelines themselves.

In the case of Finland, its compatibility of laws allowed for an easier transition from pre-Erika to the present day situation. Its legislation passed in 1979, the Finnish Prevention of Pollution from Ships Act, irons out any potential conflicts of interest in outlining SYKE as the competent pollution response authority. We can see also that of all the Baltic states Finland has perhaps come furthest in the field of national compensation measures, its own system being termed the Finnish Oil Pollution Compensation Fund and formalised under the FOPC Fund Act (1406/2004) and the Governmental Decree on the FOPC (1409/2004). The two countries cooperate in diverse manners having a bilateral, quadrilateral (through the Copenhagen Agreement) and multilateral (HELCOM) agreements. Cooperation, collaboration and discussion are also manifested through Interreg projects such as Baltic MaSTER and interregional organisations such as the CPMR.

The Republic of Lithuania and the Republic of Poland.

The Republic of Lithuania.

An interview was held at the Headquarters of the Lithuanian Maritime Safety Administration in Klaipeda, Lithuania on June 15, 2006 with Mr. R. Tarasevicius, Deputy Director of the Administration and Mr. J. Karalavicius, Deputy Head of the Maritime Search and Rescue Co-ordination Centre.

Introduction (including the preparatory stage):

In correspondence with the European Commission the Lithuanian Maritime Safety Administration, on 12 September, 2005 wrote a three-page description of Lithuania's stance on the implementation of Directive 2002/59/EC. It is pointed out that the Directive, repealing Directive 93/75/EC had been implemented by the Order No.- 3-333 of the Minister of Transport and Communications of the Republic of Lithuania (hereinafter termed the Order) "as well as by other normative documents mentioned in (the) letter" (LMSA, 2005).

According to R. Tarasevicius in order to accommodate the implementation of the Directive, and in particular of Article 20, the Minister of Transport and Communications formed a Working Group comprising of industry and government representatives from eleven different agencies and departments whose task it was to suggest potential places of refuge and draw up a draft of appropriate legislation along with the plans that could be used to accommodate ships in distress in Lithuanian waters (personal communication, June 15, 2006).

Chain of command (including the emergency stage):

Again, according to R. Tarasevicius the decision making process and the national authorities that are involved in it are defined in the Order. In the familiar manner, the body authorised to receive a vessel's request for a place of refuge in the Lithuanian territorial sea or the economic exclusive zone is the MRCC. Upon receiving this alert the MRCC will then immediately contact the Head of the Lithuanian Maritime Safety

Administration, the Head of Klaipeda County Governor's Administration, the Harbour Master of Klaipeda State Seaport Authority, the Klaipeda Region Environmental Protection Department and the Senior Specialist of the Coast Guard District of the State Border Guard operating under the Ministry of the Interior of the Republic of Lithuania (personal communication, June 15, 2006; LMSA, 2005, p. 2).

The MRCC plays a leading role in that in cooperation with the bodies named above, it is responsible for the risk assessment and evaluation of the particular case in hand, which involves assessment of the seaworthiness of the ship involved, the risk to safe navigation, the risk to human life on board the vessel and the likely level of any pollution. It is pointed out in the correspondence to the Commission that:

“Under Clause 5 of the (Order No.- 3-333) Rules, the MRCC after initial event-specific assessment, in cooperation with the Harbour Master (Klaipeda State Sea Port Authority) and Klaipeda Region Environmental Protection Department shall:

- consult the master of the ship on in initial actions necessary for vessel stability, buoyancy, etc;
- make an analysis of ship accident particulars and plan to accommodate the ship in a place of refuge;
- when appropriate, organize an inspection team to board the ship to evaluate the level of risk involved” (LMSA, 2005, p. 2).

The list of potential places of refuge are presented in the Order and have been defined by the Minister of Transport and Communications of the Republic of Lithuania. They are named as Berth No. 1 - 6 and the outer Roads of Klaipeda Sea Port (LMSA, 2005, p. 2).

In consultation with J. Karalavicius it is made clear that the final decision as to allocate or to refuse a ship in distress access to the above areas lies with the Director of the Lithuanian Maritime Safety Administration and it is a decision based upon the outcome that was received from the MRCC in its event specific consultations. In a specific case whereby dangerous or hazardous cargo is involved the decision shall be coordinated with

the Harbour Master (Klaipeda State Sea Port Authority) and Klaipeda Region Environmental Protection Department (personal communication, June 15, 2006; LMSA, 2005, p. 2). Tarasevicius concludes that the relationship between the Director of the Lithuanian and the Harbour Master and the Environment Inspectorate in the case of an HNS case is that the signatures from the latter two are required before the Director can send a vessel to a place of refuge. If a place of refuge is not granted the Director of the MSA will inform the master of the ship but also, perhaps more interestingly, the competent authorities in neighbouring states (personal communication, June 15, 2006).

Co-operation with neighbouring states:

Lithuania is operative within HELCOM' s South-east region.

Financial warranties:

Referring once again to the Order (LMSA, 2005, p. 2), Clause 10 states that once the access for a ship in need of assistance is granted, the ship owner shall cover all expenses and damages in relation to this granted access and must also take into account all appropriate insurance and financial guarantee requirements.

Reference to the list of IMO Conventions will show the compensation and liability related conventions to which Lithuania is a party. In the correspondence dated 12 September, 2006 it was stated that there were plans by the Lithuanian Government to ratify the IOPC Fund Protocol 2003, the LLMC Protocol 1996, HNS 1996 and the Bunkers Convention 2001, all of which should be ratified by the first quarter of 2006.

The Republic of Poland.

The interview was conducted in the Harbour Master's Office in Swinoujscie, Poland on April 28, 2006 with J. Osadowska the Deputy Harbour Master, Capt. J. Filoda the Harbour Master and D. Korczynska the Head of International Cooperation, Maritime Office in Szczecin.

Introduction (including the preparation stage):

The Polish coast consists of three coastal regions, each bearing responsibility for the allocation of the places of refuge within its sphere, the focus for interview in this thesis is the government office at Szczecin and the Harbour Master's Office at Swinoucsjie. Information was later requested from the two other sea areas in Poland namely Gdansk and Slupsk although no interviews were arranged. The information provided below is a partly summarised account of an unofficial translation of "Regulation No.1 of the Director of the Maritime Office in Szczecin of 1st March 2006 on Determining the Plan for Providing Places of Refuge for Ships in Distress in Polish Sea Areas" (hereinafter termed the Regulation) provided by the Maritime Office in Szczecin.

The relevant legislation that deals with the allocation of places of refuge within this region is as mentioned the Regulation, which states that the VTS acts as MAS and thereby fulfills the requirements in the IMO Guidelines A.950 (23). As regards the hierarchy of command the Director of the Maritime Office in Szczecin (DMO) has the ultimate responsibility for sending a ship a place of refuge within that region. This responsibility is however interlinked in a chain that involves the DMO cooperating with the West Pomeranian Voivode (WPV) which is a regional governing body much like the *Kommuner* in Sweden or perhaps more appropriately the *Länder* of Germany, the regional inspector for the planned place of refuge, the Master of the vessel in distress, SAR services, the State Fire Brigades, the State Navy and the VTS itself. If any particular operation involves two or more regions then it is the Director of the Maritime Office of the region that contains the ultimate place of refuge that will bear responsibility for the operation, responsibility therefore travelling with the vessel across the area boundary (Maritime Office in Szczecin, 2006).

