



**International Association of Ports and Harbors
World Ports Association, World Ports Conference**

An Instrument on Places of Refuge From A Ports' Perspective

Presentation by Frans van Zoelen

**Chair Legal Committee of the International
Association of Ports and Harbors**

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An Instrument on Places of Refuge From A Ports' Perspective

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1. Introduction

It is rather brave to depart on a project for drawing up an international instrument about Places of Refuge as CMI's International Working Group under the Chairmanship of Stuart Hetherington has done.

Brave for a number of reasons. First, this subject has been "de-prioritised" by IMO's Legal Committee in its agenda for action for several years now. In other words: at Albert Embankment in London, where IMO's Headquarters are based, this subject seems politically dead and buried. As a result, any draft instrument to be adopted by CMI at this week's conference in Athens has to be very persuasive indeed, in order for Places of Refuge to reappear at IMO's legislative agenda.

Secondly, the project is also brave from a legal angle. Academic opinion is at best divided about the existence in international law of a right of a ship in distress to enter the territorial waters of a coastal State to find a Place of Refuge. With both advocates and opponents present relying on the same provisions of the United Nations Convention on the Law of the Sea (UNCLOS) of Montego Bay 1982 for their arguments. UNCLOS constitutes a fairly modern codification and extension of the previous written and unwritten law of the sea. However, not even in UNCLOS, did the international community of national States include any provisions explicitly dealing with the topic of Places of Refuge. It is after all this gap, which the Draft Instrument seeks to fill up.

Thirdly, it seems that over time the nature of the problem of Places of Refuge for ships in distress has changed. Whereas previously humanitarian considerations may have led national States to voluntarily grant access to ships in distress in order to save lives, in the meantime better technical means such as long-range helicopters, have become available for



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this purpose. Instead environmental and financial concerns have become much more important as a result of the impressive increase in the tonnage of ships and quantum and value of cargoes including the enormous increase in capacity of ship and cargo to cause major maritime disasters and financial loss whether in the form of serious pollution of the environment, cargo damage or wreck and cargo removal costs.

In my view it cannot be stressed enough that the subject of Places of Refuge touches the core of a national State's sovereignty, i.e. the right of a coastal or port State to decide for itself, to defend itself and to protect its vital interests, which is recognised under international law. This aspect defines our challenge this week: will we be able to draw up or even adopt an instrument attractive enough for governments to consider subordinating their national interests in favour of the safety of ships in distress? If not, I fear that all our efforts will be fruitless, simply because States will not be prepared to adopt or even ratify such a proposed instrument.

It is the opinion of the International Association of Ports and Harbors (IAPH) that the proposed draft for the Instrument on Places of Refuge is likely to fail because the new obligations and liabilities proposed for national States are not in any way balanced by any (adequate) incentives from ship-owners and their underwriters that will provide the States with better protection than the status quo already offers. In short: the proposed instrument reads as a wish list for the owners and P&I Clubs of potential ships in distress, not as a serious attempt to bridge the divide of conflicting interests which continues to exist in this area of law. Needless to say this topic is of great interest for the International Association of Ports and Harbors as in most of the cases, the Place of Refuge happens to be a *port of refuge*.

My presentation for you today consists of four parts.

1. For those unfamiliar with the association I am representing, I will briefly introduce IAPH, its objectives and activities.
2. Next I will shortly elaborate the position IAPH consistently has taken in the debate on Places of Refuge, and which I trust you already are familiar with.
3. Then I will comment on the proposed Draft Instrument and make suggestions for improvement which may help to increase support for it.



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4. Finally, in my conclusive remarks I will pay attention to IAPH's options in this context.



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2. The International Association of Ports and Harbors (IAPH)

The International Association of Ports and Harbors is often referred to as the "United World Ports", in which the global port community is represented to promote and advance its common purpose and vital interests. To further this goal, IAPH has adopted the following objectives:

- To promote the development of the international port and maritime industry by fostering co-operation between its members in order to build a more cohesive partnership between the world's ports and harbors.
- To represent the interests of and views held by the international community of ports and harbors before international organizations involved in legislating and regulating international trade, shipping and transport and to see to it that its interests and views are taken into consideration whenever these organizations take relevant regulatory initiatives.
- To collect, analyze, exchange and distribute information on developing trends in international trade, transportation, ports and the regulations of these industries.

