



# Places of refuge

## Part 1 – Introduction and Background

Dr. Jens U. Schröder-Hinrichs

# Places of Refuge workshop

## Agenda

- 1 Introduction and background
- 2 Setting up a system for granting refuge
- 3 Requesting a place of refuge
- 4 Granting a place of refuge
- 5 Relevant EU Guidelines and support services offered
- 6 National implementation - Bulgaria
- 7 National implementation - Romania
- 8 Discussion and final remarks

# Places of refuge

## Part 1 – Introduction and background

- What are places of refuge and why do we need them?
- Legal requirements to grant refuge to ships in need of assistance?
- Relevant international guidance for granting refuge to ships in need of assistance

# 1.1 What are places of refuge and why do we need them?

## Granting refuge to ships in need of assistance is an old maritime tradition

- **Examples from maritime history**

- Polybios recounts practice from the 3rd Punic War (149-146 BC)
- Barcelona Maritime Code (1258AD): contains a provision for assistance in case of storms to be given to ships in distress
- Rules of Oleron (ca. 1266AD): stipulated a duty not only to assist mariners and merchants on board in case of distress but also to aid in saving the merchandise.
- ...

# 1.1 What are places of refuge and why do we need them?

Example: Accident of oil tanker ERIKA in 1999



# 1.1 What are places of refuge and why do we need them?

Example: Prestige accident in 2002

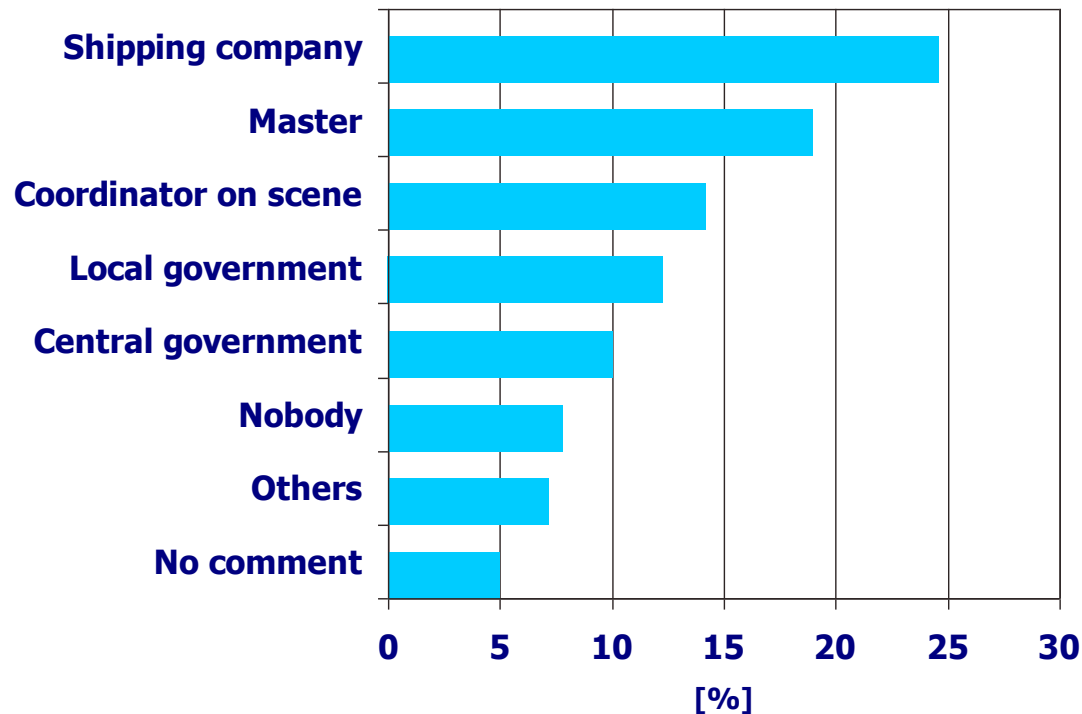




# 1.1 What are places of refuge and why do we need them?

## Example: Prestige accident in 2002

Who is responsible?



