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Salvage and Maritime Safety in the Sea: The Mediterranean Spanish Case

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ABSTRACT

Maritime safety and security institutions evolved from a sole consideration of private and economical interests into public ones, including concepts such as the protection of human life and natural environment in the Sea. On the 20th century, public authorities created a system of protection at local, regional and international levels. UNCLOS Convention must be applied in coordination with other conventions on the matter. There are particular facts in the Mediterranean border like regional conflicts and immigration movements that must be taken into account to implement any regulation on maritime safety. Spain has made an important effort to create an efficient maritime safety system since 1992, but it is necessary to improve it in terms of material and human resources and in terms of coordination between public authorities in charge.

1. Introduction

Since 1950's salvage and maritime safety has become an important issue. The evolution of maritime transport towards bigger ships has increased risks to people, ports and natural marine environment during navigation. Maritime disasters such as the *Exxon Valdez* (1989), the *Erika* on the French coasts (1999) or the *Prestige* on Spanish coasts (2002), represented a serious concern to the public opinion, the European governments, and the rest of the world[1]. To be affected by an oil spill is a situation that all states, maritime ports or coastal regions try to avoid.

Governments are constantly looking for an efficient system on salvage and maritime safety to prevent these risks; but any effective solution cannot only come from national governments. Maritime transportation, especially large volume transportation, uses international routes. Therefore, the design of the system must be considered at the international scale.

2. The first steps toward safer maritime navigation

The Sea has played an important role in the development of our societies. Oceans fulfilled needs of people and have created a link between countries. In addition to these traditional functions, the sea has been subject to other ways of exploitation, like oil and minerals extraction.

According to this perspective, the Sea is a big territory with huge amounts of natural resources that brings wealth to nations and where contact between people with different languages, religions, cultures and political systems occurs.

At the Sea, people develop economical activities such as commercial exchange of goods and mineral exploitation. Politically speaking, nations' sovereignty extents over ocean territories. People often must cross them to migrate to other territories.

Due to its importance, states and governments are very interested in having control over this space by using different political and legal techniques to control the territory and the activities that take place on it.

Regulations on maritime activities have been traditionally classified in 2 groups: Initially, there were few regulations, mainly because it was considered that they affected only private interests; but as soon as the Sea became an important space for countries interests, states started to create a complete legal system to control all activities developed on the Sea[2].

Nowadays, many legal systems follow a strict control over maritime activities, especially those related to safety and security. Maritime activities are a key element in the legislation

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of every State when ensuring a proper use of maritime transport routes and commerce.

Early maritime regulations were focused only on economic interests. The current position regarding safety in maritime legislation appeared later in time with recent regulation. At first, maritime navigation was considered an adventure with the common risks that any adventure has. Many of these adventures considered these events as normal in for this type of business.

The rules that regulated these events were focused on the distribution of risks on the property of the saved goods and the fair method to calculate the reward derived from the assistance to the ship in danger. The point was to decide what happened with the rescued goods from the shipwreck, who the owner of these goods was, how much the rescuer should obtain as a reward for his activity, and who had to pay this reward.

As we can see, we are only speaking about economical consequences of these events, not about consequences in human lives or damages on marine environment. Safety, as a concept that includes the protection of human life and marine environment, is a recently accepted idea in the maritime academic world. This change, not only in basic concepts, but also in the way of thinking, has been caused by different facts. Some of them related to the challenge that the construction and use of bigger vessels (propelled by gas motors instead of sail) represented to the transportation sector.

These new ships were able to transport much more passengers and goods, especially chemical and oil derivatives, which highly increased the risk of losing human lives and seriously damaging the marine environment in High Sea, territorial waters and coastlines.

For the first time in human history, some maritime accidents caused a great number of deaths, as well as huge damages to the marine environment. As an example, the Titanic accident that took place in the beginning of the 20th century, caused thousands of deaths, and deeply impressed the public opinion. Recently, accidents like *Exxon Valdez* (1989), the *Erika* (1999), the *Prestige* (2002), the *Deepwater Horizon – BP Exploration* in the Gulf of Mexico (2010), or the *Concordia* on Italian coasts (2012) show how fragile our technology in security is to efficiently mitigate risks in maritime navigation.