IAPH now comprises of about 230 regular Members from leading ports in 90 States worldwide, including public port authorities, private port operators and government agencies. Together IAPH-member-ports handle approximately 7 billion tons of goods – thus accounting for 60% of the world's sea-borne trade – and over 90% of world container traffic. In addition, IAPH has over 100 Associate Members consisting of shipping, stevedoring and warehousing companies, national and regional port associations, port and maritime research institutes, and manufacturers of port-related products. The Collective Knowledge and Experience gathered within IAPH is immense, which explains why some refer to IAPH as a sleeping giant.

IAPH is recognized as the only international organization representing the voice of the world port industry and has been granted Consultative Status as Non-Governmental Organization (NGO) by six United Nations specialised agencies and bodies including the International Maritime Organization (IMO), the International Labour Organization (ILO) and the United



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Nations Commission on International Trade Law (Uncitral). This status has enabled IAPH to represent the views of ports and protect the interests of the global port industry at large.

IAPH divides the world into the following three regions:

- African/European Region (Africa and Europe, including Madagascar and the Asian countries on the Mediterranean and Aegean Seas)
- American Region (North and South America, including Hawaii)
- Asia/Oceania Region

Each region has its own Regional Board. Currently, Mrs. O.C. Phang of Port Klang Authority, Malaysia holds the Presidency over IAPH for the period 2007-2009. The IAPH's headquarters are based in Tokyo, where our Secretary General Dr. Satoshi Inoue and his staff reside. The African/European regional office of IAPH at Rotterdam is responsible for maintaining contact with most of the international organizations and with other NGO's.

IAPH as a membership association addresses various issues of interest and concern to the entire membership through committees. IAPH has eight Technical Committees, who are responsible for the task of addressing and examining issues impacting the global port industry. The Legal Committee of which I am the chairman has been grouped together with the Port Safety and Security Committee and the Port Environment Committee. The position taken by these Committees represent the view of the World Port Industry as a whole.



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3. IAPH and Places of Refuge

IAPH's position with regard to Places of Refuge has been a consistent one over the years to begin with IAPH's initial submission on this subject to the Legal Committee of IMO on 19 March 2002 (LEG 84/7/1). This position has been based on the following two considerations.

First, there is no rule of international law – whether written or unwritten – by which a ship in distress has an absolute right to unconditionally enter territorial waters of a sovereign State to find a Place of Refuge. As no international instrument confirms the existence of such absolute right of entry of a ship in distress, it is clear that national States have reserved their sovereign right to decide for themselves, and to defend and protect their vital interests.

However, this does not mean that coastal and port States or other competent authorities do not care about ships in distress or are unwilling to give ships in distress access to Places of Refuge. What it does mean, is that the governments of these States wish to decide for themselves on a case to case basis under what conditions ships in distress may enter their territorial waters from the high seas to seek refuge there. Neither does it mean that owners of ships in distress are left at the mercy of governments of coastal and port States or other competent authorities, without any access to justice, but rather that political decision-making and judicial review about giving access to territorial waters to a ship in distress seeking a Place of Refuge, takes place at the level of the relevant national State.

It also follows that in reality there is no legal vacuum with regard to Places of Refuge under international law: the matter has so far been left to national States.

The position of coastal State is recognized by IMO, for instance in the IMO Guidelines on Places of Refuge for Ships in Need of Assistance (Resolution A.949 (23), adopted 5 December 2003). In the recitals of this Guideline the prerogative of coastal States to protect its coastline is recognized. Further in paragraph 1.10 it has been acknowledged that the use of a Place of Refuge involves political decisions.