Source: La Voz de Galicia, 2003

# 1.1 What are places of refuge and why do we need them?

## Example: Prestige accident in 2002

- Impact of media





# 1.1 What are places of refuge and why do we need them?

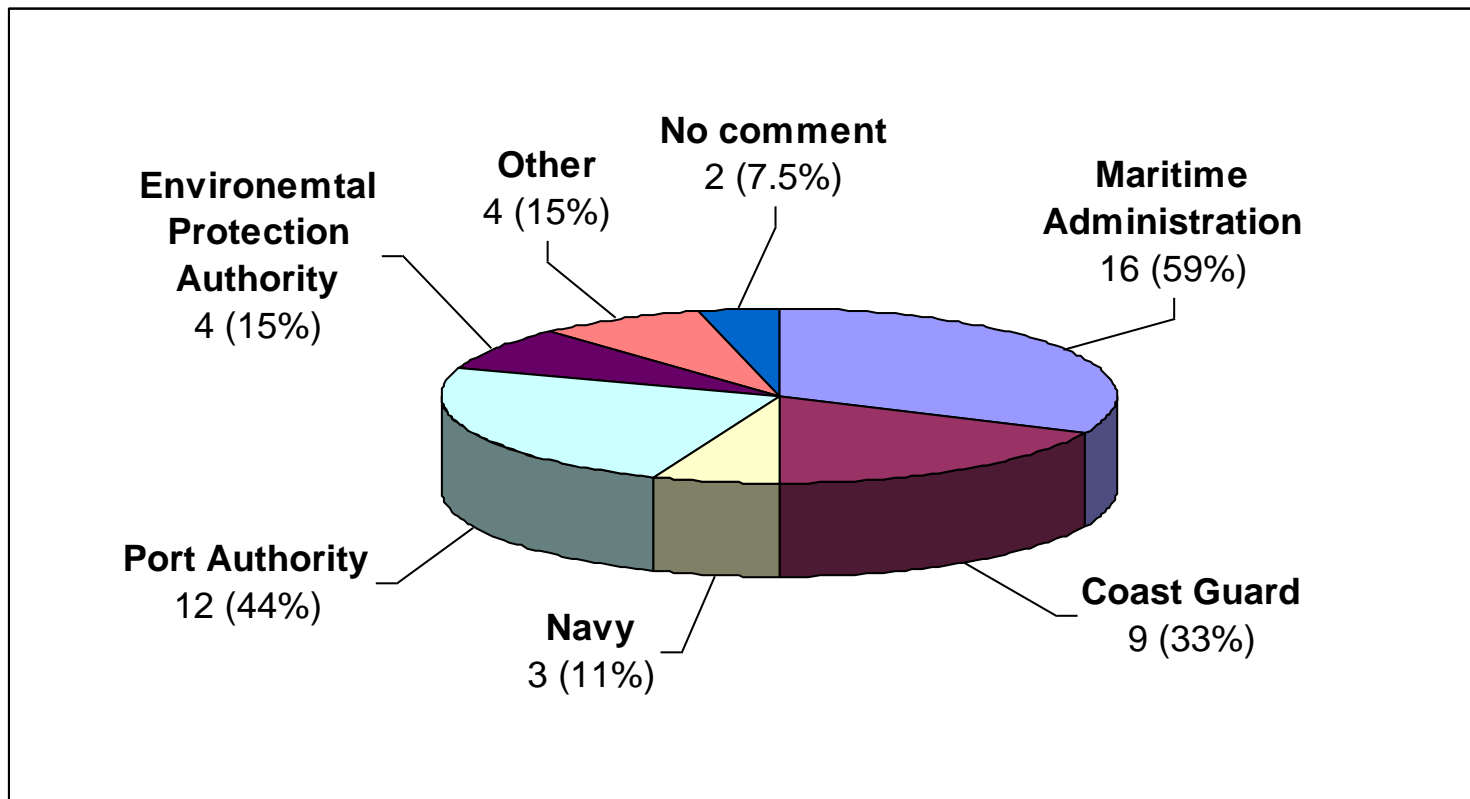
## Questionnaire study in 2005 – starting point

- **Information required**
  - 82 administrations approached
  - 27 questionnaires returned
  - 3 more indicated that they cannot provide information
  - Questionnaire structure
    - General
    - Past practice
    - Legal framework
    - Guidelines
    - Follow-up to IMO initiative
- **Results published in 2006 in Chircop/Lindén “Places of refuge for ships” (Martinus Nijhoff Publishers)**

