

Places of Refuge - An International Disgrace

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Can a Master of a vessel that has become less than 100% seaworthy expect to receive assistance from the coastal state in whose waters the vessel is voyaging? Can the Master expect assistance without the risk of legal (criminal) action being taken against him?

Great concern has been expressed by governments and mariners that vessels requiring assistance are requesting places of refuge, which requests are being held up or prohibited by bureaucratic wrangling and the “Not-in-my back-yard” attitude of industry and State corporations. Major environmental catastrophes and legal action against individuals and organisations have ensued as a direct result of these delays and prohibitions.

A Master of a vessel requesting assistance will have weighed the circumstances and risks, and may reasonably expect that assistance will be given.

Coastal states, most of which rely on the marine transportation of goods to meet the needs of their citizens and their economies, are dragging their feet and failing to provide locations (places of refuge) where such assistance can be provided.

Following the Castor incident, in 2001 the Secretary General of IMO, William O’Neil, suggested that the Organization undertake as a matter of priority a programme to identify places where disabled vessels may obtain assistance. States were requested to review their contingency arrangements; and to provide such facilities as required to meet the circumstances.

December 5th 2003, IMO presented Resolution A949 (23) “Guidelines on Places of Refuge for Ships in Need of Assistance”.

In 2007, the European Union stated that more than half of its coastal states have identified their entire coastline as POTENTIAL places of refuge for ships in distress, while another third have singled out precise places of refuge. Very few, if any, have made the lists public.

Many coastal states have reviewed their contingency plans and developed guidelines for the evaluation of risks associated with a vessel asking for assistance and the provision of a place of refuge. One of these States, Canada, has published a notice identifying its process.

Canada is not alone in its identification of the need for assessment on a case-by-case basis. The extent of the need for assistance will depend upon the incident.

“The UK would consider it unwise pre-emptively to rule anywhere in or out as a potential place of refuge. There can be no pre-conceived list or ranking of places of refuge in waters as complex as ours because each incident has its own unique, transient and varied nature.” (Mark Clark, MCA Public Relations, Manager. May 2007).

The location for the place of refuge will depend upon the risk associated with this incident. There can be little doubt that there will be conflicts between the government agencies

involved, state corporations, private industry and governments of bordering nations. Delays brought about by these interdepartmental and international conflicts are detrimental to the vessel requesting assistance and to the environment in which the incident is occurring. Time is of the essence, and coastal states must have a contingency plan and an assessment methodology that will rapidly provide the vessel with a place of refuge at which the incident can be normalised.

The need to reduce the delays is recognised in the Canadian TP Notice. The UK has provided a unified command under the lead of a single person, the Secretary of State's Representative (SOSREP). This process has been successful, been copied by Australia, and is under consideration by the European Commission (BIMCO July 2014). This, or a similar unified command system, is essential in order to reduce the conflict between departments, and to facilitate a speedy, albeit well assessed, resolution to locating a place of refuge.

No location will meet the "one size fits all" designation for a place of refuge. Incidents may involve, among others, loss of power, hull damage, cargo, fire, pollution and sickness or death aboard. The vessel's dimensions will have a bearing on the location. Weather conditions and shelter need to be assessed. Equipment availability may be essential to the normalisation of the incident. Above all it is essential to recognise that the incident is likely to escalate and that the quicker a decision on the location of the place of refuge is made, the less likely the incident will become a catastrophe.

Two things are essential to the satisfactory resolution of an incident where the master of a vessel has requested assistance – the preparedness of a coastal state to provide a place of refuge, and a timely and efficient management of the incident.

It should be noted that the salvage industries, responding to an incident where a vessel has asked for assistance, also support the need for a quick positive response to a request for a place of refuge. The IMO Salvage Convention (1989) is quite specific about the concerns of the salvors.

The Vessel

In the tradition of the practice of good seamanship, the master of a vessel experiencing a serious incident or emergency is expected to seek shelter. This is supported by Chapter V of SOLAS. Regulation 34.1 is specific about the Master's role and discretionary power. Any Master recognising that the vessel is in need of assistance and requesting a place of refuge is using his discretion in decision-making which under this regulation is not to be compromised.

He is doing all within his power to reduce the risks associated with the incident. Rather than being pilloried he should be praised.

The Coastal State.

Notwithstanding the right of a coastal state to regulate entry into port or national waters, and its right to protect the coastline from marine pollution, (UNCLOS a194-225), it is an internationally accepted practice for a vessel in situations of force majeure or distress to enter ports or waters of another nation, but this is not regulated by UNCLOS. As recognised by IMO, ports are not the only locations where a place of refuge may be offered.

It may be practical to provide a sheltered area where the incident can be normalised, and thence allow the vessel to enter a port to complete any necessary repair.

Unified Command

A vessel needing assistance will need support from the State to which it has applied. As identified, there are numerous government departments, agencies, stakeholders, etc., which will have input into the selection or refusal of a location for a place of refuge. It will be essential for a decision to be made even if consensus is not reached.

IMO Resolution A950 (23) Marine Assistance Services recommends that States provide a single point of contact for vessels needing assistance. A unified command is an extension of this and is essential in such circumstances. The unified commander must have an overriding authority to dictate locations and processes, (the process in the United Kingdom provides for the SOSREP (one person) to obtain information from all stakeholders and to make a decision based on these data). The process streamlines the decision making which is to the advantage of the vessel and to the environment. Comité Maritime International (CMI) also recognises these needs and notes, “States shall designate a competent authority...”

Risks Associated with Request for Assistance.

The risks will be evaluated by the State before decisions are made. However, the greatest risk will be the result of refusing assistance and not providing a place of refuge.

Master’s Responsibility

The Master will retain responsibility for the ship, the safety of life and the protection of the environment. The master will seek assistance as necessary and in doing so will expect the support from the state to which the request has been made. In the event of an incident where the coastline of a state is damaged by a pollutant from the vessel, the Master will have taken all possible action to reduce or eliminate the effects of the pollutant. In asking for assistance, the Master has recognised the risks and is undertaking measures to mitigate the risks.

Legal Action

In the past, a State has chosen to take action against the polluter. In certain cases, (eg. m.v. Prestige) the State has chosen to proceed against the master of the vessel.

If the enquiry following an incident finds that the Master has been negligent, then legal proceedings against him may be reasonable. **In all other cases the Master should be protected from legal action, particularly as it is his action in asking for assistance which, if granted, will be likely to reduce the effect of the incident.**

RECOMMENDATIONS

That the Delegates to the IFSMA AGA in Chile on 16/17th April, 2015 adopt recommendations to be presented to the International Maritime Organization and the marine community to meet the pressing need to ensure that necessary aid is provided to

vessels seeking assistance and to protect the Master acting properly in accordance with his duties.

IFSMA seeks to persuade:

1. the IMO to adopt legal instruments that require coastal states to be prepared to meet the needs, in a timely manner, of a vessel requesting assistance. Coastal States shall be required to establish a risk assessment system using modern methods of communication, and involving all stakeholders, to assess risk in such circumstances. Such risk assessment process will identify the best possible location for a place of refuge taking into account all relevant factors including the interests of the vessel, the risks to the environment, any international concerns, prevailing weather and damage to a third party.
2. the IMO develops protocols that serve to protect the Master from legal action following his request for assistance whatever the outcome of the incident in respect of which the request was initiated.