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« The Place of refuge : a concept under debate »

Maritime safety and the prevention of marine pollution have generated numerous international conventions under the aegis of the IMO and the United Nations Convention on the Law of the Sea (UNCLOS). There exists a comprehensive regulatory corpus governing safety at sea, whether for the search and rescue of persons or for providing assistance to a vessel when human life is not in immediate danger, but where the situation is liable to result in a shipwreck or present a hazard to the marine environment or navigation tracks. National, European, and international frameworks empower coastal States to intervene when a vessel is in distress and strongly incentivize them to accommodate it. However, recent international shipping news—notably the case of the bulk carrier Ruby in August 2024, which was denied entry into Lithuanian and Swedish ports despite commanding severe structural hull damage—profoundly challenges the actual effectiveness of the place of refuge (lieu refuge) concept. Is the universal solidarity of seafarers truly replicable across EU Member States?

The Legal Distinction Between Search & Rescue and Maritime Assistance

In 2003, the IMO Guidelines on Places of Refuge for Ships in Need of Assistance were officially adopted under Resolution A.949(23). These guidelines explicitly recommend that coastal States develop structured operational procedures to enable an effective and objective risk assessment prior to authorizing a disabled vessel's entry into a place of refuge, outlining the precise safety variables to be weighed during these evaluations.

At the European tier, Directive 2002/59/EC of the European Parliament and of the Council of June 27, 2002, establishing a community vessel traffic monitoring and information system, formally consecrates the legal concept of a place of refuge. This directive was engineered directly from the post-casualty lessons learned of the catastrophic oil spills of the tankers *Erika* and *Prestige*. The core spirit of this European legislation focused on accommodating a vessel in distress as rapidly and under the best possible technical conditions as possible, specifically to avert an even greater environmental or maritime disaster. Crucially, it stands legally distinct from the concepts of safeguarding human life at sea and commercial assistance.

The preservation and search and rescue (SAR) of human life at sea stems from a universal, mandatory duty to rescue (*obligation de secours en mer*), which applies unconditionally, even in times of war between opposing belligerents. It strictly does not give rise to any financial remuneration, a principle commonly hailed as the timeless solidarity of seafarers. The rescuer may, however, claim a right to reimbursement for direct operational losses sustained or expenses incurred during the rescue maneuvers.

Sovereignly, this duty is owed exclusively to persons, and not to property or cargo assets. Pursuant to Article L. 5262-5 of the French Transport Code, any Master who fails to fulfill this duty to rescue (provided his own ship's safety is not critically engaged) faces a statutory criminal penalty of up to two years' imprisonment and a €3,750 fine.

Beyond individual mariners, this rescue mandate binds coastal States under Regulation 7, Chapter V of the SOLAS Convention, alongside the 1979 International Convention on Maritime Search and Rescue (SAR Convention). This international text mandates that sovereign States deliver effective search and rescue services to any person in distress at sea off their coastlines. In France, the CROSS centrally execute this regalian state function, coordinating a diverse matrix of multi-agency and interministerial intervention assets (encompassing the French Navy, the Customs Coast Guard, and Civil Security forces), alongside recognized public-utility lifesavers like the SNSM, and private commercial crafts opportunistically mobilized within the SAR sector.

Conversely to the rescue regime, maritime assistance is fundamentally optional and non-mandatory, except in cases of vessel collisions or when human lives are directly at stake. It relies on a formal written or oral commercial contract executed between the two contracting parties. Legally, the operations mandate the

absolute presence of a real and present peril facing the assisted asset; absent this danger, the operation falls under a standard service agreement, such as ordinary commercial towage.

Courts and tribunals interpret the concept of danger broadly, evaluating its presence at the exact moment the assistance is physically delivered, and not when it was initially requested. Maritime assistance operates as a commercial contract that can be heavily remunerated, but strictly under the condition of a successful operational outcome, pursuant to the historic maritime law principle of "No Cure, No Pay".

The salvage rewards and indemnities perceived are calculated based on the degree of risk braved by the salvor, the operational utility of the result, and the total financial value of the property and cargo assets saved. The salvor is bound by an obligation of means and not of result, committing to deploy his utmost professional efforts to salvage the maximum amount of property. The salvor proposes his services under commercial terms he freely selects relative to the vessel's technical exposure. The Master of the vessel in peril retains the right to evaluate his chances of saving his ship unassisted, either refusing the salvor's terms or executing the salvage contract.

