

Prestige places tankers under pressure

The sinking of the Prestige has re-ignited several industry debates and has once again, rightly or wrongly, tarnished the shipping industry's reputation in the eyes of the public

At an oil spill conference which took place less than three months ago, one of the speakers rattled off a list of notorious names: the Braer, the Sea Empress, the Nakhodka and the Erika, among others. He expressed the fervent hope that this list would not grow any longer, and at the time, this hope did not seem unrealistic. The tanker industry, after all, had made great strides in safety and transparency after the Erika incident. It had shown that it was capable of cooperating with legislative authorities through its participation in the process that yielded the Erika I and II packages and had demonstrated a willingness to examine and change its own practises, although it could be argued that it only finally did so as a result of concerted external pressure.

In the light of all this, the Prestige sinking is a deeply unfortunate occurrence, not least for the Galician fishermen and shellfish harvesters who have lost their livelihoods as a result. The story of what happened to the vessel is by now well known, but these, briefly, are the facts: on November 13, 2002, the 81,589 dwt tanker Prestige, laden with 77,000 tons of fuel oil and heading towards Singapore, suffered from the flooding of two of its starboard tanks while sailing in heavy weather off the coast of Spain and quickly developed a list of 25 degrees. The cause of this initial damage has not yet been ascertained, although the crew and master did report hearing the sound of an explosion shortly before the flooding occurred; several theories are in circulation, including the possibility of the vessel having been struck by a foreign object such as a container or a log. In order to correct the list, the ship was counterballasted by flooding the portside tanks with seawater. At this stage, the cargo tanks were still intact; the small amount of oil that had been spilled had issued from the vessel's butterworth openings, as reported by the ship's master. In its counterballasted condition, it sought access to sheltered waters from Spain, but was denied permission to approach the coast. The salvors who had been called in were in the process of towing it away when the inevitable happened - the ship broke in two and sank to the bottom of the ocean, spilling 10,000 tons of oil in the process (although it has been estimated that the volume of the spillage could have been as high as 20,000 tons, and in view of the ongoing leakage from the wreck, this figure is likely to be the more accurate).

Places of refuge...again

The Prestige incident, while technically similar to other tanker incidents - the Erika and the Castor spring to mind most immediately - is unique in that it has crystallised a wide range of shipping issues, some of which have been floating around for years now but have never been satisfactorily resolved. The most prominent among these is far and away the places of refuge issue, which last garnered attention after the Castor incident, in which the damaged product tanker was turned away by several coastal States and was forced to remain at sea for a month while its cargo was salvaged. The Castor survived, but the Prestige was not as lucky. There have been calls from many for the industry to finally get hold of this issue and to effect a workable solution which might help to prevent similar incidents. Shortly after the loss of the Prestige, the International Association of Independent Tanker Owners (INTERTANKO) and the Baltic and International Maritime Council (BIMCO) issued a joint press release highlighting its "concern surrounding coastal states' continued reluctance to admit ships into ports of refuge".

"When ships are not granted such refuge the potential for a serious incident is frequently increased and the safety of the crew jeopardised. The emergency transfer of cargo and other measure to aid the stricken vessel may be similarly hindered with a consequent increased threat to the environment," they stated. The two associations urged coastal States to develop plans for places of refuge and to nominate suitable waters, ports or anchorages.

In the wake of the Castor incident, the places of refuge issue was fast-tracked to the top of the International Maritime Organisation's (IMO) Maritime Safety Committee agenda. IMO called for the drafting of an outline of the actions expected from coastal States in providing vessels in distress with places of refuge; an evaluation of the risks associated with the provision of places of refuge; and an outlining of the actions masters of ships in distress should take when in need of a place of refuge. In spite of this sense of renewed urgency, the issue ended up getting sidelined by the maritime security juggernaut, in spite of prompting from INTERTANKO, among others, to continue work on it.

