

## **The *Prestige* Oil Spill Disaster and its Implications**

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## The Event

On November 13, 2002, a single-hulled oil tanker called the *Prestige* became distressed off the coast of Northern Spain. The vessel was in transit from St. Petersburg, Russia to Gibraltar<sup>1</sup> carrying 77,000 tons of heavy fuel oil. The problem initially started when plating on one of the starboard ballast tanks, which was empty at the time, gave way causing the tank to fill with sea water. As a result, the vessel took on a list of about 25 degrees. The captain of the vessel, Apostolos Mangouras, took immediate corrective action, but it was several hours before the list could be reduced to five degrees. At this point, the cargo tanks were intact and only small amounts of oil had been forced through the screw-down plates in the deck. However, heavy waves continued to pound the damaged side plating and a 40-foot section of the starboard hull eventually broke off allowing the ship's cargo to begin pouring into the ocean<sup>2</sup>. Mangouras sent out a distress signal to Spain's port authorities, asking to be brought into harbor. Port officials, however, refused to harbor the vessel and ordered it out of Spanish territorial waters. The vessel then turned north towards the coast of France but was likewise rebuffed by French port authorities<sup>3</sup>. The captain then determined to sail south towards Africa where waters were calmer<sup>4</sup>. However, this route required passing through Portuguese waters and

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<sup>1</sup> *Prestige*, WIKIPEDIA, available at [http://en.wikipedia.org/wiki/Prestige\\_oil\\_spill](http://en.wikipedia.org/wiki/Prestige_oil_spill). (The vessel actually made two stops after leaving St. Petersburg and before the accident, one stop in Latvia and one in Denmark.).

<sup>2</sup> *Bahamas Maritime Press Statement*, 29 Jan 2003, available at <http://www.eagle.org/news/press/prestige/bma%20press%20statement.pdf>, (last visited 25 April 2006).

<sup>3</sup> *Prestige*, *supra* note 1.

<sup>4</sup> Telephone and email interview with Fran Lijo González, Captain of the *Pico Sacro* (April 15-18, 2006), (Lijó was fishing in the area where the *Prestige* first became distressed and where it eventually sank and was privy to many of the radio conversations that went back and forth between the involved parties.).

authorities in Portugal denied the vessel passage, even sending the Portuguese Navy to force the vessel to turn back. At this point, the captain traveled back into Spanish waters hoping to prevail upon the Galicians to allow the vessel to dock<sup>5</sup>. The Spanish Merchant Marine, under the direction of José Luis López Sors, continued to refuse entry and repeated the order to withdraw from the Galician coast. At this point, the integrity of the vessel's hull had become seriously compromised as a result of the rough weather conditions and the added stress of running the ship's engines. The crew had been safely evacuated by this stage, and only Mangouras and a few officers remained onboard. Mangouras cut the engines and refused to take the vessel away from the coastline. Spanish port authorities then boarded the vessel, taking Mangouras into custody, and had their own engineers restart the engines and turn the vessel towards international waters. Around 8am on November 19, the ship broke in two and sank in deep waters off the Galician coast<sup>6</sup>.

The bulk of the *Prestige*'s cargo was in the water at this point, creating huge oil slicks<sup>7</sup> that had already begun to wash up on the Galician coastline, and there yet remained over 14,000 tons of oil leaking from the vessel's stern and bow tanks, then under 3500 meters of water<sup>8</sup>. It would not be until two years later that the oil remaining in the tanks would be fully extracted and the extent of the contamination finally

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<sup>5</sup> See Appendix 1.

<sup>6</sup> *Prestige*, *supra* note 1. See Appendix 2.

<sup>7</sup> See Appendix 3.

<sup>8</sup> *Prestige*, INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS, report updated 17 March 2006, available at <http://www.iopcfund.org/prestige.htm>, (last visited 20 April 2006).

completed. More than eighty percent of the tanker's 77,000 tons of fuel oil is now thought to have been spilled off Spain's north-east coast.<sup>9</sup>

### **Environmental Impact**

The oil affected the Atlantic coastline from the southern tip of Galicia (Vigo) to Brest, France, approximately 1900 kilometers of coastline, and even caused light contamination along the English Channel as far as the Dover Strait. Around 141,000 tons of oily waste, called *chapopote* in Spanish, were collected in Spain and some 18,300 tons in France<sup>10</sup>. The Galician coastline, in particular, supports ecologically important coral reefs and a crucial seafood industry; however, marine life in the entire region was devastated by the incident. Experts have predicted marine life could suffer pollution from the *Prestige* for at least ten years due to the type of oil spilt, which contains light fractions called polyaromatic-hydrocarbons. These toxic chemicals could poison plankton, fish eggs and crustaceans, leading to carcinogenic effects in fish and other animals higher in the food chain<sup>11</sup>.

The environmental devastation caused is at least on a par, if not worse, than the *Exxon Valdez*. The amount of oil spilled is more than the *Valdez* and the toxicity is higher, because of the higher temperatures.<sup>12</sup>

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<sup>9</sup> *Prestige*, *supra* note 1.

<sup>10</sup> *Id.*, (I realize the numbers do not add up. Presumably, the oily waste includes sand, rocks, seaweed, etc. that was scooped up with the crude oil.).

<sup>11</sup> *Prestige*, *supra* note 1.

<sup>12</sup> Simon Walmsley, World Wildlife Fund's senior policy officer for shipping. See *Id.*

## Economic Impact

Figures given in May 2003 by the governments of Spain, France and Portugal<sup>13</sup> indicated the total damage could be as high as €1,050 million. With respect to Spain, which endured the bulk of the contamination, the country has to date submitted claims totaling €838 million<sup>14</sup>. That amount includes a €109 million contract Spain signed with Repsol YPF to extract the oil remaining in the *Prestige* as it lay at the bottom of the ocean. Other claims relate to losses sustained in the fishing/seafood, mariculture, and tourism industries.