# 1.1 What are places of refuge and why do we need them?

## Questionnaire study in 2005 – starting point

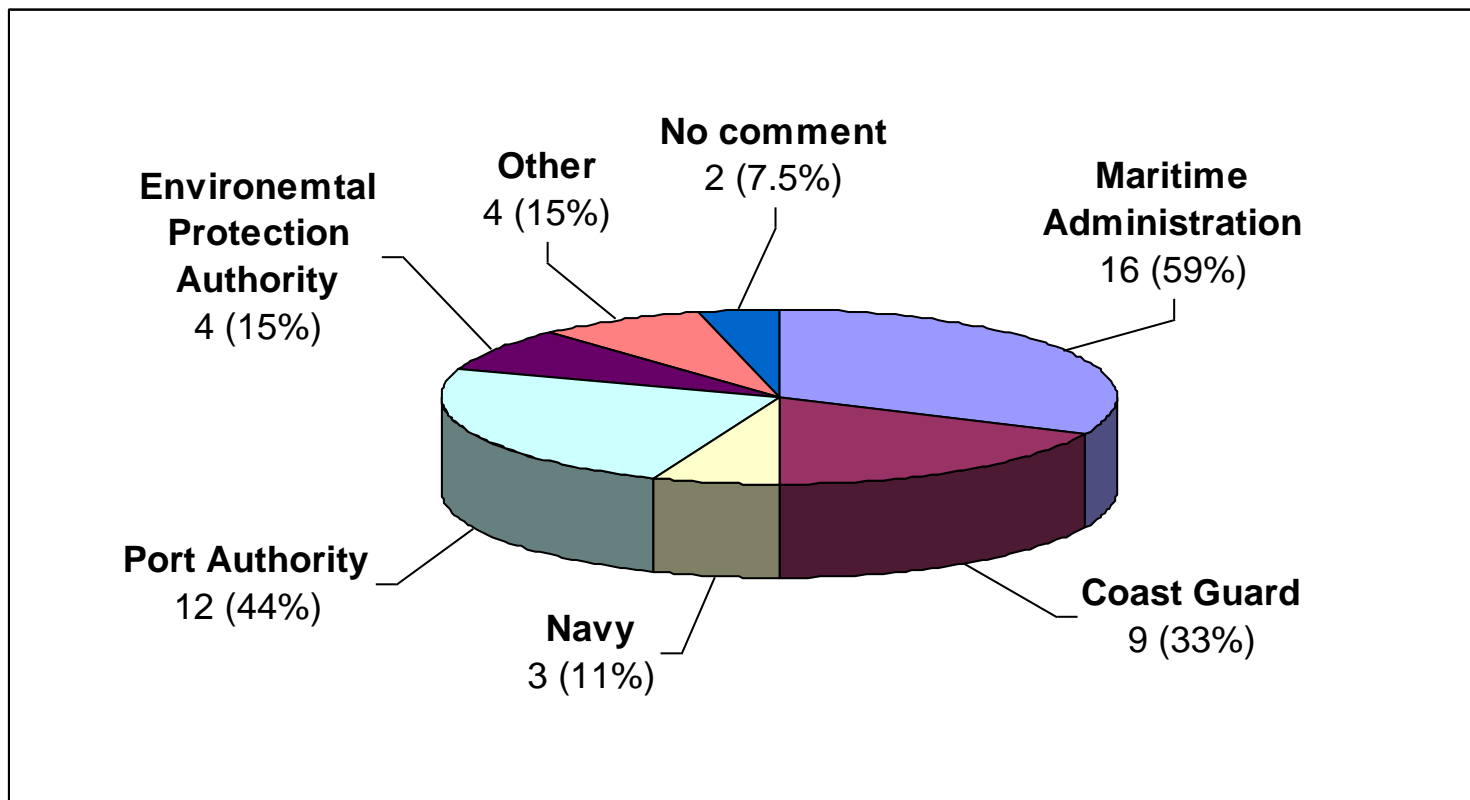
- Responsible administration in charge



# 1.1 What are places of refuge and why do we need them?

## Questionnaire study in 2005 – starting point

- Level of decision making



# 1.1 What are places of refuge and why do we need them?

## Questionnaire study in 2005 – starting point

- **Past experience**

- 20 out of 27 were asked to grant refuge
- All 20 granted refuge at some time
- Occasions at which refuge was granted - no specific trends
- Results of granting refuge (11 States minor and major damage)
- Changes of procedures (only 2 States changed guidelines after experiencing damage)
- Reasons for not granting refuge (9 States replied – 8 indicated unforeseeable risk)