A difficulty arises, of course, because IMO does not have the power to dictate to sovereign nations, but the fact remains that some sort of regulatory framework needs to be put into place. What should the substance of this framework be, though?

The phrase 'places of refuge' began life first of all as 'ports of refuge', and the difference between the two concepts is significant. A place of refuge need not be a port facility; sheltered waters - a harbour or an inlet - or anchorages would in most cases be more than sufficient. The chances of saving the ship and preventing the cargo from hitting the water would be greater, or in the event that pollution does occur, its impact would be limited. This is in drastic contrast to what happened with the Prestige. The Spanish government has been criticised for its decision to order the vessel out to sea, even by those outside of the shipping industry - what might have been a non-existent or limited incident was instead exacerbated by the conditions in which the ship finally went down, resulting in widespread pollution over a long stretch of coastline, affecting both Spain and France. Many, including the International Salvage Union (ISU), have pointed to the UK's system for handling ships in distress off of its coastline as one which works well and believe that it should be implemented across the EU.

The UK has created a role called the Secretary of State's Representative, or SOSREP. SOSREP is someone with maritime experience who attends the site of any maritime incident in UK waters. He gives advice when it is called for and authorises courses of action when necessary. This means that decisions can be taken and implemented quickly and efficiently, rather than falling to a local administration which has no knowledge of the technical issues involved in attempting to save a ship. The UK is also one of the very few, if not the only, countries to have designated places of refuge along its coastline. "The bigger the pollution threat, the higher up the political ladder the decision-making - and the top of that ladder is very far away from those who understand ship casualties and salvage," says ISU president Joop Timmermans. "The British approach is simple. Only two individuals are involved. The Salvage Master gets on with the job and [SOSREP] - who understands salvage and represents the public interest - can intervene if he is not satisfied. This is a rational basis for quick and sound decision-making."

Salvors have a particular interest in seeing the development of a coherent policy on places of refuge come to fruition, for they are more often than not the ones on the sharp end of incidents like the Castor and the Prestige. As a result, ISU has drafted and called for the following 10 measures to be implemented in order to avoid the kinds of confusion and emotionally overwrought responses which, it could be argued, led to the loss of the Prestige:

1. EU adoption of the UK Command and Control model, based around a Ministerial Representative (the SOSREP in the UK).

2. Swift EU action to implement the June 2002 Maritime Monitoring, Control and Information Directive, which includes an obligation to identify places of refuge for ship casualties and, in addition, to implement new IMO guidelines in this area.
3. An IMO decision to "fasttrack" the work now under way to develop the International Guidelines on Places of Refuge
4. Establishment of an ISU Task Force, to work alongside the IMO Group on Places of Refuge. Professional salvage expertise would be used, to develop a risk assessment model for improved decision-making when confronted with a major pollution threat. This model would take account of key variables: vessel type, cargo carried, degree of damage, water ingress, cargo leakage, fire, position in relation to the coast, availability of main engines, environmental vulnerabilities, tug availability, weather and other parameters.
5. "No rejection without inspection," i.e. casualties should be boarded and the risks assessed before a decision is made about whether or not to grant a ship access to a place of refuge.
6. Consideration of the consequences of rejection of a request for shelter for a damaged vessel.
7. Establishment of an expert panel to help governments identify the best environmental option when confronted with an imminent pollution threat. The panel would include experts in salvage, spill behaviour, environmental impact and clean-up.
8. Construction of an EU Casualty Response Database.
9. The undertaking by the newly established European Maritime Safety Agency of an assessment of salvage provision in EU waters to ensure coverage is adequate.
10. A review of the case for new salvage standby schemes, to protect vulnerable coastlines.