Surgically speaking, the salvor forfeits any right to financial remuneration if the Master of the vessel in peril has issued an express and reasonable rejection of his services; the salvor must refrain from any abusive or coercive conduct. Internationally, maritime assistance is strictly governed by the 1989 London International Convention on Salvage, which defines it broadly as *"any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever."*

French domestic law provides heightened codification precision, as outlined within Articles L. 5132-1 et seq. of the French Transport Code. Technically, maritime assistance predominantly manifests as towing the distressed vessel to a safe position. Assistance must explicitly constitute a concrete material act; merely standing by, prepared to intervene alongside a disabled vessel, is legally not classified as assistance.

Conversely, useful salvage operations can encompass executing temporary emergency hull repairs or transshipping a portion of the cargo to systematically lighten the vessel's draft. Although the salvage contract strictly binds the salvor and the salvee alone, any operational failure carries an exceptionally high probability of triggering catastrophic pollution.

Historically, however, mitigating marine pollution fell entirely outside the structural objectives of maritime assistance; only the preservation of the vessel asset and its cargo counted under the rigid "No Cure, No Pay" doctrine. To be explicit, in a desperate, near-hopeless maritime casualty scenario, no private salvage vessel was willing to undertake any maneuvers whatsoever.

It is precisely for this reason, following the catastrophic mega-oil spills of the 1970s, that the international framework was profoundly overhauled. Protection and Indemnity (P&I) Clubs pioneered a specialized underwriting coverage tailored for the salvor who, having actively attempted to mitigate environmental damage, ultimately failed to save the vessel asset.

The 1989 London International Convention on Salvage formally consecrated this insurance practice: a salvor intervening on a vessel that threatens to cause severe damage to the marine environment, and who is unable to save the ship or its cargo, is legally guaranteed a specialized financial compensation known as the "Safety Net" (or Special Compensation), completely decorrelated from the "No Cure, No Pay" strict baseline rule (transposed into French law under *Article L. 5132-5 of the Transport Code*).

Yet, in the event of a total failure or operational default of these private commercial arrangements, what are the explicit legal recourses available to the coastal State?

Sovereignly, the State is not tasked with executing maritime vessel assistance *stricto sensu*. It intervenes within this domain strictly on a subsidiary basis, under the absolute condition that the vessel (or its cargo) constitutes a characterized, verified danger for the coastal State (encompassing threats to the marine environment, the public health of coastal populations, or severe macroeconomic repercussions), and exclusively in the event of total inaction or insufficient, dilatory action undertaken by the shipowner. Indeed, the fundamental, overriding principle governing assistance to vessels in distress resides in the primary liability of the shipowner.

Protection and Indemnity Clubs

P&I Clubs are mutual insurance associations of shipowners, originally established in England during the mid-19th century to cover the third-party civil liabilities of shipowners and charterers that traditional fixed-premium underwriters refused to guarantee. Under this mutualistic framework, the insured operators act as their own underwriters: stripped of any profit-driven motive, they pool resources through a highly specialized risk management architecture to shield themselves against operational liabilities.

It stands as a category of marine insurance that ocean carriers contract to absorb the potentially astronomical costs of any accidental damage they cause to persons, third-party properties, and the marine environment. The baseline cost of P&I underwriting fluctuates face to a matrix of complex variables: namely, the physical dimensions and typology of the vessel, the nature of the cargo matrix, the specific trading zones, the historical claims records of the shipowner or operator, and the required limit of liability coverage. Over time, these mutual associations grouped themselves into the International Group of P&I Clubs (IG P&I), which currently aggregates 12 premier P&I Clubs. These 12 component clubs of the International Group collectively underwrite third-party liabilities for approximately 90% of global merchant shipping tonnage. To secure the market against catastrophic claims, the member clubs of the International Group engineered a structured claims-pooling mechanism to jointly cover individual liabilities exceeding a baseline threshold of \$10 million USD.

The Scope of Action and Sovereign Prerogatives of the Coastal State

International maritime law recognizes specific rights and statutory responsibilities vested in the coastal State, most notably regarding the search and rescue of human life at sea, the protection of coastal populations and the marine environment, alongside the maintenance of the freedom of navigation (encompassing UNCLOS, the SOLAS Convention, the 1969 Brussels Intervention Convention, and the 1969 London CLC Convention). By virtue of these diverse responsibilities, the coastal State is legally empowered to mandate that a vessel's Master or shipowner undertake all appropriate measures to eliminate the threat of a danger posed by the ship to the coastline or the State's related interests. In the event of non-compliance, operational failure of these private measures, or proven absolute emergency, the coastal State can execute any appropriate disposition to directly confront the threat.