# 1.1 What are places of refuge and why do we need them?

## Questionnaire study in 2005 – starting point

- **Legal framework**

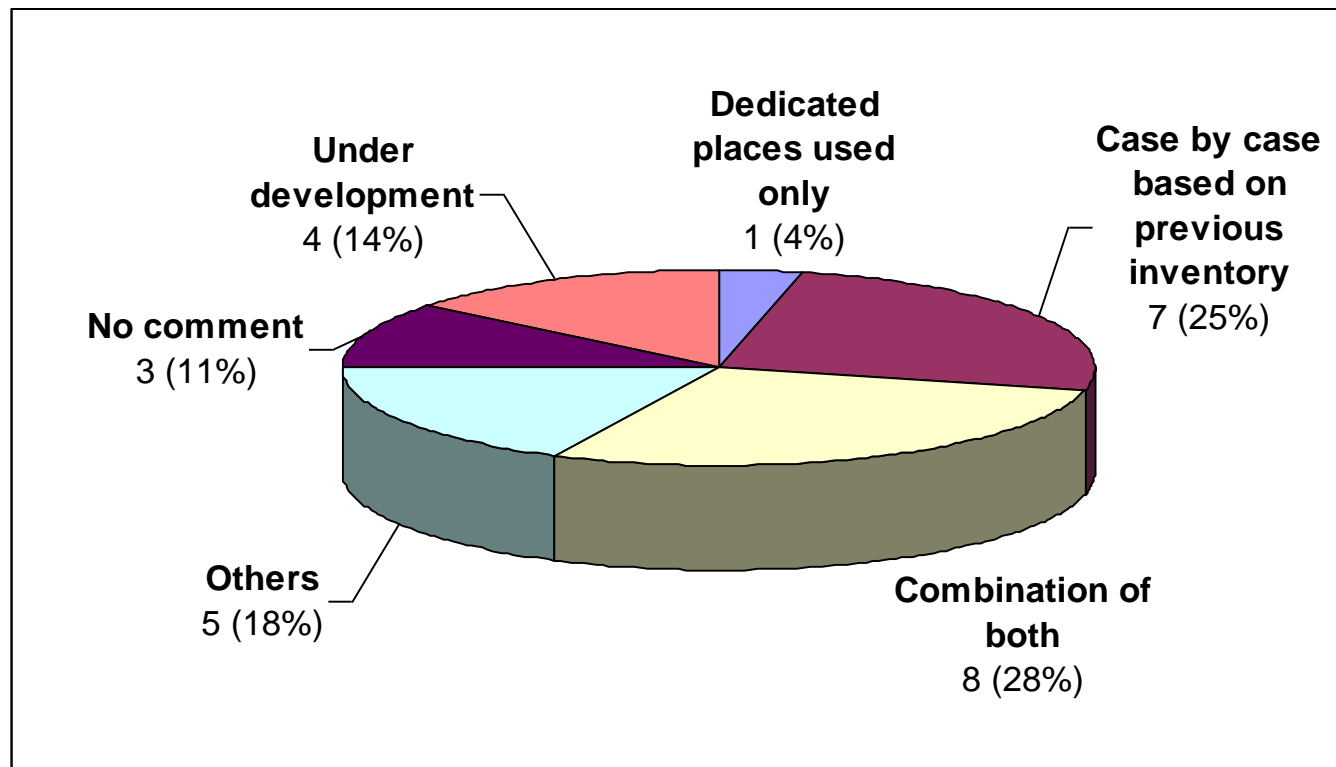
- 17 States have a policy
- 11 States confirmed objective to save lives, ship and cargo and to avoid environmental damage
- 13 States have domestic obligations to consider granting of refuge