The second consideration is that a ship in distress poses quite an extreme and abnormal situation, which is not covered by the right of innocent passage under articles 17 and 18



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UNCLOS. This implies that coastal and port States have the right to impose pre-conditions on a ship in distress in return for granting it the right to enter their territorial waters to find a Place of Refuge. Such pre-conditions are not limited to technical and operational aspects, but may include also the waiver of the ship-owner's right to limitation and to provide a letter of undertaking or guarantee for amounts based upon the potential for damage resulting from the ship in distress entering the Place of Refuge. Coastal States cannot be expected to subordinate their interests to such an extent that they voluntarily absorb the risk of a major maritime disaster posed by ships in distress. In any case not if ship-owners and their respective P&I Clubs, as well as other interested parties such as cargo interests and other coastal States are unwilling to offer any (additional) incentive in return whilst accepting the benefit of this selfless act.

It should be noted that IAPH is not at all unsympathetically towards casualty ships. Although there is no (absolute) obligation in international law for a coastal State to grant access to its territorial waters to a ship in distress, it does not follow that it is desirable if coastal and port States were to deny access to ships in distress to Places of Refuge under all circumstances.

IAPH favours a case-by-case approach on the basis of good public and private management. Ships in distress must be assessed objectively to determine their condition and requirements and the risks attached to them. Next, the potential for (environmental and other) damage if access to the Place of Refuge is denied should be compared with the potential for damage if access is granted. If it appears that the risk of damage if the ship remains on the high seas is higher than the potential for damage to be caused in the Place of Refuge, then this constitutes a prima facie case to allow the ship in distress access to a Place of Refuge in the territorial waters of the coastal State.

In that case it would not be fair to 'punish' coastal States and/or ports for their willingness to provide shelter to a ship in distress and to absorb all risks of environmental and financial loss involved, by not allowing them full recovery of their resulting damage. Neither would it be wise from a practical point of view to introduce a pecuniary motive on the part of the ship-owner and his P&I Club, as to where the owner may limit his liability for wreck removal and environmental pollution most cheaply. As it is, there is already considerable diversity as to



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limitation regimes, which is exemplified by the fact that although Denmark, The Netherlands and England are all party to the LLMC, a general liability limitation fund in Denmark also extends to wreck removal claims, whereas in The Netherlands a separate wreck removal fund would be necessary to limit liability for such claims and in England limitation of liability is not possible for wreck removal claims. If we imagine a ship in distress at the North Sea equally distanced from coastal States Denmark, England and The Netherlands, where do you expect the ship to go to?

This problem is remedied if the ship-owner waives his right to limit in return to access to a Place of Refuge. I trust that this idea of reciprocity will appeal to lawyers in the audience groomed in the common law as it is based on a line of thinking not dissimilar from the *consideration doctrine* in English law. In my country we would say “voor wat, hoort wat”, which comes down to the basic notion of “quid pro quo”, or “one good turn deserves another”.

In order to give a proper incentive to coastal States at least two cumulative pre-conditions have to be met:

- 1) A waiver of any right to global limitation of liability by the ship-owner, and
- 2) Security for an open ended amount given by a first class bank, insurance company or other financial institution.

IAPH's position was further elaborated in detail in its letter of 22 June 2007 to Mr. Stuart Hetherington Chairman of CMI's International Working Group, which letter is attached to this paper. IAPH was astonished to learn that the International Working Group did not take IAPH's position into consideration or even cared to respond or to enter into discussions about it. On the contrary even, with regard to the key issue of the security to be given on behalf of the ship in distress, paragraph 7 still requires only security for a limited amount by reference to the applicable conventions and national law, which is unacceptable to IAPH and probably to coastal States as well.

In fact the only response received came from Prof. Eric van Hooydonk who suggested to create an incentive for ports in cases where providing shelter to a ship in distress leads to success. Although sympathetic, the proposal is not a real step forward because ports are not seeking to turn ships in distress into a money-making venture, but would be quite content if



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ports and others who voluntarily absorb a considerable potential for damage for the common good of all, were not left with unrecoverable damage and costs. That would obviously not be a fair deal because coastal and port States who give access to a Place of Refuge already subordinate their own interests, as well as those of their local businesses and inhabitants to an even wider notion of the public goods on international level, which may require a sacrifice of local interests for the general interest of preventing pollution of the environment and of mitigating damage.



