6 When Environmental Protection Meets Human Rights – In the Wake of the Prestige

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This article seeks to point out an interesting intersection of environmental protection and human rights in the context of the catastrophe of the Prestige, an oil tanker – i.e. a situation where environmental interests may prevail over human rights requirements. The national courts as well as the European Court of Human Rights had to face such considerations in the context of deciding upon the possible liability of the captain of the Prestige.

There are several international organisations working on the problems associated with the prevention and eventual removal of marine pollution.[1] Oil spills from vessels – including both *operational pollution*, meaning oil pollution from the normal operation of vessels, and *accidental pollution*, meaning oil pollution discharged from shipwrecks or due to other catastrophes – have caused significant problems for mankind, and maritime trade in particular, during the last five decades. However, regulators found themselves extremely difficult to keep up with the needs of fast innovation and technological development – the appearance of 'supertankers' have posed more and more challenges to the community of nations. *Torrey Canyon* is regarded as the first 'supertanker'[2] that ran aground at the shore of Great Britain during its last journey and caused significant damages[3] to the United Kingdom and France, thereby serving as a catalyst for the development – or rather estab-

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1 Such as the International Maritime Organisation, the United Nations Environment Programme, and various NGOs, such as the Comité Maritime International, INTERTANKO (International Association of Independent Tanker Owners), and EMSA (European Maritime Safety Agency).

2 Ved P. Nanda: The 'Torrey Canyon' Disaster: Some Legal Aspects, Denver Law Journal 44 (1976) 400-425; Kardos András: Szennyezés vízben és víz mentén – A XXI. század problémái, in: Raisz Anikó: A nemzetközi környezetjog aktuális kihívásai, Miskolci Egyetem, Miskolc, 2012, 73-83.

3 It was estimated that the damages caused by the about 80,000 ton crude oil discharged into the sea exceeded GBP 3.25 million.

lishment – of international environmental law.[4] The case of *Torrey Canyon* is also interesting because the possibilities arising from the malfunction of the vessel were largely ignored and the case was focused around the possible liability of the captain and crew of the ship.[5] That situation revealed an important intersection of environmental protection and human rights, as human rights were not used (among others) to promote and enforce environmental considerations – as is the practice of human rights courts[6] –, but on the contrary, the promotion and protection of environmental interests (through criminal law) may be in conflict with human rights requirements.

6.1 Oil Spills from Vessels

As noted earlier, oil spills may be released in the course of normal operations of ships and may also be the result of tankers running aground, crashing, or sustaining other damages to the hull of the ship. In the last decades, international law moved toward finding solutions to such problems, for example by adopting the 1973 International Convention for the

4 For more details, see Dinah Shelton–Alexandre Kiss: Judicial handbook of environmental law, Hertfordshire, United Nations Environmental Programme, 2005; Kiss–Shelton: International Environmental Law, Ardsley, NY, UNEP, Transnational Publishers, 2004; Alan Boyle–Catherine Redgwell–Patricia Birnie: International Law and the Environment, Oxford University Press, 2009; Daniel Bodansky–Jutta Brunnée–Ellen Hey (eds.): The Oxford Handbook of International Environmental Law, Oxford University Press, New York, 2007.