Within the European community framework, Directive 2002/59/EC delineates the explicit levers of action available to the coastal State. Article 17 of this directive mandates that the Master of any vessel exceeding 300 gross tonnage (GT / UMS) navigating within the Exclusive Economic Zone (EEZ) of a Member State must instantly report to the geographically competent coastal monitoring station any incident or marine casualty compromising the safety of the vessel or navigation, or liable to result in pollution of the waters or the coastline, alongside any observed slick of polluting products or drifting containers and packages spotted at sea. Within the French maritime landscape, the CROSS units hold sole statutory competence across their respective zones of responsibility.

Furthermore, Article 19 of this identical directive solidifies the intervention rights of the coastal State under these circumstances, explicitly providing the statutory capacity to:

- Restrict the vessel's movements or legally compel it to follow a determined navigation track.
- Issue a formal injunction to the shipowner to immediately terminate the hazard posed by the vessel.
- Deploy an expert assessment and intervention team on board the vessel to evaluate the precise degree of risk, assist the Master in remedying the situation, and continuously apprise the shore command center of the onboard situation.
- Act ex-officio to terminate the hazard represented by the ship (encompassing onboard interventions, naval escorts, or mandatory commercial towage).
- Impose a specific destination, location, or port of refuge.

The provisions locked in by Directive 2002/59/EC were subsequently reinforced by Directive 2004/35/EC on environmental liability. This text endows the coastal State with the statutory authority to compel the shipowner to halt any danger caused to the environment and to substitute itself for the owner in the event of an *"imminent threat"* of an *"environmental damage"* occurring.

Assistance to Vessels in Distress and the ORSEC Framework

In France, the ORSEC maritime framework defines the centralized administrative organization of emergency rescue responses. Placed under the sole and unified authority of the Maritime Prefect, it orchestrates the operational deployment required to manage the entirety of civil protection crises and maritime emergencies that may arise within the waters under his sovereign jurisdiction.

This emergency framework encompasses general provisions alongside highly specialized operational sub-plans, explicitly concerning respectively the maritime search and rescue of persons in distress at sea (SAR), the mitigation and suppression of marine pollution (POLMAR), the management of disrupted or hazardous maritime navigation tracks (CIRC), as well as assistance to vessels in distress (ANED). The ANED sub-plan is strictly defined by a situation that does not—or no longer—endanger human life (the persons on

board have already been rescued, or the technical situation is not severe enough to threaten their safety): the vessel itself is in distress.

This specialized contingency plan is divided into three operational levels based on the severity of the maritime casualty (involving the deployment of additional human reinforcements, specialized engineering expertise, or the activation of an emergency crisis management team). ORSEC Level 3 is the most critical tier, corresponding to a severe emergency in which the vessel or its cargo presents an imminent or long-term threat to the coastline, maritime traffic density, or the marine environment. It can identically manifest as a scenario where the crew is entirely unable to contain a shipboard disaster without a significant intervention of external resources, encompassing both private salvage assets and public State means. Finally, it applies to a situation revealing that the maritime disaster might eventually not be controlled across all its cascading consequences. If, despite the maneuvers executed by the crew or an onboard specialized intervention team, the vessel fails to recover its full operational capacity, the authority can decide to proceed with a coercive towage toward a place of refuge or toward the high seas, based on a rigorous, multi-layered risk analysis.

Places of refuge: Legal frameworks versus operational realities

The European Union has recorded a sharp, structural improvement in maritime safety across its waters over recent years, driven notably by the international harmonization among Member States of safety rules, port state control inspections, and associated penal sanctions (encompassing tighter targeting of Port State Control audits, the implementation of a rigorous monitoring framework for classification societies, and the substantial increase of financial funds available for the compensation of future pollution victims via the IOPC Funds / FIPOL). Following the catastrophic shipwreck of the tanker Erika in 1999, EU Member States committed to heavily reinforcing maritime safety within their waters through the sequential adoption of the Erika I, II (2000), and III (2009) Legislative Packages. This final package specifically mandated the mandatory pre-designation of places of refuge to accommodate vessels in need of assistance. Consequently, Article L. 5331-3 of the French Transport Code stipulates that "the State shall determine the conditions for accommodating vessels in distress, and the administrative authority shall, where appropriate, enjoin the port authority to accommodate a vessel requiring assistance. It may also, where appropriate, authorize or order its movement within the port."¹

The legal concept of a place or port of refuge is structurally embedded within the overarching ORSEC framework, and more precisely within the chapter dedicated to the ANED mechanism previously described. The core objective targets locking in a highly specific information circuit and the most fluid operational management possible, given that a vast matrix of public and private stakeholders will be simultaneously mobilized. If necessary within selected gateways, the Maritime Prefect commands the sovereign power to enjoin a port authority to accept the entry of a vessel into a place of refuge, even if that local authority aggressively opposes it.

