How have European Union regulation tools on maritime safety developed after the Prestige catastrophe?

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HOW HAVE EUROPEAN UNION REGULATION TOOLS ON MARITIME SAFETY DEVELOPED AFTER THE PRESTIGE CATASTROPHE? A SPECIAL REFERENCE TO SPAIN

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Abstract:

Maritime transport (especially when it comes to carrying hydrocarbons and dangerous products) is part of the economic globalisation process. The Prestige accident in the Galician coast, Spain, has shown the existence of significant failures on the part of both the market and the public sector, which leads to conclude that maritime safety should be considered as a global public good. Consequently, this paper shows the advances and the still unfinished tasks according to the aforementioned view, mainly in the European Union context.

Key words:

Market Failure; Flawed State; Global Public Goods; Maritime Safety.

JEL: H87; L51; L92; L98; R42; R48.
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1. INTRODUCTION

The increase of maritime traffic of dangerous goods has shown the most risky exposed navigation areas, without efficient and effective intervention measures, show a great vulnerability and accidents take place too often as to exceed, from the scientific point of view, what can be considered as negative externalities in maritime transport. In this paper, vulnerability is understood as the relative tendency a system has to suffer significant transformations – either structural or permanent and deep changes.

As noted above, it is clear a system can be either vulnerable or strong depending on the diverse circumstances. Therefore, a rigorous analysis of the risks should consider the following elements: a) sensibility, or to what extent the system can be changed or affected by an alteration; b) the capacity to answer, which has to be scheduled to face or resist the alteration, as well as to moderate the potential damages and to take advantage of the opportunities – among others, resistance, availability of stocks, regulatory mechanism, and cooperative links--; c) to what extent the system is exposed to this alteration, i.e., the time and the effects related to the system; and d) the impacts on the system, where the calculation of vulnerability, exposition, possibility of new occurrences, magnitude, intensity and persistence are included.

In this paper a detailed analysis of some relevant questions for maritime safety in the European context will be carried out using relevant information obtained from the Prestige accident on the Galician coast, Spain, in November 2002.

2. THE PARADIGM OF COMPLEXITY IN MARITIME TRANSPORT

Globalisation has encouraged the growing integration of the different economic areas; the development of the international trade; the elimination of obstacles that make the transit and flow of goods and services easier; and a greater mobility of foreign direct investment. This integration of national economies contributes to both the acceleration of competitiveness and a new repositioning of companies in the world trade.

The maritime world has not been left out of those powerful forces of change, and the economic environment related to the international transport of hydrocarbons and dangerous products has become extremely complex, as the following characteristics highlight:

a) The global industrial development and the growing interchanges have meant that the oil societies have got rid of their fleets and small independent tankers shipowners have appeared in the market. As a consequence, oil societies do not control more than a fourth part of the global tanker fleet, whereas the other three fourth parts belong to independent owners.

b) The spread of vessels with flags of “free registration” countries (flags of convenience). About the half of tonnage that is carried by the fleet world of tankers is registered with flags of convenience and there are “second registers” in many
developed countries where the aforementioned vessels have similar characteristics than the ones registered with flag of convenience.

c) The evidence of quality problems in a significant part of the vessels carrying potentially pollutant goods. About 70% of the vessels are single-hull tankers and 39% of the tonnage carried in tankers sail in vessels older than twenty.

d) The difficulty to exert efficient controls of the maritime transport of dangerous goods. There is not an international legislation to be adopted by all countries in order to establish prevention criteria on this kind of traffics. It is only when an accident takes place that the “interest on speeding the implementation of a more strict legislation” becomes stronger. Analysing the EU Maritime safety policy, Pallis (2002) focuses on the incapability of both self-regulation and international rule making (IMO) to provide the essential regulatory realignments. The examples of recommendations of the Erika I and Erika II and the subsequent declarations of the Prestige accident are a good example of this approach.

e) The existence of economic limitations to the civil liability because of the spills of hydrocarbons. This means that, as there is no regulation on who pollutes, it allows the free-riders to act with high “benevolence” on the part of public authorities and international organisations.

As it can be clearly observed, the aforementioned characteristics constitute a heterogeneous set of failures on the part of both the market and the public sector (flawed state), and they are strong enough to generate negative externalities since they act in a context where public goods are not efficiently protected, on a worldwide scale (Kaul et al., 1999, eds). So far, significant implicit threats can be recognised in the above characteristics, which consider the framework of maritime safety as a current affair, i.e. a first essential mechanism in the network of national protection of these public goods.

