

IG P&I CLUBS - PLACES OF REFUGE

Historical experience reveals a worrying number of incidents where vessels in distress have not been promptly afforded a safe place of refuge, thereby seriously imperilling life, property and environment, in some cases with disastrous but avoidable consequences.

The issue of ships in distress seeking assistance, and in need of a place of refuge, remains one of fundamental importance for shipowners and for their insurers. For many years, the Group has participated constructively in discussions on this issue at the International Maritime Organisation, within the European Union and with individual State maritime administrations.

The vital role of the coastal States

When a shipowner approaches a coastal State or States with a request to afford a place of refuge for a vessel in distress, this will generally be with the objectives of saving or protecting life, protecting the marine environment and preserving property. Indeed, these objectives are consistent with a shipowner's obligations in relation to safety of life at sea under SOLAS and, where applicable, in relation to protection of the environment under MARPOL 73/78.

In such situations shipowners will seek a coastal State's approval to enter a port or safe haven in the territory of the State concerned. If approval is granted, the safety of crew members is assured, damage to the ship can be assessed and stabilised, and fuel and cargo can be transferred to another ship or discharged on land in a controlled and safe manner. Such actions mitigate the risks not only to the parties involved in the maritime adventure, but also to third-party interests in the coastal State or States in question who, as experience has shown, can be very significantly impacted by the consequences of not affording a safe haven to a vessel in distress. But the decision on whether to grant a place of refuge rests not with the shipowner, but with the relevant coastal State which has the sole authority to make the necessary decision.

Prompt and decisive intervention

Prompt and decisive intervention is a key factor in preventing a manageable casualty from becoming a maritime disaster. Recognising this objective, a number of States have very sensibly implemented streamlined casualty evaluation and decision-making processes for handling major casualties, the UK SOSREP and Australian MERCOM systems being two examples which have proven to be very effective in ensuring prompt response to casualty situations.

But the recent history of ships seeking refuge in ports and coastal shelters reveals that, regrettably, there are considerable delays in the decision-making processes and in some instances vessels are refused access to a port or place of refuge. A number of well-publicised incidents over recent years, including the PRESTIGE in the Bay of Biscay (2002), the STOLT VALOR in the Persian Gulf (2011), the FLAMINIA in the English Channel (2012) and most recently the MARITIME MAISIE in the Sea of Japan (2014), demonstrate the problems which arise where coastal States, for whatever reason, fail to respond positively and promptly to a shipowner's request for a place of refuge.

The IMO regime

Whilst there is no specific legal requirement, or international rules, that impose a duty on coastal States to grant or designate a place of refuge, there are IMO Guidelines on Places of Refuge for Ships in Need of Assistance which were adopted in 2003. These address not only the actions required from masters and/or salvors in appraising and responding to the need for a place of refuge, but also the actions expected of coastal States in such situations, both in advance planning and response as and when incidents arise. There have been suggestions that the IMO should develop a stand-alone Places of Refuge Convention but, following consideration within the IMO Legal Committee, it was not considered that there was any need for such an instrument. States were, however, encouraged to adhere to, and apply, the guidelines and to ratify the IMO conventions, which through their no-fault compensation provisions provide financial security and comfort for States when considering whether or not to grant a place of refuge to a vessel in distress.

The EU review

EU Directive 2009/17 (the "Vessel Monitoring Directive" or VTM Directive) requires Member States to designate a competent authority or authorities to take independent decisions concerning the accommodation of ships in need of assistance. This includes drawing up response plans on the basis of IMO Resolution A.949 and making decisions in relation to the accommodation of ships if they consider that this is necessary for the purposes of protection of human life or the environment. It does not however mandate accommodation, which is left to the decision of the competent authorities. A repeated concern expressed by States relates to the availability of compensation for damages and expenses which may arise as a result of a vessel being granted a port or place of refuge. The Group has repeatedly pointed out that the solution to this concern lies in States ratifying and implementing the IMO maritime conventions. This provides a comprehensive compensation system which will respond to all the main liabilities arising out of a vessel being provided with a port or place of refuge, and which is backed by the financial security provided by the Group Clubs

In 2013, the European Commission launched a review on the issue of places of refuge, with a view to developing its own guidelines for member States on handling these situations. This review has involved some consultation and engagement with shipping, salvage and insurance industry, and the Group has been, and remains, involved in this process. It has provided input on the drafting of the guidelines and participated in joint meetings with Member State and industry representatives. This project remains a work in progress, but may result in European guidelines being

finalised in the latter part of 2015. Hopefully these guidelines will provide encouragement to States to respond more promptly and positively to shipowners' requests for a port or place of refuge.

Joint industry initiative

Shipowners, Clubs, salvors and marine property underwriters have a mutual interest in improving States' pre-planning for, and response to, port or place of refuge situations. They should continue to work together, through initiatives such as the current EU review, to promote a more focused and proactive response by States in considering requests to grant a port or place of refuge to a vessel in distress. The Group is committed to pursuing, and will continue to support, such joint initiatives along with other relevant industry associations

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