5 Tormod Rafgard: Tankers, Big Oil and Pollution Liability, 2012, 54, www.oilpollutionliability.com/ (19 May 2014).

6 See, in particular, the relevant case-law of the European Court of Human Rights and the Inter-American Court of Human Rights, as well as: SHELTON: The Environmental Jurisprudence of the European Court of Human Rights, 2003-2004, The global community: yearbook of international law and jurisprudence 1 (2004) 293-303; SHELTON: Human Rights and the Environment: Jurisprudence of Human Rights Bodies, Environmental policy and law 32 (2002) 3-4, 158-167; FODOR László: Az Emberi Jogok Európai Bíróságának ítélete a zajterhelés csökkentésére tett intézkedésekről és a bírósági eljárás időtartamáról. Az intézkedések következetes elégtelensége és az eljárás elhúzódása egyaránt megalapozza az állam felelősségét. JeMa 3 (2011) 86-92; RAISZ Anikó: Az Emberi Jogok Európai Bíróságának ítélete a zajszennyezéssel összefüggő egyes emberi jogi kérdésekről: Sérti-e a rendszeres tűzijáték a magánélethez és a tulajdonhoz való jogot? JeMa 2 (2012) 64-68; SZEMESI Sándor: Környezetvédelmi kérdések az Emberi Jogok Európai Bírósága gyakorlatában, in: RAISZ Anikó: A nemzetközi környezetjog…, 175-184; MARINKÁS György: Az őslakosok jogainak megjelenése az Amerikaközi Rendszerben: az őslakosok joga ősi földjeikre, in: RAISZ: A nemzetközi környezetjog…, 108-117; RAISZ Anikó: A nemzetközi környezetvédelmi bíráskodás jelene és jövője, in: Collegium Doctorum Konferencia, Miskolc, 19 April 2012. Miskolc, Bíbor Kiadó, 2013. Paper 37; RAISZ Anikó: Gondolatok a nemzetközi környezetvédelmi bíráskodásról, GÉP, 6 (2012) 33-36. For more meeting points, see SZILÁGYI János Ede: Környezetvédelem a Világkereskedelmi Szervezet jogában, in: SZILÁGYI János Ede (ed.): Környezetjog: Tanulmányok a környezetjogi gondolkodás köréből, Novotni Alapítvány, Miskolc, 2010, 25-50; SZILÁGYI János Ede: WTO-jog és környezetvédelem, in: BOBVOS Pál (ed.): Reformator iuris cooperandi, Pólay Elemér Alapítvány, Szeged, 2009, 485-511. See also: Manual on Human Rights and the Environment – Principles Emerging from the Case-Law of the European Court of Human Rights; Committee of Ministers, Ann. 2005/186, 16 December 2005, CDDH, 61st meeting, Final Activity Report, point 2.

Prevention of Pollution from Ships, as modified by the Protocol of 1978 (MARPOL),[7] as well as Annex I laying down provisions regarding both operative and accidental discharges. In the context of accidents, the introduction of the double-hull requirement is of utmost importance, essentially stipulating that a 10% overprotection is required for determining the conditions required for the safe operation of tankers through technical calculations.[8] A problem concerning the rules of MARPOL is that its provisions apply to oil tankers delivered after 1982; *Prestige*, the vessel this paper focuses on, was set afloat in 1976, meaning that the progressive rules of MARPOL do not apply to this particular vessel.[9]

Another problem regarding the vessel is that it was registered in a flag of convenience, namely the Bahamas. The 1982 United Nations Convention on the Law of the Sea (UNCLOS) does not lay down specific provisions in this respect, meaning that the rules of the state whose flag the ship is flying must be applied mutatis mutandis, so that '[t]here must exist a genuine link between the State and the ship.'[10] Significant difficulties in this respect include, among others, that ships may be registered in a state where the owner of the ship does not have citizenship; the registration related requirements of the state may be easy to meet; the taxes imposed by the state on ships may be low or are not raised; the state may not have jurisdiction to enforce international rules; and the crewmembers of the ship may be the citizens of any other state.[11] Since the standards to be met such vessels may be need significantly lower for vessels than for those flying under a 'regular' flag, vessels flying under a flag of convenience pose a significantly higher risk of accident – and an accident did happen in the case of the Prestige.

In several cases, the lack or delay of any regulation was also an aggravating factor, since it often took a major catastrophe for international law to make an attempt to eliminate a problem through the adoption of an international convention: this is the reason why most of the oil spill related conventions were adopted after a major catastrophe (such state of affairs is not uncommon on the field of international environmental protection, unfortunately). Nevertheless, the continuous regulatory improvements had a positive impact: the number of shipping accidents has been decreasing continuously since 2000 due to the

7 A protocol was attached to the Convention in 1978 and the two documents entered into force in 1983. MARPOL was promulgated by Hungary under Act X of 2001.