There is no doubt this is the basis for a positive answer to the growing demands of an international civil society regarding information, control and sanctioning capacity; a society whose individuals claim both greater levels of security and the elimination of harmful risks. The fact that it is not taken under consideration the punishment of the actions related to the social-economic and environmental damage that is generated by certain actors and economic operators allows that some agents act as free-riders, without being afraid of the additional cost that involves the reparation of damages or the sanction in a specific and definite time. According to Pallis (2002), the economic environment feeds the perceptions and behaviour of policy actors but the presence of ‘escape routes’ imposes constraints on the preferences of EU policy makers and militates strongly against radical schemes of higher EU safety standards.

All the aforementioned failures are also responsible for an intense maritime traffic developed in conditions of informal economy, with poor-quality tankers, which are contracted in a world freight market without regulated mechanisms, which allow reducing the volatility at an acceptable level and promoting long-term contracts among operators. Finally, the unsatisfactory existence of regulation of those mechanisms makes extraordinarily difficult determine who the owners of both the vessels and the cargo are at every moment. This increases the margin of vulnerability and insecurity in case it is necessary to adopt prevention measures and to guarantee the assumption of civil liabilities.
The experience of the Prestige accident has allowed to determine the existence of two big focal points of performance and behaviour on the part of some operators. On the one hand, we have highlighted a significant spread of small companies in charge of the transport of dangerous goods in conditions of informal economy (González Laxe, dir, 2003). These are companies registered in tax heavens, with an accountant organisation difficult to trail; companies that are created and disappear very quickly to avoid the controls, they are acquired in an open market at very low prices without having total or strict security conditions for both the vessels and the crew. On the other hand, the international institutional framework does not manage to design a regulation system that allows to avoid, mitigate, or reduce the negative impacts in the cases these situations regarding the maritime business take place.

That is because there are not restrictions or severe rules to achieve a good sectorial performance. Analysing the EU maritime policy, Aspinwall (1995) focuses on capital mobility as a critical parameter that constraints regional authority-building and he argues that public policies are closely related to foreign direct investment of capital global requirements because “mobile business... ... is less willing to bear new regulatory and distributive burdens at either the European or state level than otherwise would be” and shipping is “the apotheosis of capital mobility” (ibid., p. 23). In other words, the globalised nature of the industry and the power of shipping capital to disinvest limit the opportunities to legislate maritime issues both autonomously at national level and collectively at regional EU level, nowadays.

Therefore, if we analyse the evidence provided by the Prestige accident in the light of the public economy, it can be stated that there are two clear negative guidelines on which to take measures: on the one hand, there is still a significant lack of anticipatory prevention measures to reduce the negative impacts, and, on the other hand, there is not enough exploitation of the sanctioning capacity that becomes obvious in view of the laxity these interventions take place.

The IMO performance proves to be a key factor in this field. This organisation has shown a good and right attitude, but its achievements regarding the implementation of the resolutions are slow given the continuous pressures by the states and oil companies. The current divergence of interests among the European countries, the difficulties to implement certain rules related to the renewal of the vessels, and the own interests of both the oil industries and the maritime transport are the reasons for the present delay to harmonize these rules on a worldwide scale.

For these reasons, Gonzalez-Laxe (Gonzalez-Laxe, dir, 2003) proposes that an efficient and effective model of mechanisms of financial compensation for hydrocarbons spills for the European Union demands the polluting companies do not have incentives to avoid the adoption of preventive measures or to try to subvert the legal order by long litigations and legal strategies with the aim to reduce their costs by the generated damage. Moreover, higher compensations are demanded to palliate the high social costs of the polluting spills coming from vessels.

