Place of Refuge versus Waste Law

IMO Resolution A.949(23), adopted on 5 December 2003
GUIDELINES ON PLACES OF REFUGE FOR SHIPS IN NEED OF ASSISTANCE
Place of Refuge versus Waste Law

IMO GUIDELINES ON PLACES OF REFUGE FOR SHIPS IN NEED OF ASSISTANCE, Resolution A.949(23) Adopted on 5 December 2003

- Has (only) a recommending character

The main points (1/5):

- Should the ship be brought into shelter near the coast or into a port or, conversely, should it be taken out to sea?
Place of Refuge versus Waste Law

Into a port or out to sea?

The “Prestige” was refused to enter a port and broke at sea.

- The costs of the following incident (oil pollution) were 4,3 billion € (Spanish publ. prosecutor)
- Against estimated costs of salvage and cleaning up: 40-55 million €

Source: Focus
Place of Refuge versus Waste Law

IMO GUIDELINES ON PLACES OF REFUGE FOR SHIPS IN NEED OF ASSISTANCE, Resolution A.949(23)

The main points (2):

- However, to bring such a ship into a place of refuge near a coast may endanger the coastal State, both economically and from the environmental point of view, and local authorities and populations may strongly object to the operation.
Place of Refuge versus Waste Law

IMO GUIDELINES ON PLACES OF REFUGE FOR SHIPS IN NEED OF ASSISTANCE, Resolution A.949(23)

The main points (3-5):

- Granting access to a place of refuge could involve political decision which can only be taken on a case-by-case basis.
- A risk-assessment on a base of valid facts is necessary.
- There is no right to get access.
Place of Refuge versus Waste Law

Different definitions/terminology of/for ships for different situations

- PoR Res. A.949(23): Ship in need of assistance means a ship in a situation, apart from one requiring rescue of persons on board, that could give rise to loss of the vessel or an environmental or navigational hazard.

- The possible environmental incident, caused by cargo and bunkers, is in the future.
Place of Refuge versus Waste Law

Different definitions/terminology of/for ships for different situations

- **Bunker C.:** "Ship" means any seagoing vessel and seaborne craft, of any type whatsoever.
  - over 1.000 gross tonnage

- The possible environmental incident caused by cargo and bunkers is in the near future or happened already.

- The main object is reimbursement of costs (not liability for costs as acc. CLC).
Place of Refuge versus Waste Law

Different definitions/terminology of/for ships for different situations

- WRC: “Ship” means a seagoing vessel of any type whatsoever and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and Wreck Removal Convention Act 2011 (c. 8) Schedule — Wreck Removal Convention 11 floating platforms, except when such platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources.

  - of 300 gross tonnage and above
  - The possible environmental incident caused by cargo and bunkers is in the near future or happened already.

- One object is the reimbursement of costs.

Dr. Douvier; Maskat, March 2019
Place of Refuge versus Waste Law

Ship as waste

- After wreck removal to a port this classification is possible
- Waste law is applicable in territorial waters (not in EEZ)
- Wreck is after removal not sunken or stranded or about, or may reasonably be expected, to sink or to strand (Def. of Art. 1 WRC)

> So it is not longer a wreck
Ship as waste

- When it is classified by authorities as waste, those authorities can give orders about its treatment.

- This is also applicable to the cargo that can be classified as waste.
Ship as waste (by international standard)

The Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 was adopted 2009 and enters into force…

• Ships sold for scrapping may contain environmentally hazardous substances such as asbestos, heavy metals, hydrocarbons, ozone-depleting substances and others.
Place of Refuge versus Waste Law

Ship as waste
Hong Kong Convention’s main issues (excursus)

- Ship Recycling Plan
- Inventory of Hazardous Material
- Authorization of Ship Recycling Facilities
- Survey, Certification, Inspection
Place of Refuge versus Waste Law

Waste handling in the Port of Refuge
Res. A.949(23), Page 9

“As a general rule, if the place of refuge is a port, a security in favour of the port will be required to guarantee payment of all expenses which may be incurred in connection with its operations, such as: measures to safeguard the operation, port dues, pilotage, towage, mooring operations, miscellaneous expenses, etc.”

➢ Compulsory waste disposal
Place of Refuge versus Waste Law

Waste handling in the Port of Refuge, who pays?

- The insurer of the vessel feels like a “purser”
- P & I-clubs often play a leading role in the management of casualties
- Lack of proof of adequate insurance cover cannot in and of itself form sufficient reason to refuse a PoR-request

Dr. Douvier; Maskat, March 2019
Place of Refuge versus Waste Law

Waste handling in the Port of Refuge, who pays?