8 MARPOL, Ann. I, Reg. 13F.

9 Ship Structure Committee: Case Study on Prestige: Complete hull failure in a single-hull tanker, www.shipstructure.org/case_studies/Prestige.pdf (19 May 2014)

10 Art. 91 UNCLOS; in M/V 'SAIGA' the International Tribunal for the Law of the Sea held that 'the purpose of the provisions of the Convention on the need for a genuine link between a ship and its flag State is to secure more effective implementation of the duties of the flag State, and not to establish criteria by reference to which the validity of the registration of ships in a flag State may be challenged by other States.' ITLOS, M/V 'SAIGA' (No. 2) Case (*Saint Vincent and the Grenadines v. Guinea*), Judgement of 1 July 1999, Paras. 62-66.

11 Esko Antola: The Flag of Convenience System: Freedom of the Seas for Big Capital, Instant Research on Peace and Violence 4 (1974) 4, 195-205.

strict rules applied by the IMO. Furthermore, GESAMP has shown that emissions also reduced significantly by 1990.[12] However, the problems caused by oil spills are yet to be eliminated.

6.2 Rules of Liability

The protection afforded by international maritime conventions, such as MARPOL and UNCLOS, is insufficient, and the relevant provisions are frequently violated already in the course of arresting.[13] Regulation 11 MARPOL lays down provisions that are exempted from the requirements pertaining to the discharge of oil (Regulation 9) and the prevention of oil pollution from ships while operating in special areas (Regulation 10). Accordingly, the provisions on discharging are not applicable the discharge into the sea of oil or oily mixture resulting from damage to a ship or its equipment provided that all reasonable precautions have been taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing or minimizing the discharge; and except if the owner or the master acted either with intent to cause damage, or recklessly and with knowledge that damage would probably result.

According to Article 230 UNCLOS, monetary penalties only may be imposed with respect to violations of national laws and regulations or applicable international rules and standards committed by foreign vessels beyond the territorial sea, and with respect to violations committed by foreign vessels in the territorial sea, except in the case of a wilful and serious act of pollution in the territorial sea.

Furthermore, Article 220 UNCLOS stipulates that where there are clear grounds for believing that a vessel navigating in the exclusive economic zone or the territorial sea of a state has, in the exclusive economic zone, committed a violation of applicable international rules and standards for the prevention, reduction and control of pollution from vessels or laws and regulations of that state conforming and giving effect to such rules and standards, that state may require the vessel to give all information required to establish whether a violation has occurred. If the violation causes major damage or threat of major damage to the coastline or related interests of the coastal state, or to any resources of its territorial sea or exclusive economic zone, that state may institute proceedings, including detention of the vessel, in accordance with its laws. According to Article 221 UNCLOS, coastal states may take and enforce measures within and beyond the territorial sea proportionate to the actual or threatened damage to protect their coastline or related interests from pollution

12 GESAMP: Impact of Oil and Related Chemicals on the Marine Environment, Reports and Studies No. 50, London, 1993, 25-27.

13 Birgitta Hed: Criminalisation of seafarers – will this contribute to improving, The Swedish Club, 1 (2005) 12-15.

or threat of pollution following upon a maritime casualty or acts relating to such a casualty, which may reasonably be expected to result in major harmful consequences.

6.3 The Prestige Accident and Its Consequences

Another accident occurred in 2002, when the Prestige, a Liberian owned tanker, operated by a Greek crew, sunk with a cargo of 77,000 tons of oil beyond the 12 miles limit of territorial sea but within the 200 miles limit of the exclusive economic zone, i.e. about 28 miles from the shore. The ship was caught up in a storm at the Northwest coast of Spain and one of its tanks breached due to the difficult circumstances. After contacted by the captain, the Spanish authorities denied the vessel safe harbour. The captain then sought assistance from the Portuguese and French authorities but they were also unwilling to cooperate. Because of the delay – and the heavy weather the already damaged vessel was exposed to for hours –, part of the hull broke off, the ship began to sink, and it eventually broke into half. The captain of the ship was taken into custody under charges of failing to comply with the instructions of the port authorities and committing an offence of causing damage to natural resources.[14] However, the coastal states also failed to perform their obligation to cooperate with the vessel as they all denied assistance to the ship. The first estimations indicated that the extent of natural damages was similar to the *Exxon Valdez* accident; in a lawsuit filed for damages, Spain claimed – on the ground of 'gross negligence'[15] – an amount of 700 million dollars in damages.[16] The accident endangered various species of sharks and birds living in the area, and coast fishing was also suspended due to the extensive oil spill that reached the coasts of Galicia, thereby causing significant financial damages to the local fisheries industry.