The goal focuses on securing a rapid, unassailable administrative arbitration regarding the status of a vessel in peril that risks being denied entry by local port authorities and coastal populations, who legitimately dread ecological, economic, and social threats if the situation deteriorates further. Sovereign public interest (*l'intérêt général*) must strictly prevail over individual or municipal interests. The longer a severely damaged hull is forced to remain exposed at sea, the faster its structural condition is liable to degrade. Conversely, bringing a casualty vessel into a sheltered place of refuge delivers the immense operational advantage of being able to contain, isolate, and therefore limit the spatial extent of any shoreline pollution.

Furthermore, a place of refuge enables salvors to safely execute critical cargo transshipments or major emergency structural repairs to actively prevent imminent environmental damage. While the central public administration establishes the official registry list of designated places of refuge, by their very engineering, all commercial ports operate naturally as potential places of refuge. Ultimately, the selection of the optimal hosting location or port of refuge depends on a complex matrix of technical factors:

- Port industrial capabilities: the capacity to handle and receive hazardous cargoes, the availability of ship repair facilities (specialized engineering workshops, shipyards, heavy drydocks, mobile cranes), and advanced transshipment assets (heavy-lift cranes, barges, high-capacity pumps).

¹ This article stems from the transposition into French law of several European directives, notably enacted through Ordinance No. 2004-691 of July 12, 2004 (which engineered Article L. 361-1 of the Maritime Ports Code, later codified as Article L. 5331-3 of the Transport Code) and Ordinance No. 2011-635 of June 9, 2011, which added the mandatory hosting obligation upon formal injunction by the administrative authority.

- Pollution response resources: the immediate shoreside presence of oil spill mitigation and containment equipment.
- Hydrographic variables: local bathymetry and the maximum permissible draft relative to the vessel's damaged condition.
- Socio-economic parameters: a rigorous evaluation of the potential local economic and ecological impacts.
- Meteorological forecasting: real-time wind, wave, and current data models.

Nevertheless, while this extensive legal arsenal is fully present, a precise statutory definition is still lacking regarding the exact semantics of a "vessel in difficulty", as referenced under Article R. 5331-27 of the French Transport Code. Consequently, the State retains full discretionary power to interpret these criteria. The technical status of a vessel at any given moment depends on a vast matrix of interlocking internal factors (hull structural integrity, the operability of steering gears, main propulsion availability) and external variables (geographical constraints, meteorological environment). This makes objective evaluation exceptionally complex. Finally, the coastal State is by no means legally bound to respond favorably to the assistance request submitted by a ship. It must evaluate all risks and parameters with absolute objectivity and offer shelter whenever it is technically feasible.

This institutional hesitation often seems to manifest as a geopolitical game of "passing the hot potato" between European coastal States. Volatile political deliberations and bureaucratic foot-dragging can violently override objective operational management during live maritime crises, as risk assessment criteria remain inherently subjective. Legally and politically, it will always stand as exceptionally difficult to formally blame a coastal State for having denied access to a vessel that ultimately foundered on the high seas. Such a catastrophic outcome might even enable that State to retrospectively argue that the ship did indeed constitute an unmanageable, terminal threat to its shores.

The domestic political risk is deemed far too high: it will always be significantly easier for public authorities to scapegoat the private shipowner or the commercial salvors for the shipwreck, rather than assuming a sovereign executive decision that could see a burning mega-vessel run aground inside a scenic bay or founder, totally or partially, within a commercial harbor basin—most notably if this casualty unfolds along coastlines commanding high tourist densities and heavy maritime economic clusters.

This European operational drift is by no means greenfield, having repeatedly disrupted lines of command during the high-profile casualties of the *Castor* (2000), the *Prestige* (2002), the *MSC Napoli* (2007), and most distinctively the *MSC Flaminia*, where the French Minister for Transport and Maritime Affairs at the time, Frédéric Cuvillier, formally refused to accommodate the crippled vessel.

As a retrospective baseline, on July 14, 2012, this container ship—transporting 2,876 TEUs (out of a maximum capacity of 6,750) bound for Antwerp—was struck mid-Atlantic by a violent explosion inside cargo hold No. 4. Prior to even evaluating the potential entry of the *MSC Flaminia* into a European port of refuge, salvage engineers and class experts had to technically verify that no secondary explosion or thermal runaway risks loomed within adjacent containers, and that the hull's residual structural integrity could withstand the mechanical stresses of a long-distance oceanic towage despite the extreme intensity of the blasts and subsequent fires.

