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(Agenda item 17)**

**GUIDELINES ON PLACES OF REFUGE FOR SHIPS
IN NEED OF ASSISTANCE**

THE ASSEMBLY,

RECALLING Article 15(j) of the Convention on the International Maritime Organization concerning the functions of the Assembly in relation to regulations and guidelines concerning maritime safety and the prevention and control of marine pollution from ships,

RECALLING ALSO the obligations and procedures for the master to come to the assistance of persons in distress at sea, established by regulation V/33 of the International Convention for the Safety of Life at Sea, 1974, as amended,

RECALLING FURTHER that the International Convention on Maritime Search and Rescue, 1979, as amended, establishes a comprehensive system for the rescue of persons in distress at sea which does not address the issue of ships in need of assistance,

CONSCIOUS OF THE POSSIBILITY that ships at sea may find themselves in need of assistance relating to the safety of life and the protection of the marine environment,

RECOGNIZING the importance of and need for providing guidance for the masters and/or salvors of ships in need of assistance,

RECOGNIZING ALSO the need to balance both the prerogative of a ship in need of assistance to seek a place of refuge and the prerogative of a coastal State to protect its coastline,

RECOGNIZING FURTHER that the provision of a common framework to assist coastal States to determine places of refuge for ships in need of assistance and respond effectively to requests for such places of refuge would materially enhance maritime safety and the protection of the marine environment,

HAVING CONSIDERED the recommendations made by the Maritime Safety Committee at its seventy-sixth and seventy-seventh sessions, by the Marine Environment Protection Committee at its forty-eighth session, by the Legal Committee at its eighty-seventh session and by the Sub-Committee on Safety of Navigation at its forty-ninth session,

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1. ADOPTS the Guidelines on places of refuge for ships in need of assistance, the text of which is set out in the annex to the present resolution;
2. INVITES Governments to take these Guidelines into account when determining and responding to requests for places of refuge from ships in need of assistance;
3. REQUESTS the Maritime Safety Committee, the Marine Environment Protection Committee and the Legal Committee to keep the annexed Guidelines under review and amend them as appropriate;
4. REQUESTS the Legal Committee to consider, as a matter of priority, the said Guidelines from its own perspective, including the provision of financial security to cover coastal State expenses and/or compensation issues, and to take action as it may deem appropriate.

ANNEX

**GUIDELINES ON PLACES OF REFUGE FOR SHIPS
IN NEED OF ASSISTANCE**

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1 General

Introduction

Objectives of providing a place of refuge

1.1 Where the safety of life is involved, the provisions of the SAR Convention should be followed. Where a ship is in need of assistance but safety of life is not involved, these guidelines should be followed.

1.2 The issue of “places of refuge” is not a purely theoretical or doctrinal debate but the solution to a practical problem: What to do when a ship finds itself in serious difficulty or in need of assistance without, however, presenting a risk to the safety of life of persons involved. Should the ship be brought into shelter near the coast or into a port or, conversely, should it be taken out to sea?

1.3 When a ship has suffered an incident, the best way of preventing damage or pollution from its progressive deterioration would be to lighten its cargo and bunkers; and to repair the damage. Such an operation is best carried out in a place of refuge.

1.4 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.

1.5 While coastal States may be reluctant to accept damaged or disabled ships into their area of responsibility due primarily to the potential for environmental damage, in fact it is rarely possible to deal satisfactorily and effectively with a marine casualty in open sea conditions.

1.6 In some circumstances, the longer a damaged ship is forced to remain at the mercy of the elements in the open sea, the greater the risk of the vessel’s condition deteriorating or the sea, weather or environmental situation changing and thereby becoming a greater potential hazard.

1.7 Therefore, granting access to a place of refuge could involve a political decision which can only be taken on a case-by-case basis with due consideration given to the balance between the advantage for the affected ship and the environment resulting from bringing the ship into a place of refuge and the risk to the environment resulting from that ship being near the coast.

Background

1.8 There are circumstances under which it may be desirable to carry out a cargo transfer operation or other operations to prevent or minimize damage or pollution. For this purpose, it will usually be advantageous to take the ship to a place of refuge.

1.9 Taking such a ship to a place of refuge would also have the advantage of limiting the extent of coastline threatened by damage or pollution, but the specific area chosen may be more severely threatened. Consideration must also be given to the possibility of taking the affected ship to a port or terminal where the transfer or repair work could be done relatively easily. For this reason the decision on the choice and use of a place of refuge will have to be carefully considered.