The event had sour consequences for the maritime shipping sector as well,[17] since the European Court of Human Rights (ECtHR) ruled in 2009 that the arrest of the captain in 2002, his 83 days long custody, as well as bail being set at EUR 3,000,000 for his release was not inconsistent with Article 5(3) of the European Convention on Human Rights.[18]

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14 Varga Miklós: Tankerbalesetek a tengeren, 232. www.publikon.hu/application/essay/536_1.pdf (15 June 2014).

15 Rafgard: Tankers. Big Oil and Pollution Liability, 306-307.

16 The claimed amount was subsequently raised to USD 2.5 billion due to the costs of removal.

17 The case was interesting not from the aspect of fundamental rights, but in the context of the issue of technical revision of vessels by the port state authorities. According to the Paris Memorandum of Understanding, ships stopping at European harbours are to be reviewed regularly and to be classified by their condition and the conditions on board. The Prestige case showed that such reviews are missing even from countries that ratified the convention, as the vessel was not inspected anywhere despite the fact that it stayed in various European harbours during the last 12 months prior to the incident. See: UNCTAD secretary report: Review of Maritime Transport, 2003, 41.

18 ECtHR, *Mangouras v. Spain* (GC), merits, 28 September 2010, point 93.

The Spanish investigating judge remanded Mangourast in custody and set bail at EUR 3,000,000 under Articles 325 and 556 of the Criminal Code of Spain (*Codigo Penal*). (Mangouras later requested the reduction of bail to EUR 60,000, but the investigating judge refused the request.) Article 325 lays down provisions regarding crimes against natural resources and the environment, and stipulates that

> [a]ny person who […] causes or produces, directly or indirectly, emissions, discharges […] into […] inland or maritime waters in violation of general environmental laws and regulations likely to severely upset the balance of natural systems, shall be liable to a term of imprisonment of between six months and four years […].

Article 556 also stipulates that '[a]ny person who fails to comply with or objects to the instructions of the administrative authorities given in the course carrying out their duty shall be liable to imprisonment.' The investigating judge believed that Mangouras committed the above crime when he failed to cooperate with the instructions of the Spanish authorities for over three hours – the instructions were to move the vessel away from the coast as far as possible.[19] When he noticed the damages sustained by the vessel, Mangouras requested the Spanish authorities for safe harbour,[20] but these requests were refused by the authorities consistently.

It happens frequently that the captain of an oil tanker that sustains damages due to a *force majeur* event and eventually sinks is regarded as a criminal.[21] Furthermore, such vessels usually sink either in the open sea or in waters falling within the jurisdiction of a foreign country, meaning that the captain must face a foreign legal system. Such situations – in the context of various accidents[22] that are similar to the case of Mangouras – are frequently referred to in professional literature as scapegoating of seafarers.[23]

19 ECtHR, *Mangouras v. Spain*, 2010, point 17.

20 In addition to raising environmental and human rights issues, the case also required IMO to take action regarding the granting of refuge, thereby leading to the adoption of Res. A.949(23). According to section 1.3, when a ship has suffered an incident, the best way of preventing damage or pollution from its progressive deterioration would be to lighten its cargo and bunkers; and to repair the damage. Such an operation is best carried out in a place of refuge. However, to bring such a ship into a place of refuge near a coast may endanger the coastal state and the operation may be strongly objected to. Rescuing a vessel in open waters is much more difficult and less efficient due to its exposure to natural forces, thereby deteriorating the condition of the vessel and causing more and more extensive damages.

