

Places of refuge – learning from the MSC Flaminia

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Introduction

The recent incident involving the MSC Flaminia has again brought into sharp focus the problems that arise when a ship in need of assistance seeks a place of refuge. Unlike the disastrous cases of the Erika and the Prestige, the case of the MSC Flaminia had a happy ending but clearly showed that methods of handling requests for places of refuge still need refinement.

This article will examine this issue in light of the way in which the case of the MSC Flaminia was handled. This will involve a brief examination of the facts of the case and the way in which international law and the laws of the European Union address requests for places of refuge. The article will conclude with the lessons that can be learned from the case and what further avenues need to be explored.

The facts

The MSC Flaminia is a small, German-flagged container vessel with a capacity of 6,732 twenty-foot equivalent units (TEU). On 14 July 2012, on a voyage from Charleston (USA) to Antwerp (Belgium), with a cargo of 2,876 TEUs, the vessel encountered difficulties in the Atlantic ocean approximately 1,000 nautical miles west of Cornwall (UK). On that day a fire broke out in hold four and during the attempts to extinguish the fire an explosion occurred. A crew member was killed and another one subsequently died of his injuries after being rescued and taken aboard the tank vessel DC Crown together with the other crew members. As a result of the fire and explosion, 72 containers were destroyed and 24 were substantial damaged. More ominously, 151 containers contained dangerous goods.

Despite continuous discussions with the authorities in several coastal states, the vessel was not permitted to enter the waters of any coastal state until 16 August. On 17 August, Germany agreed to grant a place of refuge. The vessel was in a condition to be towed and arrangements were made to tow it through the English Channel to the German Exclusive Economic Zone (EEZ). An inspection team was placed on board and continuous monitoring of the condition of the ship and its cargo were conducted.

On 31 August, the consents of all coastal States involved were obtained and on 8/9 September the vessel was towed into and berthed in Jade-Weser-Port in Wilhelmshaven, Germany. This port had previously been identified as a suitable place of refuge as it had a suitable basin and quay wall as well as enough empty wharf space and was on the brink of becoming operational.

The law

At international level, there is little support for the concept of a general right to access ports. However, it is widely argued that in exceptional circumstances, such access must be granted where a vessel is in distress. While this may be true, recent state practice has reduced the previously accepted custom of granting refuge to a ship in distress into one of humanitarian safety and, in the absence of a threat to human life on the vessel, the custom has evolved



The German-flagged MSC Flaminia (pictured) ran into difficulties on July 14th 2012

such that access may no longer be automatically granted to ships in distress and is now to be decided on a case by case basis.

In view of the uncertain position under international law of ships in distress in seeking a place of refuge, in December 2003 the International Maritime Organisation (IMO) drew up guidelines for use by ship owners, ship masters and coastal states when a place of refuge was needed and requested.

Under the guidelines, the master or salvor must clearly establish the problems being experienced and report them to the coastal state to enable the coastal state to assess the risk and what action, if any, may be required. While it is waiting for the response from the coastal state, the master or salvor should take all necessary action to deal with the situation including signing a towage or salvage agreement or other services.

Coastal states are encouraged to develop a contingency plan for each possible place of refuge and to assess the appropriateness of each potential place of refuge. The factors which can be taken into account include environmental and social factors as well as the natural conditions of the potential place of refuge. Additionally, an assessment should be made of the availability of suitable equipment, the availability of evacuation facilities and international cooperation.

When a request for a place of refuge is received by a coastal state, consideration must be given as to whether or not to grant the request. The factors for consideration include the condition of the ship at the time of the request and its potential to change; the type and condition of cargo carried; whether or not the



Photo courtesy of Smit Salvage

The salvage of MSC Flaminia was assigned by the boxship's operator NSB Niederelbe to Smit Salvage

master and crew or salvors are still on board and, if so, their condition; whether a salvage agreement has been entered into; the distance to a potential place of refuge; whether the ship is insured and if so, the details of the insurance; the details of any financial security required; the requirements, if any, of the flag state. Where possible, to assist in assessing the risks, an inspection team should be put on board. Once all the assessments and analyses have been performed, the coastal state must then make a decision on whether or not to grant a request for access. The options available to coastal states are to allow or refuse access, subject to any conditions.

Places of refuge are dealt with by the European Union in Directive 2002/59/EC, as amended by Directive 2009/17/EC and the procedure corresponds closely with the IMO guidelines. Sub-Article 20a requires member states to draw up plans for accommodation of ships in need of assistance. These plans are to be based on the IMO guidelines. Sub-Article 20b confirms that the competent authority is to make the decision on a request for a place of refuge based on the plans. This article requires the authority to ensure that ships are admitted to a place of refuge if they consider such an accommodation to be the best course of action for the purposes of protection of human life or the environment.

Lessons to be learned

While it is too early to ascertain to what extent the handling of the case was in accordance with the IMO guidelines and the EU Directive, once a place of refuge was granted by Germany, the process appeared to go smoothly and the vessel was towed to a suitable place which had the requisite machinery and wharf space to deal with a damaged container ship. One apparent failure of the process and a matter that does need examination is the length of time (one month) between the fire and the obtaining of authorisation of the coastal states to access their waters. This is currently being examined by the Cooperation Group on Places of Refuge of the EU Commission and the

Parties to the Bonn Agreement.

Furthermore, had the MSC Flaminia incident occurred later, it is doubtful whether Jade-Weser-Port could have been a viable option as the terminals then would have been fully occupied. Of course with flexibility and improvisation it should be possible to free a quay wall for some days, but that's exactly the issue which can be learned from the MSC Flaminia case: the unloading of a damaged container vessel takes weeks and maybe even months. It is clear that for a fully operational container terminal such an interruption would be disruptive and the economic losses for the container stevedoring company in question will be enormous and disproportional. Therefore specific attention should be given to the operational differences between liquid cargo vessels and container vessels when in distress. Both have their own merits and an important difference is that a liquid cargo carrier in need of assistance can be offered shelter and subsequently discharged in relative isolation.

The MSC Flaminia experience teaches us that container vessels in distress need at least two things: a suitable berthing place which has to be a terminal with cranes, equipment and quay space for segregation, and that this berthing place has to be available for a relatively long period as the operational challenges will follow after the ship has been safely berthed in a place of refuge.

Focus of further investigations

On the basis of international legislation it is standard procedure that maritime accidents have to be investigated. The focus of the investigations regarding MSC Flaminia should not only be on the specific causes of the fire in order to avoid future accidents, but also on what can be learned from the aftermath after the MSC Flaminia had been berthed, that is, how to organise the operations of the unloading of a burned out or even smouldering container vessel. It is expected that newer generation container vessels will carry 1,000 to 1,800 containers with dangerous cargo. What are the alternatives if commercially operated container terminals are not available for weeks or even months? Is it time for relevant industry groups to re-examine the plan of the salvage industry to have a specific place of refuge permanently available, which in this case could be a floating dock with container facilities into which a container vessel in distress could be placed in isolation? These elements have to become clear in due course in order to be ready for future incidents where there is no new, empty terminal available.

ABOUT THE AUTHORS



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