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4. Observations on the Draft Instrument on Places of Refuge and Suggestions for Improvement

General Observations and Alternative by Scaling Down the Draft Instrument

As mentioned earlier, the subject of Places of Refuge has disappeared from IMO's legislative agenda. Based upon its extensive experience in dealing with Governments and Government Agencies of many States around the world, IAPH has no doubt that the proposed Draft Instrument in its current form will prove to be totally unacceptable to national States, if only because of the way in which it invades the sovereignty of States, without offering any real benefit in return. It therefore is predictable that the proposed Draft Instrument will not reach the finish line by reviving the issue of Places of Refuge - the file of which will remain dead and buried at Albert Embankment.

This raises the question as to how the Draft Instrument must be changed in order to give it a chance of being successfully adopted by IMO and national States.

IAPH is of the opinion that it is helpful to develop objective standards as to how to assess alternative operational options for dealing with ships in distress.

IAPH advice is to take the Draft Instrument back to the drawing-table and redesign it by taking into account the following considerations:

- a. It is useful to develop common standards and practices leading to an international objective framework for decision-making concerning ships in distress.
- b. This framework should be designed in another way than the current Draft Instrument.
- c. The framework should not be compulsive in the way it overrules sovereignty.
- d. The framework should harmonize the decision-making process by giving objective criteria in order to improve the quality of the decision-making process without taking away the decision-competences of States.



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Such an approach should be based on the following principles:

1. A State and any relevant Competent Authority shall pay proper attention to a ship in need of assistance if requested. How?
2. By establishing the condition of the ship and by investigating if this condition is such that immediate assistance is required for environmental reasons.
3. If immediate assistance is required:
 - A. Identifying the conditions for giving access to the ship, or if such is not possible because greater danger for damage exists if permission to enter a Place of Refuge is granted than if such a permission is not given:
 - B. By identifying a lower risk alternative to granting access.

Although it is clear that my association disagrees in principal with how the Draft Instrument is constructed now, it is useful to note some specific observations (which comments are not exhaustive).

Observation Article 3. Legal obligation to grant access

This Article 3 is based on the presumption that an absolute obligation exists for coastal States to give access to stricken vessels. As explained above, this right does not exist. Working further on the basis of this misconstrued assumption is not useful.

Observation Article 4. Immunity from liability where access is granted reasonably

Our observation is that because in the decision-making process concerning ships in distress coastal States exercise their sovereign rights, a rule for immunity from liability where access is granted reasonable, is not necessary.

Vice versa it should be noted that the Draft Instrument does not create immunity for States who refuse access to ships on reasonable grounds. Within the understood presumptions of the Draft Instrument such a rule would be logic.



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Article 5. Liability to another State, a third party, the ship-owner or salvor where refusal of access is unreasonable

In the Notes on Clauses of the Draft Instrument on Places of Refuge it is stated that this article summarises the existing position in International Law as understood by the International Working Group. As signalled before, such an absolute obligation for States leading to the liability as worked out in this Article 5, does not exist.

Article 7. Guarantees

Any instrument must balance *the needs of the ship with those of them providing shelter*. There is only one regime of compensation provided in the Draft Instrument which is an insurance certificate, letter of guarantee or other financial security. However, the insurance regime is not compulsory. A Competent Authority cannot use the absence of such a financial security as a reason to refuse access. In addition, there is a limitation in relation to the amount which can be recovered from the ship according to paragraph 7 of the Draft Instrument which refers to the limitation of liability.

In order to give a proper incentive to coastal States at least two cumulative pre-conditions have to be met:

- A. A waiver of any right to global limitation of liability by the ship-owner
- B. Security for an open ended amount given by a first class bank, insurance company or other financial institution.



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5. Conclusive Remarks

On basis of stated above it follows that IAPH disagrees in principal with the Draft Instrument: how it has been constructed and how specific clauses are designed. It simply is not a good plan to go this way and we only can advise the National Maritime Law Associations present here, not to agree with the Draft Instrument in its present form.

At the same time IAPH sincerely believes that it is useful to develop common standards and practices leading to an international objective framework for decision-making concerning ships in distress.

Further IAPH is of the opinion that it is possible to construe an Instrument that will meet broad international consensus and will lead to adoption and ratification.