At the recent Maritime Advocates legal conference held in Spain, Timmermans stated that all industry stakeholders, including governments and fishermen, have a common interest in developing and supporting a new approach to the places of refuge issue. "The best option, of course, is to keep the pollutant in the ship. This is the aim of the salvor. However, that option is not always available. When 100 per cent containment is impossible, fast decision-making based on professional salvage expertise becomes even more important," he said. Several delegates at the same conference pointed out that what is really required is not so much a list of geographical locations as a legal framework that can enable politicians and those in the shipping industry to make decisions easily and quickly and to ensure that lines of communication and authority are established.

In a statement released shortly after the Prestige incident, IMO affirmed its commitment to finding a solution to the places of refuge issue, while diplomatically acknowledging that it has no power to do anything other than make suggestions and recommendations to coastal States. Secretary-General William O'Neil suggested that "the time had come for the Organisation to undertake, as a matter of priority, a global consideration of the problem of places of refuge for disabled vessels and adopt any measures required to ensure that, in the interests of safety of life at sea and environmental protection, coastal States reviewed their assistance and facilities as might be required in the circumstances."

IMO has shown that it can act quickly when it is required to do so - the maritime security issue, for example, which was pushed through in less than a year's time - but the onus for formulating a solution rests firmly on the willingness of coastal States to acknowledge that this is an issue which concerns them as well. For too long, places of refuge has been seen as a shipping-only issue, and as we have seen to

terrible effect yet again with the Prestige, it is clear that a ship in distress is not a problem which only afflicts the ship and cargo owners.

Newbuilding standards . . . again

Last year, the issue of newbuilding standards, for both tankers and bulk carriers, gained prominence after several key industry figures, including representatives of the Hong Kong Shipowners' Association (HKSOA), the International Association of Independent Tanker Owners (INTERTANKO) and the Greek Shipowners' Union, complained that newbuilding standards had declined and that ships were no longer 'fit-for-purpose'. Moreover, they stated, this levelling-down of standards was a direct result of competition: between owners themselves, between classification societies and between yards. The concerns highlighted by these owners led to a meeting at the end of last year in Shanghai attended by owners, shipyards and class. The key topics of discussion were shipbuilding capacity; design margins; and the relationship between owners and yards, encompassing a discussion about the length of ship guarantee limits. All three are of great concern to tanker owners and operators, but it is the latter two which have a direct bearing on the Prestige debate. It is generally felt that design margins have been eroded as a result of cost-cutting by owners and of competition between classification societies and yards. "There is the realisation that, at the end of the day, class are responsible for setting the design margins, and that if building standards were universally raised and universally applied, then nobody would lose out," points out Peter Swift, managing director of INTERTANKO. "You have a minimum level that is established by class, but some owners take up options over and above that minimum: corrosion margins, whether you coat parts of the tanks, or all of the tanks, buckling strength, fatigue life, etc. The broad proposal is that these should be incorporated as part of the normal. If these were the norm rather than one-off specials, then the costs would much likely be less than is the case today when they're individual extra items."

One issue which arose in the wake of the Erika incident, and which furthermore drew the shipyards into the raging debate about quality which ensued, had to do with the fact that the Erika's sistership had been built in the same yard and had also experienced problems. The concept of an early-warning system and the idea that yards should be more involved with the vessels they build after delivery sprang directly from this fact. This is just one of the reasons behind owners' demands for a longer guarantee period. "The ideal is that the owner is party to the knowledge of what is being agreed [between class and the yard] during the construction and in a similar vein that the builder has a mechanism for feedback about what happens to the ship when it goes into service," says Swift.

Basil Papchristidis, in a speech given last year, famously pointed out that he got a longer guarantee period on his toaster than most owners did on their ships. Owners are hoping for a guarantee period that extends to least the first special survey, if not longer.

The meeting between the three industry sectors marked a first - owners and class quickly became embroiled in the newbuilding standard debate when it first became an issue, whereas yards for the most part had been largely silent on the subject. Finally bringing all three parties together should result in at least some small modicum of progress in the right direction.