The empirical evidence clearly highlights that the present system of international financial compensation, established on the basis of the IMO international agreements on limited civil liability and the ones of the IOPC Funds do not satisfy the aforementioned conditions. As a consequence, Gonzalez-Laxe, Prado & Dopico (2003) have underlined
the need to establish a new model that completes the present tools efficiently and effectively, in accordance with a series of principles that are established on the basis of three alternative possibilities:

a) The **implementation of financial liability mechanisms**, by which, in case of an accident, the shipping company carrying dangerous goods has to make the sanction effective, or mobilise additional resources at the same time as any rated damage takes place.

b) The **imputation of negligence**, which means that the sanction will be activated when any rated damage takes place, and when the company causing the damage is accused of having adopted a sub-standard level of precaution.

c) The **specific regulation**, that demands a high level of precaution to be adopted, as well as to apply a sanction when the shipping company does not follow this regulation; but the legal guaranteeing terms facilitate the litigation and the continuous appeals by means of legal strategies that prolong the financial solution to the problem.

From three possibilities, the implementation of mechanisms of financial liability means an availability of resources to compensate the damages caused by a spill, which are higher than the resultant of any of the other two strategies, since the requirements give a smaller margin of maneuver to the litigant company. Furthermore, the institutional analysis of this problem highlights the need to have a standardised regulation of the maritime traffic of polluting goods, since there are not any mechanisms that contribute the necessary incentives so that the companies, whose accident risk is not directly related to the adopted preventions, invest in high levels of security measures.

Thus, the question is to implement both a new mechanism of standardised regulation on the maritime operations with polluting products and systems of financial liability with enough endowments to get, from the beginning, the best result to palliate the social costs of spills. It is necessary to correct and adapt the present systems of liability that are unsatisfactory and hardly operative - outside the USA -, as it is empirically proved.

The proposed solution in Gonzalez-Laxe, Prado & Dopico (2003) seems efficient when it comes to having a model whose aim is to avoid the existence of the present incentives, so that the companies responsible for the damage, as it is happening in the Prestige case, disappear or are in litigation in order to reduce their costs through legal strategies. Hence, the uncertainty in the case of shipping companies that are condemned to pay strong ex-post sanctions because of the damages derived from polluting spills would disappear. However, this is only feasible when there is the possibility to make these companies pay those sanctions without them subverting the established legal order.

3. THE EUROPEAN INSTITUTIONAL FRAMEWORK OF MARITIME SAFETY AFTER THE PRESTIGE ACCIDENT, WITH SPECIAL REFERENCE TO SPANISH IMPLEMENTATION PROCESS

The European institutional framework related to oil slicks has been quite limited and vague until the Prestige and Erika accidents. It has been limited to the extent that the existing instruments for the regulation of maritime activities showed a very narrow scope. The control of maritime traffic, the inspection of the characteristics of vessels
carrying dangerous goods, the conditions to enter into European ports, the knowledge of operators, or the responsibilities regarding compensations, are examples of this secondary and vague role that the European institutions adopted.

The European Union reacted positively after the Erika accident (1999) and started to elaborate new sets of regulations to improve maritime safety, the so-called Erika I and Erika II sets of measures. They included new inspections and controls for both vessels and classification societies, and they verified the conditions of maritime traffic. But this European reaction was less exigent and decisive than the US procedures after the Exxon Valdez accident (1989). The enactment of the Oil Pollution Act (1990) meant a change in trend.

The unilateral North American intervention included very important aspects such as: a) the liability is unlimited in case of accidents, so shipowners have to provide a 1,000 million $ guarantee, as well as to appoint a representative in the affected territory whom to demand civil liabilities in case of an accident; b) it was drawn up a list of ports to give refuge to those vessels with less security conditions and have the suitable infrastructures and means to act if necessary; c) the security measures for vessels were increased and strengthened. The use of these instruments makes up a public-financed technology that defines maritime security as a good club, in order to demand the immediate toll payment that allows to internalise those costs generated by the use of the public good. A subsequent analysis on the enactment of this regulation shows that there have not been more oil spills of the first magnitude since the implementation of this legislation.

The analysis of the implementation process of the proposals considered in the Erika I and II sets of measures highlights the need to continue going into the undertaken methods so as to reach the following aims:

a) The clarification of liabilities through the reinforcement of the flag-state link. This will let exert a greater control of the activity of the vessels, avoid the “flags of convenience”, and eliminate the distorted business practices of the competitiveness, which means a greater exposition to risky situations. In short, a better identification of the responsible.

b) The existence of safety means that guarantee the efficient control of vessels, which means to increase the physical (tugs, radars, etc.), and the human means (inspectors, technicians, etc.)

c) The security in the port facilities so that ports have the suitable means and infrastructures to give refugee to vessels involving risks.

d) The harmonisation of the European regulations, with the aim to avoid unilateral both national and international measures, that can distort the competitiveness.

e) The precise definition of a network of refugee ports or reference ports that act as points of control and inspection in the European coastal areas.