# 1.1 What are places of refuge and why do we need them?

## Questionnaire study in 2005 – starting point

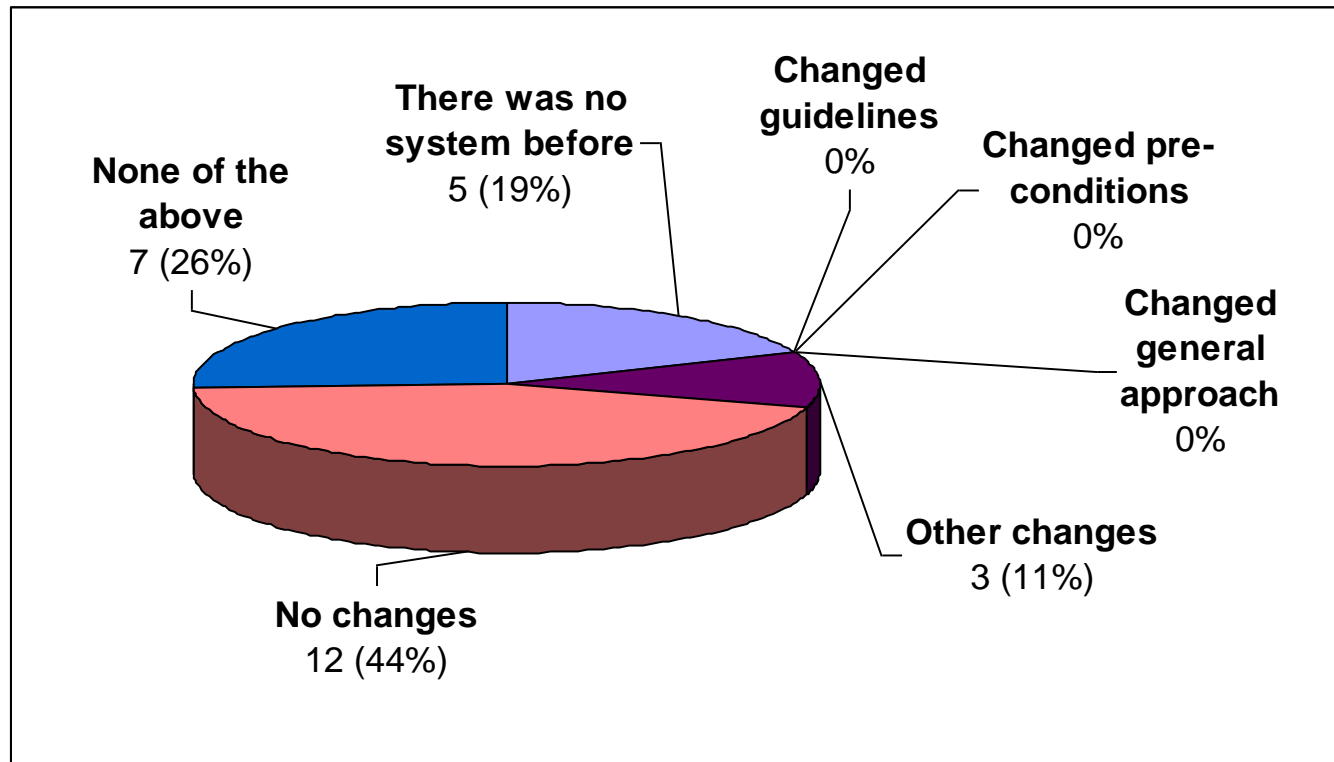
- Follow-up to IMO Res. A.949(23)



# 1.1 What are places of refuge and why do we need them?

## Questionnaire study in 2005 – starting point

- Follow-up to IMO Res. A.949(23)



# 1.1 What are places of refuge and why do we need them?

## Questionnaire study in 2005 – starting point

- **Follow-up to IMO Res. A.949(23) – States without guidelines**
  - Preconditions – 84% no preconditions (48% of the states with previous guidelines)
  - Surveys – 50% multiple (86% of the states with previous guidelines)
  - Doc. Review – 42% (47% of the states with previous guidelines)
  - Experts – 83% (100% of the states with previous guidelines)

# 1.1 What are places of refuge and why do we need them?

## Questionnaire study in 2005 – starting point

- **Summary**

- Different countries have found different solutions over the years
- Systems for granting refuge to ships in need of assistance rely on expertise
- The procedures for granting refuge seem to change with every accident experienced

- **Having a uniform set of guidelines may help less experienced IMO member states**