One Galician fisherman, Captain Francisco Lijó, described the affect of the *marea negra* (black tide) on the source of his livelihood as “enormous,” stating both the seafood and shipping industries came to a stop along the whole coastline of Galicia. Galician seamen, along with all employees in business related to the fish and seafood industry, were out of work for a minimum of six months. Some sectors of the industry, such as mussels, will require several more years to get back to the same level of production.<sup>15</sup> Lijó, like most out-of-work seamen in Galicia, spent many days during the first six months following the spill at beaches cleaning *chapopote* from rocks, birds, and sand and scooping it from the water with nets and hands.<sup>16</sup> Lijó’s testimony as to the affect of the

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<sup>13</sup> *Prestige*, *supra* note 8. (While the Portuguese coastline was not affected, the country has claimed expenses of €4.3 million incurred in cleaning contaminated territorial waters and other preventative measures.).

<sup>14</sup> *Id.* (Some of the claims require further supporting documentation; however, the figure is still useful for illustrating the extent of the economic impact to the region.).

<sup>15</sup> Lijó, *supra* note 4. (Captain Lijó is a great source of information because he is in daily contact with different sectors of the seafood industry. In addition to talking with him, I have gathered information by talking with many people in the seafood industry in the town of Ribeira, Galicia, where I have a summer home.).

<sup>16</sup> *See* Appendix 4. (A great many volunteers from all over the world, your author included, aided in beach clean up.).

oil spill on the economy as a whole as well as to the effect on the living conditions of the people of Galicia is borne out by the fact the European Commission relied on this rationale in its decision to aid Galicia with monies from the European Union Solidarity Fund. In so doing the Commission made an exception since such funds are designated for natural disasters, and oil spills are non-natural in origin<sup>17</sup>.

### **Repercussions of the Incident**

The *Prestige* oil spill represents the worse disaster in the history of Spain<sup>18</sup>. The media attention the incident received along with the combined outcry of activist groups, Non-Governmental Organizations (NGOs), and the general public quickly turned it into something of a *cause celebre*, the ramifications of which are still evident in legal, political, and social spheres.<sup>19</sup>

In the wake of the *Prestige* accident in November 2002 there was an emotional wave of solidarity throughout Europe, and the institutions and highest authorities of the European Union expressed their firm resolve that the policy of strengthening maritime safety pursued following the Erika accident in December 1999 should be continued and reinforced<sup>20</sup>

The political pressure created by the event spurred politicians and diplomats into long overdue action, and the atmosphere of cooperation and common purpose made possible the passage of measures that would never have achieved consensus prior to the disaster.

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<sup>17</sup> *European Solidarity Fund*, EUROPEAN UNION PREPARATORY ACTS, Report from the Commission 2002-2003, EU: COM (2004) 397, (current through 20 April 2006).

<sup>18</sup> *Prestige*, *supra* note 8.

<sup>19</sup> *Keynote address by Secretary-General of the IMO William O'Neil*, THE FOURTH INTERNATIONAL MARINE SALVAGE CONFERENCE, 2003, at [www.imo.org/About/mainframe.asp?topic\\_id=762&doc\\_id=2875](http://www.imo.org/About/mainframe.asp?topic_id=762&doc_id=2875) - 23k -

<sup>20</sup> *Communication from the Commission—Third package of Legislative Measures on Maritime Safety in the European Union*, EUROPEAN COMMISSION, EU: COM (2005) 585. (Current through 20 April 2006).

## European Union Response

In discussing actions taken by the European Union (EU) in the aftermath of the *Prestige* incident, it should be noted that two other oil tankers, the *Erika*<sup>21</sup> and the *Castor*<sup>22</sup>, had experienced similar fates in years just prior to the *Prestige*, causing damage on a smaller scale. Therefore, while the *Prestige* is seen as the culminating event that spurred the introduction of tighter shipping regulations and sanctions, the impetus for change had begun earlier.

### European Council

Meeting in Copenhagen shortly after the *Prestige* incident, the European Council stated it was determined to take all necessary measures to avoid a repetition of similar disasters.<sup>23</sup> One year later, as a first stage response, the Council adopted a Directive on ship-source pollution that introduced new sanctions, including criminal sanctions, for pollution offenses.<sup>24</sup> The Council recognized the Directive as necessary because rules established by the International Convention for the Prevention of Pollution from Ships,

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<sup>21</sup> *Oil Spill Damage Worsens*, BBC NEWS ONLINE, 12 December 1999, at <http://news.bbc.co.uk/1/hi/world/europe/592378.stm>.

<sup>22</sup> Timms, Roger. *Current IMO position on safe havens, salvage and wreck removal*. AUSTRALIAN MARITIME SAFETY AUTHORITY, 19 Feb. 2002, at [http://wwwlive.amsa.gov.au/about%5Famsa/corporate%5Finformation/amsa%5Fspeeches/safe%5Fhavens%5Fand%5Fsalvage%5Fconference/Safe\\_havens\\_salvage\\_and\\_wreck\\_removal.asp](http://wwwlive.amsa.gov.au/about%5Famsa/corporate%5Finformation/amsa%5Fspeeches/safe%5Fhavens%5Fand%5Fsalvage%5Fconference/Safe_havens_salvage_and_wreck_removal.asp), (last visited 25 April 2006).

<sup>23</sup> *Third package of legislative measures on maritime safety in the European Union*, COMMUNICATION FROM THE COMMISSION, Celex No. 505DC0585, EU: COM (2005) 585, (current through 20 April 2006).

<sup>24</sup> *Common Position*, EUROPEAN UNION PREPARATORY ACTS, No. 3/2005 of 7 October 2004 adopted by the Council, OJ 2005 C25E/29, 29.



1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78)<sup>25</sup> were being ignored by a large number of ships sailing in Community waters without corrective action being taken. One reason for the problem was that Member States were not implementing MARPOL 73/78 uniformly, particularly with regard to sanctions relating to discharge of pollutants. Hence, the Council saw a need to harmonize regulations and practices at the Community level<sup>26</sup>. Along with the lack of uniformity, the Council also saw the current international regime for civil liability and compensation of oil pollution as inadequate. The only way to effectively discourage parties from engaging in substandard practices, reasoned the Council, is to introduce sanctions against not only ship owners and masters who cause or contribute to maritime pollution but also against owners of cargo, classification societies, and any other party involved<sup>27</sup>.