The continuance of the European Union in the IMO has sometimes limited the European agreements. In fact, not all the business groups related to the maritime transport agree to incorporate to their regulations and guidelines those articles that have to determine the environmental liabilities and increase the number of inspections. The ecologist groups and the areas that were affected by the different catastrophes demand
the IMO to strengthen its role regarding both the maritime safety and the pollution prevention.

In view of the present limitations to establish the scope in the European context, it is not surprising that in the unfinished performances the following difficulties are highlighted: the absence of agreements to apply “penal sanctions against those that spill their cargo in the sea; the question related to the definition of “refugee places”, or “reference locations”, if necessary, constitutes the evidence of the belated reaction before the urgent need that the civil society demands against the increase of risks and vulnerabilities the most sensitive territories are exposed to; and the insufficient legal framework when it comes to determining the reparation of the damages originated by the contamination.

Our study on how the intervention framework evolved after the Prestige accident let us highlight the initiatives carried out, as well as re-examine the institutional European framework – see Table 1 for the specific case of Spain – from the point of view of maritime safety, with special attention to the following points:

a) New more exigent rules to transport hydrocarbons. The acceptance to limit this kind of transport to double-hull under than 15 years vessels constituted one of the first European initiatives the EU took.

b) Greater number of missions by the European Maritime Safety Agency (EMSA), which should expand its functions to fight against pollution (through greater technical and scientific assistance to the Member States), and the possibility to acquire special material and vessels; to increase the training of crews; and to improve maritime and port security against those attacks related to international terrorism by means of greater controls and inspections.

c) The publication and diffusion of the “blacklist”, by virtue of the Directive 95/21/EC on port state control, which includes those vessels with refused access to EU ports, since they do not satisfy the current regulation on maritime safety.

b) Agreements to put into practice European regulations to sanction those vessels that commit voluntary polluting actions, such as the cleaning of their holds.

e) Notifications to the Member States to speed the preparation of plans to let vessels with problems enter refugee places.

Nevertheless, the implementation of these instruments depends on the European Members passing the necessary initiatives, since these Members often differ on both the application of inspections and the controls of vessels. Therefore, since the 21st October 2003, when the European Community regulation came into effect, no double hull tankers carrying heavy oil have been allowed to call at or leave an European port. The EU-15 asked the IMO to change the International Convention for the prevention of pollution from ships (MARPOL), so that this regulation could be applied on a worldwide scale, as all international operators are required to follow more severe rules concerning maritime safety.

This change was passed during the 50th session of Marine Environment Protection Committee (4th October 2003); therefore, on 5th April 2005 the following restrictions, which will positively affect maritime safety, will come into effect: a) highly-dangerous oil products have to be exclusively carried in double-hull vessels; b) all the coastal States will be authorised to forbid single-hull vessels that do not comply with the age
limits, or with the technical controls planned in the MARPOL Convention, to call at
their ports or sail in their territorial waters; c) the programme to phase-out single-hull
vessels extends until 2010, which means that after this date there will be no vessel like
this, except for foreseeable exceptions; d) the special regime to inspect tankers and
assess their structural state is extended to those single-hull units with more than 15
years. The imposed supplementary regime of inspections strengthens the controls; e) the
diplomatic functions are strengthened in the closest countries to the EU, specially
Russia, which is exporting heavy oil by sea, and whose transports sail off in front of the
European coast, what exposes the coastal areas to maritime catastrophes.

