Chapter 11
Places of Refuge: Compensation for Damage Perspective
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INTRODUCTION

The topic of ‘places of refuge’ and ‘leper ships’\(^1\) has moved to the top of the agenda in the discussion of maritime issues. The incidents of the ‘Erika’ (France 1999), the ‘Prestige’ (Spain 2002), and the ‘Castor’ in the Mediterranean have attracted the attention of the International Maritime Organization (IMO), Comité Maritime International (CMI), the European Union, national and other institutions.\(^2\) On certain occasions, the admission to internal waters of a vessel in distress – possibly a leper ship – has caused

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\(^1\) The term ‘leper ship’ is used to refer to a ship that is shunned by port authorities and refused entry into potential places of refuge.

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damage to the admitting state: the ‘Kowloon Bridge’, wrecked in West Cork, spilled bunker oil causing damage to fisheries and to the tourism image of that area.\(^3\) The law relating to ports of refuge, although of ancient vintage, does not provide for a one-stop solution; it is scattered amongst various sources.

In this chapter the aim is to look at the remedies available at common law, international law, and in terms of the international pollution damage conventions for damage caused in the port of refuge scenario. The issue of ‘wrecks’ in the context of places of refuge is addressed towards the end of this chapter.

**COMMON LAW REMEDIES FOR DAMAGES IN THE PORT OF REFUGE SCENARIO**

The common law generally seems to be of doubtful utility in relation to compensation for pollution damage. It is also only of limited relevance in those contracting states where the international conventions referred to below are implemented in national legislation. However, general law remedies remain appropriate in relation to defendant parties – like classification societies – which are not referred to as defendants in the said conventions. Similarly port authorities could be defendants in an action in negligence, as can be salvors. Moreover, general law remedies continue to be relevant in cases of action in recourse which, of course, remain untouched by the conventions, and likewise are likely to be restricted by limitation of liability. For example, in the case of the oil spill from the ‘Sea Empress’,\(^4\) one could easily envisage an action in recourse on the basis of the tort of negligence by the International Oil Pollution Compensation Fund (IOPC Fund) and shipowner – strictly liable in terms of the conventions discussed below – against the port authority of Milford Haven in respect of damages. Indeed in separate regulatory proceedings, the port authority was found liable as a cause of the pollution under section 85 of the *Water Resources Act 1991*.\(^5\)

There have been a number of oil pollution damage cases in common law but the outcome, as will be indicated in the cases discussed below, is undoubtedly unsatisfactory. Some of these cases deal with a ‘ship in distress’ if not a ‘place of refuge’ situation.

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\(^4\) ‘The Sea Empress’ grounded and discharged oil off the west coast of Wales in February 1996.