The Directive begins by adopting many current international rules on ship-source pollution, largely those established in the United Nations Convention on the Law of the Sea (1982), as European Community (EC) law. One benefit of doing so is that it makes Member States that do not adhere to those standards subject to the enforcement mechanisms of the EC, whereas adherence to such rules under international bodies like the IMO is generally voluntary or weakly enforced.

The incorporation of the international ship-source pollution standards into Community law and the establishment of sanctions, which may include criminal or administrative sanctions, for violations of them is a necessary measure to achieve a high level of safety and environmental protection in maritime transport.

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<sup>25</sup> *International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto* (MARPOL 73/78), INTERNATIONAL MARITIME ORGANIZATION, at [http://www.imo.org/Conventions/contents.asp?doc\\_id=678&topic\\_id=258](http://www.imo.org/Conventions/contents.asp?doc_id=678&topic_id=258).

<sup>26</sup> *Common, supra* note 24.

<sup>27</sup> *Id.*

This can be effectively achieved by the Community only by means of harmonized rules<sup>28</sup>.

Evidence of the new teeth given these rules can be found in *Commission of the European Communities v. Republic of France*, where the court assessed a fine against France for not enforcing shipping regulations stringently enough.<sup>29</sup> Article 8 of the Directive requires Member States to “take the necessary measures” to ensure infringements are subject to “effective, proportionate and dissuasive sanctions,” which may include criminal charges. Sanctions are indicated where infringements are committed with intent, recklessness, or by serious negligence<sup>30</sup>. As an added measure, sanctions applied under the Directive in no way limit the civil liability of responsible parties for damages incurred by victims of pollution incidents, nor does the Directive inhibit Member States from implementing more stringent sanctions.<sup>31</sup> Captain Lijó confirms the effect these measures have had on the fishing and shipping industry, stating the rules are being followed more carefully nowadays than ever before. *Me complica la vida*, he complains<sup>32</sup>.

Another feature of the Directive is that it goes beyond customary international law standards by addressing prohibited behavior on the high seas<sup>33</sup>. How this provision will be interpreted is not yet entirely clear, but it presumably requires each Member State to regulate and sanction the conduct of vessels sailing under its flag even while in international waters. One possible criticism of this addition to the Directive is that it may

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<sup>28</sup> *Id.*

<sup>29</sup> *Commission of the European Communities v France* (C304/02), 2005 WL 1615190, [2005] 3 C.M.L.R. 13, Celex No. 602J0304, EU: Case C-304/02, ECJ, Jul 12, 2005.

<sup>30</sup> *Common*, *supra* note 24.

<sup>31</sup> *Id.*

<sup>32</sup> “It complicates my life.” *Lijó*, *supra* note 4.

<sup>33</sup> Article 1(e), *see Common*, *supra* note 24.

encourage more ship owners to seek a flag of convenience rather than sailing under the flag of their own country. For example, if Captain Lijó comes to feel the regulations imposed upon him by the EC and enforced by the Spanish Merchant Marine are too onerous, he may choose to sail under the flag of a non-EC country. Such a maneuver would not remove Lijó from Spanish authority while sailing in Spanish waters, but it could serve to nullify the competence of the Spanish authorities while his vessel is on the high seas. It remains to be seen how much of an incentive to flag-shop the provision will provide and, assuming it does result in more flags of convenience, what negative effects that will have.

### European Parliament

Having regard to its resolutions of 21 November 2002 on the Prestige oil tanker disaster off the coast of Galicia, 19 December 2002 on safety at sea and measures to alleviate the effects of the Prestige disaster and 23 September 2003 on improving safety at sea in response to the Prestige accident and its previous resolutions on safety at sea<sup>34</sup>

The European Parliament was also spurred into a flurry of activity by the sinking of the *Prestige*. The first thing it did was create the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS)<sup>35</sup> which, along with the Temporary Committee on Improving Safety at Sea<sup>36</sup>, did most of the work behind important resolutions issued in the aftermath of the *Prestige*. In particular, the Resolution on safety

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<sup>34</sup> *European Parliament resolution on improving safety at sea (2003/2235(INI))*, at [http://www.europarl.eu.int/comparl/tempcom/mare/pdf/res\\_en.pdf](http://www.europarl.eu.int/comparl/tempcom/mare/pdf/res_en.pdf) (2003), (last visited 29 April 2006).

<sup>35</sup> COSS was created by Article 3 of Regulation (EC) No 2099/2002 of 5 November 2002.

<sup>36</sup> *Communication, supra* note 20 at 1.

at sea adopted on 27 April 2004 (MARE) was aimed at improving European maritime safety by the following means.

### *Banning of Substandard Vessels*

The first measure the Resolution calls for is the banning of substandard vessels. The Resolution does not include an explanation of what would be considered “substandard” under EC law; however, we can adduce some of the criteria the Parliament has in mind from subsequent actions and communiqués. For example, members of Parliament were aware of statistics gathered in connection with the Paris Memorandum of Understanding (Paris Memorandum)<sup>37</sup> that showed “an increase in the number of shortcomings found during ship inspections concerning, in particular, human aspects and ship management.”<sup>38</sup> We also know EC officials played a significant role in prompting the IMO to move up its time frame for phasing out single-hulled oil tankers and vessels older than 23 years.<sup>39</sup> Therefore, by “substandard” the Resolution must be referring, *inter alia*, to vessels that would not pass a Paris Memorandum inspection and single-hulled oil tankers that have more than 23 years in service.

### *Expanding Scope of Liability*

Another measure called for in the Resolution is the introduction of a system of liability that would cover the entire chain of parties, including public authorities, involved in any act of maritime transport. One of the issues highlighted in the aftermath of the

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<sup>37</sup> *Paris Memorandum of Understanding on State Port Control*, at <http://www.parismou.org> (last visited 29 April 2006).