# 1.2 Legal requirements

## 1.2.1 United Nations Convention on the Law of the Sea – PoR Provisions

- **Article 17** - *Right of innocent passage*

- Subject to this Convention, ships of all States, whether coastal or land-locked, **enjoy the right of innocent passage through the territorial sea.**

- **Article 18** - *Meaning of passage*

- 1. Passage means navigation through the territorial sea for the purpose of:
  - (a) traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or
  - (b) proceeding to or from internal waters or a call at such roadstead or port facility.
- 2. Passage shall be continuous and expeditious. However, **passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.**



# 1.2 Legal requirements

## 1.2.1 United Nations Convention on the Law of the Sea – PoR Provisions

- **Article 192** - *General obligation*
  - States have the obligation to protect and preserve the marine environment.
- **Article 194** - *Measures to prevent, reduce and control pollution of the marine environment*
  - 1. States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection.
  - 2. States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as **not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention.**

# 1.2 Legal requirements

## 1.2.1 United Nations Convention on the Law of the Sea – PoR Provisions

- **Article 195** - *Duty not to transfer damage or hazards or transform one type of pollution into another*
  - In taking measures to prevent, reduce and control pollution of the marine environment, **States shall act so as not to transfer, directly or indirectly, damage or hazards from one area to another** or transform one type of pollution into another.
  
- **Article 198** - *Notification of imminent or actual damage*
  - When a State becomes aware of cases in which the marine environment is in imminent danger of being damaged or has been damaged by pollution, it shall **immediately notify other States it deems likely to be affected by such damage, as well as the competent international organizations.**

# 1.2 Legal requirements

## 1.2.1 United Nations Convention on the Law of the Sea – PoR Provisions

- **Article 199** - *Contingency plans against pollution*
  - In the cases referred to in article 198, States in the area affected, in accordance with their capabilities, and the competent international organizations shall **cooperate**, to the extent possible, in eliminating the effects of pollution and preventing or minimizing the damage. To this end, States shall jointly develop and promote **contingency plans for responding to pollution incidents in the marine environment**.

# 1.2 Legal requirements

## 1.2.1 United Nations Convention on the Law of the Sea – PoR Provisions

- **Article 221** - *Measures to avoid pollution arising from maritime casualties*
  - 1. Nothing in this Part shall prejudice the right of States, pursuant to international law, both customary and conventional, **to take and enforce measures beyond the territorial sea proportionate to the actual or threatened damage to protect their coastline or related interests**, including fishing, from pollution or 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.
  - 2. For the purposes of this article, "maritime casualty" means a collision of vessels, stranding or other incident of navigation, or other occurrence on board a vessel or external to it resulting in material damage or imminent threat of material damage to a vessel or cargo.

# 1.2 Legal requirements

## 1.2.1 United Nations Convention on the Law of the Sea – PoR Provisions

- **Article 225** - *Duty to avoid adverse consequences in the exercise of the powers of enforcement*
  - In the exercise under this Convention of their powers of enforcement against foreign vessels, States shall **not endanger the safety of navigation or otherwise create any hazard to a vessel, or bring it to an unsafe port or anchorage, or expose the marine environment to an unreasonable risk.**



# 1.2 Legal requirements

## 1.2.1 United Nations Convention on the Law of the Sea - Liability

- **Article 232** - *Liability of States arising from enforcement measures*
  - States shall be liable for damage or loss attributable to them arising from measures taken ... when such measures are unlawful or exceed those reasonably required in the light of available information. States shall provide for recourse in their courts for actions in respect of such damage or loss.

# 1.2 Legal requirements

## 1.2.1 United Nations Convention on the Law of the Sea - Liability

### ■ Article 235 - *Responsibility and liability*

- 1. States are responsible for the fulfilment of their international obligations concerning the protection and preservation of the marine environment. **They shall be liable in accordance with international law.**
- 2. States shall ensure that **recourse is available in accordance with their legal systems for prompt and adequate compensation** or other relief in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction.
- 3. With the objective of assuring prompt and adequate compensation in respect of all damage caused by pollution of the marine environment, States shall cooperate in the implementation of existing international law and the further development of international law relating to responsibility and liability for the assessment of and compensation for damage and the settlement of related disputes, as well as, where appropriate, development of criteria and procedures for payment of adequate compensation, such as compulsory insurance or compensation funds.