21 P. K. Mukherjee: Criminalisation and unfair treatment: the seafarer's perspective, Journal of International Maritime Law12 (2006) 325-336.

22 E.g. similarly to the case of *Hebei Spirit* or *Tasman Spirit*.

23 Mukherjee: i. m. 330.

After his arrest, Mangouras filed several appeals for the reduction of his bail, but his appeals were denied. Finally, he lodged an *amparo*[24] appeal with the Constitutional Court under Article 17 of the Constitution of Spain.[25] However, Mangouras did not appeal against his pre-trial detention but he complained of the amount set for bail, arguing that it had been excessive and disproportionate[26] in view of his financial circumstances and had made any prospect of provisional release unrealistic.[27]

The case made its way to the European Court of Human Rights in 2009 and a first decision was adopted by the third section of the ECtHR. The Spanish Government argued that the primary purpose of bail is to ensure that the applicant remained at the disposal of the judicial authorities during the trial and that any reduction in the amount of the bail would have failed to achieve this purpose.[28] On the other hand, Mangouras claimed that it was inconsistent with Article 5(3) of the European Convention on Human Rights, stipulating that everyone arrested or detained shall be entitled to trial within a reasonable time or to release pending trial. The third section of the ECtHR acknowledged that the bail of EUR 3,000,000 was excessively high, but it held that the relevant provisions of the Convention were not violated by the Spanish authorities, considering that the amount of the bail was paid by the insurer of the tanker's owner (London Steamship Owners' Mutual Insurance Association Limited) and Mangouras was allowed to return to Greece. However, it seems that the third section of the ECtHR relied mostly on the arguments presented by the Spanish authorities, and without taking into account the relevant case law of the International Tribunal for the Law of the Sea (ITLOS), considering that the case law of the ECtHR did not include any similar case and that the facts of the cases referred to by the parties (i.e. *Neumeister v. Austria* and *Iwańczuk v. Poland*) were not quite similar to the facts of Mangouras' case.

On the other hand, ITLOS[29] reads Article 73 in conjunction with Article 292 of the UN Convention on the Law of the Sea when deciding matters relating to arrested vessels. According to Article 73, arrested vessels and their crews are to be promptly released upon

24 The writ of *amparo* is a procedure for the protection of constitutional rights, such as individual freedom and liberty, in certain Neo-Latin countries. See P. P. Camargo: The Right to 'Judicial' Protection: Amparo and Other Latin American Remedies for the Protection of Human Rights, Lawyer of the Americas 3 (1971) 191-201.

25 According to Art. 17, '[e]veryone has the right to liberty and security. No one may be deprived of his liberty other than in accordance with the provisions of this Article and in the circumstances and form provided by law.'

26 According to Art. 45(3) of the Constitution of Spain: For those who violate the provisions of the foregoing paragraph, penal or administrative sanctions, as applicable, shall be established and they shall be obliged to repair the damage caused.

27 ECtHR, *Mangouras v. Spain*, judgement, 8 January 2009, point 16.

28 ECtHR, *Mangouras v. Spain*, 2009, point 25.

29 For more details, see Alan Boyle: The Environmental Jurisprudence of the International Tribunal for the Law of the Sea. The International Journal of Marine and Coastal Law 22 (2007) 3.

the posting of reasonable bond or other security. Furthermore, according to Article 292, where the authorities of a state have detained a vessel flying the flag of another state and it is alleged that the detaining state has not complied with the provisions of the Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security, the question of release from detention may be submitted to the International Tribunal for the Law of the Sea. The case law of ITLOS indicates that most of the cases – such as the cases of *M/V Saiga*, *Camouco*,[30] *Monte Confuro*,[31] and *Grand Price*[32] – are connected to the issue of prompt release. However, those cases usually required ITLOS to decide on the matter of arrested shipping vessels and their crews, but none of the cases involved a captain arrested because of an oil spill.