Chain of command (including the emergency phase):

In the event that a vessel is in need of a place of refuge the familiar channels of contacting the VTS or a coastal radio station are used. Once this call is received the DMO as well as SAR services are contacted. The DMO will then notify three separate parties of the initial intention to send the vessel to a place of refuge - the responsible

Minister, the WPV by means of the Rescue Coordination Centre, and the regional inspector for the planned place of refuge. After consulting the WPV, the DMO may call for expert help from a team of experts which consists of the responsible Harbour Master or Harbour representative or representative for the place of refuge, the Voivode representative, the SAR services, the Coastguard representative, the Polish Navy staff representative, the Fire Department representative, and the Meteorology and Water Economy representative (Maritime Office in Szczecin, 2006).

The DMO then bases the decision to allocate the vessel a place of refuge on the 'National Plan for Fighting against Threats and Pollution at Sea' as well as the opinion of the representative of the local authority or Voivode. Once a decision has been made to grant access to a place of refuge the Director of the Maritime Office then notifies the relevant Minister for maritime administration, the West Pomeranian Voivode and the regional inspector for environmental protection (Maritime Office in Szczecin, 2006).

Osadowska states that as regards an inventory of places of refuge this is a confidential document and can only be accessed by the Director of the Maritime Office and the SAR services. Places of refuge are therefore not on the public domain (personal communication, April 28, 2006).

Co-operation with neighbouring states.

Apart from playing an important role within the various fields of activity in HELCOM, Poland has a bilateral agreements with Germany.

Financial warranties.

As regards financial warranties, Chapter 8 of the Regulation relates to insurance guarantees it reads:

“A vessel being granted a place of refuge should possess a financial protection certificate or insurance guarantee, or insurance policy of civil liability covering damages that may

arise, on a guarantee high enough to cover all the damages caused by the vessel” (Maritime Office in Szczecin, 2006, p. 3).

The contents of the chapter go on to state that in particularly justified cases, the Director of the Maritime Office in Szczecin may grant a place of refuge to a vessel not presenting these documents and the final point is made that all costs associated with the granting of a place of refuge are to be covered by the ship owner. Otherwise the relevant IMO Conventions apply.

Discussion.

The issue of HNS is raised here and is tackled by Lithuania with a requirement for extra requirements being passed before access can be granted. In the case of Poland we have seen that it deals with its allocation of places of refuge on a regional basis. As of personal contact with Mr Bibik, Acting Head of Maritime Traffic Safety Department, Maritime Office Gdynia on October 19 2006 the author was informed that all three regions had finalised the legal framework as regards places of refuge although the PoRs had not been made available on the public domain (personal communication, October 19, 2006). Both Poland and Lithuania demonstrate a state centric top-down approach to the allocation of places of refuge.

The Republic of Estonia and the Republic of Latvia.

The Republic of Estonia.

The interview was conducted on June 7, 2006 at the Environmental Inspectorate, Tallinn, Estonia with Mr T. Roose, Deputy Director General.

Introduction (including the preparatory stage).

According to Roose, the Maritime Safety Act of 2005 denotes the responsibilities of the various units of government operating within the maritime sector in Estonia. There are three main bodies that should be considered in this context. The Estonian Environmental Inspectorate bears responsibility for the supervision, and investigation of violations in all areas concerning environmental protection and the Estonian Maritime Administration bears responsibility for the investigation of marine accidents for example collisions. In the case of a collision then, the Maritime Administration would determine the responsibility for the accident and the Environmental Inspectorate would reclaim the compensation for the damage caused to the environment (personal communication, June 7, 2006).

Relating to e-mail correspondence received from J. Matso, of the Estonian Maritime Administration it is evident that the third unit, the Border Guard, is responsible for combating oil pollution at sea although these apparently overlapping responsibilities are delineated in Chapter 47 of the Act. Here, it is stated in paragraph 2 that the Government of the Republic shall determine the places of refuge on the proposal of the Minister of Economic Affairs and Communications and in Paragraph 3 that the Border Guard Administration has the right to send a vessel to a place of refuge acting upon the approval of the Environmental Inspectorate and the Maritime Administration thus exhibiting an interesting tri-partite relationship of authority (personal communication, May 18, 2006; Liiv, 2006). The publication of the places of refuge is covered by Paragraph 4 of the same Chapter 47 which states:

“The Maritime Administration shall enter the specific areas and places of refuge on sea charts and shall inform the users of waterways of the specific areas and places of refuge by navigation notices”.

Chain of command (including the emergency stage):

As mentioned the Border Guard (which operates as part of the Ministry of the Interior) makes the decision to send a ship to a place of refuge and in doing so must obtain approval from the Maritime Administration (Ministry of Economic Affairs and Communications) and the Environmental Inspectorate (Ministry of the Environment). The Border Guard also acts as the MAS, its role being to organise, conduct and manage search and rescue operations in the Estonian marine rescue region and to discover, localise and combat marine pollution. Matso makes the point that the places of refuge are on the public domain and that three ports have been named, they are Muuga, Paldiski South and Kunda (personal communication, May 18, 2006).

Co-operation with neighbouring states.

A trilateral cooperation agreement exists between Sweden, Latvia and Estonia, and Estonia is operative within HELCOM. As regards the SAR Convention an agreement exists between Finland, Russia, Latvia and Sweden.

Financial warranties.

Roose mentions that matters involving compensation at the national level are covered by the National Marine Pollution Abatement Plan. The Working Draft for this Plan was available on the public domain as from May 2006. It covers the coastal areas, the inland and territorial seas and the EEZ of Estonia and creates a basis for drafting response plans for other agencies such as the Maritime Rescue Coordination Centre (MRCC) and the Joint Rescue Coordination Centre (JRCC) (personal communication, June 7, 2006).

The Republic of Latvia.

Separate interviews were conducted on April 26, 2006 with Mr. G. Steinerts, Director of the Maritime Safety Department of the Maritime Administration of Latvia and Capt. A.

Krastins, Director of the Maritime Department of The Ministry of Transport of the Republic of Latvia.

Introduction (including the preparatory stage).

As regards the geography of the state, the shallow Gulf of Riga is situated in the northwest of the country. The capital Riga is situated on the eastern shore of the Gulf, at the mouth of the River Daugava. Other major cities include Ventspils and Liepaja further south along the Baltic coast. Each of these areas has been designated as places of refuge.

Chain of command (including the emergency stage).