1.10 The use of places of refuge could encounter local opposition and involve political decisions. The coastal States should recognize that a properly argued technical case, based on a clear description of the state of the casualty, would be of great value in any negotiations which may take place.

1.11 At the international level, the Conventions listed in Appendix 1, as may be amended, constitute, *inter alia*, the legal context within which coastal States and ships act in the envisaged circumstances.

Purpose of the Guidelines

1.12 The purpose of these Guidelines is to provide Member Governments, shipmasters, companies¹ (particularly in connection with the ISM Code and procedures arising therefrom), and salvors with a framework enabling them to respond effectively and in such a way that, in any given situation, the efforts of the shipmaster and shipping company concerned and the efforts of the government authorities involved are complementary. In particular, an attempt has been made to arrive at a common framework for assessing the situation of ships in need of assistance.

1.13 **These Guidelines do not address the issue of operations for the rescue of persons at sea**, inasmuch as the practical difficulties that have given rise to the examination of the issue of places of refuge relate to problems other than those of rescue. Two situations can arise:

- the ship, according to the master's assessment, is in need of assistance but not in a distress situation (about to sink, fire developing, etc.) that requires the evacuation of those on board; or
- those on board have already been rescued, with the possible exception of those who have stayed on board or have been placed on board in an attempt to deal with the situation of the ship.

1.14 **If, however, in an evolving situation, the persons on board find themselves in distress, the rules applicable to rescue operations under the SAR Convention, the IAMSAR Manual and documents arising therefrom have priority over the present Guidelines (and procedures arising herefrom).**

1.15 In any case the competent MRCC should be informed about any situation which may develop into a SAR incident.

1.16 Even though a "rescue" operation, as defined in the International Convention on Maritime Search and Rescue (SAR) is not the case, the safety of persons must nevertheless be constantly borne in mind in the application of these Guidelines, particularly in two respects:

- if the ship poses a risk (explosion, serious pollution, etc.) to the life of persons in the vicinity (crews of salvage vessels, port workers, inhabitants of the coastal area, etc.);
- if persons voluntarily stay (master, etc.) or go (fire-fighters and other experts, personnel of marine salvage or towage companies, etc.) on board to attempt to overcome the difficulties experienced by the ship.

¹ As defined in the ISM Code.

1.17 These Guidelines do not address the issue of liability and compensation for damage resulting from a decision to grant or deny a ship a place of refuge.

Definitions

1.18 **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.

1.19 **Place of refuge** means a place where a ship in need of assistance can take action to enable it to stabilize its condition and reduce the hazards to navigation, and to protect human life and the environment.

1.20 **MAS** means a maritime assistance service, as defined in resolution A.950(23), responsible for receiving reports in the event of incidents and serving as the point of contact between the shipmaster and the authorities of the coastal State in the event of an incident.

2 GUIDELINES FOR ACTION REQUIRED OF MASTERS AND/OR SALVORS OF SHIPS IN NEED OF A PLACE OF REFUGE

Appraisal of the situation

2.1 The master should, where necessary with the assistance of the company and/or the salvor, identify the reasons for his/her ship's need of assistance. (Refer to paragraph 1 of Appendix 2.)

Identification of hazards and assessment of associated risks

2.2 Having made the appraisal referred to in paragraph 2.1 above, the master, where necessary with the assistance of the company and/or the salvor, should estimate the consequences of the potential casualty, in the following hypothetical situations, taking into account both the casualty assessment factors in their possession and also the cargo and bunkers on board:

- if the ship remains in the same position;
- if the ship continues on its voyage;
- if the ship reaches a place of refuge; or
- if the ship is taken out to sea.

Identification of the required actions

2.3 The master and/or the salvor should identify the assistance they require from the coastal State in order to overcome the inherent danger of the situation. (Refer to paragraph 3 of Appendix 2.)

Contacting the authority of the coastal State

2.4 The master and/or the salvor should make contact with the coastal State in order to transmit to it the particulars referred to in paragraphs 2.1 to 2.3 above. They must in any case transmit to the coastal State the particulars required under the international conventions in force. Such contact should be made through the coastal State's Maritime Assistance Service (MAS), as referred to in resolution A.950(23).

Establishment of responsibilities and communications with all parties involved

2.5 The master and/or the salvor should notify the MAS of the actions that are intended to be taken and within what period of time.

