

CMI 2006 ABSTRACTS

Places of Refuge A Panel Discussion

Tuesday, 14th February
09:00 – 10:30, 11:00 – 12:30

Overview of the Session

Précis by the Chairperson of the Session
Stuart Hetherington
Partner: Colin Biggers & Paisley

When various countries in the Mediterranean region refused the "Castor" a place of refuge after she had developed a crack on the main deck during a storm in the western Mediterranean off the coast of Morocco in late 2000, the IMO Legal Committee sought the assistance of CMI to examine the legal ramifications of this problem.

CMI's work was given added impetus when the "Prestige" was refused access to a place of refuge by the Spanish authorities and sank when laden with about 77,000 tonnes of heavy fuel oil, polluting the west coast of Spain over a stretch of about 800kms, including over 250 beaches in late 2002.

Maritime Law Associations answered two questionnaires which the CMI International Working Group sent out. The first questionnaire dealt with a number of the main Conventions that impact on this area of the law. The second questionnaire looked at the legal liabilities and responsibilities of authorities that permit access to a place of refuge or refuse access to a place of refuge and damage results.

Simultaneously with the work being done by the IMO Legal Committee the Maritime Safety Committee worked on Guidelines for the assistance of both Masters and Coastal States as to what might reasonably be expected of them in a place of refuge situation. These Guidelines have found expression in Resolution A.949 (23) of the IMO and were adopted on 5 December 2003.

At its April 2005 meetings the IMO Legal Committee determined not to do further work on this topic at this stage, notwithstanding the views of the International Association of Ports and Harbours (IAPH), and some States, for work to continue in this area.

At its Assembly meeting in Paris in April 2005 the CMI resolved to continue with its work on this topic and to produce for the consideration of delegates at this Colloquium a draft Instrument so that delegates from the constituent Maritime Law Associations could express their views on the Instrument both in terms of principle and drafting, so that if thought appropriate further work could be done on this topic at the next CMI Conference.

It is therefore hoped that after the initial panel presentations at this Colloquium delegates will participate and express both their own opinions and those of their MLAs.

Places of Refuge in South Africa

Précis by the Presenter
Quintus van der Merwe
Partner: Shepstone & Wylie Attorneys

IMO Resolution 949(23) was used as a basis for drafting of the National Contingency Plan by the South African Maritime Safety Authority ("SAMSA"). The plan provides for the prevention and combating of pollution from a ship. The aim of the plan is the protection of human health and safety, minimisation of the detrimental impact to the environment and restoration of the environment, if need be.

The plan provides for the following regarding a request for a place of refuge:

- First choice will be a port in South Africa
 - Failing a port, suitable places of refuge are limited to Algoa Bay, False Bay and St Helena Bay
 - Priorities to be considered:
 - Safety of the crew;
 - Pollution prevention;
 - Type of cargo; and
 - The value of the ship and her cargo.
 - A joint response committee (JRC) made up of the major role players will consult and coordinate any response
 - SAMSA & DEAT will determine of the best place of refuge
 - Disclosure of all the relevant facts is by the owner/operator
 - Insurance cover is a pre-requisite
 - Guarantee to cover costs of pollution or wreck removal
 - If structural damage or failure to vessel, owner must enter into a salvage agreement with a salvor
 - A suitable salvage tug with the appropriate towing gear and expertise must be on standby.
 - SAMSA retains the authority to order the removal of the distressed ship at any time.
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European Commission Developments on Places of Refuge

Précis by the Presenter
Professor Dr Eric Van Hooydonk
Professor of Maritime Law and Law of the Sea
University of Antwerp

In our presentation, we shall report on recent developments relating to places of refuge at EU level since the CMI's Vancouver conference in June 2004.

Under Article 20 of the existing EU Traffic Monitoring Directive, EU Member States are obliged to draw up plans to accommodate ships in distress. Such plans must 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. In implementing these provisions, some EU Member States encountered difficulties.

In November 2005, the European Commission proposed amendments to the Traffic Monitoring Directive. These amendments first of all envisage the replacement of Article 20 by a new text pursuant to which Member States shall ensure that, subject to the results of the assessment of the situation, ships in distress are admitted to a place of refuge which will make it possible to limit the threat posed by their situation. The accommodation of a ship in distress in a place of refuge

shall be the subject of a prior assessment of the situation and a decision taken by an independent competent authority designated by the Member State. These authorities shall meet regularly to exchange their expertise and improve the measures taken pursuant to the new Article.

Next, the Commission proposes to insert a new Article 20a into the Directive, which would deal with plans for the accommodation of ships in distress. Under this provision, Member States would be under an obligation i.a. to draw up plans for responding to threats presented by ships in distress in the waters under their jurisdiction. These plans would have to take into account the relevant IMO guidelines, and shall contain a number of mandatory items, including an inventory of potential places of refuge and the financial guarantee and liability procedures in place for ships accommodated in a place of refuge.

Thirdly, a new Article 20b would be inserted on financial guarantees. Under the proposed provision, Member States would be entitled, prior to accommodating a ship in distress in a place of refuge, to request the ship's operator, agent or master to present an insurance certificate or a financial guarantee.

In our presentation, we shall discuss the newly proposed EU regime for places of refuge more in detail, and confront it with the Draft Instrument prepared by the CMI International Working Group on Places of Refuge.