Some of the most serious accidents that occurred in history were caused by tanker ships transporting petrol. We must make a brief reference to transport of petrol across the world. Industrialization and development of economies made it necessary to increase the supply of energy. Countries and territories where petrol can be found were geographically apart from the countries that needed to develop their industries. Obviously the best, most appropriate and cheapest way to transport those mineral resources from the extraction fields to the industrial countries is by Sea.

Accordingly, new technology permitted the construction of new ships, beginning a new era of huge tankers with enough capacity to transport large amounts of oil and minerals across the Sea.

Transporters fixed new navigation zones worldwide. Some of them, like The Finisterre on the Atlantic Zone in northern Spain, became one of the riskiest navigation routes due to the particular features of its coasts and weather conditions.

Many accidents, such as The *Prestige,* in the Finisterre coast in 2002, have taken place in these zones. This accident seriously damaged the marine environment of the Atlantic coasts of Spain and France, and endangered the health of people who were involved in the cleaning of the affected coasts.

In the same way, the use of new technologies in the communications field, such as satellites, let us know where a boat is currently located anywhere in the world. At the same time, Maritime Ports can count on equipments and infrastructure capable of efficiently managing vast quantities of goods whose movements increase the risk of accidents.

The first safety regulations were enacted in the first decades of the 20th century. At that time, the evolution of navigation techniques allowed big boats to travel across the oceans. Boat construction made of steel instead of wood, and the introduction of gas machinery instead of sail completely changed the maritime transportation system to make it more efficient, reliable and fast.

Safety institutions have evolved to acquire the importance they have nowadays. Currently, there is an interest not only in the protection of seamen and passengers` lives, but also in the protection of goods transported by ships, and in preventing possible damages to the maritime environment and coastlines.

Formerly, the lack of resources and a lower appreciation of human life did not require establishing specialist bodies to operate on maritime rescue. Before the 20th century, the life or a sailor was at the bottom of the human life scale. Later, from the development of communications and naval technology and a new estimation of human life leaded the governments to establish specialised expert bodies in maritime rescue and prevention of damages to the Sea.

The first specialised expert bodies were founded by donations from charity, such as the *Royal National Lifeboat Institution – RNLI*, founded in 1852 in the United Kingdom, the *Société Centrale de Sauvetage des Naufrages – SCSN*, founded in 1865 in France, the *Instituto de Socorros a Naufragos*, founded in 1892 in Portugal, the *Deutches Gesellshaft zur Rettungsschiffbrüchiger*, founded in 1860 in Germany, the *Japan Lifeboat Institution*, founded in 1889 in *Japan* and the *Sociedad Española de Salvamento de Náufragos – SESN*, founded in 1880 in Spain.

At that time, these charity institutions were mainly integrated by volunteers who used rowboats and tools like canyons to throw cables to rescue ships in danger.

These charity institutions continue to be an essential part of the rescue system but they paved the road for professional institutions, most of them created by governments, like the American Coast Guard (USA) or the Sociedad de Salvamento y Seguridad Marítima – SASEMAR, in Spain[3].

3. The role of international treaties

International treaties play an extraordinary role on maritime safety. Transportation of large volume cargo is made essen-

tially using international maritime transport routes, so States were soon persuaded that the best way to establish a reliable system on safety and security must be coordinated by all the implicated states.

There are some important international instruments that we can mention. The first one is the United Nations Convention of Law of the Sea (UNCLOS Convention), signed in Jamaica in 1982. This is such an important legal instrument that it is commonly known as "the Constitution of the sea", in a clear reference to the Constitutions of modern States, as the most important legal instrument in any juridical system.

The UNCLOS Convention regulates several issues. First of all, it fixes the rules to parcel the oceans between littoral states. This issue has a huge importance in terms of world wealth distribution because the oceans are an important source of natural resources including fisheries and minerals. The UNCLOS Convention establishes three kinds of maritime zones: the Economic Exclusive Zone that finishes 200 miles away from the coastline, the Contiguous Zone (24 miles from the coastline) and the Territorial Waters (12 miles from the coastline).

Coastal States have jurisdiction and sovereignty powers over the three mentioned zones in terms of exploitation of maritime resources. On the contrary, the High Sea, further than 200 miles away from the coastline, is a territory with no sovereign adscription to any country. It belongs to the humanity and it is managed by an international organization created by the Convention.