According to Krastins, when a ship encounters serious difficulty it makes contact with the MRCC. The sequence of events which then ensues is that the Duty Officer at the MRCC will inform the Response Commander (RC) of the MRCC Committee who assesses the situation. The MRCC Committee is then summoned and the RC informs the ship's master that a place of refuge will be granted if written confirmation is received covering all losses that may be caused to the port, the environment or to third parties. It is interesting to note here that the MRCC RC has the authority to allocate a place of refuge without the Committee's consent if ship in question has not encountered serious difficulty. In this case the Harbour Master of the port to be used as a place of refuge will be informed directly by the Rescue Coordinator (personal communication, April 26, 2006).

As regards the inventory of places of refuge, these have been published in the Regulations of Cabinet of Ministers, 2005 and are listed as follows: The Port of Liepaja, Liepaja Port anchorage L3, Port of Riga, Riga Port anchorage, Port of Ventspils, Ventspils Port anchorage V2 and the Anchorage in the lee of Kolka Coastal Guard of the Navy (although in this case vessels are not admitted with oil leakage) (Regulations of Cabinet of Ministers)

Co-operation with neighbouring states.

Latvia is operative within HELCOM.

Financial warranties.

Latvia has implemented the CLC and the LLMC has been transposed into the Latvian Maritime Code (0553). Please refer to the Annex for further details.

Discussion.

A very interesting development on the part of Estonia is the National Marine Pollution Abatement Plan which made its working draft available in May 2006. Linked to the issue of places of refuge, this plan must first be finalised in cooperation with the Ministries of the Interior, the Environment, and Economic Affairs and Communications before it is put forward for approval by the Republic in the near future. The plan, which lays the basis for the planned use of an environmental fee to be used for compensation purposes, is divided into a two sections: Strategies and Preparedness and Pollution Abatement Operations and its overall objective is to, “guarantee prevention, detection, elimination and recovering of the status of the marine environment in the Baltic Sea area under Estonian jurisdiction” (Liiv, 2006.).

Latvia, for its part has allowed for a certain leniency as regards the allowance of a ship to a place of refuge in that the MRCC RC has the authority to allocate a place of refuge without the Committee’s consent if ship in question has not encountered serious difficulty. Whilst both states have named places of refuge there exists no evidence of local, regional concerns being consulted prior to their allocation.

The Russian Federation.

Kaliningrad Oblast.

Interviews were conducted on July 28, 2006 with Capt. Apekhtin, Acting Harbour Master Mr. M. Durkin, Chief Environmental Officer of the Kaliningrad Maritime Port Administration.

Introduction (including preparatory stage):

The Russian Baltic coast is split into two separate sections; one an approximately 150km coastline along the coast of Kaliningrad and the other occupying the Russian stretch of the Gulf of Finland. The focus for interview in this research was Kaliningrad. In discussions and research for this state a new aspect emerged affording perhaps a new stance to the entire places of refuge issue: that of maritime security, which is linked closely to related issues such as HNS, nuclear matters and the arrest of ships. That aside, the decision to allocate a place of refuge in this relationship is a regional one, with the relevant authorities outlined in the Federal Act on the Internal Maritime Waters, Territorial Sea and Contiguous Zone of the Russian Federation (1998) (hereinafter termed the Federal Act). As the Federation is not a member of the European Union, the IMO Guidelines and HELCOM's recommendations afford the two international references for policy-making.

It is primarily in Article 9 entitled "Emergency calls by foreign ships, foreign warships and other government ships in the territorial sea, internal maritime waters and seaports" that the issue of places of refuge is addressed. Article 9 Section 8 of the Federal Act constitutes the first layer of the legal background and reads:

"The decision to refuse exercise of the right of an emergency call shall be taken by the official of the federal executive body for the border service independently or in agreement with an official of the seaport, naval base or area where warships are based" (Federal Act, 1998).

According to Durkin, this section was recently amended in terms of the replacement of “federal executive body for the border service” by “the federal executive body for national security” which means the Federal Security Service (FSS), a body that replaced the Soviet KGB. The border service or border guard as we have seen that it is also termed in the ex-Soviet Baltic states, is a sub-division of the FSS. Whilst the amendments in the Act may purely signify an update to comply with present governmental structure, there is also the possibility that the FSS is broadening its authority in order to deal with false distress alerts and dirty bombs given the fact that the FSS is the coordinating body for ISPS implementation between Russian Federation authorities on the regional (county) level (personal communication, July 17, 2006). At present, the updated version of the Federal Act is not available in the English language.

The general harbour area of Kaliningrad is defined as port waters according to the by-laws of the port (KMPA, 2001, p.5) which have their background in six other sources of legislation. The harbour area itself serves as the main place of refuge in the Kaliningrad area. Some factors however limit its efficiency in this regard. The harbour entrance itself is relatively narrow and the channels only of the width that can allow one way travel with two outbound and two inbound vessel passages every 24 hours. Access to harbour areas is also restricted by the draught of vessels. Free passage into a place of refuge however is guaranteed by Article 9, Section 2 of the Federal Act. It states that:

“All foreign ships, foreign warships and other government ships shall, without any discrimination, have, in accordance with the rules of international law, the right of an emergency call in the territorial sea, internal maritime waters and seaports” (Federal Act, 1998)

By law there are few restrictions on access for a vessel to a place of refuge. Unlike other Baltic states, the Russian Federation does not demand financial guarantees before admittance. However, restrictions do apply “in respect of damaged foreign ships, foreign warships and other government ships with nuclear engines or foreign ships transporting

...materials which may cause harm to the Russian Federation, its population, natural resources and environment” (Federal Act, 1998).

Chain of command (including emergency stage):

The MRCC contacts the Harbour Master in Kaliningrad directly who decides whether a vessel can be granted access, ultimate legal responsibility for designation however is in line with Article 9, Section 8 of the Federal Act provided above.

Co-operation with neighbouring states.

One of the results of the recent developments under HELCOM Response was to create sub-regions within the Baltic Sea. Kaliningrad, Latvia, Lithuania and Poland comprise the South-east region and are at present working on an elaboration of the sub-regional contingency plan that is to include places of refuge. The planned Helcom Response Conference in Gdynia on September 13-15 is likely to contain issues concerning places of refuge in its draft agenda.

Saint Petersburg Oblast.

Introduction

The initial research plan, bearing in mind time constraints did not cater for research interviews in Saint Petersburg, although contact details were provided in Kaliningrad for this area. Important, valid information can be gleaned however from the SummerI/SummerI II/Gofmec initiatives - three partly funded EU projects that involve the maritime academic centres in St Petersburg, Kotka and Talinn. The object is to unite the three national crisis management simulator centres to train for oil spill contingency planning, the role of places of refuge also being addressed in this context (GOFMEC, 2006).

Chain of command.

No information can be provided on this sector due to the reasons mentioned above.

Cooperation with neighbouring states.

The Russian Federation cooperates within HELCOM, and within the projects named above.

Financial warranties.

IOPC and CLC. The Russian Federation has ratified the LLMC.

Discussion.

The geographical nature of the coast of Kaliningrad predetermines a reliance of the places of refuge of that Oblast to the Port of Kaliningrad. Determination of actual sites is made within the domain of the port authority thereby demonstrating a state centric, Intergovernmentalist approach.

Part Six: Conclusion.