Swift makes a connection between the issue of newbuilding standards and the debate currently raging, in the wake of the Prestige, about age and single hulls versus double hulls. "The relevance is this: is you arbitrarily set a finite age for a ship you have the potential to discourage sound investment in a robust ship initially, and it drastically reduces the incentive to maintain the vessel later in life," he says. "Now if you have good design margins to start with then the robustness should be there throughout the life of the ship, and the ability to maintain it to a high standard is actually increased over the whole of the ship's life." Swift's message is clear:

"Arbitrary age limits do nothing to improve maritime safety." He goes on to emphasise the importance of ensuring that a proper investigation of the Prestige incident is conducted, which includes among other things, releasing Captain Mangouras or at least providing the Bahamian authorities with access to him so that they can ascertain what went on onboard the vessel at the time of the initial damage and the actions that he and his crew took directly afterwards.

Transparency . . . again

In spite of the superficial similarities between the Erika and the Prestige (same ship type, same cargo, similar circumstances, etc), the two are in fact very different. Firstly, in the case of the Erika sinking, it was some time before the owner of the vessel was identified. This obscurity led to a popular perception of the shipping industry as secretive and therefore culpable. The industry's reaction to the Prestige couldn't have been more different: immediately after it was reported that the vessel was in distress and leaking fuel oil, ABS confirmed its status as the vessel's classification society, stating that "the vessel was in full compliance with all ABS classification requirements, including the IACS Enhanced Survey Program for older tankers" at the time of the incident. The society immediately began to review its records on the vessel and also instigated a full-scale 'vertical' audit to be carried out by the International Association of Classification Societies (IACS), in cooperation with industry bodies such as the International Association of Independent Tanker Owners (INTERTANKO) and the Bahamas Maritime Authority (BMA), the body which administrates the Bahamian flag. In addition, the manager (Universe Maritime Ltd of Greece) and the owner (Mare Shipping Inc, registered in Liberia) were identified. According to Stewart Wade, vice-president of ABS, the society is currently undertaking a technical investigation, the results of which will be shared with BMA, in the hopes that they will aid it in its own investigation into the casualty. The investigation involves, among other things, an enquiry into the vessel's survey and repair history and participation in and cooperation with IACS' 'ad hoc' audit involving the European Commission, INTERTANKO and IMO, which says Wade, has so far been to Houston and Dubai (the location where the last annual survey took place) and will shortly visit China (where the last special survey took place). ABS expects that a finalised report will be released at the end of January. An investigation into the cause of the initial failure is also being carried out. "We believe that there were really two phases to this casualty," says Wade. "An initial failure of the hull structure, by cause as of yet unknown and will probably never be completely known. The second phase is really what happened after the vessel was counter-ballasted; the initial pollution had stopped and the decision was taken by the Spanish authorities to deny it access to a sheltered area where a ship-to-ship transfer could have taken place, but instead sent it out to sea in a damaged and overstressed condition in which it was inevitable that there would be continued degradation of the hull which resulted in the loss of the vessel. That is not the substance of our investigation."

Within the first phase, ABS is undertaking several analyses: a seakeeping analysis; an investigation of the 'wave-breaking' theory (i.e. that a rogue wave broke across the vessel's hull, causing the initial damage); a complete Finite Element Method (FEM) structural analysis in the intact condition for the affected section of the vessel (the number 2 and number 3 starboard wing tanks); a complete fatigue assessment of the sidshell longitudinals; a residual stress analysis based on the repair history of the vessel; an enquiry into the various theories about objects that might have struck the vessel; and an analysis of fender loads "to determine possible cumulative stresses and or damage that could have taken place through fender impact", given the vessel's immediate past service history as a bunker supply ship.

Technical issues aside, ABS' approach to the casualty has set a standard for transparency that other classification societies ignore at their own risk. Following on from its handling of the Castor incident, during which it opened all of its files on the

vessel and invited the public, the press and other interested parties to view the information, it has been completely open about the Prestige and has arguably usurped the manager and the owner as the face of the shipping industry as it is presented to the wider world. It is a certainty that in the future, any classification society which does anything less will be viewed as suspect.