2.6 The MAS should notify the master and/or the salvor of the facilities that it can make available with a view to assistance or admittance of the ship to a place of refuge, if required.

Response actions

2.7 Subject, where necessary, to the coastal State's prior consent, the shipmaster and the shipping company concerned should take any necessary response actions, such as signing a salvage or towage agreement or the provision of any other service for the purpose of dealing with the ship's situation.

2.8 The master, the company and, where applicable, the salvor of the ship should comply with the practical requirements resulting from the coastal State's decision-making process referred to in paragraphs 3.12 to 3.14.

Reporting procedures

2.9 The reporting procedures should be in accordance with the procedures laid down in the safety management system of the ship concerned under the ISM Code or resolution A.852(20) on Guidelines for a structure of an integrated system of contingency planning for shipboard emergencies, as appropriate.

3 GUIDELINES FOR ACTIONS EXPECTED OF COASTAL STATES

3.1 Under international law, a coastal State may require the ship's master or company to take appropriate action within a prescribed time limit with a view to halting a threat of danger. In cases of failure or urgency, the coastal State can exercise its authority in taking responsive action appropriate to the threat.

3.2 It is therefore important that coastal States establish procedures to address these issues, even if no established damage and/or pollution has occurred.

3.3 Coastal States should, in particular, establish a Maritime Assistance Service (MAS).²

Assessment of places of refuge

Generic assessment and preparatory measures

3.4 It is recommended that coastal States endeavour to establish procedures consistent with these Guidelines by which to receive and act on requests for assistance with a view to authorizing, where appropriate, the use of a suitable place of refuge.

3.5 The maritime authorities (and, where necessary, the port authorities) should, for each place of refuge, make an objective analysis of the advantages and disadvantages of allowing a ship in need of assistance to proceed to a place of refuge, taking into consideration the analysis factors listed in paragraph 2 of Appendix 2.

² Unless neighbouring States make the necessary arrangements to establish a joint service.

3.6 The aforementioned analysis, which should take the form of contingency plans, is to be in preparation for the analysis provided for below when an incident occurs.

3.7 The maritime authorities, port authorities, authorities responsible for shoreside safety and generally all governmental authorities concerned should ensure that an appropriate system for information-sharing exists and should establish communications and alert procedures (identification of contact persons, telephone numbers, etc.), as appropriate.

3.8 The aforementioned authorities should plan the modalities for a joint assessment of the situation.

Event-specific assessment

Analysis factors

3.9 This analysis should include the following points:

- seaworthiness of the ship concerned, in particular buoyancy, stability, availability of means of propulsion and power generation, docking ability, etc.;
- nature and condition of cargo, stores, bunkers, in particular hazardous goods;
- distance and estimated transit time to a place of refuge;
- whether the master is still on board;
- the number of other crew and/or salvors and other persons on board and an assessment of human factors, including fatigue;
- the legal authority of the country concerned to require action of the ship in need of assistance;
- whether the ship concerned is insured or not insured;
- if the ship is insured, identification of the insurer, and the limits of liability available;
- agreement by the master and company of the ship to the proposals of the coastal State/salvor to proceed or be brought to a place of refuge;
- provisions of the financial security required;
- commercial salvage contracts already concluded by the master or company of the ship;
- information on the intention of the master and/or salvor;
- designation of a representative of the company at the coastal State concerned;
- risk evaluation factors identified in Appendix 2; and
- any measures already taken.

Expert analysis

3.10 An inspection team designated by the coastal State should board the ship, when appropriate and if time allows, for the purpose of gathering evaluation data. The team should be composed of persons with expertise appropriate to the situation.

3.11 The analysis should include a comparison between the risks involved if the ship remains at sea and the risks that it would pose to the place of refuge and its environment. Such comparison should cover each of the following points:

- safeguarding of human life at sea;
- safety of persons at the place of refuge and its industrial and urban environment (risk of fire or explosion, toxic risk, etc.);
- risk of pollution;
- if the place of refuge is a port, risk of disruption to the port's operation (channels, docks, equipment, other installations);
- evaluation of the consequences if a request for place of refuge is refused, including the possible effect on neighbouring States; and
- due regard should be given, when drawing the analysis, to the preservation of the hull, machinery and cargo of the ship in need of assistance.

After the final analysis has been completed, the maritime authority should ensure that the other authorities concerned are appropriately informed.

