Chapter 19
The United States’ Approach to Implementing the IMO Guidelines on Places of Refuge

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INTRODUCTION

The shipment of oil by sea is not without peril. Major marine casualties such as the M/T ‘Torrey Canyon’ in 1967 and the M/T ‘Exxon Valdez’ in 1989 are but

* The views expressed in this paper are those of the author and do not necessarily represent the views of the United States Coast Guard, Department of Homeland Security, or Government of the United States.

1 On 18 March 1967, the Liberian tanker ‘Torrey Canyon’, which in 1967 was one of the largest vessels in the world, ran aground off the southwestern coast of England, spilling over 100,000 tons of oil that eventually washed ashore on English and French beaches, causing massive environmental and economic damage. The scale of pollution was unprecedented in world history, see C. de la Rue and C. B. Anderson, Shipping and the Environment: Law and Practice (London & Hong Kong, LLP Reference Publishing, 1998), at 11 and 835.

2 On 24 March 1989, the U.S. tanker Exxon Valdez ran aground in Prince William
two examples of the potential for large-scale pollution from ships. Of particular relevance are the cures such casualties have inspired. The ‘Torrey Canyon’ exposed shortcomings in both public and private law, which resulted in the International Convention on Civil Liability for Oil Pollution Damage (CLC), 1969\(^3\) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund Convention), 1971,\(^4\) and the ‘Exxon Valdez’ is widely known as the genesis for the Oil Pollution Act of 1990 (OPA 90).\(^5\) These landmark reforms have significantly reduced oil pollution from ships over time, largely through financial liability regimes. Despite their success, however, accidents still happen. Existing liability schemes have not eliminated (and perhaps arguably cannot eliminate) the potential for large-scale pollution from ships, as demonstrated by the 2002 sinking of the M/T ‘Prestige’ (see insert).

The way in which the ‘Prestige’ incident unfolded and, in particular, the denial of safe refuge for the tanker, brought to light potentially conflicting interests of two main parties in the places of refuge issue. On one side of the issue stands the prerogative of a ship in need of assistance to seek a place of refuge; and on the other, the prerogative of a coastal state to protect its coastline. If poorly managed, these conflicts can act like a ‘knot in the line’ toward efforts to ensure maritime safety and environmental protection. In the case of the ‘Prestige’, the knot tightened until finally cut by the breaking of a loaded tanker at sea. To loosen – perhaps even untie – the knot, the International Maritime Organization (IMO) Guidelines on Places of Refuge for Ships in Needs of Assistance provide a framework for assimilating various interests and factors inherent to ‘Prestige’-type scenarios.\(^6\) For the United States, implementation of the IMO Guidelines is achieved largely through the National Response System,\(^7\) which shall serve as the context for discussion in this chapter.

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\(^7\) See National Response Team (NRT) website, <www.nrt.org>, 28 July 2005.