Ultimately, the case was referred to the Grand Chamber, which held that national authorities need to proceed with due care when setting the amount of bail, with a view to deciding whether the continued detention of the defendant is indispensable or not.[33] In the present case, according to the national court and the Grand Chamber, it was essential to ensure that Mangouras, the captain of the Prestige, appeared for trial before the courts hearing the case, in view of his professional environment.[34] Thus, the Grand Chamber held that the detention of the ship's captain was lawful and that the Spanish authorities did not violate Mangouras' right to liberty.[35]

Another interesting aspect of the case is that seven of the seventeen judges of the Grand Chamber did not agree with the ruling; they argued that the captain of the Prestige was detained for a period of 83 days because the fixed amount of the bail clearly exceeded the financial means of Mangouras, and the investigating judge did not even take into account the financial means of Mangouras appropriately. In the end, the judgement of the Grand Chamber relies on the arguments of the Spanish authorities extensively, and it focuses on the environmental catastrophe that occurred in Spain, on the economic consequences, as well as the public outcry and panic that ensued, while the personal circumstances and situation of the captain was mostly ignored.

A comparison of the *Exxon Valdez*[36] and *Prestige* cases shows that the behaviour of the two captains was perceived rather differently. In *Exxon Valdez*, captain Joseph Hazelwood

30 ITLOS, *Camouco, Panama v. France, No. 5*, 7 February 2000.

31 ITLOS, *Monte Corfuro, Seychelles v. France, No. 6*, 18 December 2000.

32 ITLOS, *Grand Brince, Belize v. France, No. 8*, 20 April 2001.

33 ECtHR, *Mangouras v. Spain*, 2010, points 82-83.

34 ECtHR, *Mangouras v. Spain*, 2010, point 85.

35 The captain, chief operator, and the director of the Spanish trade fleet was acquitted in 2013. http://hu.euronews.com/2013/11/13/felmentettek-a-prestige-vadlottjait/ (15 November 2013).

36 The Exxon Valdez sank in the vicinity of Alaska in 1989 and about 250,000 ton crude oil was discharged into the sea during the accident. It is regarded even today as one of the major oil catastrophes and it served as a catalyst for the further development of the international regulatory framework of accidents. As a result, the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPPRC) was adopted by IMO in 1990, introducing the obligation to prepare an emergency plan and report.

was under the influence of alcohol at the time of the accident. While the crewmembers maintained that the captain had not consumed any alcohol, a blood test performed 10 hours after the accident showed a blood alcohol level that exceeded the permitted 0.01 per mille threshold by 50 percent.[37] The court of appeal convicted Hazelwood for 'negligent discharge of oil' while his bail was set at USD 1,000,000.[38] In the end, Hazelwood had to pay a total sum of USD 50,000 and had to do 1,000 hours of community service, while he was allowed to keep his captain's license. Nevertheless, the case of Hazelwood may also serve as an example of the one-sided nature of such proceedings, considering that the radars of the coast guard failed to detect, and the coast guard failed to control, the route actually taken by the ship instead of the route communicated previously. However, these factors were not taken into account and all attention was focused on the liability of Hazelwood, and no proceeding was launched against members of the coast guard.[39]

On the other hand, Apostolos Mangouras, the captain of the *Prestige*, was arrested after the accident by the Barcelona police and his release was subject to the posting of EUR 3,000,000 as bail – an unprecedentedly high amount in similar cases. Similarly to Hazelwood, the court denied any reduction of the bail, despite the numerous petitions and pleadings lodged for Mangouras.[40] At the time of the accident, Mangouras was 67 years old and had been serving on the sea for over 40 years. He requested assistance for the *Prestige* from Spain, Portugal, and France in vain, as none of these countries allowed safe harbour for the damaged vessel that was caught up in a storm. Despite the fact that the captain of the vessel acted in the manner that could be expected under the given circumstances and did all possible measures to ensure the safety of the ship, her crew, and cargo, he still spent over two years in prison during the criminal proceedings.