Decision-making process for the use of a place of refuge

3.12 When permission to access a place of refuge is requested, there is no obligation for the coastal State to grant it, but the coastal State should weigh all the factors and risks in a balanced manner and give shelter whenever reasonably possible.

3.13 In the light of the outcome of the assessment provided for above, the coastal State should decide to allow or refuse admittance, coupled, where necessary, with practical requirements.

3.14 The action of the coastal State does not prevent the company or its representative from being called upon to take steps with a view to arranging for the ship in need of assistance to proceed to a place of refuge. 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.

APPENDIX 1

APPLICABLE INTERNATIONAL CONVENTIONS

At the international level, the following Conventions and Protocols are in force and constitute, *inter alia*, the legal context within which coastal States and ships act in the envisaged circumstances³:

- United Nations Convention on the Law of the Sea (UNCLOS), in particular article 221 thereof;⁴
- International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (the Intervention Convention), 1969, as amended;
- Protocol relating to Intervention on the High Seas in Cases of Pollution by substances other than Oil, 1973;
- International Convention for the Safety of Life at Sea, 1974 (SOLAS 1974), as amended, in particular chapter V thereof;
- International Convention on Salvage, 1989 (the Salvage Convention);⁵
- 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

³ It is noted that there is at present no international requirement for a State to provide a place of refuge for vessels in need of assistance.

⁴ “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.”

⁵ Parties to the International Convention on Salvage, 1989 (Salvage 1989), are obliged under article 11 of the Convention when considering a request for a place of refuge, to take into account the need for co-operation between salvors, other interested parties and public authorities to ensure the efficient and successful performance of salvage operations. Article 11 of the Salvage Convention states:

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

- 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.

APPENDIX 2

**GUIDELINES FOR THE EVALUATION OF RISKS ASSOCIATED
WITH THE PROVISION OF PLACES OF REFUGE**

When conducting the analysis described in paragraphs 3.4 to 3.8, in addition to the factors described in paragraph 3.9, the following should be considered.

1 Identification of events, such as:

- fire
- explosion
- damage to the ship, including mechanical and/or structural failure
- collision
- pollution
- impaired vessel stability
- grounding.

2 Assessment of risks related to the identified event taking into account:

.1 Environmental and social factors, such as:

- safety of those on board
- threat to public safety
 - What is the nearest distance to populated areas?
- pollution caused by the ship
- designated environmental areas
 - Are the place of refuge and its approaches located in sensitive areas such as areas of high ecological value which might be affected by possible pollution?
 - Is there, on environmental grounds, a better choice of place of refuge close by?
- sensitive habitats and species
- fisheries
 - Are there any offshore and fishing or shellfishing activities in the transit area or in the approaches to the place of refuge or vicinity which can be endangered by the incoming ship in need of assistance?
- economic/industrial facilities
 - What is the nearest distance to industrial areas?
- amenity resources and tourism
- 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?

.2 Natural conditions, such as:

Prevailing winds in the area.

Is the place of refuge safely guarded against heavy winds and rough seas?

Tides and tidal currents.

- weather and sea conditions
Local meteorological statistics and number of days of inoperability or inaccessibility of the place of refuge.
- bathymetry
Minimum and maximum water depths in the place of refuge and its approaches.
The maximum draught of the ship to be admitted. Information on the condition of the bottom, i.e., hard, soft, sandy, regarding the possibility to ground a problem vessel in the haven or its approaches.
- seasonal effects including ice
- navigational characteristics
In the case of a non-sheltered place of refuge, can salvage and lightering operations be safely conducted?
Is there sufficient space to manoeuvre the ship, even without propulsion?
What are the dimensional restrictions of the ship, such as length, width and draught?
Risk of stranding the ship, which may obstruct channels, approaches or vessel navigation.
Description of anchorage and mooring facilities in the place of refuge.
- operational conditions, particularly in the case of a port
Is pilotage compulsory and are pilots available?
Are tugs available? State their number and horsepower.
Are there any restrictions? If so, whether the ship will be allowed in the place of refuge, e.g. escape of poisonous gases, danger of explosion, etc.
Is a bank guarantee or other financial security acceptable to the coastal State imposed on the ship before admission is granted into the place of refuge?

.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

.4 Foreseeable consequences (including in the media) of the different scenarios envisaged with regard to safety of persons and pollution, fire, toxic and explosion risks.

3 Emergency response and follow-up action, such as:

- lightering
 - pollution combating
 - towage
 - stowage
 - salvage
 - storage.
-