

U O W

Places of Refuge Hypothetical Scenario

China-ASEAN Academy on Ocean Law and Governance
1st Special Program of Maritime Law Enforcement

National Institute for South China Sea Studies (NISSCS)
China-Southeast Asia Research Center on the South China Seas (CSARC)
Australian National Centre for Ocean Resources and Security (ANCORS)
20-26 October 2019, Haikou, China

Anthony Morrison, PhD (amorrise@uow.edu.au)
Research Fellow, Australian National Centre for Ocean Resources and Security (ANCORS)



- *IMO Guidelines* adopted by the IMO in December 2003 had to be a delicate balance between the interests of the shipping States and the Coastal States.
- “RECOGNIZING ALSO the need to balance both the prerogative of a ship in need of assistance to seek a place of refuge and the prerogative of a coastal State to protect its coastline,...”
- In achieving a common beneficial outcome each incident was to be treated as an exercise of risk management weighing up the interests of all parties according to the risks relevant to the specific incident.

ANCORS 

- The *IMO Guidelines* are written in a clear, ‘user friendly’ way and provide guidance on the reasons for the *IMO Guidelines* and their importance, what is expected of all parties where a place of refuge is requested, as well as a risk matrix to enable objective decisions to be made on such a request.

ANCORS 

Definition:

- Place where a ship in need of assistance can take action to stabilize its condition, reduce the hazard to navigation, protect human life and the environment.
- Ship in Need of Assistance means a ship in a situation, apart from one requiring rescue of persons on board, that could give rise to a loss of the vessel or an environmental or navigational hazard

IMO Guidelines on Places of Refuge for Ships in Need of Assistance adopted by Resolution A.949(23), 5 December 2003

ANCORS UOW 

- The *IMO Guidelines* are structured as follows:
 - general provisions including objectives, background and purpose of the *IMO Guidelines* together with definitions;
 - guidelines for action required of masters and/or salvors of ships in need of refuge (Part 2);
 - guidelines for actions expected of coastal States (Part 3);
 - applicable international conventions (Appendix 1); and
 - guidelines for the evaluation of risks associated with the provision of places of refuge (Appendix 2).

ANCORS UOW 

General provisions

- The first part of the *IMO Guidelines* contains, in narrative form, an outline of their objectives and purpose.
- In paragraphs 1.1 – 1-11, the *IMO Guidelines* seek to provide a rationale for their use and to highlight the importance of taking a balanced view on the provision of a place of refuge

ANCORS UOW 

Paragraph 1.2

What to do when a ship finds itself in serious difficulty or in need of assistance without, however, presenting a risk to the safety of persons involved. Should the ship be brought into shelter near the coast or into a port or, conversely, should it be taken out to sea?

ANCORS

UOW 

Paragraph 1.7

Therefore, granting access to a place of refuge could involve a political decision which can only be taken on a case by case with due consideration given to the balance between the advantage for the affected ship and the environment resulting from bringing the ship into a place of refuge and the risk to the environment resulting from that ship being near the coast.

ANCORS

UOW 

Paragraph 1.10

The use of places of refuge could encounter local opposition and involve political decisions. The coastal States should recognize that a properly argued technical case, based on a clear description of the state of the casualty, could be of great value in any negotiations which may take place.

ANCORS

UOW 

Paragraph 1.12

The purpose of the Guidelines is to provide Member Governments, shipmasters, companies...and salvors with a framework enabling them to respond effectively and in such a way that, in any given situation, the efforts of the shipmaster and shipping company concerned and the efforts of the government authorities involved are complementary. In particular, an attempt has been made to arrive at a common framework for assessing the situation of ships in need of assistance.

ANCORS

UOW 

Safety of Life

- 1.1 Where the safety of life is involved, the provisions of the SAR Convention should be followed. Where a ship is in need of assistance but safety of life is not involved, these guidelines should be followed.
- 1.13 These Guidelines do not address the issue of operations for the rescue of persons at sea, inasmuch as the practical difficulties that have given rise to the examination of the issue of places of refuge relate to problems other than those of rescue.

ANCORS

UOW 

Actions by Masters/Salvors

- Identify the reasons for ships need of assistance
- Identify hazards and assess risks if
 - Ship remains
 - Ship continues
 - Ship reaches place of refuge
 - Ship taken out to sea
- Identify required actions

ANCORS

UOW 

• Contact authority of coastal State
• Establish responsibilities and communications
• Take necessary response actions
• Comply with coastal State requirements

ANCORS UOW

General Actions by Coastal State

- Establish MAS
- Establish procedures to receive and act on requests for refuge
- For each place of refuge make objective analysis of allowing in ship in need of assistance using risk factors in Appendix 2
- Prepare contingency plans for places of refuge
- Establish communications and alert procedures

ANCORS UOW

Event Specific Assessment

- Use analysis factors in 3.9
- Use risk factors in Appendix 2
- Where possible put inspection team on ship
- Compare the risks involved in allowing refuge or keeping ship at sea using specific stated factors
- Follow decision making process

ANCORS UOW

• Benefits

- Provide a set of risk factors
- Ability to make objective decision on requests
- Salvors in better position
- Assessment and inspection must be made
- Prevent automatic refusals
- Flexible application
- Easier acceptance than conventions
- States able to cooperate without binding obligation

ANCORS UOW 

• Disadvantages

- Not binding
- No obligation to grant access
- Rely on goodwill of coastal States
- Do not prevent political or other influence
- No reference to flag State obligations
- Do not deal with liability and compensation
- No clear decision making process – SOSREP, MERCAM

ANCORS UOW 