The results of the research into ‘Problems to be solved’, Sections 1-5 (pages 9-11) are the following:

In answer to Section 1, due to the high response rate a clarification of the national designation of places of refuge has been able to be provided involving all nine Baltic states. A quick reference guide provided below summarises the results:

Pre-designated potential PoRs on the public domain:

Denmark:

Pre-designated potential PoRs but can also use a case-to-case system. Public consultation: top-down. Detailed PoR details including charts on the public domain.

Estonia:

Pre-designated potential PoRs. No public consultation. PoRs as ports named in legal texts accessible by the public.

Latvia:

Pre-designated potential PoRs. No public consultation. PoRs as ports and/or anchorages named in legal texts accessible by the public.

Lithuania:

Pre-designated potential PoRs. No public consultation. PoRs as ports named in legal texts accessible by the public.

The Russian Federation (Kaliningrad)

Pre-designated potential PoRs. No public consultation. PoR as the Port of Kaliningrad named in legal text accessible by the public, although no specific details of which area of the Port of Kaliningrad is given.

Pre-designated potential PoRs not on the public domain:

Germany:

An inventory of potential PoRs exists and is the responsibility of the Head of CCME. PoRs are not on the public domain.

Poland:

Each of the three regions has allocated potential PoRs and work is continuing in creating other potential PoRs. PoRs are not on the public domain.

Case-by-case system (PoRs not on the public domain).

Sweden:

Case-by-case system is used based on the Swedish Pilot manual. No public consultation. Work is under way to clarify the legal responsibilities of the various actors in the directing of a vessel to a PoR. Potential PoRs are not on the public domain.

Pre-designated potential PoRs and case-by-case system used concurrently.

Finland:

Ten potential PoRs have been charted in the Gulf of Finland (GoF) by a salvage company following public demands. The remaining Finnish coast west of Hankoniemi itäpuoli is regarded as a case-by-case zone. SYKE bears overall responsibility for case-by-case designation of a vessel to a PoR throughout the entire Finnish coast and would logically bear the ten potential GoF PoRs in mind in its determination for a vessel in that zone. No public consultation. Pre-designated potential PoRs are on the public domain, the case-by-case zone by its very definition is not on the public domain.

It could also be argued that Denmark could belong to this group since it is not limited to its choice of pre-designated PoRs but the particular case of Finland, without any public consultation, makes this grouping unique.

Secondly, as regards a response to Section 2 and the interplay between the international actors, the theory of Intergovernmentalism can be seen to be operative at this level. The International Maritime Organization has traditionally led the field in places of refuge legislation. Decisions made in the Maritime Safety Committee in 2001 led to the acceptance of the IMO Guidelines on Places of Refuge Res. A.949 (23) and its MAS counterpart A.950 (23) both following an Intergovernmentalist mould. The role of the IMO at this stage can thus be seen as an agent of its member states, and one that facilitates intergovernmental bargaining in the field of maritime safety. Policy-making at the IMO level can therefore be regarded as an Intergovernmentalist domain, with the gate-keeper function of the nation state firmly in place. The Guidelines were however, just that, guidelines. Directive 2002/59/EC and a response to the secondary problem concerning democratic deficit will now receive further attention.

When applying the different theoretical perspectives to the EU Directive 2002/59/EC a similar picture to the one presented above evolves. An important point is that at the policy-making stage Intergovernmentalism is very evident in the construction of the Directive with little if any regional or local influence evident. It is in the implementation phase of the Directive that aspects of MLG-ICOM may have been expected with local influences and regional concerns being able to shape the actual location of the places of refuge. The results however paint a different picture. As regards the EU states a case-by-case system similar to that used in the United Kingdom is used by half and the possible places of refuge of these states have not been made available on the public domain. This does not necessarily mean that planned places of refuge do not exist, it is merely in general considered a central government concern and thereby not a public issue. As regards the remaining fifty percent of EU states, the well documented case of Denmark, and the new EU states Estonia, Lithuania and Latvia have all published potential places of refuge along their respective coasts.

In the case of Denmark's designation of its 22 places of refuge, a number of consultations were made with local communities at an early stage although the initiative for this move, the starting point, lay with central government concerns thereby exhibiting a top-down

angle despite the extremely open, democratic nature of the process involved. As defined by Cicin-Sain & Knecht, the top-down approach to ICOM can be viewed as “the formulation of an ICM program from a higher level of government, such as the national level” (1998, p. 464), and can perhaps best be understood by their comparison with the bottom-approach to ICOM seeing “the formulation of an ICM program starting first at the local community level” (1998, p. 459). The initial impetus is of prime importance here. The Danish approach does however exhibit important aspects of Multi-level influences and therefore acts as an important reference point for possible future MLG-ICOM study.

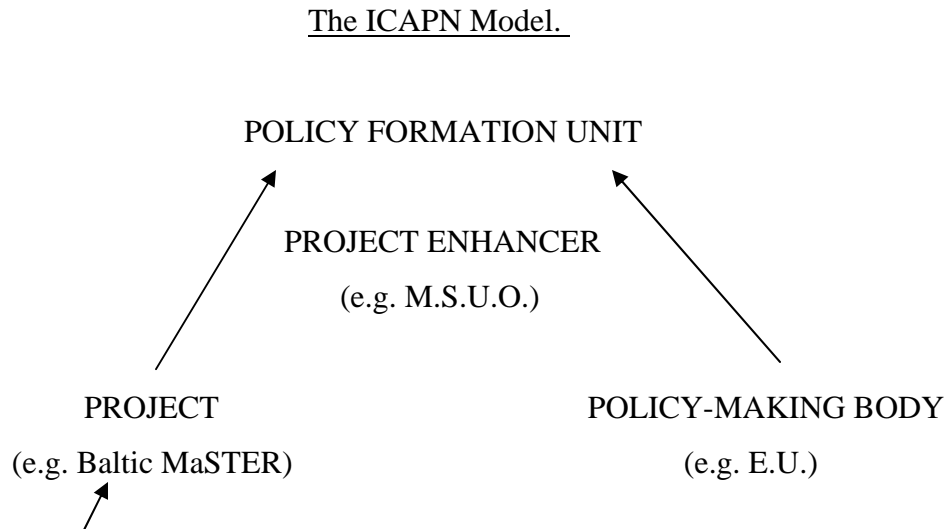
As regards Estonia, Latvia and Lithuania the allocation of places of refuge was taken solely at the central government level exhibiting characteristics of Intergovernmentalism, without any influential role of the local communities in this respect. The theory of Neo-functionalism has been evident not on the national level but rather in the various regional initiatives that have been taken following the Trelleborg Declaration.

Thirdly, in relation to Section 3 a link was found between Multi-level governance and the maritime discipline of Integrated Coastal and Ocean Management although little evidence was found of its applicability as regards the decision to allocate a particular area as a place of refuge, Intergovernmentalism being clearly prevalent in this sphere.