<sup>38</sup> *Id.* at 7-8.

<sup>39</sup> See section entitled “IMO Response” in this paper for more detail.

*Prestige* is that complex relationships respecting ownership and control of vessels and their cargo, common in today's shipping and fishing industry, make it very difficult to attach civil liability for damages incurred in such incidents. As the European Economic and Social Committee puts it, "International civil liability regimes that govern ship-source pollution incidents involve significant shortcomings with respect to their dissuasive effects, in particular the ability of the polluter to nearly always limit liability."<sup>40</sup>

In the case of the *Prestige*, there is a great deal of obfuscation surrounding ownership. The vessel itself was owned by a Liberian company called Mare Shipping, Inc., which was a one-vessel enterprise. Liberian law makes it hard to be certain who really owns Mare, but many sources believe the Coulouthros family, who run a secretive shipping dynasty out of Greece, are behind the front. What *is* known about Mare is that the total accident insurance it maintained on the vessel was worth less than 30 million dollars, a paltry amount given the actual damages.<sup>41</sup> Accordingly, it is easy to see why the Parliament would seek to enhance the ability of victims to impose civil liability. In addition to the problem of putting a human identity to Mare Shipping, the vessel was being operated by a different company, Universe Maritime, Ltd. Universe Maritime is a Greek company, but little more is known about it than that because the company has not been forthcoming with information and Greek authorities have been unwilling to

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<sup>40</sup> *European Economic and Social Committee Opinion*. OJ 2003 C220/72, Celex No. 503AE0755, Official Journal C 220, 16 Sept. 2003, 72.

<sup>41</sup> See Willmore, Ian, *Slick Business?* GUARDIAN UNLIMITED 24 November 2002, at <http://observer.guardian.co.uk/comment/story/0,6903,846684,00.html>. (last visited 15 April 2006). See also "Daily Shipping Newsletter 2002 080," SMIT-OCEANEERING CABLE SYSTEMS, 20 November 2002, 3, at <http://www.ibiblio.org/maritime/Scheepvaartnieuws/Pdf/scheepvaartnieuws/2002/november/080-20-11-2002a.PDF>, (last visited 15 April 2006).

cooperate with investigations.<sup>42</sup> Finally, the cargo was owned by Crown Resources, a company incorporated in Gibraltar. However, Crown Resources is in turn owned by a Russian conglomerate called the Alpha Group Consortium. Some commentators have stated that participants in the shipping industry have used these kinds of measures to escape liability and, in the process, have succeeded in escaping the attempts of states and international institutions to regulate them.<sup>43</sup> This problem, clearly illustrated by the *Prestige* incident, is what the Resolution's introduction of a system of liability is aimed at alleviating.

### *Places of Refuge*

The Parliament's Resolution also seeks to establish an operational framework that would allow limiting the consequences of maritime accidents through intervention. In particular, the idea is to make better use of places of refuge.

It is now quite clear that, if decisive action had been taken at an early stage to move the ship to a more sheltered location, the ship and its cargo would almost certainly have been saved and any pollution would have been minimal. . . . Once the decision was taken by the shore authorities to order the ship out to sea, without making any provision to prevent any further damage occurring, the ship was likely to sink eventually unless the weather abated very quickly.<sup>44</sup>

The concept of providing refuge for ships in distress was first raised in the late 1980s, under the auspices of the IMO, when draft provisions of the International Convention on

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<sup>42</sup> *La falta de colaboración de Grecia, el último obstáculo*, LA VOZ DE GALICIA, 18/04/2006, at [http://www.lavozdeg Galicia.es/buscavoz/ver\\_resultado.jsp?TEXTO=4695108&lnk=UNIVERSE,MARITIME](http://www.lavozdeg Galicia.es/buscavoz/ver_resultado.jsp?TEXTO=4695108&lnk=UNIVERSE,MARITIME), (last visited 15 April 2006).

<sup>43</sup> See Willmore, *supra* note 40.

<sup>44</sup> See *Bahamas*, *supra* note 2 at 1.

Salvage were being considered. It was suggested then that States should be under an obligation to admit vessels in distress into their ports. However, some delegates argued such a provision might not duly account for the interests of coastal States and that States would likely ignore the provision when actually faced with the situation. What resulted was a watered down version asking States to “take into account the need for co-operation between salvors, other interested parties and public authorities” when in such a situation.<sup>45</sup>

The IMO first turned its attention to reviewing policies on places of refuge after the *Erika* incident in 1999, and the need was reinforced by the *Castor* accident in 2000. In the *Castor* instance, the damaged tanker was towed around the Mediterranean Sea, from Spain down to Tunisia, for over a month before finding shelter.<sup>46</sup> At the 23<sup>rd</sup> Assembly in 2003, the IMO adopted new guidelines on places of refuge that recognize granting port access to a ship in distress involves a political decision that must be made on a case-by-case basis. The guideline calls for weighing the advantages for the ship and the environment in granting shelter and the risk to the local interests.<sup>47</sup>

The Parliament’s Resolution seems to indicate the EC’s dissatisfaction with the IMO’s position on places of refuge. As a general rule, the EC has supported the IMO in

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<sup>45</sup> *Places of Refuge: Addressing the Problem of Providing Places of Refuge to Vessels in Distress*, IMO Library Services, External Relations Office, Information Sheet No. 36, at <http://www.imo.org/Safety/mainframe.asp?topic id=746>, (last visited 29 April 2006).

<sup>46</sup> Fortunately, in that case, a successful lightering operation could be carried out before the vessel sank. See *Background on Castor Incident*, UN ATLAS OF THE OCEANS, at [http://www.oceansatlas.com/unatlas/issues/emergencies/transportation\\_and\\_telecomm/places\\_of\\_refuge.htm#Background%20on%20the%20Castor%20incident](http://www.oceansatlas.com/unatlas/issues/emergencies/transportation_and_telecomm/places_of_refuge.htm#Background%20on%20the%20Castor%20incident), (last visited 29 April 2006).