The marching route leads back to the drawing-table by reopening the debate about the material content for such an Instrument. I already outlined the basic principles for such an Instrument:

1. State and any relevant Competent Authority shall pay proper attention to a ship in need of assistance if requested.
2. How? By establishing the condition of the ship and by investigating if this condition is such that immediate assistance is required from environmental reasons.
3. If immediate assistance is required:
 - A. Identifying the conditions for giving access to the ship, or if such is not possible because greater danger for damage exists if permission to enter a Place of Refuge is granted than if such a permission is not given:
 - B. By identifying a lower risk alternative to granting access.

IAPH's stance is that it refers its position to the standpoint of IMO's Legal Committee of April 2005 in which it was determined that the subject of Places of Refuge indeed is a very important one, but at that point of time urgent priority should be given to implement all existing liability and compensation Conventions (with which is meant the closing of the



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framework by coming into force of HNS, Bunkers and the Nairobi Wreck Removal Conventions). After a certain period of experience with the compensation and liability framework in place, there will be new momentum for dealing with the question whether a Convention for Places of Refuge should be drafted.

IAPH refers to this approach and therefore is actively promoting the acceleration of respective ratification processes. This is done amongst others with IAPH's Resolution on Accelerating the Ratification Processes of said conventions including the 1996 Protocols to LLMC 1976, which resolution has been adopted in Dunkirk on 16 April 2008 and which is attached to this paper.

Thank you for your attention.



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Comite Maritime International (CMI)
Attn. Stuart Hetherington
Chairman IWG Places of Refuge

Rotterdam, 22 June 2007

Subject: CMI's draft Instrument on Places of Refuge – position International Association of Ports and Harbors (IAPH)

Dear Mr. Hetherington

Your e-mail of Tuesday 5 June 2007 with which you circulated CMI's draft Instrument on Places of Refuge was received in good order. The draft text resulted from inter alia the exchange of thoughts during CMI's ICS meeting on 22 May 2007 in London.

During the discussions various subjects were tabled. From IAPH's side special attention was asked for paragraph 7 of the draft Instrument. My colleague Wilko Tijssse Claase of Port of Amsterdam explained that ports as potential suppliers of (often well-equipped) places of refuge consider a guarantee or letter of security by a member of the International Group of P&I Clubs or other recognised Insurer or Bank or Financial Institution, as an important sub-instrument in the context of giving a ship in distress access to a place of refuge. Mr Wilko Tijssse Claase also explained that ports are particularly worried about the wording of paragraph 7 which limits the amount of the financial security to the applicable limit of liability. It was agreed that IAPH would explain its position on this specific point further.

IAPH fully agrees with the approach that the decision to give or deny access to a place of refuge to a ship in distress should be based on a case by case approach. In this approach the potential for damage immanent to refusing access should be compared with the potential for damage immanent to permitting the ship in distress to access the place of refuge. In case the risk of damage if the ship were to remain on the high seas is higher than the potential for damage to be caused in the place of refuge, the ship should in principle be given access to remedy its troubles in a place of refuge.

However, this approach will only work if proper consideration is also given to the interests of those parties who will absorb these lesser risks when giving access to a place of refuge to a ship in distress. In the present wording of paragraph 7 where the security to be provided is restricted to the limited liability, this reality is not recognised.



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It is indeed not uncommon that the damage caused in a place of refuge exceeds the applicable limit of liability, also taking into account that at present important international conventions in this field, such as the HNS Convention, the Bunkers Convention and the Wreck Removal Convention, are not yet in force. From a policy perspective, it is IAPH's view that it is unfair to 'punish' a party who allows a ship in distress access to a place of refuge by imposing limits of liability or limits on the amount of security to be given in return for the permission to enter. After all, by allowing access to a place of refuge that party already subordinates his own other interests as well as the interests of local people and businesses to the serving of an even wider concept of the (often international) public good which includes the general interests of promoting safety at sea, of preventing pollution of the environment and of overall mitigation of damage. Why should that party also accept only a limited recovery of his resulting damage, if thanks to his permission of entry to the ship in distress many other parties escaped from suffering damage altogether or were able to mitigate their damage considerably?