Fourthly, in answer to Section 4 and leading on from the point made above, whilst limited evidence of MLG-ICOM influence was found, a model based on stakeholder participation in the allocation of places of refuge is to be considered conceivable and worthwhile. Considering the Black Sea as an EU water, a model formed on observations apparent in the Baltic could be applicable to this area, offering a blueprint for stakeholder involvement in place of refuge development. Likewise, a new model could be utilised in other maritime areas, both in terms of territorial and functional aspects.

A model combining Policy Networks with Integrated Coastal and Ocean Management that allowed for bottom-up stakeholder interests to have real influence in policy-making

decisions would be the goal in this respect, a suitable maritime acronym proposed as ICAPN – Integrated Coastal Area Policy Network. The conceived structure could be visualised by the following model.



Stakeholders (e.g. coastal home-owners, fishing sector workers, environmental concerns.)

Whilst the legitimacy of the role of non-governmental actors in policy-making is of paramount importance here, this model seeks to show how stakeholder influence could be realised within the parameters of the project mechanism. Here we see that a policy formation unit combining officials from both the policy-making body and from the project structure itself could agree upon policy strategies thereby allowing bottom-up influences to have real power in policy decisions. The role of the project enhancer in this respect would be administrative, much like the present umbrella function of the MSUO - its role to coordinate policy discussion, and secure the involvement of all relevant actors. The arrows represent the directions of influence to final discussions. Final policy goals, and strategies are decided at the policy formation unit level and then channelled via the policy-making body to policy fruition maintaining a multi-level structure within specific policy areas.

Modifications including the involvement of a larger number of projects thereby providing for a more varied stakeholder base are possible, creating a democratic equilibrium rather

than contributing to any perceived deficit. Likewise, the policy-making body need not be confined to the EU.

If non-governmental policy-making were legitimate, this structure of governance would empower NGO and subnational levels of government within the existing mechanisms of an Interreg structure.

Finally, in response to Section 5, the Interreg project Baltic MaSTER offers a sound basis for an individual research programme of this type, with concepts of spill-over, policy networking and bottom-up governance intrinsic in its make-up. The author believes that the role of the MSUO in enhancing the effect of this and other Baltic Sea initiatives is central to the advancement of concepts of governance in the European maritime field.

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Appendix 1. Relevant IMO Conventions.

1. Introduction.

In order to shed some light on this extensive and intricate body of law and its applicability to the topic in hand, the most relevant IMO Conventions and Protocols that cover the area of compensation and liability and its relation to places of refuge in the Baltic Sea are presented below with their short titles bracketed and a summary provided of their content. Included also is a list of the (Baltic Sea) State parties that have become party to the Convention by the process of accession. Three points are made in this respect:

Firstly, the summaries provided have in each case been written in the author's own hand after consultation with the "Focus on IMO – April 2001. A Summary of IMO Conventions" manual.

Secondly, the list of relevant conventions/protocols along with details of the status of their ratification presented is a modification of the contents of Page 7 of "Helcom Maritime 4/22, Document 8/4. Agenda Item 8 Matters Related to Safety of Navigation. Status of the Designation of Places of Refuge in the Baltic Sea – Liability and Compensation with Regard to Places of Refuge" a document presented for the Helcom Maritime Group's Fourth Meeting in Klaipeda, Lithuania, between 11-13 October 2005. Data concerning the Russian Federation was not present on the original HELCOM document but research has shown that the Russian Federation has ratified the IOPC, CLC and LLMC Prot 96.

Thirdly, the data on the State parties that are parties to each convention or protocol or both was collected from the "Status of Conventions 30/06/2006" web page of the IMO homepage. Reference to each of these sources of information is made in the Reference List. The author makes the point that according to his own research the information provided by HELCOM was up-to-date at the time of the respective interviews.

2. Conventions and Protocols.

2.1 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (Intervention Convention) 1969.

Whilst there are no areas in the Baltic Sea that come under High Seas jurisdiction the inclusion of this Convention is interesting for the development that has been seen in its Protocol of 1973 – extending the scope of regulations to substances other than oil. Following the Torrey Canyon disaster of 1967 concerns rose to the fore as to the power of a coastal State to protect its shores from pollution, within the sphere of public international law and within respect to incidents occurring on the High Seas. The international feeling was that there was a need to recognize a requirement for some kind of coastal State intervention to protect its own coastline whilst at the same time respecting the rights afforded flag States and ship and cargo owners. The Convention allows for the coastal State to take such action that is necessary but that compensation for any damage must be paid by it to relevant parties for example, the flag State(s) of the stricken vessel(s), the ship owners or the cargo owners if the measures are beyond those permitted in the Convention. “The Convention applies to all seagoing vessels except warships or other vessels owned or operated by a State and used on Government non-commercial service.” (IMO, 2001, p. 60).

State Parties by means of accession are: Denmark, Finland, Germany, Latvia, Poland, Russia and Sweden. (IMO, 2006)

States that have ratified the convention are: Denmark, Finland, Germany, Latvia, Poland, Sweden.

2.2 Intervention Protocol 1973.

This Protocol extends the Convention to apply to casualties emitting substances other than oil.

State Parties by means of accession are: Denmark, Finland, Germany, Latvia, Poland, Russia and Sweden. (IMO, 2006).

States that have ratified the convention are: Denmark, Finland, Germany, Latvia, Poland, Sweden.

2.3 International Convention on Civil Liability for Oil Pollution Damage (CLC) 1969 and its Protocol of 1992.

Here, we are more interested in parties to the Protocol than parties to the original Convention however a short summary will be provided for both. The Convention was adopted to allow adequate compensation to be available to those persons that have suffered oil pollution damage as a result of the casualties of oil-carrying ships. The burden liability is on the ship owner, and the Convention requires the ships covered by it to maintain some form of financial security equivalent to that of the owner's total liability for one incident. It is only applicable to ships actually carrying oil in cargo and does not deal with spills from tankers in ballast and spills from ships other than tankers.

The Protocol of 1992.

This reduced the number of large-tanker owning countries required to bring the entry into force requirements forward. It also widened the scope for the Convention to cover oil pollution damage in the EEZ and to include unladen as well as laden tankers including spills of bunker oil from tankers. Compensation amounts were also increased.

State Parties by means of accession to the Protocol of 1992 are: All Baltic States. (IMO, 2006).

States that have ratified the convention are: Denmark, Finland, Germany, Latvia, Poland, Sweden, Lithuania.

2.4 International Convention for the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND), 1971 and its Protocol of 1992.

Here, again, we are mainly interested in the Protocol of 1992. As in the case of CLC above, the Protocol was introduced to modify the entry into force requirements and increase compensation amounts. A major point, and one that was pointed out in the previous chapter, was that it established a separate International Oil Pollution Compensation Fund known as the IOPC or 1992 Fund of which all Baltic States are

members, and which inadvertently was the reason for the demise of the EU's own planned COPE fund since it raised its limits of liability. The reason for concentration on the 1992 Protocol being that, 'from 16 May 1998, Parties to the 1992 Protocol ceased to be Parties to the 1971 Fund Convention due to a mechanism for compulsory denunciation of the old regime established in the 1992 Protocol' (IMO, 0221, p.72). The basic purposes of the 1971 Fund itself were to provide compensation for pollution damage not covered by the 1969 Civil Liability Convention and to provide relief to shipowners had had suffered an additional financial burden as a result of the 1969 Civil Liability Convention.