Consequently, following a protracted phase spent drifting inside international waters during which the fire was contained and hydrostatic stability restored, the vessel's condition was judged sufficiently stable to authorize transit toward British approaches on August 19. In the initial phase, British, French, Belgian, and Dutch authorities systematically denied the vessel entry into their territorial waters. The casualty was ultimately accommodated at the German deepwater port of Wilhelmshaven. This severe maritime disaster cost the lives of three seafarers and left two severely injured, while the exact root causes of the initial explosions remain technically unexplained to this day.

For prominent maritime observers, the *MSC Flaminia* strictly matched the legal and technical definition of a vessel in need of assistance (commanding a severe structural list, an active fire contained but not fully extinguished, and hull plating heavily compromised by extreme heat). If such a vessel failed to qualify under this definition, what merchant craft could ever pretend to?

Modern mega-container ships introduce vastly higher operational uncertainties for coastal States, notably due to the massive onboard presence of undeclared or misdeclared hazardous materials (Dangerous Goods) hidden inside the container matrix. This structural opacity drives the intense risk-aversion displayed by public authorities. Paradoxically, the core spirit of international regulations is to execute everything technically feasible to accommodate the vessel as rapidly and under the best possible conditions as possible, precisely to avert a significantly larger planetary environmental disaster. No maritime expert ignores anymore that forcing a disabled hull to remain on the high seas is never a sustainable solution.

If a vessel in absolute distress is permanently rejected and finishes by breaking apart and sinking (as experienced with the crude oil tanker *Prestige*), the environmental remedy proves significantly worse than the initial illness. Conversely, if the ship manages to survive unassisted or through private third-party salvage maneuvers, the state's refusal merely repasses the structural problem onto neighboring jurisdictions, which can be legally analyzed as a deliberate political strategy to take zero executive risks. Could one innovative avenue of solution lie in mutualizing this environmental risk among EU Member States? What specific role does the European Maritime Safety Agency (EMSA) play within this landscape?

The EMSA: Towards a Coordinated European Response Framework?

The EMSA rigidly monitors and audits the national master plans established by Member States for deploying places of refuge. A high-level Cooperation Group—comprising representatives from EU Member States, the maritime shipping industry, classification societies, marine underwriters, P&I Clubs, the Norwegian Coastal Administration, the EMSA, and the European Commission—regularly executes joint simulated crisis exercises on places of refuge to optimize inter-agency operational coordination.

Furthermore, during live hazardous chemical or material casualties, the EMSA drives a coordinated technical response by activating the specialized MAR-ICE Network, engineered in partnership with the CEFIC (European Chemical Industry Council) and the CEDRE (French Centre for Documentation, Research and Experimentation on Accidental Water Pollution). This emergency network enables coastal states and national maritime administrations to extract highly specific chemical data and customized emergency advice regarding the spilled substances and the specific casualty dynamics within a strict one-hour timeline. This expert service is available 24/7 through a dedicated permanent contact point hosted within the CEDRE infrastructure.

Moving forward, one of the primary avenues under evaluation focuses on profoundly reinforcing inter-state solidarity across the European Union (explicitly encompassing both coastal and landlocked Member States) through the engineering of a specialized mutualized compensation fund or a dedicated maritime tax—modeled on the historical air navigation toll networks—to financially shield any coastal State that accepts the risk of hosting a disabled vessel. This financial cushion would mechanically diminish the local perception of economic risk, effectively counterbalancing the isolated, siloed operational workflow (*fonctionnement en silo*) of sovereign Member States.

Such a mechanism could successfully supplement or bridge the gaps of insufficient or non-existent P&I insurance indemnifications. However, the historical frequency of these extreme mega-casualties is statistically not significant enough to politically mobilize Member States to legislate on the deployment of such a permanent compensation fund. Consequently, operational solutions will continue to be hammered out on a strict case-by-case basis.

The alternative legal avenue targets engaging the international responsibility of the State before international tribunals, if the coastal nation in question has enacted an unreasonable, non-justifiable refusal decision that directly triggered catastrophic damages within the jurisdictions of an adjacent sovereign State. Ultimately, the escalating gigantisme of modern merchant vessels, coupled with the rapid rise of alternative next-generation propulsion systems—explicitly encompassing nuclear-powered merchant shipping—introduce unprecedented operational risk profiles. These emerging maritime hazards must be rigorously anticipated and planned for by the sovereign authorities of all EU Member States.

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