TABLE 1. REGULATIONS ON SAFETY AND MARITIME TRAFFIC
ENACTED IN SPAIN AFTER THE PRESTIGE CATASTROPHE

<table>
<thead>
<tr>
<th>REGULATIONS</th>
<th>GOALS</th>
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<tbody>
<tr>
<td>Royal Decree Law 9/2002</td>
<td>On measures for single-hull tankers under any flag carrying hazardous or polluting cargoes, which are banned from entering Spanish ports.</td>
</tr>
<tr>
<td>Royal Decree 1381/2002</td>
<td>On measures to protect the marine environment and the use of port facilities where ship waste and cargo residues are discharged.</td>
</tr>
<tr>
<td>Royal Decree 90/2003 (It enacts the provisions of Directive 2001/105/EC)</td>
<td>On the recognition of organisations that were authorised to inspect ships and issue the relevant safety certificates on behalf of the Member States.</td>
</tr>
<tr>
<td>Royal Decree 1249/2003 (It enacts the provisions of the Directives 2002/6/EC and 2002/84/EC)</td>
<td>On reporting formalities for ships arriving in and/or departing from Spanish ports, to increase transparency, trying to forbid sailing those vessels do not comply with this regulation.</td>
</tr>
<tr>
<td>Royal Decree 210/2004 (It enacts the provisions of the Directive 2002/59/EC)</td>
<td>On the measures provided for tracking the movement of ships and carriage of dangerous substances through Spanish waters, so as to mitigate the environmental consequences in case of maritime accidents, by strengthening the collaboration between the Member States.</td>
</tr>
</tbody>
</table>

Source: Self elaboration from official publications of Spanish Central and Autonomous Public Administrations, several years.

The acceleration of the process to phase-out single-hull tankers became one of the EU
goals. The change of the Regulation 417/2002 established the limits to phase-out the
aforementioned tankers that can enter ports under the jurisdiction of the Member States
and fly the flags of Member States. The stipulated period was 2010-2015 according to
some characteristics of vessels. Subsequently, the amount of vessels to be destroyed
was reduced and the new Regulation 1726/2003 forbids the transport of hydrocarbons
or dangerous goods in single hulled tankers from 2005. That means 40% of single-hull
tankers fleet will have to be renewed at least in 2005, and 80% of this fleet in 2010,
with reference to the existing fleet in 2000; furthermore, the IMO itself will intensify
the controls to definitively achieve the fact that in 2015 there will be no single-hull
tankers at all.
Another line of performance that has been modified after the Prestige accident is those decisions referring to sanctions for maritime pollution. The institutional actions have been strengthened and, therefore, the European Directive consider maritime pollution as a criminal infraction, and not only the shipowner, but also the cargo owner, the classification society or anyone who makes severe negligent actions can be sanctioned, in order to finish with the thousands of present deliberate spills of waste materials some vessels do.

Likewise, the changes carried out on matters of controls to vessels in ports, the liabilities of the States, and a greater transparency are clear. The aim is to have greater control on vessels, in both their inspections and immobilisations, and the notification of their schedules. The masters, shipowners, those in charge of the vessel exploitation, Port Authorities, and the Member States are obliged to communicate all information in order to improve maritime security. The Council Directive 98/25/EC also tries to update the incorporations to the MARPOL, SOLAS and STWC international conventions on the prevention of pollution, the security of life at sea, and the standards of training, certification and watchkeeping for seafarers.

The IMO promote the vigilance so that the States apply those measures on security and defend the legislation on shipbuilding from an environmental and technical point of view. By strengthening the cooperation, the IMO insists on finding a “link” between the vessel and the state where it is registered -in this way, Pallis (2002) discusses that a redirection towards policy actions ‘port-state’ practices are ‘second best’ due to their reactive (rather than preventative) nature, and Chlomoudis and Pallis (2002, Chapter 5) analyse the implications of the EU maritime safety initiatives on the port industry and the strong objections of the latter as regards an EU policy based on ‘port-state’ rather than flag-state practices-. Finally, some mechanisms of European harmonisation are also under way in the field of sanctions in case of pollution.

4. THE REGIMES OF CIVIL LIABILITY AND THE COMPENSATORY PROCESS OF MARITIME CATASTROPHES

Increasing the security in the maritime transport of oil products is one of the essential questions the affected people put forward. Among the measures that contribute to achieve this greater safety, it is important to highlight the implementation of a “new European system of liabilities of the different agents implied in maritime transport”. Firstly, that means to establish the liabilities for both the carrier and the cargo owner; and, secondly, to increase the collective compensation regimes.