State Parties by means of accession to the Protocol of 1992 are: All Baltic States. (IMO, 2006).

States that have ratified the Protocol are: Denmark, Finland, Germany, Latvia, Poland, Sweden, Lithuania.

2.5 Convention relating to Civil Liability in the field of Maritime Carriage of Nuclear Material (NUCLEAR), 1971.

This Convention provides for the exoneration of liability for persons otherwise liable for damage caused in a nuclear incident if the operator is also liable for such damage under; the Paris Convention (1960) on Third Party Liability in Nuclear Energy, or the Vienna Convention (1963) on Civil Liability for Nuclear Damage, or any national law which is similar in the scope of protection afforded persons who suffer damage.

State Parties by means of accession are: Denmark, Finland, Germany, Latvia and Sweden. (IMO, 2006).

States that have ratified the Protocol are: Denmark, Finland, Germany, Latvia, Sweden.

2.6 Convention on Limitation of Liability for Maritime Claims (LLMC), 1976 and the LLMC Protocol of 1996.

Replacing the International Convention Relating to the Limitation of the Liability of Owners of Seagoing Ships of 1957, the LLMC Convention 1976 provides for two types of claims: those for loss of life or personal injury and property claims such as damage to harbours, ships or other property. The limit for liability rose considerably compared to

the 1957 Convention. It provides an effective system to limit liability related to loss and intent.

The Protocol of 1996.

This provides for an increased compensation amounts to be payable and includes a tacit acceptance procedure for the updating of these amounts.

State Parties by means of accession are: Denmark, Finland, Germany, Russia and Sweden. (IMO, 2006).

States that have ratified the Protocol are: Denmark, Finland, Germany, Sweden.

2.7 International Convention on Salvage (Salvage Convention/ SALCON), 1989.

The 1989 Convention remedies the deficiency un the 1910 Convention by making a provision for an enhanced salvage award which takes into account the skill and efforts in preventing or minimizing damage to the environment. A special compensation award is paid under the convention to salvors that failed to earn a reward by salvaging the ship and cargo.

State Parties by means of accession are: Denmark, Estonia, Germany, Latvia, Lithuania, Poland, Russia and Sweden. (IMO, 2006).

States that have ratified the Protocol are: Denmark, Germany, Latvia, Lithuania, Sweden.

2.8 International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC), 1990.

Parties are required to establish mechanisms for dealing with pollution both nationally and in co-operation with other State parties. Ships and offshore platforms are required to carry a Shipboard Oil Pollution Emergency Plan (SOPEP). On the operative sphere, ships are required to report pollution incidents with coastal authorities. The convention also deals with the establishment of stockpiles of equipment to combat oil spills, of oil spill exercises and contingency planning. Parties to the Convention are expected to provide assistance to other State parties in the event of oil spill emergencies and reimbursement for any assistance provided is provided for in the Convention.

State Parties by means of accession are: Denmark, Finland, Germany, Latvia, Lithuania, Poland and Sweden. (IMO, 2006).

States that have ratified the Protocol are: Denmark, Finland, Germany, Latvia, Lithuania, Poland and Sweden.

2.9 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS), 1996 and the Protocol 2000 (following):

This provides for compensation to be paid to victims of accidents involving Harmful and Noxious Substances (HNS) which include oils, liquefied gases, liquid substances, dangerous, harmful and hazardous materials, substances in packaged form, and solid bulk materials. Based on a two-tier system and established under the CLC and FUND Conventions, the HNS Convention covers pollution damage, risks of fire and explosion, loss of life or personal injury and loss of or damage to property.

As with its predecessors, CLC and FUND, HNS Convention compensation is sought first from the shipowner up to a maximum limit whereby the claim moves over to a second tier, the HNS Fund, which caters for compensation up to a new maximum ceiling. The Fund itself has an Assembly consisting of all state parties which meets once annually. State Parties by means of accession are: Russia (IMO, 2006). No states have ratified it.

2.10. Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, (OPRC-HNS Protocol) 2000.

This follows the principles of the OPRC Convention and serves as a Protocol to both it and the HNS. It was formally adopted by States already party to OPRC in March 2000. Again, like the OPRC it aims to provide for a world-wide network of co-operation in major incidents and to preserve the environment. As with OPRC parties are required to establish mechanisms for dealing with pollution both nationally and in co-operation with other State parties and ships are required to carry a Shipboard Oil Pollution Emergency Plan (SOPEP) to deal with HNS incidents in particular.

Its entry into force being twelve months after ratification by not less than fifteen States, which are State Parties to the OPRC Convention the Protocol will enter into force on 14

June 2007 as the fifteenth ratification was filed with the IMO on 14 June 2006 (IMO-OPRC-HNS, 2006).

State Parties by means of accession are: Poland and Sweden. (IMO, 2006).

States that have ratified the Protocol are: Poland and Sweden.

2.11. International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunker Convention) 2001.

As of July 2006, the Convention required seven States to ratify it before entering into force. It allows claimants to take action directly against the insurance provider when these claimants have suffered damage caused by spills of oil, when carried as fuel in ships' bunkers. There is therefore a requirement for the registered owner of a vessel to maintain an insurance cover that is compulsory – much like the CLC Convention, and improving the process by which claimants are able to recover justified costs incurred as a result of pollution from ships' bunker fuel oils.

State Parties by means of accession are: Latvia. (IMO, 2006). No states have ratified it.

Appendix 2 : Pilot Questionnaire and Questionnaire.

Pilot Questionnaire.

This has been translated from Swedish into an English version. Note should be made to the fact that only places of refuge issues are presented here whereas on the original both Waste Management and Places of Refuge were present. As regards port authorities: H means Halmstad, T means Trelleborg and K means Kalmar.

1) Has your Port Authority taken steps to accommodate ships in distress?

YES: What steps have been taken?

H, T, and K: One quay has been designated.

NO: What has hindered this operation?

-

2) According to Directive 2002/59/EC Article 20 and thereby IMO Res. A.949 (23) and IMO Res. A.950 (23):

a) Has your Port Authority made an objective analysis of the advantages and disadvantages of allowing a ship in need to proceed to a place of refuge?

(A.949 (23) Article 3.5)

H, T and K: No.

b) Has your Port Authority ensured that an appropriate system for information sharing exists in line with A.949 (23) Article 3.7?

H, T and K: No. Same routines as for accidents 112 will be used.

c) Does your Port Authority have any responsibilities as a MAS in line with Resolution A.950 (23) Article 1.1?

H: No.

T: Yes.

K: No.

3) Does any agreement exist between the Swedish Maritime Administration, the County Council, The County Rescue Services and the Harbour Authorities as regards Places of Refuge?

H, T and K: No.

4) Any other comments.

H, T and K: No response.

The results of the study suggested that further research on the subject was warranted.

Correspondence sent to prospective interviewees.

