



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

An Instrument on Places of Refuge From A Ports' Perspective

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IAPH – Objectives and Activities

- **Promoting development of international port and maritime industry**
- **Representing port industry's interests**
- **Collecting, analyzing, exchanging and distributing information on developing trends**



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IAPH – Objectives and Activities (2)

- **230 Regular Members in 90 countries**
- **Handling 7 billion tons of cargo – 60 % of world sea-borne trade – 90% of world container traffic**
- **100 Associate Members**
- **Voice of World Port Industry**
- **NGO-status**



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IAPH – Objectives and Activities (3)

- **Three Regions**
 - **African/European Region**
 - **American Region**
 - **Asia/Oceania Region**
- **Equal Regional Representation**
- **Offices in Tokyo/Japan and Rotterdam/ Europe**



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IAPH – Objectives and Activities (4)

- **Technical Committees**
- **Grouping of Technical Committees:**
 - **Legal Committee - Port Safety & Security – Port Environment**
 - **Communication & Training**
 - **Port Development - Operations & Facilitation**



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IAPH and Places of Refuge

- 1. Submission to Legal Committee IMO 19 March 2002 (LEG 84/7/1)**
- 2. No international rule for ships in distress to enter territorial waters**
- 3. Ship in distress - abnormal situation – no innocent passage under articles 17 and 18 UNCLOS**



IAPH and Places of Refuge (2)

- 1. Case-by-case approach on basis of good public and private management: comparing the potentials for damage in cases access denied/granted**
- 2. More attention for risk absorption in case access granted**



IAPH and Places of Refuge (3)

- 1. Two cumulative pre-conditions**
 - a. waiver limitation of liability**
 - b. open ended security**
- 2. IAPH's letter to IWG of 22 June 2007**
- 3. Prof. Eric van Hooydonk's idea of refuge-fee for ports**



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Observation on Draft Instrument and Suggestions for Improvement

General Observations:

- 1. Controversial aspects concerning sovereignty without offering real benefit in return.**
- 2. Draft Instrument in current state will not be acceptable for States.**



Observation on Draft Instrument and Suggestions for Improvement (2)

1. It is very helpful to develop objective standards as how to assess operational options for ships in distress.
2. Alternative: scaling down the instrument to core matter.



Observation on Draft Instrument and Suggestions for Improvement (3)

Considerations:

1. Common standards for international objective framework for decision-making.
2. Designed in other way than current Draft Instrument.
3. Not be compulsive by overruling sovereignty.



Observation on Draft Instrument and Suggestions for Improvement (4)

4. 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.



Observation on Draft Instrument and Suggestions for Improvement (5)

Principles:

1. A State shall pay proper attention to ships in need of assistance. How?
2. By establishing condition of ship and by investigating if this condition is such that immediate assistance is required for environmental reasons.



Observation on Draft Instrument and Suggestions for Improvement (6)

3. If immediate assistance is required:
 - A. Identifying conditions for giving access to ship, or if such is not possible because greater danger for damage exists if permission is granted than if not granted:
 - B. By identifying a lower risk alternative for granting access.



Observation on Draft Instrument and Suggestions for Improvement (7)

Article 3. Legal obligation to grant access

Article 4. Immunity from liability where access
granted reasonably

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

Article 7. Guarantees



Conclusive Remarks

1. Disagreement in principal with Draft Instrument.
2. It is useful and possible to construct Instrument that will meet broad international consensus.
3. Alternative route by scaling down the instrument to core matter: improvement of quality of decision-making process.



Conclusive Remarks (2)

4. New momentum after coming into force and gained experience with Bunkers, HNS and Nairobi Wreck Removal Conventions?
5. Priority on promoting the acceleration of ratification processes: IAPH's Dunkirk Resolution of 16 April 2008.