The two agreements that were established in the IMO (after the Torrey Canyon accident, 1967), i.e., the Civil Liability Convention (CLC), and the International Fund for Compensation for Oil Pollution Damage (IOPC Fund), have established some economic limits for each spill, which amounts 59,700,000 SDR in the case of CLC, and 135,000,000 SDR in the case of the IOPC; those limits were increased to 89,770,000 SDR and 203,000,000 SDR, respectively, in November 2003 (See Figure 1: Evolution of the compensation limits under the CLC and the IOPC). The first one regulates the shipowner liability, whereas the second completes the compensations of those damages originated by pollution.
However, as stated above, the limit quantities established in these international agreements, in some cases, as in the Prestige catastrophe, are not enough to face the ecological disasters originated by maritime accidents. Hence, the need to complete the performance principles, the funds, and the limits of the aforementioned compensations. The Prestige accident has brought about the need to update the limits of liability regarding compensations; and the first answer is the implementation of a Supplementary Fund with a limit of 750 millions SDR, i.e., 917 millions Euros. Those successive increases of the compensation limits corroborate the imbalances between the impacts of the catastrophes and the systems of reparation and compensation for the damages. In the case of important accidents these funds do not cover all the repercussions, and they do not repair the global impact.

The present performance procedures are causing strong fights between the Public Administrations and the affected people. On the one hand, the total compensation funds for the damages (at present advances are being paid instead of not lodging appeals) are not enough for most affected people; and on the other hand, there are not compensations for many performances carried out to clean and regenerate or for some negative impacts affecting both trade and non-trade activities.

Therefore, it is necessary to clarify some damages have to be compensable with regard to the IOPC, whereas other repercussions and negative effects are not taken under consideration by the IOPC.

Private damages subject to IOPC liabilities. That means direct damages are originated to natural and environmental resources by “oil slicks” are excluded from the assessment and reparation by civil authorities, what means a clear transgression of the concept of sustainable development all EU texts try to highlight.
The main conclusions of this analysis are: a) the present regime does not guarantee a quick compensation to the affected people, since the judicial procedures are long and complicated; b) the highest amount of compensation has to be established so that it is high enough to face the demands of the greatest maritime catastrophes, as in the case of the Prestige; c) the regime of liability and compensation is to guarantee the carriers and the owners of the cargoes of polluting and dangerous products to use high-quality vessels.

The Spanish Public Administrations performance was limited to “pay the affected groups in advance on account of the compensations”. At the end of 2003, a year after the accident, a total of 27,000 people have opted for the regulation that gives the economic compensations in advance, with an average compensation of 10,570 €. This would mean the damage to be repaired amounts to 215 million Euros. There is still a group of affected people that are against this procedure and have lodged individual appeals before the IOPC.

In May 2003, the IMO Diplomatic Conference adopted a new Protocol that establishes a Supplementary Fund to compensate over the available quantities by virtue of the Oil Pollution Compensation Fund, known as the 1992 Fund for damages originated by pollution to all those States parties of the protocol. The adoption of this Protocol has improved the available amount to 750 million SDR (around 917 million Euro) for the compensation in all catastrophes. It will come into effect on the 3rd May 2005, once it was ratified by Germany, Denmark, Spain, Finland, France, Ireland, Japan and Norway.

This Supplementary Fund will not substitute the current Fund, but it will contribute with an additional compensation that will be offered to the victims of those States that ratify the Protocol. In short, the Supplementary Fund will have $845 million, as well as $314 million that come from the 1992 Fund, what means $1,159 million.

The new conditions of the compensation system are: a) practically in all the cases it would possible to pay a 100% compensation of the total damages agreed between the Fond and the victim; b) it would not be necessary to establish an amount lower than 100% of the damages that are suffered during the first phases in most important catastrophes.

The analysis of the performances carried out because of the Prestige accident leads us to the following statements: a) the official estimations of the catastrophe (1,100 million Euros) were much higher than the available amounts for compensations (171 million Euros), and that is why in May 2003 the Fund decided to limit the payments to 15% of the losses and damages; b) Spain demanded to be paid, in case of exceptional circumstances, an amount higher than the “official amounts”; and, after this demand, in October 2003 the Fund pays to the Spanish Government, on some conditions and after assessing the total damages, 15% of the 895 million Euros Spain had justified as impact, i.e., 57,555,000 Euros, as payments on account and in advance; c) in the meeting that took place in June 2004, the IOPC, on the basis of a provisional assessment, states the Spanish government have been paid 75,555 millions Euros to pay the claimants; d) in the meeting that took place in October 2004, the Spanish Administration claims 513,8 millions Euros and makes public a second claim of 120 millions Euros will be presented, since this amount corresponds to the expenditures of the extractive operations of hydrocarbons inside the vessel.
5. THE CAPACITY TO ANSWER TO THE PRESTIGE CRISIS IN DIFFERENT RELEVANT LEVELS.