The following correspondence was sent to addresses taken from the Helcom list. It includes a short scenario which was either used as an introduction to the interviews or introduced into the interview at a later stage. In its Size 12 format it was deliberately kept to one A4 page and the length of the interview was deliberately kept to 45 minutes. The correspondence was sent as an e-mail attachment to the addresses provided in the Helcom List when possible and otherwise by regular post. Modifications omitting references to 2002/59/EC were made for the version sent to the Russian Federation.

Dear Sir or Madam,

I am studying at the World Maritime University (WMU) in Malmoe, Sweden for the degree of Master of Science in Maritime Affairs with Maritime Administration as my specialisation, and work as a Lecturer in Maritime English at Kalmar Maritime Academy in Sweden where I am also involved in the Baltic Master project co-financed by the European Union.

As part of my research for my thesis at WMU I am aiming to conduct interviews with administrative contact points taken from Helcom's Response Manual in the Baltic area (updated June 2005) on the topic of my thesis entitled 'The State of Play as regards Places of Refuge in the Baltic Sea'. I would therefore like to organise a time to visit you at your workplace for an approx. 45-minute meeting in order to discuss recent developments on this subject, to provide me with a clearer picture of it and the maritime industry in general.

The object of the interview is to gain up-to-date information from maritime experts on the allocation of Places of Refuge in the Baltic Sea area for use both for my Master's thesis and for use within Work Package 2 of the Baltic Master project which deals with the same subject. The discussion, for example could centre on whether Places of Refuge have been determined in your state and if this information is available to the public, or the sequence of events both from the point of view of the respective Masters of the vessels involved and the shore-based response, the relevant legislation being EU's 2002/59/EC Article 20 and its (proposed) amendment as well as the IMO Res. A.949 (23) and IMO Res. A.950 (23). I would be pleased to provide a detailed list of questions substantially prior to the interview that we could follow more strictly if you wish and because this is an academic study complete and absolute anonymity is guaranteed if desired.

In order to have some kind of focus for the conversation I include in this letter a very short scenario that can be used as a reference point for discussion. You need not write anything or answer any questionnaires but I would be very grateful if you could set aside a little of your time for this meeting.

I would very much appreciate it if we could meet on DATE, I will try to contact you at the telephone number provided in the Helcom Response Manual within the next few days to possibly organise a meeting. Thanking you for your time and in hope of meeting you soon.

Yours faithfully,
John Ohlson.

The scenario:

The Mary Ann a Suez Max Crude carrier, DWT 130,000 MT has collided with a chemical tanker. No crewmembers have been injured on either vessel. The Mary Ann is leaking oil and the chemical tanker appears damaged. The incident occurred within your EEZ and is within your jurisdiction. What steps would your state take in this situation?

The Questionnaire.

The following questionnaire was sent to each interviewee prior to the interview although in the case of the Russian Federation modifications were made to omit the section on 2002/59/EC.

Questions: Preparation for Interview.

The three main areas that I wish to cover in the interview are the following (with reference to the scenario when required). Please refer to Appendix containing IMO Resolutions and EU Directive if required.

A) The national interpretation/ ratification of international legislation on the PoR issue.

- 1) According to EU Directive 2002/59/EC have national plans been drawn up to provide Places of Refuge?

Were these plans made available to the Commission by 5 February 2004?

Please outline the steps taken (including the type of PoRs allocated ports / bays / anchorages).

Is this information openly available to the public / on the public domain?

- 2) Which national law(s) has/have been passed that implement the content of 2002/59/EC and the IMO Guidelines A.949 (23) and A.950 (23)?

Were there any existing laws for the allocation of PoRs before the advent of the IMO guidelines?
According to the law(s) mentioned above, what are the functions and responsibilities of each body in the refuge decision-making process?

Please provide an explanation (eg a diagram/model/flow chart) of the decision-making process in your country that would be used in the scenario provided.

Have any steps yet been taken according to the EU Proposal for a Directive amending Directive 2002/59/EC (i.e. re-writing Article 20)? YES / NO.

If yes: Has an independent competent authority for receiving and handling alerts been set up according to Art.8 (2)?

If so, what is the make-up of this authority?

Is it one person (eg UK SOSREP) or a group? IN OTHER WORDS:

Who takes the final decision to accommodate a ship in distress?

Have plans been drawn up according to 9(2) of the Proposal? In particular have the following points (copied from this Article) been considered:

- the identity of the authority or authorities in charge of receiving and handling alerts (as above);
- the identity of the authority responsible for assessing the situation, selecting a suitable place of refuge and taking a decision on accommodating a ship in distress in the place of refuge selected;
- the inventory of potential places of refuge,
- the assessment procedures for selecting the place of refuge on the basis of places listed on the inventory;
- the resources and installations suitable for assistance, rescue and combating pollution;
- any international coordination and decision-making mechanisms that may be applicable;
- the financial guarantee and liability procedures in place for ships accommodated in a place of refuge.

B) Allocation of a Place of Refuge from the Master's perspective.

1) Which body functions as the MAS according to IMO Guidelines A.950 (23)

Is the contact name for the MAS available to:

the general public?

the Master onboard a vessel in the Baltic/within Helcom's boundaries?

If so, how is this information made available to the Master (which manual can this information be found in – Admiralty List of Radio Signals)?

2) From the Master's initial call please provide the sequence of events that would follow.

C) Allocation of a Place of Refuge from a land-based perspective.

1) Have coastal communities been able to influence the allocation of (any) fixed / designated places of refuge? Are local communities involved in planning scenarios/exercises?

2) How are response forces structured? Nationally and on the local level?

3) At what point is a vessel granted a PoR? –

Damage to ship

Damage to cargo

Loss of life?

A combination of the three?

Expected damage to ship

Expected damage to cargo

Expected loss of life

A combination of the three?

After a Distress call has been made?

4) What types of vessels are granted PoR?

Flag state? Classification society? Cargo? Ship type? Age?

No criteria – all vessels in need of assistance/ in distress?

How is communication between the different entities involved in the refuge operation handled? (eg between ports/ salvage/ oil spill response – tugs) Who else is informed?

Local communities? How?

In conclusion,

What are the laws that have been passed,

What would the sequence of events be and;

How would local communities be affected by the scenario?

Appendix to the Questionnaire.

IMO and EU Legislation regarding Places of Refuge.

Please note that the following consists of condensed versions of both the EU Directive and the two relevant IMO Resolutions. Complete copies of these can be obtained by accessing the following sites:

1) Directive:
http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=SL&numdoc=32002L0059 Available in all EU official languages.

