



PLACES OF REFUGE FOR SHIPS IN NEED OF ASSISTANCE
A POSITION PAPER BY THE INTERNATIONAL CHAMBER OF SHIPPING, ECSA, the Asian Shipowners' Forum, the International Salvage Union, the International Union of Marine Insurance and the International Group of P&I Clubs

It is generally recognised that when a ship has suffered an incident, the best way of preventing damage or pollution from its progressive deterioration is to transfer its cargo and bunkers, and to repair the damage. Such an operation is best carried out in a place of refuge (POR), that is, a place where a ship in need of assistance can take action to stabilise its condition and reduce the hazards to navigation, and to protect human life and the environment. (IMO Guidelines (Assembly Resolution A.949(23), on places of refuge for ships in need of assistance) (“the IMO POR Guidelines”).)

The IMO POR Guidelines were developed and agreed in the aftermath of the “Prestige” incident in 2002 but, even so, incidents continue where ships in need of assistance have reportedly been denied prompt access to places of refuge. Most recently, there have been two high-profile cases in 2012. The first of these, the **Stolt Valor**, involved an explosion and fire aboard the ship during which a fatality occurred, off the coast of the Kingdom of Saudi Arabia. Repeated requests at the early stages of the casualty to the coastal States concerned for the casualty to be granted access to a POR were denied. In the circumstances, the salvors were forced to conduct hazardous operations in the open sea with waves of up to 6m. Formal permission to access a POR was not granted until almost three months later. Had a place of refuge been earlier provided, the removal of the remaining cargo and bunkers could have been carried out much more quickly, in greater safety and with less risk to the environment.

The second case concerned a containership, the **Flaminia**, in July 2012, which suffered a fire and explosion while in transit from Charleston to Antwerp. On 30 July the salvors, who had successfully controlled the fire, asked several European government authorities for permission to enter their territorial waters to shelter the vessel and continue their work. Germany, the vessel’s flag State, indicated in August that it would be prepared to grant access. The owners and salvors needed to obtain however the permission of the UK and France to tow the vessel through the Channel. Coastal State inspections took place to ensure the vessel was safe for towage through territorial waters of UK, France, Belgium and the Netherlands en route to Germany. The vessel finally arrived in Germany in September 2012 - almost two months from the date of the casualty.

These two incidences of delay in the provision of a place of refuge illustrate a need for earlier and more effective intervention by coastal States in dealing with ships in distress, which has led to calls for revised measures to be introduced. Shipowners, however, have reviewed the measures already in place to deal with ships in distress and have concluded that the existing measures, which seek to balance the interests of the coastal State and the safety of the ship and cargo, are broadly sufficient as long as they are properly and widely implemented.

The existing measures include, at the international level, **the IMO POR Guidelines** noted above. The Guidelines recognise that the best way of protecting a ship in distress and preventing pollution is to transfer its cargo and bunkers and undertake repair in a place of refuge, but that to bring a ship into a place of refuge near a coast may endanger the coastal State, both economically and from the environmental point of view. Therefore, granting access to a place of refuge involves a political decision to be taken on a case-by-case basis, after considering and balancing the interests of the affected ship with those of the environment and the State in question. The IMO POR Guidelines provide a framework to assess the situation of ships requiring assistance and contain a non-exhaustive list of objective and relevant criteria that the coastal state ought to consider “in a balanced manner and give shelter whenever reasonably possible”.

The IMO POR Guidelines are, importantly, supplemented by **IMO Assembly Resolution A.950(23)** (recommending that all coastal States should establish a Maritime Assistance Service (MAS)) and **Guidelines on the Control of Ships in an Emergency**, approved by the IMO Maritime Safety Committee in 2007 (MSC.1/Circ 1251).

In addition to these provisions, the International Convention on Salvage 1989, provides that a State Party, when deciding in the context of a salvage operation whether to admit a vessel in distress, shall take into account the need for co-operation between salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general.

The intention of all of these provisions is to encourage and support coastal States to designate places of refuge for use when confronted with situations involving ships (laden tankers, in particular) in need of assistance off their coasts and to draw up relevant emergency plans. Such actions avoid governments being unprepared to face such situations and, because of that, risking the wrong decision being made by improvising or, in the heat of the moment, acting under pressure from groups representing various interests. (IMO commentary on the IMO POR Guidelines).

In Europe, the existing measures are contained in **the European Community vessel traffic monitoring and information system (Directive 2002/59/EC as amended by Directive 2009/17/EC** (“the VTM Directive”).