After the first tank broke, the Prestige, which carried 77,000 Tons of fuel oil, 40-50,000 of which spilt when the accident took place and 22,000 tons in the course of the following weeks, began an erratic journey (in six days it had three different directions), leaving a trail of hydrocarbon whose extent is still now very difficult to quantify. The aforementioned erratic journey extended and generalised the contamination, worsened the effects and threatened a wide set of coastal areas in different countries. Thus, we can wonder about the capacity to answer and provide protocols that avoid discretionary and erratic performances. Therefore, it is necessary to wonder which the reaction was and which lessons have been learnt. The answers to these questions can be summarised as follows:

a) There have been advances on the control of traffic with mechanism to separate and move away the vessels from the Galician coast. Four ways were established, two to the North (for vessels with conventional goods) and other two to the South (for vessels with hazardous goods). Vessels are moved away from the coast and placed 29 miles to the North and 42 miles to the South.

b) Likewise, it is positive that the IMO admits in some sensitive areas, that is, the most exposed areas to the risks derived from maritime accidents, there must be controls on transhipment vessels that carry crude and heavy oil, tar, and other highly dangerous products and these vessels must notify their transhipment 48 hours before entering these areas. The area considered as especially sensitive extends to 80 miles to the North and 130 miles to the West.

c) In the European institutions the discussions have stressed the extent of liability. It is an important advance to try to fall the liability on the shipowners, but it should also be extended to those economical operators that are part of the “maritime business”; likewise, this question should be applied immediately, without waiting for the regulation coming into effect in the short term, because, otherwise, the free-riders are still encouraged to act with impunity.

d) Two other questions have supposed a greater political awareness, but a new slowing down. The first one refers to the performance protocols, and the second one refers to the need to take under consideration a network of shelter ports. Regarding the first question, the performance protocols in case of accidents have not been updated or revised yet, both from the physical point of view (they have not been increased), and in human means (they are still pending of training more technicians and increasing their technical capacity). With regard to shelter ports, the discussion is in progress, although there are already different controversies on different questions, namely, if masters have to obey the instructions of the affected country, how to assess the consequences for the safety of the people in the areas closer to shelter ports, and how to estimate the effects on the industrial, urban and natural environments.

One of the main challenges is the “adaptation of the principle of free movement in the seas concerning a framework of a more regulated activity”. That brings about the demand of a set of measures as regards security, as well as the efficiency of the implemented mechanisms that guarantee the coherence of the actions adopted in all the fields of activity.
A way to explain this would be to specify the main aims and highlight the main recommendations (Table 2). On reporting formalities for ships arriving in and/or departing from Spanish ports, to increase transparency, trying to forbid sailing those vessels do not comply with this regulation.

**TABLE 2. PROPOSED AND UNDER DEVELOPMENT REGULATIONS AND GOALS ON MARITIME SAFETY AND POLLUTION PREVENTION**

<table>
<thead>
<tr>
<th>RULES</th>
<th>GOALS</th>
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<tbody>
<tr>
<td>Regulations on exploitation</td>
<td>Establishment of methods concerning security; appointment of territorial representatives in the country where the accident takes place; and existence of security certificates for vessels and cargo.</td>
</tr>
<tr>
<td>Control by the State</td>
<td>Control of regulation as regards maritime safety; pollution prevention; and respect to social rules on board.</td>
</tr>
<tr>
<td>Information about improvements on safety</td>
<td>Better information interchanges among States to get a more efficient cooperation; use of EDI; reports on traffic of dangerous and pollutant goods; regulation on arrival and departure of vessels; appointment of refugee ports or reference ports.</td>
</tr>
<tr>
<td>Conditions of vessel load and unload</td>
<td>Harmonised procedures on load and unload, existence of quality regulation, and appointment of representatives in terminals and vessels.</td>
</tr>
<tr>
<td>Pollution prevention</td>
<td>Existence of port facilities to store waste products.</td>
</tr>
<tr>
<td>Control of certification organisms</td>
<td>Strengthening of control, regulation and rules on the organisations entitled to make controls of vessels and definition of State liability.</td>
</tr>
<tr>
<td>Sanctions</td>
<td>Introduction of sanctions, fines, prohibitions and definition of penal liabilities in the case of infringement.</td>
</tr>
<tr>
<td>Vessel equipment</td>
<td>Introduction of IBC codes for chemical vessels and ICG for tankers.</td>
</tr>
</tbody>
</table>

**Source**: Self elaboration from official publications of European Union Commission and other European Public Institutions, several years.