<sup>47</sup> Assembly Resolution A.949(23). See *Guidelines on Places of Refuge for Ships in Need of Assistance*, UN ATLAS OF THE OCEANS, at [http://www.oceansatlas.com/unatlas/issues/emergencies/transportation\\_and\\_telecomm/places\\_of\\_refuge.htm](http://www.oceansatlas.com/unatlas/issues/emergencies/transportation_and_telecomm/places_of_refuge.htm), (last visited 30 April 2006).

its role as the supreme rule-making body for international maritime matters. Apparently, however, the social and political pressure resulting from the *Prestige* accident, which followed in the wake of the *Erika* and the *Castor*, obliged the EC to take matters into its own hands, at least with respect to harboring ships in need of assistance<sup>48</sup>.

The Commission fully recognises the added value of international action in respect of maritime safety, which is generally preferable to regional action when it makes it possible to achieve sufficiently high levels of protection. Unfortunately, despite enlargement, the European Union's influence at international level is not commensurate with the size of its fleet and its maritime interests. This situation is due to the fact that the European Union does not have legal status within the IMO.<sup>49</sup>

The danger in having the EC act outside the aegis of the IMO, which is to say the United Nations, is that fragmenting the rules that govern international maritime may threaten the effectiveness of all such rules. On the other hand, how many such avoidable disasters will it take before all parties to the IMO agree to a more exigent rule? In reality, such an agreement might never come to pass. The IMO continues to be hung up on the right of a State to regulate entry to their ports<sup>50</sup>, as provided in Article 2 of the United Nations Convention on the Law of the Sea (UNCLOS)<sup>51</sup>, even though a compelling argument can

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<sup>48</sup> To date there have not been any conflict of laws challenges in this area. Should one arise, Article 30 of the Vienna Convention on the Law of Treaties provides rules for resolving conflicts between successive treaties. In this situation, conflict of law rules found either in EC law or in national law would resolve any conflict between an IMO rule and EC rule. *See Relation between Conventions and Interpretation and Uniform Law and Conflicts of Law Rules*. INTERNATIONAL MARITIME ORGANIZATION, available at [http://www.imo.org/Conventions/mainframe.asp?topic\\_id=148#5](http://www.imo.org/Conventions/mainframe.asp?topic_id=148#5), (last visited 25 April 2006).

<sup>49</sup> *Common*, *supra* note 23 at 11.

<sup>50</sup> *Places*, *supra* note 40.

<sup>51</sup> Article 2 refers to the sovereignty of a coastal State over its land territory, internal waters, archipelagic waters and the territorial sea. *See* [http://www.univie.ac.at/RI/KONTERM/intlaw/konterm/vrkon\\_en/html/doku/unclos.htm#9.0](http://www.univie.ac.at/RI/KONTERM/intlaw/konterm/vrkon_en/html/doku/unclos.htm#9.0), (last visited 14 April 2006).



be made that Article 98 of UNCLOS and SOLAS V/7<sup>52</sup> can be interpreted to require governments to open their ports to vessels in distress. Ultimately, given the dense traffic of oil tankers in EC waters, it is probably both appropriate and necessary that the EC take unilateral action in this area at least until the IMO is able to get onboard with more stringent requirements of their own.

### *Ship Inspections*

In the Resolution, the Parliament determined to reinforce ship inspections through rigorous application of port State control and greater monitoring of the work of classification societies. The Paris Memorandum, of which 22 maritime nations are signatories, is aimed at eliminating substandard ships on the oceans through harmonized port controls.<sup>53</sup> The objective of the Resolution is not so much to increase the rigor of inspections performed under The Paris Memorandum, or any other source governing inspections, as it is to ensure those inspections are being duly performed. This action is no doubt prompted by the fact port authorities in Russia, a signatory to the Paris Memorandum, did not perform the required inspection before the *Prestige* left St. Petersburg.

The vessel was in the port of St. Petersburg for about five months before departing on its fateful journey. During that time, it was subject to the normal banging against the dock that results from the ebb and flow of the water. Normally, however, the

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<sup>52</sup> International Convention for Safety of Life at Sea (1974), INTERNATIONAL MARITIME ORGANIZATION, *at* [http://www.imo.org/Conventions/contents.asp?topic\\_id=257&doc\\_id=647](http://www.imo.org/Conventions/contents.asp?topic_id=257&doc_id=647), (last visited 20 April 2006).

<sup>53</sup> *Common, supra* note 24.

protectors between the vessel and the dock would prevent damage to the vessel.

According to some sources, the protectors used to buffer the *Prestige* in St. Petersburg were of low-quality, which resulted in damage to the area of the hull that later failed.

Allegedly, pictures taken of pieces from the wreck show cracks in the panel that first gave out. If the allegations are true, presumably, an inspection by port authorities would have revealed the defect.<sup>54</sup>

The ship classification society that did an annual inspection of the *Prestige* six months prior to the accident, American Bureau of Shipping (ABS), does not deny the allegations of visible cracks caused by banging against the dock in St. Petersburg,<sup>55</sup> but it does deny allegations of receiving a faxed report from the previous Captain of the *Prestige*, Costazos Efftrapios, while the vessel was in the port of St. Petersburg.<sup>56</sup> Spanish engineers who have read the report say it should have been grounds for detaining the ship: “grietas y corrosion en el tanque de lastre número 3 de babor.”<sup>57</sup> According to the Spanish press, Efftrapios reported the poor condition of the vessel to both the ABS and Russian port authorities and, subsequently, resigned when the ship was not

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<sup>54</sup> See *Rusia admite a la jueza que no revisó el Prestige cuando zarpó hacia Galicia*, LA VOZ DE GALICIA, 23 April 2006. at [http://www.lavozdegalicia.es/se\\_galicia/noticia.jsp?CAT=102&TEXTO=4709981](http://www.lavozdegalicia.es/se_galicia/noticia.jsp?CAT=102&TEXTO=4709981), (last visited April 29).

