

LEGAL COMMITTEE  
101st session  
Agenda item 11

LEG 101/11/4  
14 March 2014  
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**ANY OTHER BUSINESS**

**(iv) Advice and guidance on issues brought to the Committee in connection with implementation of IMO instruments**

**Places of Refuge for Ships in Need of Assistance**

**Submitted by International Chamber of Shipping, International Group of P&I Clubs, International Union of Marine Insurance, and International Salvors' Union**

**SUMMARY**

*Executive summary:* Coastal States, Flag States, and technical experts recognise that a ship will request a place of refuge only if it is in distress or in need of assistance. Early and decisive intervention will minimise the risk of structural deterioration and mitigate the threat of pollution from the ship's cargo and bunkers. Such intervention is carried out most effectively in the relative safety of a designated place of refuge (POR), where experts and coastal State representatives can take proportionate and appropriate action to protect human life and the marine environment

*Strategic direction:* 2.0

*High-level action:* 2.0.1

*Planned output:* 2.0.1.5

*Action to be taken:* Paragraph 12

*Related documents:* LEG 8/1, resolution A.949(23), resolution A.950(23) and MSC.1/Circ.1251

**Introduction**

1 In November 2003, the IMO Assembly adopted two resolutions addressing the issue of places of refuge for ships in distress, recognising that the resolutions are an important step in facilitating incident response and effective management of maritime casualties.

2 Assembly resolution A.949(23) adopted the *Guidelines on places of refuge for ships in need of assistance* (the Guidelines), which were developed following the sinking of the oil tanker "Prestige" in 2002. The issue had been on the IMO agenda since the "Erika" and "Castor" incidents in 1999 and 2000, respectively.

### **IMO Guidelines on places of refuge**

3 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. Granting access to a place of refuge should rely on an objective technical analysis that assesses risks to navigation, human health and the marine environment.

4 The Guidelines present a non-exhaustive list of factors which the coastal State should consider “in a balanced manner and give shelter whenever reasonably possible” (paragraph 3.12 of the Guidelines). They 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.

5 The Guidelines are, importantly, supplemented by 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 (document MSC.1/Circ.1251).

6 In addition to these provisions, the International Convention on Salvage, 1989, provides that a State Party shall, when deciding in the context of a salvage operation whether to admit a vessel in distress, “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” (article 11). The intention of all of these provisions is to encourage and support coastal States to designate places of refuge when confronted with situations involving ships in need of assistance.

7 The industry welcomed the adoption of resolution A.949(23). However, incidents continue to be reported where ships in need of assistance are denied prompt access to places of refuge. These incidents have illustrated a need for the Legal Committee to reinforce its message that the Guidelines should be given due regard when States are asked to provide a place of refuge to a ship in distress or in need of assistance.

### **Framework of IMO liability and compensation conventions**

8 The existing framework of international conventions including the Civil Liability Convention, 1992, the Bunkers Convention 2001, the Hazardous and Noxious Substances (HNS) Convention, 1996 as amended by the HNS Protocol, 2010, and the Nairobi International Convention on the Removal of Wrecks, 2007 (WRC 2007) provide for strict liability on the part of the shipowner, as well as compulsory insurance which has to be certified by States Parties to the conventions. The ratification and effective implementation of these conventions, along with the Fund Convention 1992 and the Supplementary Fund Convention 2003 in respect of oil pollution damage, will bring into effect the provisions concerning liability and compensation for pollution prevention measures, clean-up operations, and wreck removal, including where damage or losses occur following a State's decision to grant a ship a place of refuge.

9 In this context the Legal Committee's attention is drawn in particular to the WRC 2007 (articles 6 and 7) which gives legal effect to some aspects of the Guidelines. Moreover, the provisions in this Convention, on shipowner's strict liability supported by mandatory financial security and a right for the Affected State to recover costs directly from the provider of the financial security, should allay concerns that an Affected State might not be

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compensated once a ship has been declared a hazard and appropriate and proportionate measures have been taken. The industry would therefore encourage Member States to consider ratifying the WRC 2007 and, when doing so, to extend its application to the territorial sea, in order to provide a binding liability and compensation framework for dealing with maritime hazards.

10 The industry recognises that it may not be appropriate for coastal States to adhere to the Guidelines for every incident involving a ship in distress. However, recent cases would seem to indicate a need for greater consideration of the Guidelines for ships seeking a place of refuge.

**Action requested of the Committee**

11 The Legal Committee is invited to take note of the information provided in this document and to decide as appropriate.

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