Compensation . . . again

The Prestige incident has also succeeded in re-igniting the debate surrounding one of the thorniest issues pertaining to oil spills - compensation. The mechanism underlying the Civil Liability and Fund Conventions is well established - strict, limited liability for the owner; the contributions paid into the fund by the cargo receivers; compulsory insurance through a P&I Club for the owner; claims channeled solely onto the owner - but there are moves from some quarters to fundamentally change the way in which victims of oil spills are compensated. Among them are legislators, some of whom have in the past expressed a desire to see liability extended to other parties aside from the owner - the charterer, the flag, the classification society and others have come under the spotlight in this respect. Equally, the oil industry is unhappy with the fact that the oil receivers alone will be expected to fund the so-called third tier of compensation in the form of a Supplementary Fund. The proposed Supplementary Fund would intervene over and above the current limits, which themselves are due to be increased by 50 per cent (effective November 2003).. Jan Kopernicki, vice-president of STASCO and the Oil Companies' International Marine Forum's (OCIMF) current chairman, has gone on record in the past as stating that he believes that forcing owners to take a greater part in compensation would give them an incentive to be more quality-minded. Owners, on the other hand, point out that to date only two incidents - the Erika and the Nakhodka - have exceeded the current limits, and therefore that they, the owners, have paid for the majority of the claims through their P&I Clubs.

Regardless of the merits or otherwise of these arguments, the workings of the CLC are due to come under scrutiny in February 2003, when the International Oil Pollution Compensation Funds (IOPCF) working group meets. The three main issues, according to director Mans Jacobsson, will be the maximum amounts available; environmental issues; and shipowners' liability and related issues. Some believe that the Prestige incident will give those who wish to make it easiest to deprive owners of their limited liability the added impetus to carry this change through; others continue to point out that the only reason why the CLC is able to work so relatively quickly in paying out to claimants is because of the strict and channeled nature of the owners' liability and that as a result, this fundamental aspect of the Convention should, above all others, be retained.

According to Jacobsson, immediately after the incident took place, the Fund's staff sprang into action; Jacobsson himself went to Spain and met people in Madrid at the ministerial level, as well as going to La Coruña. It was decided, together with the P&I Club, to set up a local claims office. The Fund's practice is to put an advertisement in the local press to alert people of the office's presence and giving them information about how to submit claims. Information is also disseminated through groups such as fishery cooperatives, local authorities, tourist boards and governmental authorities. He notes that it is impossible to tell what the final level of the compensation claims will be. It has been estimated that the claims total will fall around the EUR 3 billion mark.

Knee-jerk reactions...again

The biggest fear in the tanker industry is that the Prestige sinking will lead to the further introduction of what is termed 'knee-jerk' legislation. In the immediate aftermath of the incident, several European coastal States banned tankers from approaching their coast altogether, restricting them to the 200-mile economic

exclusion zone. In some cases, armed naval vessels were engaged to enforce this restriction. Other touted measures include the banning of all single-hull vessels from European waters, with the US looking into the same, as well as the acceleration of the timetable for the phase-out of single-hull tankers, as codified in Annex 13G of MARPOL. The industry is battling against such knee-jerk reactions, not least INTERTANKO and ABS' CEO Frank Iarossi, who in a speech given in Singapore in January stated in no uncertain terms that shipping is the safest mode of transport, bar none, with a safety record which has shown consistent improvement through the years; as a result, the public's and governments' perception of the shipping industry as a shoddily run and inherently substandard one is a bafflement. Regardless, the industry will, as ex-INTERTANKO managing director Richard du Moulin said at a conference in Athens this past summer, have to simply 'get over it' and find ways of addressing the many thorny issues which the Prestige sinking has thrown into its path yet again.