



XIXTH INTERNATIONAL CONGRESS - IIDM

DIFERENCOJ POR UNIFORMECON!

Places of Refuge

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1989 SALVAGE CONVENTION

Article 9 • *Rights of coastal States*

Nothing in this Convention shall affect the right of the coastal State concerned to take measures in accordance with generally recognized principles of international law to protect its coastline or related interests from pollution or the threat of pollution following upon a maritime casualty or acts relating to such a casualty which may reasonably be expected to result in major harmful consequences, including the right of a coastal State to give directions in relation to salvage operations.

Article 11 • *Co-operation*

A State Party shall, whenever regulating or deciding upon matters relating to salvage operations such as admittance to ports of vessels in distress or the provision of facilities to salvors, 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.



m/t “CASTOR” • 30 December 2000

The “Castor”, on its way from Romania to Nigeria with a full cargo of 30.000 tons of gasoline, suffered a 24 m. crack in her main deck during a storm whilst navigating off the coast of Morocco. The crew was evacuated and salvors sought permission from six States for a place of refuge to perform ship to ship transfer. Permission was denied and salvors had to perform transshipment on the high seas.

m/t “PRESTIGE” • 13 November 2002

The “Prestige”, loaded with 77.000 m/t of fuel oil, developed a list off the coast of La Coruña in severe weather conditions.

On seeking a place of refuge she was told to steer away with the authorities of three States refusing her access.

Six days after the initial incident the “Prestige” broke into two and sank causing substantial pollution along many hundreds of kilometres of coastline.



DIRECTIVE 2002/59/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

27 June 2002

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.



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

Resolution A.949(23) - 5 December 2003

2. GUIDELINES FOR ACTION REQUIRED OF MASTERS AND/OR SALVORS OF SHIPS IN NEED OF A PLACE OF REFUGE

Appraisal of the situation

- 2.1 The master should, where necessary with the assistance of the company and/or the salvor, identify the reasons for his/her ship's need of assistance.

3. GUIDELINES FOR ACTIONS EXPECTED OF COASTAL STATES

Decision-making process for the use of a place of refuge

- 3.12 When permission to access a place of refuge is requested, there is no obligation for the coastal State to grant it, but the coastal State should weigh all the factors and risks in a balanced manner and give shelter whenever reasonably possible.
- 3.13 In the light of the outcome of the assessment provided for above, the coastal State should decide to allow or refuse admittance, coupled, where necessary, with practical requirements.



CMI
DRAFT INSTRUMENT ON PLACES OF REFUGE
APPROVED AT PLENARY SESSION OF CMI CONFERENCE
ATHENS, 17 OCTOBER 2008

Objectives

- to emphasise the position under customary international law of a presumption of a right of access to a place of refuge for a vessel in distress
- to make the presumption rebuttable by the coastal State if it can show that it was reasonable to refuse access
- to give immunity from suit to a State which grants access to a place of refuge to a vessel in distress
- to give more force to the IMO Guidelines, which CMI recognises as playing a significant role in assisting to define the ambit of “reasonableness”, when considering the behaviour of both ship owners (and their masters) and States (and port authorities)
- to clarify the position regarding the issue of letters of guarantee to secure claims of a port or coastal State, which grants access to a ship in distress
- to require coastal States to designate places of refuge in advance, although not necessarily to publicise them



DIRECTIVE 2009/17/EC

23 April 2009

Article 20 • *Competent authority for the accommodation of ships in need of assistance*

1. Member States shall designate one or more competent authorities (. . .) to take independent decisions on their own initiative concerning the accommodation of ships in need of assistance.

Article 20a • *Plans for the accommodation of ships in need of assistance*

1. Member States shall draw up plans for the accommodation of ships in order to respond to threats presented by ships in need of assistance in the waters under their jurisdiction, including, where applicable, threats to human life and the environment. The authority or authorities referred to in Article 20 shall participate in drawing up and carrying out those plans.
2. The plans referred to in paragraph 1 shall be prepared after consultation of the parties concerned, on the basis of IMO Resolutions A.949(23) and A.950(23).

Article 20b • *Decision on the accommodation of ships*

The authority or authorities referred to in Article 20 shall decide on the acceptance of a ship in a place of refuge following a prior assessment of the situation carried out on the basis of the plans referred to in Article 20a. The authority or authorities shall ensure that ships are admitted to a place of refuge if they consider such an accommodation the best course of action for the purposes of the protection of human life or the environment.



IMO'S POSITION 95 SESSION 14 April 2009

At its ninety-fifth session in 2009, the Legal Committee restated the view that there was no need for a new convention following CMI's submission of a draft text of an instrument on places of refuge. The Committee considered that the international regime, comprising the existing liability and compensation conventions for pollution damage at sea, already provided a comprehensive legal framework, especially when coupled with the Guidelines on places of refuge. Therefore noted that priority should be given by the Committee to enhancing the implementation of existing conventions.

It was also noted that the IMO liability and compensation conventions, such as Bunker 2001, CLC 1992, 2010 HNS Convention and the Nairobi Wreck Removal Convention 2007, do apply in these situations.

It was felt that such an instrument might not only interfere with States' sovereignty, and not accord with UNCLOS, but that it might also unduly interfere with the right of coastal States to deal with incidents on a case-by-case basis.



m/t “MARITIME MAISIE” • 29 December 2013

The “Maritime Maisie”, loaded with 30.000 tons of chemical suffered major structural damages after a collision with another ship 9 miles off Busan in South Korea. She started burning and salvors managed to put off the fire after 19 days and sought a safe harbour in which to safely transfer the chemicals to another ship considering too dangerous to perform the transshipment on the high seas.

Permission was denied by two States for some 100 days until the South Korean Authorities permitted her to be towed to safety in the port of Ulsan.



**IMO'S POSITION
101 SESSION
28 April - 2 May 2014**

The International Chamber of Shipping, the International Group of P&I Clubs, the International Union of Marine Insurance and the International Salvage Union noted that the Guidelines on maritime assistance service (MAS) were not working as ships in distress were continuing to be refused access to a place of refuge.

The CMI noted that the IMO Guidelines were not working as intended and reminded that at LEG 92 the CMI had submitted a draft Convention on Places of Refuge.

The IMO Legal Committee concluded that the ratification and effective implementation of the various liability and compensation conventions already in existence would make it much easier, for states faced with a request for access to a place of refuge to a ship in distress, to accept that request.