In terms of maritime security and safety, UNCLOS Convention establishes the main principles that let States control their territorial waters and make their rules enforceable to any ship that cross or pass near them. The first principle established by UNCLOS Convention is the *"freedom of navigation at Sea"*. According to this rule any ship from any country can navigate without any restriction on the High Sea and with some limitations when it navigates on the other zones. So that, when a ship navigates on territorial waters, it is under the coastal State jurisdiction, rule also applicable when the ship is in a coastal State port. The second is named "the flag state principle". According to this principle, ships are subject to the law of State whose flag they fly.

These two principles establish general rules for controlling the navigation by states. As a result of these principles the Convention classifies the states in Flag States, Coastal States and Port States. Each category of state has a different level of power to control the maritime traffic and to make its law enforceable. The whole system is based on recognition of the rights of flag states over their vessels in reference to the limited rights of Coastal and Port States over them when they cross their territorial waters or arrive to their ports. In this sense, the Convention tries to balance the powers of the different kinds of States in order to guarantee the natural environment and to prevent damages to the natural environment or illegal activities in their territorial waters.

Another feature of this Convention is that UNCLOS is an "umbrella convention". It means that in particular cases its rules must be applied using not only the text of the Convention, but also using the rules established in other conventions signed to supplement UNCLOS in some specific areas. There are some international conventions that we can mention related to safety and protection of the marine environment like the International Convention for the Safety of Life at Sea (SOLAS) 1974, the International Convention for the prevention of pollution from ships (MARPOL 73/78), the International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC), the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other matter (LDC) 1972, generally known as the London Convention[4].

4. Spanish regulation on salvage and maritime security

The system created by UNCLOS and other Conventions has been well accepted by the international community and its instruments are in force worldwide. Each country and region has its own regulations according to their particular needs and interests. We will focus on the Spanish case in its Mediterranean border.

Historically, the Mediterranean Sea has been centre of an intense maritime traffic. Using navigation routes Mediterranean people have negotiated and interchanged products, experiences and culture. Our law, even if it comes from Latin or Anglo-Saxon sources, has an important precedent in institutions created by Mediterranean nations when they made business using the Mediterranean Sea.

The Mediterranean Sea is very important in relation with maritime institutions, and it is still a place for creativity of modern solutions for 21th century problems. Its position, in terms of security, safety and environmental protection, is similar to the position in other Seas and oceans and we can apply similar responses to problems that will arise in other regions.

International Conventions have created a general framework of protection, but over this basis, an efficient system must be completed implementing better techniques and instruments to make the Sea safer. The main objective must be to create an adequate system to protect life on the Sea, to protect goods and merchandises transported by Sea and to prevent the sea from pollution caused by vessels or dangerous merchandise transported.

Apart from these "usual" demands, the Mediterranean Sea, due to its geographical situation, has some specific features: It is a natural border between three continents: Europe, Asia and Africa. In this sense, it is a place where continuous population migration from some countries to others takes place. Additionally to immigration movements, regional conflicts that involved political and religious considerations make the Mediterranean a space especially vulnerable to terrorist attacks.

Following this perspective, all coastal countries on the Mediterranean Sea, some of them part of the European Union, have interest to create a suitable legislation under UNCLOS and complementary international conventions, to permit themselves to make a rigorous control of the Sea in order to assure safety an security conditions.

4.1. The European communitarian law

Referring to legislative initiatives, apart from the above-mentioned international conventions, Europe has its own legislation enacted by the European Union and applicable to all European territory.

The European Union institutions started on 1978 to establish rules related to maritime security and safety. Traditionally, authors divide the development of European communitarian law in two periods: the first one, from 1978 to 1993, the European Economic Community enacted the first rules focused to create a common action between member states. These regulations pretended all member states to sign international treaties on maritime safety and security and also to harmonize national law between them. Since 1993, the European Union enacted their own rules in order to develop European maritime infrastructure and promote new legislation at an international level.

Accidents like the *Erika* (1999) on the French coast and the *Prestige* (2002) on the Spanish coast, caused a deep impact on European public opinion and made governments moved towards a more efficient legal system to prevent such dramatic events. As a result, the European Union published the *Erika I* and *Erika II* proposals as a plan to establish an European communitarian system to follow, control, and obtain relevant information about maritime traffic in Europe. This plan also proposes to create an European Fund to compensate damages caused in maritime environment and an European Maritime Safety Agency (EMSA)[5].

Equally, due to the September 11th terrorist attack in New York City, European Union adopted the ISPS system to protect ports which increased controls over the vessels with destination to European ports[6].