- The operator or owners feel extort when their salvage-plan is not satisfactory for the authorities
- They wish fixed berth fees also after casualties
- They wish more influence on the authorities decisions
- The security of 19 million € for disposal of 8,000 tons of fire-fighting water and spoiled bulk cargo (ammonium nitrate / fertilizer after decomposition)

Dr. Douvier; Maskat, March 2019
Place of Refuge versus Waste Law

Waste handling in the Port of Refuge

Res. A.949(23), Page 12, APPENDIX 2:

“facilities available

- Are there any specialist vessels and aircraft and other necessary means for carrying out the required operations or for providing necessary assistance?
- Are there transfer facilities, such as pumps, hoses, barges, pontoons?
- Are there reception facilities for harmful and dangerous cargoes?
- Are there repair facilities, such as dockyards, workshops, cranes?”

and:

- GUIDELINES FOR THE EVALUATION OF RISKS ASSOCIATED WITH THE PROVISION OF PLACES OF REFUGE, 2 Assessment of risks related to the identified event taking into account:
  .1 Environmental and social factors
Place of Refuge versus Waste Law

Waste handling in the PoR
What it means: “Facilities available” and “Assessment of risks”
- Dry bulk or liquid cargo
- Container
- General cargo
- Heavy lift
- Dangerous goods
- Noxious substances
- Fire fighting water

Source: Havariekommando
.3 Contingency planning, such as:
- competent MAS*
- roles and responsibilities of authorities and responders
  Fire fighting capability
- response equipment needs and availability
- response techniques.
- Is there a possibility of containing any pollution within a compact area?
- International co-operation.
- Is there a disaster relief plan in the area?
- evacuation facilities”

* (IMO Resolution A.950(23) entitled “Maritime assistance services (MAS)” )
Place of Refuge versus Waste Law

Ship and it’s cargo as waste

- The waste-regulations are not original made for ships like e.g. MARPOL-Conv.
- Environmental authorities have no large experience with this kind of waste handling.
- The compulsory permission for the waste handling and treatment is not (yet) standardized (a permission should be tailored to the special hazards of the substances in the waste)

> This means assessment of waste and treatment procedure from recovery to disposal

Dr. Douvier; Maskat, March 2019
Place of Refuge versus Waste Law

Ship and its cargo as waste

- Many different “players” with different interests have to deal with such a case
Place of Refuge versus Waste Law

Waste handling in the Port of Refuge, examples

1. MSC Flaminia (a clear case of Res. A.949(23))

Source: Havariekommando
1. MSC Flaminia - Brief History –

- 2876 Container o/b, 149 with DG in Atlantic Ocean
- 14\textsuperscript{th} July 2012: Smoke –detection-alarm, explosion in cargo hold whilst fire fighting operations. 900 nm from UK, 1,000 nm from CDN.
- Crew (except finally three deaths) rescued the same day by oil tanker
- Salvage-contract with three tugs for fire fighting and towing the vessel to Europe
- 24\textsuperscript{th} July position in distance between 200 and 300 nm from Ireland, England, France and Spain
Place of Refuge versus Waste Law

1. MSC Flaminia

- Contact of salvor with European coastal states regarding P.o.R.
- 15th August: Germany as flagstate tries to arrange P.o.R.
- 16th August: P.o.R.-Request of salvor to German Ministry of Transport
- 28th August: UK, F and Ger boarding team inspects the ship
- 9th September: Ship alongside in Wilhelmshaven
- Unloading damaged cargo
- 15th March 2013: Departure to Romania for repair
1. MSC Flaminia
1. MSC Flaminia  

**Risks**

- Danger of explosions, still fire a/b, temp. measured in three cargo holds still near 100° C
- Draft is increasing (danger of sinking); 28th of July: 19 m (from 13.5 m; Tmax: 14.5 m)
- List due to burnt cargo and fire fighting water in hold
- Anchoring is not possible because water depth more than 100 m
MSC Flaminia – Waste removal in P.o.R

- 35,000 t of contaminated fire fighting water (BSU report, Page 158; 85,823 tdw) for disposal with tankship to DK

Source: Havariekommando
Place of Refuge versus Waste Law

Waste handling in the Port of Refuge, examples

2. Maersk Karachi
2. Maersk Karachi - Brief History –

- 13th May 2015: Arrival Bremerhaven
- 14th May: Gantry crane-Accident
- 22nd May: Fire during gantry-recovery
- 23rd May: Fire off
- 17th July: Fire-fighting-water discharged
- 1st Aug.: Continuing discharge-operations
- 3rd Oct.: Cargo discharged
- 5th Feb. 2016: Waste disposal completed