Among other things, the VTM Directive provides that non-availability of a place of refuge may have serious consequences in the event of an accident at sea. Member States should therefore draw up and implement plans whereby ships in distress may, if the situation so requires, be given refuge in their ports or any other sheltered area in the best conditions possible. Where necessary and feasible, these plans should include the provision of adequate means and facilities for assistance, salvage and pollution response (Article 20). Moreover, these plans and procedures are to be established by the competent authority on the basis of IMO Resolutions A.949(23) and A.950(23). In this way, the VTM Directive imports the list of criteria in the IMO POR Guidelines, which is to be given due consideration when deciding on providing a place of refuge.

As a result of these provisions, EU Member States may not issue an outright refusal of a place of refuge but instead are obliged to perform an initial assessment on the basis of certain parameters prior to making a decision on accommodating a ship in distress.

Significantly, the EU VTM Directive also states that the safety of human life and the environment are the overriding concern, and issues of financial security, whilst important, are of secondary concern.

Both the international measures agreed at the IMO and the EU VTM Directive stress the importance of establishing an objective decision making process assisted by independent expert advice, and the establishment of an authority tasked with coordinating information and resources, (in the case of the IMO POR Guidelines, this is the MAS, and in the case of the EU VTM Directive, it is the “Competent authority”).

Both the IMO POR Guidelines and the EU VTM Directive are inspired by the successful United Kingdom model established in 2003 by which the UK Secretary of State’s Representative for Maritime Salvage and Intervention (SOSREP) has powers of intervention and direction and full authority to oversee all incidents in UK waters where there is a significant risk of pollution. He may direct vessels to places of refuge when judged appropriate without, notionally, the risk of political interference from politicians. In a number of high profile cases, notably, the **Napoli** in 2009, the SOSREP Model has demonstrated the importance and effectiveness of a single, independent decision-making process with wide and robust intervention powers.

Industry’s Position

The shipping industry believes that customary international law provides ships with a right to a place of refuge when they are in distress. Therefore the refusal by some coastal States to make available a place of refuge, and the risk to the safety of ships and the environment in consequence, is noted with dismay. The Industry therefore welcomes the development of rules and guidance at the IMO and by the EU, in

recognition of the serious risk to the environment and the ship if a place of refuge is not made available.

However, in order to provide the necessary protection, it is imperative that these rules and guidance are implemented by all States and that States give them due regard when confronted with a ship in distress. In particular, coastal States should prepare relevant emergency plans and designate appropriate places of refuge (even if these places are not published) and consider all relevant criteria objectively and independently when deciding if a ship can be allowed into a place of refuge.

Accordingly, Industry encourages governments to consider adopting the IMO POR Guidelines and the establishment of a MAS as a matter of urgency and when doing so, also to consider adopting similar measures to those prescribed by the EU VTM Directive concerning the powers of competent authorities to take independent decisions (Articles 20 and 20a of the VTM Directive). Industry also advocates improved cooperation and communication between States, and also between competent authorities and the parties involved in an incident, in order to facilitate decision-making in cases of ships that are in need of assistance.

Finally, the shipping industry recognises and understands the concerns of coastal States that may deny access to a place of refuge because of fears that the casualty will cause loss and damage (for example, through oil pollution), which might not be compensated because either the ship can call upon a defence or a limit of liability or because the ship has insufficient or no financial security in place to fully meet its eventual liability.

In this regard, Industry notes that the liabilities that might arise from a ship in distress being taken into a place of refuge are addressed in a number of international liability and compensation conventions agreed at the IMO, *viz.* the Civil Liability Convention, 1992, the Fund Convention 1992, the Supplementary Fund Convention, 2003 and the Bunkers Convention 2006 (in relation to oil pollution damage); the Hazardous and Noxious Substances (HNS) Convention, 1996 as amended by the HNS Protocol, 2010 (regarding pollution from HNS); the Nairobi Convention on Wreck removal, 2007 (regarding liability following a wreck). All of these international conventions provide for a strict liability on the part of the ship. Moreover, the system of compensation is supported by and tied to compulsory insurance and direct action against the insurer, which has to be certified by the flag State.

Industry therefore advocates that States should ratify and bring into force as soon as possible the above mentioned conventions in order to ensure swift compensation for losses that may be incurred following a ship's accommodation in a place of refuge.

With the ratification of these international conventions, coastal States will obtain a high degree of security as to liability and compensation for any losses following a decision to provide a place of refuge.