# 1.2 Legal requirements

## 1.2.1 United Nations Convention on the Law of the Sea - Liability

- **Article 304** - *Responsibility and liability for damage*
  - The provisions of this Convention regarding responsibility and liability for damage are without prejudice to the application of existing rules and the development of further rules regarding responsibility and liability under international law.

# 1.2 Legal requirements

## 1.2.2 Salvage Convention 1989

### ■ Article 11

- State Party shall, whenever regulating or deciding upon matters relating to salvage operations, such as admittance to ports of vessels in need of assistance or the provision of facilities to salvors, **take into account the need for co-operation between salvors, other involved 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.

# 1.2 Legal requirements

## 1.2.2 Intervention Convention 1969

- Article VI

- a State that has taken measures “causing damage to others shall be obliged to pay compensation to the extent of the damage caused by the measures which exceed those reasonably necessary to achieve the end”.



# 1.3 Relevant international guidance

## Three core documents

- **IMO Resolutions**

- A.949(23) – Guidelines for places of refuge for ships in need of assistance
- A.950(23) – Maritime Assistance Services (MAS)

- **EMSA**

- Places of Refuge EU Operational Guidelines (published in 2016)

# 1.3 Relevant international guidance

## 1.3.1 IMO Resolution A.949(23) Guidelines for places of refuge for ships in need of assistance

- **Content**

- **2 Guidelines for action required of masters and or salvors in need of places of refuge**
  - 2.1 Appraisal of the situation
  - 2.2 Identification of hazards and assessment of associated risks
  - 2.3 Identification of required actions
  - 2.4 Contacting the authority of the coastal State
  - 2.5 to 2.6 Establishment of responsibilities and communications with all parties involved
  - 2.7 to 2.8 Response actions
  - 2.9 Reporting procedures

# 1.3 Relevant international guidance

## 1.3.1 IMO Resolution A.949(23) Guidelines for places of refuge for ships in need of assistance

- **Content**

- **3 Guidelines for actions expected of coastal States**

- 3.4 to 3.8 Assessment of places of refuge
    - 3.9 Event-specific assessment
    - 3.10 to 3.11 Expert analysis
    - 3.12 to 3.14 Decision-making process for the use of a place of refuge

# 1.3 Relevant international guidance

## 1.3.2 EMSA Places of Refuge EU Operational Guidelines

### ■ Content

- Chapter 1 - Roles and Responsibilities of Key Players in relation to a request for a Place of Refuge
- Chapter 2 - Initial Incident Reporting, Monitoring & Information gathering
- Chapter 3 - Places of Refuge Co-ordination
- Chapter 4 - Requesting a Place of Refuge
- Chapter 5 - Risk Assessment & Inspection
- Chapter 6 - Decision Making & Outcomes
- Chapter 7 - Financial Security
- Chapter 8 - Media and Information Handling
- Chapter 9 - Lessons Learned

# 1.3 Relevant international guidance

## 1.3.3 Other relevant guidance/regulations

### ■ Instruments listed in IMO Res. A.949(23)

- International Convention for the Safety of Life at Sea, 1974 (SOLAS 1974), as amended, in particular chapter V thereof;
- International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (the OPRC Convention);
- International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78);
- International Convention on Maritime Search and Rescue, 1979 (SAR 1979), as amended.
- Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972

# 1.3 Relevant international guidance

## 1.3.3 Other relevant guidance/regulations

- **Instruments listed in IMO Res. A.949(23)**
  - Convention Relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, 1971
  - Convention on Limitation of Liability for Maritime Claims (LLMC), 1976
  - International Convention on Civil Liability for Oil Pollution Damage (CLC), 1969
  - International Convention on Civil Liability for Oil Pollution Damage (CLC), 1992
  - International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND), 1992

# Review questions

## Setting up a system for granting refuge to ships in need of assistance in your country

- Is the legal situation known in your country?
- Is your country party to the instruments explained in this part?
- Do you have laws/regulations/guidelines for granting refuge in need for assistance?
- Which instruments would have to be developed?
- What other authorities would have to be involved in setting up a system for granting refuge to ships in need of assistance?
- What challenges are you expecting?



**Any questions?**

# Questions & Answers