<sup>55</sup> ABS does state the evidence it has reviewed does not substantiate the allegation of visible cracks in the ship’s hull. See *Steel Recovered from Prestige Refutes Allegations of Poor Maintenance*, ABS Press Release, 14 Nov. 2003, at <http://www.eagle.org/news/ress/nov1403.html>, (last visited 5 April 2006).

<sup>56</sup> A spokesperson for the ABS said such a fax would have elicited an immediate response and a printout would have been inserted into the vessel’s survey correspondence file. According to the same source, the ABS undertook an exhaustive search of the entire record of the *Prestige* immediately after the casualty and no such fax was found. See *Id.*

<sup>57</sup> See *El anterior capitán denunció a las autoridades rusas el mal estado del petrolero*, La Voz de Galicia, 23 April 2006, at [http://www.lavozdegalicia.es/buscavoz/ver\\_resultado.jsp?TEXTO=4709983&Ink=PRESTIGE](http://www.lavozdegalicia.es/buscavoz/ver_resultado.jsp?TEXTO=4709983&Ink=PRESTIGE), (last visited 30 April 2006).

detained.<sup>58</sup> The allegations and defenses rage on between the Spanish press and the ABS but, irrespective of the existence of the report, the port authorities in St. Petersburg did not do the inspection required under the Paris Memorandum, in spite of the ship having been in port for five months engaging in extensive lightering activity.<sup>59</sup> The Parliament's Resolution is aimed at preventing this kind of lax adherence to inspection policies currently in place.

### *Insurance Requirements*

Two other issues are highlighted in the Resolution, the first of which is strengthening requirements of compulsory insurance. This matter is of greatest concern where the ship's cargo is oil or some other hazardous substance because risks posed to the environment give rise to the potential for extremely high damages, as we have seen. Certainly the imposition of insurance requirements should take into consideration the risk of burdening companies to the point that they cannot compete or that the cost of such products becomes prohibitively high. Also, it makes more sense to focus on preventing accidents from happening in the first place than it does to bolster compensation after the fact. Indeed, rather than serving as an incentive to owners to improve their safety practices, it is possible that greater indemnity might actually serve to make operations more negligent. On the other hand, unless the industry is able to do a better job of "naming and shaming" liable parties, greater insurance requirements may be necessary.

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<sup>58</sup> *Id.*. See also *El anterior capitán denunció a las autoridades rusas el mal estado del petrolero*, *La Voz de Galicia*, 23 April 2006, at [http://www.lavozdegalicia.es/buscavoz/ver\\_resultado.jsp?TEXTO=4709983&INK=PRESTIGE](http://www.lavozdegalicia.es/buscavoz/ver_resultado.jsp?TEXTO=4709983&INK=PRESTIGE), (last visited 1 May 2006).

<sup>59</sup> *Steel Recovered*, *supra* note 50.

Also, perhaps insurance companies can motivate compliance with higher safety standards through discounts in premiums and penalties.

### *Investigations*

In the aftermath of the *Prestige*, the Spanish State and several activist groups have appealed to the Spanish court system for civil relief, *Nunca Mais* and *Izquierda Unida* are among the larger ones. Francisco Javier Collazo began the investigation into events surrounding the accident as a judge<sup>60</sup> for the court of Corcubión,<sup>61</sup> a city in Galicia near where the *Prestige* sank. Collazo has sought information from many parties—including Russian, Letonian, and Danish port authorities, the Director of the Merchant Marine who gave the order for the vessel to leave the Spanish coastline, Universal Maritime, Crown Resources, etc.—and has met with great resistance on almost all fronts. For example, parties residing in Greece have been virtually shielded from official interrogatories by the Greek government. Collazo appealed to the Greek court system for aid in forcing Universal Maritime to surrender information about its company assets and operations, but the response given was that such assistance is available only in criminal prosecutions.<sup>62</sup> The court put out a warrant for the arrest of the director of operations for Universal Maritime, Michael Marguetis, who failed to appear before the court in Corcubión as

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<sup>60</sup> As with many civil law countries, Spanish judges investigate cases and controversies brought before the court and do much of their own legal research.

<sup>61</sup> Collazo has since been promoted to a higher seat in the Spanish judicial system and has turned over the *Prestige* investigation to the Court of First Instance in Lugo, Galicia. See *El juez del caso Prestige deja vacante su plaza en Corcubión y se traslada a un juzgado de Lugo*. LA VOZ DE GALICIA, 13 April 2005, at [http://www.lavozdeg Galicia.es/buscavoz/ver\\_resultado.jsp?TEXTO=3631548&lnk=JUEZ,PRESTIGE,COLLAZO](http://www.lavozdeg Galicia.es/buscavoz/ver_resultado.jsp?TEXTO=3631548&lnk=JUEZ,PRESTIGE,COLLAZO), (last visited 2 May 2006)

<sup>62</sup> *La falta*, *supra* note 41.

ordered, but there is little that can be done for as long as he remains in Greece.<sup>63</sup>

Likewise, it was not until very recently, nearly four years after the accident, that Russian authorities finally answered the court's interrogatories about the *Prestige* in St. Petersburg. For this reason, one of the key objectives of the Parliament's Resolution is to increase the level of cooperation in maritime accident investigations brought by independent parties.

### **European Commission's Response**

#### *Third Package of Legislative Measures on Maritime Safety*

Subsequent to the Parliament's Resolution of 27 April 2004, the Commission responded by introducing a package of legislative measures on maritime safety in the European Union.<sup>64</sup> At present the package is in the process of being approved by the Council and the Parliament, which is required before becoming EC law. The bottom line to the package is that every vessel sailing in EU waters must be checked for safety standards, whereas only about 25% of the vessels are currently checked.<sup>65</sup> Spokesperson for the Commission Jacques Barrot said the measures are designed to establish a "no

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<sup>63</sup> *Busca y captura para el jefe técnico del «Prestige»*, LA VOZ DE GALICIA, 15 Dec. 2004, at [http://www.lavozdeg Galicia.es/buscavoz/ver\\_resultado.jsp?TEXTO=100000060329&lnk=JUEZ,MARGUETIS](http://www.lavozdeg Galicia.es/buscavoz/ver_resultado.jsp?TEXTO=100000060329&lnk=JUEZ,MARGUETIS), (last visited 1 May 2006).