4.2. Spanish legislation - reference to the Mediterranean border

International and European legislation are complemented by national regulations. National legislation is important as well, because the core of competences to regulate these matters is normally attributed to national parliaments. Human and material resources integrated in governmental organizations, such as the National Coast Guard or Merchant Marine Administration, belong mainly to national departments.

In Spain, successive governments made important efforts to create a complete system in order to prevent risks associated with maritime emergencies or pollution in the Sea. In 1992, the Spanish Parliament enacted the Ports and Marine Merchant Act that established a public system of rescue and created a professional body that is in charge of managing this kind of emergencies. The new organization named SASEMAR (Sociedad Estatal de Salvamento Marítimo), has a fleet of rescue boats and expert staff to professionally deal with maritime emergencies.

Since 1992, our country has made a permanent effort to implement an efficient system of maritime rescue through the development of successive national plans to maritime rescue and fight against maritime pollution[7]. Despite the efforts, the system remains fragile and there are some aspects that should be improved.

According to the Spanish Constitution 1978, competences on maritime salvage and protection on maritime environment related to pollution are distributed between central government and regions (Autonomous Communities). The Spanish Constitutional court in a decision made on February 19, 1998 (Decision 40/1998, Judge Pedro Cruz Villalón), reasserted the constitutional validity of article 6.1 e) of the Ports and Marine Merchant Act 1992. According to Spanish Constitution, the central government has competences to "legislate" but the Autonomous Communities have "executive competences" on maritime salvage.

Therefore, both governmental authority levels (central government and autonomous communities), even other authorities like City Halls, must act in complete coordination to assure the proper functioning of the salvage and pollution prevention on the Sea. Even if we can say that the current Spanish salvage public system is a very important step forward in this field, we have to accept that it is necessary to improve it even further by the continuation of the coordination efforts between concerned public authorities.

For example, in reference to the Mediterranean border, the system has shown failures in the treatment of two particular items that need an immediate action from the Spanish authorities. The Mediterranean Sea is the natural border between Africa and Europe and the Spanish coast on the Mediterranean Sea is one of the most accessible route to Europe used by immigrants.

Every summer, we have to attend to the disgraceful spectacle of people trying to cross the Gribraltar Strait towards Spain, or trying to reach the Canarian Islands coast travelling by small, unseaworthy boats with great risk of their lives. Some of them reach the coasts but many disappear in the Sea. Spanish spectators watch every day on the news and are witnesses in their beaches of this human tragedy.

When facing to this human tragedy, the Spanish rescue system has shown its failures. There is no an appropriate coordination between public authorities and there is no enough human and material resources to deal with this problem.

Spain has a rescue surveillance area of near 1 million square kilometres[8] and currently does not count with enough human and material resources to control all this space and to offer the necessary support to vessels in danger. These circumstances become worse if we consider the lack of coordination between the different governmental authorities.

It is absolutely necessary to improve the public rescue service. Perhaps, as the latest political and technical trends suggest, the creation of centres of coordination or a unique national institution with all competences in rescue like the American Coast Guard to solve any situation at sea, could be a good step in our way to create a better system on rescue and protection on marine environment. Under this scheme, we would have functionaries belonging to different competent institutions working as one, eliminating unnecessary interagency coordination.

5. General conclusions

Initially, regulations on maritime salvage and safety were focused only on economic interests. The point was to decide what happened with the goods rescued from a shipwreck, who the owner of these goods was, how we could distribute the losses between goods owners, how much the rescuer should have obtained as a reward for his activity, and who had to pay this reward.

Later, on the 20[8] century the lives of the seamen had a different consideration and the naval technology allowed the construction of new bigger vessels, propelled by gas motors. Here, the changing of maritime transportation suggested widening the regulation focus to integrate protection of the human life on the sea and prevention of maritime pollution.

Some maritime disasters like the *Titanic* (1912), the *Exxon Valdez* (1989), the *Erika* (1999), the *Prestige* (2002) and lately the *Deepwater Horizon – BP Exploration* (2010) and the *Concordia* (2012) usually led public opinion to consider human life and protection of maritime environment as relevant interests to be taken into account when changing the current maritime salvage and safety system in order to improve it.

Any efficient system on maritime safety and security must coordinate national and international actions. The current maritime transportation, especially large volume transportation, is made internationally using ports and maritime companies from different countries.