The main conclusions obtained as a result of the Galician events after the Prestige accident are shown in Table 3, where the favourable and unfavourable criteria as regards the behaviours and the capacities to answer are shown.

They are defined according to those aspects the Galician society has considered as the most sensitive ones, and on which there should have been an immediate decision-making with medium and long-term programmes.


<table>
<thead>
<tr>
<th>TABLE 3. CAPACITIES TO ANSWER ON THE PART OF THE GALICIAN SOCIETY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FAVOURABLE</strong></td>
</tr>
<tr>
<td>Positive reaction on part of citizens: positive, quick</td>
</tr>
<tr>
<td>and constructive reaction.</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Increase of levels of environmental awareness and</td>
</tr>
<tr>
<td>liability.</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Increase of levels of citizens’ active participation.</td>
</tr>
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<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Strengthening of degrees of worry and demands to</td>
</tr>
<tr>
<td>public policies, concerning to risk increase.</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Greater awareness that certain risks are to be</td>
</tr>
<tr>
<td>assumed under international environments.</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Relevant budget actions to palliate the catastrophe effects</td>
</tr>
<tr>
<td>and to face investment on infrastructures.</td>
</tr>
<tr>
<td>The sensitive maritime areas have been catalogued</td>
</tr>
<tr>
<td>and it has been carried out a greater control on vessels</td>
</tr>
<tr>
<td>with problems.</td>
</tr>
</tbody>
</table>

Source: Self elaboration.

6. CONCLUSIONS

This document highlights that the recommendations on maritime safety carried out after the Prestige catastrophe can be summarised in the following points:

a) Greater control of the vessel in the European ports, according to the different types of vessels (age, structure of the hull, safety rules, etc.), and establishment of rules for the traffic of those vessels that carry hydrocarbons or hazardous goods.

b) Greater control, on the part of the States, on the classification societies and the adoption of liabilities in case of accidents or catastrophes; improvement of traffic information, navigation conditions, and inspections by the States and the International Organisations.

c) Adaptation of the compensation funds to cover the damages in all the fields, with the aim to repair these damages and establish sanctions; in short, to change the “polluter pays” principle for the “polluter is sanctioned and pays” principle.

d) Stronger measures to promote the withdrawal of obsolete and old vessels, by introducing severe quality and security measures; introduction of social rules that guarantee more suitable working conditions under special circumstances.

e) Establishment of mechanisms that introduce legal sanctions to the offenders; in the shortest time as possible, the European Maritime Safety Agency will have to
constitute a Technical and Advisory Council composed by technicians and experts from the most sensitive areas to accidents.

f) Port modernisation; ports with better infrastructures and means to answer to the challenges of the new industrial maritime development, and establishment of plans of contingency and models of quick answer to immediately intervene, palliate and repair in case of accidents.

The improvement of the aforementioned tools shows that the EU has implemented a very slow bureaucratic model as regards maritime security. That is so because a lot of agents have to be pleased and the main aim of these agents is the development of specific collaboration agreements, but the EU still lacks an important factor: the financial compensations. It is obvious that the development of agreements has evolved since the Erika and Prestige accidents, but though the financial compensations have increased, and this increase has been high enough in the framework of collective and budgetary mechanisms, it has not been enough as regards the direct imputation to the responsible agents.

Finally, we could point out in two of the main important challenges still remain opened in the European Union maritime safety context. The first item is the adaptation of the principle of free movement in the seas concerning a framework of a more regulated activity. That brings about the demand of a set of measures as regards security, as well as the efficiency of the implemented mechanisms that guarantee the coherence of the actions adopted in all the fields of activity.

The second item is to find a political effective response to the implementation of financial liability mechanisms, by which, in case of an accident, the shipping company carrying dangerous goods has to make the sanction effective, or mobilise additional resources at the same time as any rated damage takes place.
7. REFERENCES


IOPCF/FIPOL (1998……2004): Documents Available for the Several Meetings and Assemblies and Annual Reports of International Oil Pollution Compensation Funds.


