Chapter 6
Port Perspectives and Environmental Management Considerations

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INTRODUCTION

Ships have experienced distress situations since the earliest days of the shipping industry. Whenever the crew was unable to deal with the problem successfully at sea, outside assistance was needed and the ship had to be brought into a place of refuge. A maritime tradition of providing shelter to ships that needed refuge thus developed. There are many examples of ships in the worst possible state being welcomed into ports around the world. But at some point in the latter part of the 20th century, damaged ships became less welcome. This can be attributed to two reasons. Firstly, the explosive growth in the size of modern ships constrains the ability of a port to offer reasonable facilities to accommodate a ship in distress. Secondly, and most important, the fear of pollution or associated hazards due to the vast quantities of oil and other hazardous cargo

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carried in a single hull represent a big risk for ports. As a consequence, there have been several incidents where shelter has been denied to ships in distress by national or local (e.g., ports) authorities. This reluctance to accept the entry of a damaged ship into their territorial waters or port areas is due not only to the aforementioned fear of pollution (i.e., sensitive areas, coastal and port environment), but also due to concern for the safety of local inhabitants, the economic consequences for coastal tourist resorts, and the severe disruption of port operations and subsequent loss of business. On the other hand, the risk of leaving the ship at sea is that this may lead to greater economic and environmental damages than bringing it to a place of refuge.\footnote{For example, it can be leaking for a very long time without control and thus cause long-term damage to the environment.} The IMO Guidelines on Places of Refuge for Ships in Need of Assistance (IMO Guidelines)\footnote{Guidelines on Places of Refuge for Ships in Need of Assistance, IMO Assembly Resolution A.949(23), adopted on 5 December 2003, IMO Doc. A 23/Res.949, 5 March 2004 (hereafter IMO Guidelines).} and EU Directive 2002/59/EC Establishing a Community Vessel Traffic Monitoring and Information System\footnote{Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC, European Parliament and the Council of the European Union, \textit{Official Journal}, L208, 5 August 2002, Article 20 (hereafter EU Directive).} acknowledge this risk and establish that places of refuge may be the best solution in the case of a ship in distress. However, a potential confrontation between the customary right of refuge and the coastal right of self-defence makes the decision to grant refuge complex.

From the point of view of a port, the acceptance of a ship in distress into the port is not straightforward; many interests, such as environmental, economic and safety concerns, are involved in reaching a decision. Some important questions for the port to consider in such situation include:

- Do commercial ports have to take in any ship in distress, even if this will pose a risk to the port, its population or installations, or if its commercial activities are hampered?
- Who decides if a port has to accept a ship?
- What are the costs incurred by a port?
- Is there any compensation to a port accepting a ship in distress?
- What is the civil liability of a port authority when deciding whether or not to accept a ship in distress?
- What are the consequences for a port after accepting a ship in distress?
- Would a new International Convention on Places of Refuge establish rights and duties for ports? Will it establish compensation and liability regimes for them?