<sup>64</sup> *Communication*, *supra* note 20.

<sup>65</sup> *Commission tables new maritime safety measures*, EUROPEAN UNION TRANSPORT, 24 Nov. 2005, at <http://www.euractiv.com/en/transport/commission-tables-new-maritime-safety-measures/article-149583>, (last visited May 1, 2006).

tolerance” for junk ships.<sup>66</sup> Directives included in the package that are proposed directly in response to the *Prestige* incident are the following.<sup>67</sup>

*1.1 A proposal for a Directive on the responsibility of the flag States*

Recall the *Prestige* sailed under a Bahamian flag. This Directive expresses concern over the continuing problem of making States take greater responsibility for safety standards and practices of vessels sailing under their flags, which the Commission considers the “main missing link in the existing Community legislation.” The Directive proposes 1) adopting the audit procedures in the IMO’s code on compliance of flag States with international conventions, and 2) creating an administrative body to monitor States’ compliance with those procedures. One has to wonder how effective such measures will be since most, if not all, flags of convenience come from non-EC countries, such as the Bahamas, Antigua and Barbuda, Barbados, Belize, etc.. Nonetheless, the EC can still apply pressure on such countries by holding them accountable when their substandard vessels travel, or desire to travel, through EC waters.

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<sup>66</sup> Press conference in Brussels, 23 November 2005. *See Id.*

<sup>67</sup> *Commission Staff Working Paper: Content of the Third Maritime Safety Package* (Annex to the Communication from the Commission on the third package of legislative measures on maritime safety in the European Union), at [http://europa.eu.int/comm/transport/maritime/safety/doc/package3/en/working\\_paper\\_en.pdf](http://europa.eu.int/comm/transport/maritime/safety/doc/package3/en/working_paper_en.pdf), (last visited 1 May 2006), (Proposed Directive 1.5 has been omitted from the discussion because it is largely a repetition of the Parliament’s treatment of accident investigations in MARE, and 1.6 has been omitted because it does not directly bear on events surrounding the *Prestige* accident).

### *1.2. Amendment of the Directive on classification societies*

Do you remember the allegations leveled at ABS in the context of the *Prestige* accident? In fact, the Spanish government is currently suing ABS, seeking more than 700 million in damages, in U.S. court.<sup>68</sup> This move on the part of Spain is perhaps simply an attempt to find deep pockets to cover for some of the damages incurred by the oil spill. Even if that is true, however, the Commission seems convinced that classification societies such as the ABS need to improve the quality of their services. This Directive would establish an independent system of auditing and certification of societies classifying ships that travel in EC waters.

### *1.3. Amendment of the Directive on port State control*

The . . . objective is to respond to the expectations of the European Parliament and the Council following the *Prestige* accident as regards the reinforcement of port State control, in particular for ships presenting the greatest risks.<sup>69</sup>

With this Directive, the Commission means to harmonize standards for port inspections established under three different regimes which overlap with respect to EC nations: Directive 95/21/EC, the Paris Memorandum—which does not include certain Member States—and the related memoranda concerning the Mediterranean and the Black Sea, which includes several new and prospective EU Member States.

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<sup>68</sup> See *ABS fires back at Spanish Government over Prestige claims*, ABS Press Release, 30 June 2003, available at <http://www.eagle.org/NEWS/PRESS/june30.html>.

<sup>69</sup> *Working*, *supra* note 66.

#### *1.4. Amendment of the Directive on traffic monitoring*

The Commission states in this Directive that “one of the main lessons to be learned from the Prestige accident” involves rules on places of refuge. The way the Parliament left the matter in MARE, Member States are called on to establish “a clear decision-making and command structure for dealing with maritime emergencies and an independent authority having the powers and expertise to take the necessary decisions which are to be binding on all parties concerned, in particular as regards the selection and mandatory assignment of an emergency mooring or port.”<sup>70</sup> The Commission goes a step further in proposing financial compensation for ports that offer refuge to ships in distress. It makes sense that ports willing to incur the risk of harboring such vessels should be given money both as an incentive to incur the risk and as compensation for damages. Without some kind of remuneration it is easy to imagine authorities of Member States refusing to comply with any kind of place of refuge rule, especially when the stakes are high. The possibility of non-compliance will almost certainly continue to exist, but financial support of ports offering refuge will at least give new policies a *chance* to prevent future catastrophes.

#### *1.7. A Proposal for a Directive on the civil liability of shipowners*

As discussed earlier, holding liable the owners and operators of substandard vessels, as the *Prestige* incident amply illustrates, is a complicated venture. The Commission considers the problem from a different angle than that taken by the Parliament:

Liability regimes in the maritime sector, whether general or sectoral, are all based on the principle of limitation of liability. The Commission considers that this privilege for the

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<sup>70</sup> See



maritime industry may lead to an erosion of the sense of responsibility of operators and that the justification for such a privilege should be reconsidered.<sup>71</sup>

The Directive proposes improving the international CLC/IOPCF regime concerning oil pollution by, *inter alia*, removing the ceiling on civil liability. In addition, regarding other types of pollution and damage to third parties, the Commission proposes incorporating the provisions of the 1976 Convention on Limitation of Liability for Maritime Claims, as amended by the 1996 Protocol (the “1996 Convention”). Finally, the proposed Directive stipulates that ships flying the flag of a State that is not part of the 1996 Convention may be subject to a more severe liability regime.

#### *Other Commission Actions*

The Commission’s response to the *Prestige* accident has been labeled an “Action Plan.” That plan includes an amplification of the duties and resources of an agency created in the aftermath of the *Erika* oil spill. In particular, the Action Plan identifies the role of the Agency in response to an oil spill, by means of a specialized anti-pollution vessel, and as experts in field. The activities of the Agency are to include the following:

1. Information – The Agency will collect, analyse, and disseminate information and recommended practices, techniques, and innovations in oil pollution response.
2. Cooperation/Coordination – The Agency will provide technical and scientific assistance for dissemination of best practices and exchange of observers from the various regional agreements.<sup>72</sup>

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<sup>71</sup> *Working, supra* note 66.