In addition, imposing limitation of liability in the context of places of refuge may also prove counter-productive, because it introduces improper financial considerations for parties involved in a decision making process that should be focused on providing the most effective and cost-efficient assistance to a ship in distress.

As the right to limitation of liability of the ship-owner by its very nature is an optional right, IAPH fails to see why the permission to enter a place of refuge could not be made conditional on open-ended security and a waiver by the ship-owner of this right to limitation.

It should be borne in mind that in any of these cases this potential damage in a place of refuge is nevertheless not exceeding the potential for damage of a scenario where the ship remains on the high seas. It is worth noting in this regard, that the ship-owner by being allowed access to the place of refuge, may not only avoid (exposure to) liabilities towards third parties which may be subject to limitation under the 1976 LLMC Convention (and the 1996 Protocol), or under the CLC Convention as the case may be, but that he may also avoid such liabilities as for wreck and cargo removal, for which in some jurisdictions the ship-owner can not limit liability at all and in other jurisdictions he must put up a separate and considerably higher limitation fund. In fact, the financial benefits of the ship-owner and his underwriters are even greater than that, because if the ship in distress is allowed access to the port of refuge the ship-owner may even be able to save the ship and freight. However, the potentially high salvaged values of the ship and freight are currently not taken into consideration when determining the appropriate level of security to be granted to the party who allows the ship in distress access to a place of refuge.

From an overall point of view and taking into account all interests concerned including that of the safety of seafarers, the protection of the environment, the ship and the cargo, it is clear that an incentive is needed for those parties who are expected to absorb the (lesser) potential for damage in a place of refuge. This is not an uncommon approach in maritime law. In this respect I would point to the salvage fee where there is an incentive paid to the salvor on the basis of the value of the cargo recovered - and sometimes also taking into account - somewhat artificially - any sums that might have been spent would the ship have remained at the high seas. It is however not the position of the ports to adopt this salvage fee approach when giving access to a ship in distress, i.e. asking for a reward if the operation is successfully finalised. The approach would rather be that the actual



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costs and damages of any party involved in such operations is borne by the ship and the other interests involved without any limitation.

In view of the above considerations, I would like to stress that paragraph 7 of the draft Instrument is not acceptable to IAPH. When further discussing this draft Instrument, could you please take due note of our standpoint in order to avoid misrepresentations.

We trust that the above information will be of assistance to you in understanding our position. Further we trust that on this basis the combined interests of the ship-owner, the cargo and the environment (i.e. the coastal States) will cooperate in finding an appropriate solution in case of an incident ship seeking shelter in a place of refuge being a port.

Faithfully yours,

International Association of Ports and Harbors



Frans van Zoelen,
Chair, Legal Committee



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**IMMEDIATE MEDIA RELEASE
April 21, 2008**

IAPH adopts a resolution, calling for prompt and early ratification of IMO conventions

The Board of Directors of the International Association of Ports and Harbors (IAPH) convened in Dunkirk, France, for its annual meeting, unanimously adopted a "Resolution on accelerating the ratification process of the HNS, Bunkers and Wreck Removal Conventions and the 1996 Protocols to LLMC 1976" on April 16 2008.

In the resolution, IAPH called for a prompt and early ratification by the states involved of the following three conventions and a protocol that are of immediate concern to the entire maritime world.

- International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996;
- International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001; and
- Nairobi International Convention on the Removal of Wrecks, 2007.
- 1996 Protocols to the International Convention on LLMC of London 1976

The resolution was proposed in the background of relatively slow ratification processes with only a small number of states having ratified them to date.

Mr. Frans van Zoelen, Chairman of Legal Committee, mentioned the significance of the resolution by saying that "These IMO conventions are essential for reinforcing the liability and compensation framework concerning maritime and environmental damages resulting from maritime accidents. These subjects are of importance for coastal states and ports. The said conventions also play a significant role to assist coastal states and ports to cope with ships in distress."