The United Nations Convention of Law of the Sea (UNCLOS) 1982, called "the Constitution of the Sea", fixes the rules to parcel the oceans between state parties. This distribution has consequences on the wealth distribution of ocean's natural resources and the powers of the states over the Sea territories (the Economic Exclusive Zone, the Contiguous Zone and the Territorial Waters).

UNCLOS Convention is an "umbrella convention", so that it must be applied to real cases using other international conventions that complement its rules. Referring to maritime salvage, safety and protection to the maritime environment we can mention the International Convention for the Safety of Life at Sea (SOLAS) 1974, the International Convention for the prevention of pollution from ships (MARPOL 73/78), the International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC), the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other matter (LDC) 1972, generally known as the London Convention.

Apart from "usual demands" in terms of maritime salvage and safety in the Mediterranean Spanish border, there are some facts that need to be considered. In this zone there are conflicts involving religious, political and economical reasons and migration movements that use the Mediterranean border as one of the most accessible and easiest way to enter illegally to Europe.

In 1978, the European Union started to take legal actions in reference to maritime safety and security. Since 1993, European Union enacted its own rules in order to develop European maritime infrastructure and promote new legislation at international level. The *Erika* and *Prestige* accidents in 1999 and 2002 encouraged European institutions to assume the Erika I and II proposals in order to improve the European protection system. As a result of these and other initiatives, the European Maritime Safety Agency (EMSA) was created.

Since 1992, when the Port and Marine Merchant Act was enacted, Spain has made important efforts to create an efficient system of maritime safety and security. However, it is necessary to improve this system in terms of material and human resources and also in the coordination of central, regional and local authorities in charge.

References

[1] Cfr. ASAMBLEA NACIONAL FRANCESA (No. 2535): *Rapport fait ou nom de la Comision d'enquête sur la securité du transport maritime des produits dangereux ou polluants*. Rapporteur: M. Jean-Yves Le Drian, 2000. AA.VV.: *Libro Blanco sobre el Prestige*, Asturias (Spain). Gobierno del Principado de Asturias – Fundación Alternativas, 329 pp.

[2] Political power has coped with maritime issues in different ways over the time. All of them can be gathered in two groups. The way Roman law used to regulate maritime transportation shows clearly this evolution. In Roman historic law, we can find two periods of time: the first one, during the roman Republic, maritime law was an international regulation based on international agreements between nations of the Mediterranean Sea. Later, in a second period, the Imperium started an age of strict regulation over maritime activities. The concentration of powers in the person of the Emperor, and the extreme importance of the Sea for supplying food and products from everywhere in the Imperium to the capital, led public powers to intervene the maritime activities in order to assure the necessary supplies to maintain the city of Rome. This intervention of public authorities is followed by the evolution of maritime regulations. In this second period, international agreements ceased to be the principal legislative tools and instead of these agreements, the Emperor enacted regulations that let him control all maritime transport activities to the Italian peninsula. Cfr. JIMENEZ VALDERRAMA, Fernando: *Formación Histórica de los Contratos de Explotación del Buque – Su regulación en el Derecho Colombiano y Español*. Cali – Colombia, Ed. Universidad del Valle, 2000, pp. 3 – 5.

[3] Cfr. AA.VV.: *Lord Donaldson's Review (Salvage & Intervention, Command & Control)*. Report submitted to the United Kingdom Parliament by the Secretary of State for the Deparment for Transport, London, 1999.

[4] Cfr. INTERNATIONAL MARITIME ORGANIZATION: *Administrative Aspects of Oil Pollution Response – Manual on Oil Pollution*, Section V, London, 1998, pp. 12. INTERNATIONAL MARITIME ORGANIZATION: *Contigency Planning – Manual on Oil Pollution*, Section II, 1995 edition, pp. 14.

[5] It was established by European Union on the Regulation (EC) No. 1406/2002 of the European Parliament and of the Council of 27 June 2002, Official Journal of the European Communities, L 208/1, 5 August 2002.

[6] Regulation (EC) No. 725/2004 of the European Parliament and of the Council of 31 March 2004.

[7] Since 1992 there have been 4 National Plans of Special Services for Rescue and Protection against maritime pollution.

[8] The International Convention on Maritime Search and Rescue (SAR), 1979 distributed between all countries parties the surveillance areas for rescue purposes.