<sup>72</sup> Such would include bilateral and regional agreements such as the Helsinki and Barcelona Convention of 1974 and 1976, respectively, concluded between coastal States to render mutual assistance in case of a maritime pollution incident.

3. Operational Assistance – The Agency, at the request of Member States having to deal with an oil spill that goes beyond national capacities, shall supplement anti-pollution resources by adding at-sea oil recovery capacity.

One final, rather novel, large-scale activity contemplated by the Commission is the establishment of an Oil Pollution Satellite Imagery Service Centre. The satellite system, slated for 2006, will support activities of the Member States and the Commission in reacting to illegal discharges and accidental oil spills.<sup>73</sup>

### **IMO Response**

The IMO, an agency of the United Nations, considers itself the supreme source of international maritime law, and many countries recognize the advantages of conceding that role. Having one central authoritative body and one set of uniform rules leads to greater compliance because 1) there is less confusion, 2) enforcement is easier, and 3) more States participate in the formulation of the rules, which results in greater cooperation and willingness to comply. The EC has to some extent acted outside the aegis of the IMO in the matters discussed above. This is perhaps due to excessive political pressure and, in some cases, to an excessively slow response from the IMO. One noteworthy new regulation, however, enacted by the IMO in response to the *Prestige* accident is the accelerated phase-out of single-hull oil tankers.

In November of 2003, exactly one year after the accident, the IMO's Marine Environment Protection Committee (MEPC) adopted amendments to MARPOL 73/78 which entered into force in April of 2005. Those amendments include revised regulation 13G of Annex 1 of MARPOL 73/78, which brings the final phasing-out date for Category

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<sup>73</sup> *Working, supra* note 66.

1 tankers (pre-MARPOL tankers) forward from 2007 to 2005 and the final phasing out date for category 2 and 3 tankers (MARPOL tankers and smaller tankers, respectively) forward from 2015 to 2010.<sup>74</sup>

The new regulation is not without criticism. The *Prestige* was a Category 1 tanker, and some would argue the IMO's move to eliminate such vessels earlier than originally planned was motivated by a desire to placate the EC rather than being based on sound reasoning. The Bahamas Maritime Authority has pointed out that double-hull tankers currently being built meet the same strength criteria as single-hull tankers, which means the thickness of each hull is less than that of a single hull. The implicit argument is that two hulls are not necessarily better than one if the two hulls put together only have the same strength as one single hull.<sup>75</sup> Another criticism forwarded is that a double hull renders four times as much surface space to protect from corrosion. If the object is to prevent pollution, the double-hull vessel may have some advantages in some situations (i.e. impact); however, in terms of the long-term structural integrity of a vessel, the degradation of which can be every bit as dangerous as impact, the industry may be better-off with single-hull vessels.<sup>76</sup> One final concern with the phase-out requirements is that it may create an unfair hardship for poorer countries. In particular, Russia is in the process of developing its oil-producing capacities and, at present, relies on less expensive (i.e. old) vessels in its attempt to compete on the open market. Not only is it unfair to unduly

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<sup>74</sup> *IMO meeting adopts accelerated single-hull tanker phase-out, new regulation on carriage of heavy fuel oil*, INTERNATIONAL MARITIME ORGANIZATION, available at [http://www.imo.org/About/mainframe.asp?topic\\_id=109&doc\\_id=3155](http://www.imo.org/About/mainframe.asp?topic_id=109&doc_id=3155), (last visited 1 May 2006).

<sup>75</sup> *Bahamas Maritime Authority Moves Ahead with its Prestige Investigation*, Bahamas Press Statement, 29 January 2003.

<sup>76</sup> *The M/T Prestige Accident*, The Coulombi Egg Tanker, at <http://heiwaco.tripod.com/prestige.htm> (last visited 2 May 2003).

burden such a program, but it is in no one's best interest, except for that of competing regions such as the Middle East, to inhibit the development of such markets.

## Conclusion

Oil spills such as those caused by the *Prestige*, the *Erika*, and the *Exxon Valdez* get a great deal of press attention, as well they should, but many smaller spills and illegal discharge of toxic substances happen all the time, the cumulative harm of which may be on a par with the high-profile accidents. The number of lives lost, the amount of economic waste, and the degree of harm done to the environment by past oil pollution makes clear the importance of establishing effective international shipping safety standards. To appreciate the potential for future harm, consider that approximately 395 million tons of petroleum and petroleum derivatives carried by some 800 tankers pass through the EuroMediterranean region alone every year, and the numbers are rising. (Recall the *Prestige* spill, the largest to date, involved less than 77,000 tons.)

In Galicia, a slogan has arisen in response to the *Prestige* spill. You can see the words *Nunca Mais* (never again) on bumpers, hats, t-shirts, and now on court documents<sup>77</sup>. The people of Galicia, a large percentage of whom depend on the fish and seafood industry, have been deeply affected by the event and rally to this slogan as both a cry of anger and a plea. Is it just empty rhetoric? Will the forces of greed/competition, inability of politicians and diplomats to agree, and lack of resources doom us to continue suffering such catastrophe's periodically? As this paper illustrates, efforts are being made, but progress is slow and comes at a high price since it takes a *Prestige*-like

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<sup>77</sup> Referring to the activist group that has adopted the phrase *Nunca Mais*

incident to bring about reform.<sup>78</sup> Measures taken in response to the *Prestige* will bring positive results, eventually; however, until greater strides are made with respect to places of refuge and port inspections, in particular, the words *nunca mais* are likely to ring hollow.

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<sup>78</sup> The same was true with respect to reforms in US admiralty law following the *Exxon Valdez* spill.

## Appendix

Appendix 1 Map of Spain. Galicia is in the northwest corner of the Iberian peninsula.

Appendix 2 Broken ship.

Appendix 3 Satellite image of oil slicks created by *Prestige*.

Appendix 4 Volunteers cleaning up *chapopote*.