Secretary General Dr. Satoshi Inoue said, "Earliest entry into force of these conventions would no doubt help coastal states and ports to more effectively cope with physical and/or environmental damages caused by maritime accidents. We will urge all IAPH members to press harder their respective governments to ratify them as early as possible. We also will reiterate to IMO our strong support for these conventions."

The full text of the resolution reads as follows:

**RESOLUTION ON ACCELERATING THE RATIFICATION PROCESSES OF THE HNS, BUNKERS
AND WRECK REMOVAL CONVENTIONS, AND THE 1996 PROTOCOLS TO LLMC 1976
ADOPTED ON 16 APRIL 2008**

**THE BOARD OF DIRECTORS OF THE INTERNATIONAL ASSOCIATION OF PORTS AND
HARBORS (IAPH) IN DUNKIRK, FRANCE**

BEING AWARE of the slow ratification processes of the Hazardous & Noxious Substances Convention (HNS C) 1996 and the International Convention on Civil Liability for Bunker Oil Pollution



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Damage 2001 (Bunkers C) and intending to avoid a similar fate for the Nairobi Wreck Removal Convention 2007 (Wreck Removal C),

APPLAUDING the fact that the Bunkers C is now expected to enter into force on 21 November 2008 after ratifications having been completed by twenty States representing 21.52 % of the world's tonnage,

NOTING that the HNS C needs to be adapted by a Protocol to the HNS C in order to modify the concept of the receiver in this convention, and that it is expected that States which not yet have ratified the HNS C might postpone ratification until the HNS C has been adapted by the protocol which might take another two years,

NOTING FURTHER when implementing the Wreck Removal C States should consider to extend its application to wrecks located in its territorial waters in order to let benefit those who are responsible for such waters from the beneficial effects of this convention,

MINDFUL that said conventions make an essential contribution to the preservation of the environment and the adequate, prompt and effective compensation of persons who suffer damage caused by incidents in connection with maritime trade and shipping,

RECOGNIZING that the prompt coming into force of said conventions also plays a key role in the context of Places of Refuge where the being into force of said conventions would facilitate the prompt and accurate decision making process of coastal States and Port Authorities absorb related risks for the community as a whole,

1. URGES States to ensure, as a matter of priority, the ratification of the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, the Nairobi International Convention on the Removal of Wrecks, 2007, and the 1996 Protocols to the Convention on Limitation of Liability for Maritime Claims (LLMC) 1976;
2. URGES States to facilitate, as a matter of priority, the adaptation of the HNS C with a protocol with a view to modify the concept of receiver in this convention;
3. URGES States when implementing the Wreck Removal C to consider to extend its application to wrecks located in its territorial waters in order to let benefit those who are responsible for such waters from the beneficial effects of this convention.

* * * * * End * * * * *

For inquiry and information, please contact us at info@iaphworldports.org or call us at +81-3-5403-2770.

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The International Association of Ports & Harbors (IAPH) is the global alliance of ports around the world. Established in 1955 as an international Non-Governmental Organization, IAPH represents today some 220 ports and 130 port-related companies and institutes of about 90 countries. Member ports all



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together handle 90% of the world container traffic and over 60% of the world maritime trade. IAPH tackles through Technical Committees a wide range of key issues facing the world port industry. Granted a Consultative NGO Status from UN agencies, IAPH also plays an active role in developing international frameworks for global issues related to maritime and trade activity.



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CV Frans van Zoelen

Frans van Zoelen is Head of the Legal Department of Port of Rotterdam Authority and Legal Counselor of the International Association of Ports and Harbors (IAPH) (www.iaphworldports.org). He chairs the Legal Committee of the International Association of Ports and Harbors and the Legal Committee of the Dutch National Ports Council (www.havenraad.nl/english/), and is member of the Legal Advisory Committee of the European Seaport Organisation (ESPO) (www.espo.be). He sits in the Board of the Dutch Association for Maritime and Transport Law (www.nvzv.nl). Frans van Zoelen has a civil and public law background with specializations in real estate law, company law, competition law and maritime law. His focus is on the interface between public and private sector, a focus useful for navigating in port environments.

Frans van Zoelen also is a long distance runner and a writer of short stories for Dutch and UK literary magazines.