

POLLUTION PREVENTION AND UNFAIR TREATMENT OF CONTRACTORS

By Andreas Tsavlis, Former President of the International Salvage Union

Zero tolerance of spills and marine pollution is now accepted and coastal states' requirements have become more and more stringent as wider public awareness of the importance of environmental protection has grown over the past decades. It is against this backdrop that salvors conduct operations to save casualty vessels – each one of which represents a pollution threat even if it is carrying non-hazardous cargo.

The International Salvage Union conducts an annual survey of its members' success in preventing pollution. This survey began in 1994 and in the 17 years to end-2011, ISU members salvaged 17,047,014 tonnes of potential pollutants, an average of over one million tonnes per year. This consists of 12,871,947 tonnes of crude oil and fuel oil; 1,060,704 tonnes of chemicals; 1,404,897 tonnes of bunker fuel and 1,709,405 tonnes of "other pollutants".

Not all of the pollutants were at risk of leaking into the sea but there can be no doubt that collectively salvor's actions have been of great benefit in helping to protect the marine environment from potential damage. Some context is given by the fact that in the United States' worst environmental disaster, 700,000 tonnes of oil was released into the Gulf of Mexico in 2010.

Given its vital role in protecting the environment, the ISU has some time ago pressed for change to the 1989 Salvage Convention. The proposals were intended to introduce a salvage award that recognises salvor's efforts to protect the environment during salvage operations. However in October 2012 the Comité Maritime International's conference in Beijing did not support the ISU proposals for change. ISU was disappointed but nevertheless grateful to those countries which did support change.

ISU will continue to work with shipowners, the insurance community, maritime lawyers and other relevant parties to ensure that salvors are properly rewarded for all of their successful work and that the framework within which salvage operations are conducted encourages innovation, investment and global readiness to intervene in casualty situations.

Despite this disappointment it is a fact that in most locations it is only commercial salvors who have the equipment and expertise to prevent environmental catastrophe and as well as concerns about salvage awards, criminalisation following marine incidents is also a real worry. Creeping criminalisation is both counter-productive and in direct conflict with the goals of safer ships and cleaner seas. There are close links between the issues of criminalisation and lack of responder immunity for salvors and other emergency responders. Set in the context of pollution prevention efforts it is particularly troubling.

The shipping industry has suffered many examples of unfair treatment in recent years. For example, the case of the crew of the Hebei Spirit in Korea became a cause célèbre, and there has also been the imprisonment of the Master of the tanker Evoxos in Singapore, followed by the confinement in Spain of the Master of the Prestige. Of particular note for the salvage industry was the detention in Pakistan of seven crew members from the Tasman Spirit because in this case the Salvage Master was also detained.

In short there has been no real progress on responder immunity in the past decade. For example, IMO member governments rejected responder immunity when adopting the Bunker Spills Convention. This is a concern for salvors, as the removal of bunkers is the first priority in many salvage operations. At that time, various IMO delegations admitted that they did not wish to rule out the possibility of prosecuting salvors. Of course salvors are commercial and wish to earn income from their operations but they deal with problems that are not of their making. But lack of immunity does nothing to encourage the kind of swift, decisive response which can prevent pollution costing billions. Salvors accept that if they are negligent there should be consequences but that is very different from being strictly liable during what are necessarily uncertain and risky operations.

The risk of criminalisation feeds a blame culture more interested in scapegoats than prevention and conflicts with the very essence of salvage: under the 1989 Salvage Convention and the most commonly used salvage contract, Lloyd's Open Form, salvors must use their "best endeavours" to prevent or minimise environmental damage while engaged in salvage operations.

This was recognised by former IMO Secretary-General, Efthimios Mitropoulos who said: "Criminalisation of individuals caught up in major spills might jeopardise effective response to an incident, as it might lead to fear and indecision at crucial times. If action is taken against salvors, indecision or inactivity may be further extended as third parties and other agencies may be unwilling, or at least hesitant, to respond to an incident because of the uncertainty over their position. Criminalisation may end up depriving us of the services of those individuals or agencies who may play an instrumental role in preventing accidents and, once they do happen, in mitigating their impact on human life and the environment."

A notable case was the 87,580 dwt Tasman Spirit which grounded off Karachi, in 2003. Her cargo consisted of

67,532 tonnes of crude oil. It is thought that around 20,000 tonnes was already lost before a salvage contract was agreed. During the week following the grounding the vessel suffered more damage in a monsoon storm. The weakened hull eventually broke in two and seven members of the tanker's crew were detained, as was the Salvage Master who was held for nine months in Pakistan without any criminal charge brought against him or the Tasman Spirit crew.

In Europe, the EU's Directive on Ship-Source Pollution also causes real concern. This allows for criminal sanctions against Masters, Shipowners, charterers, Ship managers, port authorities, classification societies and salvors. A joint industry paper from INTERTANKO, the International Chamber of Shipping and others, noted that this long list of "potential criminals" did not include public entities. The paper noted the prominent role that authorities have had in the causation chain leading to some pollution incidents. But the EU adopted the proposals and the International Transport Workers' Federation reacted with a warning that the measures would only exacerbate the trend towards treating Masters and senior officers as scapegoats. The EU measures conflict with existing IMO conventions and therefore add to pressures steadily undermining the UN agency's all-important primacy.

At the same time, there is concern that some EU states have failed to meet their obligations to nominate "places of refuge" for shipping casualties. A Spanish Government Decree, for example, allows the Spanish authorities to demand huge financial guarantees in return for shelter. It also permits the authorities to demand that the owner waive his rights of limitation under IMO conventions. In practical terms, this Decree amounts to a blanket ban on places of refuge along the Spanish coastline. France has legalisation providing for huge fines in spill cases. These fines may be based on multipliers of cargo value.

Ultimately, only legislators can put a stop to criminalisation. While seafarers cannot expect to be exempt from the normal legal process in criminal cases, it cannot be right that they become hostages in attempts to exact compensation payments or otherwise to attribute blame following a casualty. Seafarers should not be used as pawns by politicians and governments should meet their own obligations where places of refuge and compensation are concerned.

ISU's members are committed to investing in the equipment and people needed to protect the environment. Salvors have a proud record of pollution prevention and should be treated fairly and properly rewarded for the benefits that they confer.

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