THE LIABILITIES OF THE PARTIES CONCERNED IN SEA POLLUTION BY HEAVY HYDROCARBONS

Ms Bertille Le Breton – Cedre - Rue Alain Colas 29200 Brest
Tel: 06-22-16-59-26 Fax: 02-98-33-67-76 - bertille.le.breton@le-cedre.fr
Secondary authors : Mr Michel Girin

ABSTRACT

A historical analysis of the evolution of the liability of the actors of maritime transport and of the flag and riparian countries immediately evidences a transition in the course of the last 30 years from a concern that totally focussed on human and economic aspects (sailors safety, protection of the economic interests of operators) to a gradual awareness of the responsibility towards the environment. Such a marked development is a direct consequence of the public at large realizing that oil-tankers accidents, in particular those involving heavy hydrocarbons, may have extremely serious consequences on a non-straightforwardly economic element, namely the environment.

In this context, the new regulations that have gradually been adopted in the field of maritime safety, in the wake of accidents and their sequels, evidence a transition from a right to maritime safety (protection of the interests of crews, passengers, ship-owners, cargo-owners, who are the prime victims of accidents at sea) to a human right to maritime safety (a protection to be extended to the economic interests of riparians concerned and then, gradually, to their own environment and to that of future generations). Originally vested with the sole duty to protect man and ship, texts are now under an obligation to conserve and protect the rights of future generations and of the right of the environment to sustainable development.

Faced with what is at stake in maritime safety, the sheer number of actors in the chain of maritime transport should not form an obstacle to establishing clear responsibilities and should not lead to diluting them. On the contrary, an awareness of the superior nature of these interests should imply a systematic and dissuasive involvement, whether civil or criminal, of all concerned. Setting responsibilities in train is only a part of the overall set-up whose aim it is to lead those active in maritime transport to comply with safety regulations. Among the goals set by the texts, the liabilities of all protagonists should equally involve compensation of all

damages, including ecological ones, together with an improved implementation of the "polluter pays" principle and by deterrent sanctions meaning for those responsible for pollution a cost-benefit analysis in favor of man and his environment.

In practice, however, it does seem that the texts at present in force essentially share out the risks between all the actors in the maritime transport chain. A country granting its flag only to vessels that conform to standards, a charterer entrusting his hydrocarbons only to well-kept ships are very exceptionally concerned by accidents. Nevertheless their own contributions to compensation systems are not, as a rule, inferior to those of less rigorous countries or chaterers. Our paper considers this issue in the light of the Erika, Haven and a few other accidents involving heavy hydrocarbons (or crude oils the burning of which generated heavy hydrocarbons), as well as in the light of operational spills of similar products at sea. And it will attempt to draw the consequences thereof.