Source: HBH
Place of Refuge versus Waste Law

2. Maersk Karachi

- 15,000 m³ fire fighting water
- 15,000 m² port area for waste handling
- 11,209 t waste (6,089 hazardous, 4,000 liquid incl. rain- and cleaning-water)
- Permission for waste handling necessary
- Stakeholders / operators need time
- Port must be able
- Waste authority must have the capacity to conduct
Place of Refuge versus Waste Law

Waste handling in the Port of Refuge, examples

3. MSC Zoe

Source: NL Coast Guard

Dr. Douvier; Maskat, March 2019
Waste handling in the Port of Refuge, examples
3. MSC Zoe - Brief History –
• L: 396m, 8,000 cont. o/b; voyage from P to GER
• 1\textsuperscript{st} Jan. 2019: Loss of 345 cont. in storm off NL and GER coast
• 2\textsuperscript{nd} Jan.: Bremerhaven

• 220 m\textsuperscript{3} cargo residues washed ashore of german islands
• 16\textsuperscript{th} Jan.: Discharging completed
Cargo as waste

Kopie WSP

Hansestadt Bremerhaven Hafenamt
Hafenkapitän

Freie Hansestadt Bremen

Hansestadt Bremerhaven Hafenamt

Jürgen Felden
Ausschusschef

Dr. Douvier; Maskat, March 2019

Behördliche Verfügung zur Gefahrveranlassung an Bord MS „MSC ZOE“

8.1 Durch Banköligeschäft oder vergebliche Forderungen des Widersachers ist sichergestellt, dass alle möglichen Kosten, ein die der Abfahrt vorbereitung, durch den Eigentümer des Schiffes beglichen werden.
8.2 Nach Erteilung des Schiffes und unverzüglich, die Reparaturen zur Wiederherstellung des Schiffes zu unternehmen.
8.3 Sollten im Rahmen von Aktionen bei der Begleitung der Ladung oder Reparaturarbeiten ausgeführt worden, die ein Schweizer oder Bremen oder andere Halbpfandreinigem anfallen, ist das entsprechende Rechnungstitel der Hafenbehörde im Varianten anzuzeigen.
8.4 Die Waren der der verzögerung des Hafenantrags sind unverzüglich zu befördern.
8.5 Vor dem Beginn der Aktionen ist der Aktionär im Namen der Widersachens der in die erfolgten Kosten anzurechnen ist.

Besprechung


Hinweise

Diese Verfügung erfüllt keine nach anderen Gesetzen oder Verordnungen zu erfüllenden Nebenbedingungen oder Gerichtsverfügungen.

Rechtliche Bedingungen

Gegen diese Verfügung kann innerhalb eines Monats nach ihrer Bekanntgabe eine Widerspruchs kammer. Eine Widerspruch ist schriftlich oder vor Gericht beim Hansestadt Bremerhaven Hafenamt, Hafenkapitän, Bremerhavener Str. 74, 27588 Bremerhaven, zu erlassen.

Gebührenfestsetzung


Eine Rechtsstreits am Bestand dieser Genehmigung und geht ihnen in Kürze zu.

gez. Mai

A. Mail
Hafenkapitän
Cargo as waste

Discharging and Salvage Concept
- Is developed by a professional and approved surveyor
- Has to be appointed by the responsible port authority

Contents:
- The conducting terminal operator and stevedores
- Time of operation-start and planned shifts
- Explicit containers by bay and row of vessel
- Restowage and discharging plan
- Protection area (horizontal and vertical) on deck with flatracks and 40’ cont at outermost position (land and sea)
- Mobile crane with man-basket on stand-by for possible support

Dr. Douvier; Maskat, March 2019
Cargo as waste

Discharging and Salvage Concept (cont.)

- First closed cont. without risk of cargo loss/leakage to be discharged
- Loose, scattered cargo from damaged/collapsed containers to be collected and disposed into waste bins/containers
- No hotworks, if required cutting works conducted by means of hydro-jet technique
- Special measures for damaged DG-containers leakages
- Personal protection equipment of workers and other safety aspects like ignition-sources and non-arcing tools (e.g. plastic shovels)
Place of Refuge versus Waste Law

Summary

- Waste handling in the Port of Refuge takes time and costs money
- Port of Refuge Management is necessary
- In Germany up to 40 different authorities involved (HK, March 2017)
- 16 cases (2005-2017) of access/order to PoR by Central Command for Maritime Emergencies Germany
Place of Refuge

Do You know this vessel's name?

versus Waste Law

End