2) Proposal for a Directive amending 2002/59/EC

3) IMO Resolution A.949 (23) – Guidelines on Places of Refuge:
http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=SL&numdoc=32002L0059

4) IMO Resolution A.950 (23) - Maritime Assistance Services:
http://www.imo.org/includes/blastDataOnly.asp/data_id%3D9043/950.pdf

1) 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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission(1),

Having regard to the Opinion of the Economic and Social Committee(2),

Having regard to the opinion of the Committee of the Regions(3),

Acting in accordance with the procedure indicated in Article 251 of the Treaty(4),

Article 20

Places of refuge

Member States, having consulted the parties concerned, shall draw up, taking into account *relevant guidelines by IMO*, plans to accommodate, in the waters under

their jurisdiction, ships in distress. Such plans shall contain the necessary arrangements and procedures taking into account operational and environmental constraints, to ensure that ships in distress may immediately go to a place of refuge subject to authorisation by the competent authority. Where the Member State considers it necessary and feasible, the plans must contain arrangements for the provision of adequate means and facilities for assistance, salvage and pollution response.

Plans for accommodating ships in distress shall be made available upon demand. Member States shall inform the Commission by 5 February 2004 of the measures taken in application of the first paragraph.

2) The Proposal for a Directive amending Directive 2002/59/EC

8. Article 20 shall be replaced by the following:

“Article 20 – Accommodation of ships in distress in places of refuge

(1) Member States shall ensure that, subject to the results of the assessment of the situation carried out on the basis of the plan referred to in Article 20a, ships in distress are admitted to a place of refuge which will make it possible to limit the threat posed by their situation.

(2) The accommodation of a ship in distress in a place of refuge shall be the subject of a prior assessment of the situation and a decision taken by an independent competent authority designated by the Member State.

(3) The authorities referred to in paragraph 2 shall meet regularly to exchange their expertise and improve the measures taken pursuant to this Article. They may meet at any time, on account of specific circumstances, at the initiative of one of them or of the Commission.”

9. The following Article 20a shall be inserted:

“Article 20a - Plans for the accommodation of ships in distress

(1) Member States shall draw up plans for responding to threats presented by ships in distress in the waters under their jurisdiction.

(2) The plans referred to in paragraph 1 shall be prepared after consultation of the parties concerned, taking into account the relevant IMO guidelines referred to in Article 3(a), and shall contain at least the following:

- the identity of the authority or authorities in charge of receiving and handling alerts;
- the identity of the authority responsible for assessing the situation, selecting a suitable place of refuge and taking a decision on accommodating a ship in distress in the place of refuge selected;
- the inventory of potential places of refuge, recapitulating those elements which are conducive to speedy assessment and decision-making, including descriptions of the environmental and social factors and the

natural conditions of the potential places considered;

- the assessment procedures for selecting the place of refuge on the basis of places listed on the inventory;
- the resources and installations suitable for assistance, rescue and combating pollution;
- any international coordination and decision-making mechanisms that may be applicable;
- the financial guarantee and liability procedures in place for ships accommodated in a place of refuge.

(3) Member States shall publish the name of the competent authority referred to in Article 20(2) and the list of suitable contact points for receiving and handling alerts. They shall communicate to the Commission the inventory of potential places of refuge, and furthermore communicate the relevant information on the plans and places of refuge to the neighbouring Member States.

In implementing the procedures provided for in the plans for accommodating ships in distress, they shall ensure that all relevant information on the plans and places of refuge is made available to the parties involved in the operations, including assistance and towing companies.”

10. The following Article 20b shall be inserted:

“Article 20b – Financial guarantees

(1) Prior to accommodating a ship in distress in a place of refuge, the Member State may request the ship’s operator, agent or master to present an insurance certificate or a financial guarantee, within the meaning of Article X of Directive XX/XXXX/EC [on civil liability and the financial guarantees given by shipowners], covering his liability for damage caused by the ship.

(2) The absence of an insurance certificate or financial guarantee does not exonerate the Member States from the prior assessment and decision referred to in Article 20.”

The ‘relevant guidelines’ mentioned above relate to:

3) IMO Resolution A 949 (23): Guidelines on Places of Refuge for Ships in need of Assistance. Condensed version provided below:

ASSEMBLY 23rd session. Agenda item 17

A 23/Res.949. 5 March 2004

Original: ENGLISH

Resolution A.949(23)

Adopted on 5 December 2003

(Agenda item 17)

GUIDELINES ON PLACES OF REFUGE FOR SHIPS IN NEED OF ASSISTANCE.

GUIDELINES FOR ACTIONS EXPECTED OF COASTAL STATES

3.1 Under international law, a coastal State may require the ship's master or company to take appropriate action within a prescribed time limit with a view to halting a threat of danger. In cases of failure or urgency, the coastal State can exercise its authority in taking responsive action appropriate to the threat.

3.2 It is therefore important that coastal States establish procedures to address these issues, even if no established damage and/or pollution has occurred.

3.3 Coastal States should, in particular, establish a Maritime Assistance Service (MAS). Unless neighbouring States make the necessary arrangements to establish a joint service.

Assessment of places of refuge.

Generic assessment and preparatory measures

3.4 It is recommended that coastal States endeavour to establish procedures consistent with these Guidelines by which to receive and act on requests for assistance with a view to authorizing, where appropriate, the use of a suitable place of refuge.

3.5 The maritime authorities (and, where necessary, the port authorities) should, for each place of refuge, make an objective analysis of the advantages and disadvantages of allowing a ship in need of assistance to proceed to a place of refuge, taking into consideration the analysis factors listed in paragraph 2 of Appendix 2.

3.6 The aforementioned analysis, which should take the form of contingency plans, is to be in preparation for the analysis provided for below when an incident occurs.

3.7 The maritime authorities, port authorities, authorities responsible for shore side safety and generally all governmental authorities concerned should ensure that an appropriate system for information-sharing exists and should establish communications and alert procedures (identification of contact persons, telephone numbers, etc.), as appropriate.

3.8 The aforementioned authorities should plan the modalities for a joint assessment of the situation.

and 4) IMO Resolution A.950 (23): Maritime Assistance Services. Condensed version provided below:

ASSEMBLY. 23rd session. Agenda item 17

A 23/Res.950

26 February 2004

Original: ENGLISH

Resolution A.950(23). Adopted on 5 December 2003. (Agenda item 17)

MARITIME ASSISTANCE SERVICES (MAS)

1 Establishment of MASs

1.1 The establishment of a **MAS** should not necessarily entail the setting up of a new organization. In so far as the present guidelines are observed, the functions of the **MAS** could, at the discretion of the Administration, be discharged by an existing organization, preferably an MRCC, or alternatively a harbour master's office, a coast guard operations centre (if one exists) or another body.

1.2 The allocation of **MAS** functions to an MRCC could from a practical viewpoint be an advantageous and effective solution but would require the personnel to be well trained in distinguishing between circumstances causing a ship to find itself in a distress situation and circumstances placing a ship in a difficult situation but not in distress as defined in the SAR Convention and procedures arising there from. It should be recalled that the MRCC concept entails co-ordination of search and rescue operations. By contrast, a **MAS**, within the scope of the above resolution, is responsible only for receiving and transmitting communications and monitoring the situation.

1.3 The fact that the resolution recommends every coastal State to establish a **MAS** should not prevent neighbouring coastal States from combining their resources under suitable arrangements to operate a joint **MAS**.

1.4 Conversely, a coastal State should be able to establish more than one **MAS** if necessity so warrants.

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