The proceedings were launched against Mangouras – as well as the chief engineer of the vessel and the former head of the Spanish maritime trade agency – for criminal damages to the environment in 2002 and the charges was dropped finally in November 2013. The captain of the ship was found guilty by the court of appeal in failing to comply with the instructions of the authorities, and he was sentenced to 9 months in prison.[41] Nota bene the sentence was not carried out with regard to the age and clean criminal record of the captain. The court stated that 'nobody knew what caused the problem or what the adequate response to the emergency situation would have been, and the structural weakness of the

37 Rafgard: Tankers. Big Oil and Pollution Liability, 197.

38 Supreme Court of the State of Alaska, *State of Alaska v. Joseph Hazelwood*, 12 March 1993, 866 P d2 827.

39 Michael G. Chalos: Should I Go Down with the Ship, or Should I Rot in Jail – A Modern Master's Dilemma, Maritime Studies 132 (2003) 1-11.

40 Rafgard: 314.

41 www.maritime-executive.com/article/INTERTANKO-Mixed-Reactions-to-Spains-Capt-Mangouras-Judgements-2013-11-15/ (18 November 2013).

ship was also undeniable.'[42] The defendants were not found guilty in causing criminal damages to the environment because they had no intention to bring down the ship and did not even know of its structural deficiencies. The court also established that the Spanish authorities acted correctly when they instructed the ship to move away from the coast toward open sea. The proceedings took 11 years and involved the hearing of 130 witnesses and some 100 experts, and seeking the advice of about 70 lawyers.[43] In the meantime, Spain also took action against the American Bureau of Shipping (ABS),[44] a non-profit organisation that reviewed the state and structural integrity of the *Prestige* every five years. The vessel was inspected by the ABS for the last time in 2001 and it was certified as fit for oil transport operations for another period of 5 years. Spain argued that the ABS was liable to pay for damages as, being part of the *maritime safety chain* by issuing the certificate, it was liable for the catastrophe.[45] The claims lodged by Spain were denied by the court due to lack of evidence.

While the number of tanker related accidents has been decreasing since the accident of the *Prestige*,[46] but similar accidents must be taken into account even these days, despite the positive results.

6.4 Closing Thoughts

International environmental protection is one of the most recent fields of international law, while the law of human rights is already settled for the most part and despite some developments. These two fields meet at numerous points, one of the possibly most complex meeting points being the situations described in this paper, where considerations pertaining to environmental protection, criminal law, and human rights converge and compete with each other in a single case.

The story of the Prestige and her captain, Mangouras, shows that cases are seldom black or white; the only thing that seems certain is that no single person can or should be blamed for the catastrophe as a whole. The issue of responsibility and liability arises on

42 Aud. Provincial Seccion N.1. A Coruna, procedimiento abreviado 0000038/2011, Sentencia, 15 November 2013.

43 Charles R. Cushing expert witness testified that the crew had nothing to do with the condition of the vessel since it was the structural maintenance of the vessel that was not adequately carried out. It also seemed possible that attempts were made to manipulate the measurements to have the tanker declared fit for shipping.

44 United States Court of Appeals for the Second Circuit, *Renio de Espana v. the American Bureau of Shipping*, 29 August 2012.

45 *Renio de Espana v. ABS*, 3.

46 www.black-tides.com/uk/source/oil-tanker-accidents/number-accidents-spills.php (8 November 2013). Most recent data (from 2004) show that a total of 4 accidents occurred during the 4 years period before the accident, while only 7 accidents has occurred ever since. In comparison, a total of 25 tanker accidents took place in the 1970s. After 2004, the next wave of accidents took place in 2007 when a total of 31,000 tons of oil was discharged into the sea by three tankers (*COSCO Busan, Volgoneft, Hebei Spirit*).

the level of individuals (and even collective bodies) on various fields, including registration and operation related rules and regulations, operational practices, and the handling of accidents. With regard to the final phase of the catastrophe, it still remains unclear if the instructions given by the coast guard constituted the only good, or at least best, option; in effect, these instructions were testing the limits of international regulations by opting for sparing the coastal waters and, at the same time, risking that the damages and pollution would be horrendous and uncontainable in more distant sectors.

While captain Mangouras did not comply with the instructions of the coast guard, the issue of his liability raises the following question: is it not the captain of the vessel who is best placed to judge the extent and course of the impending catastrophe, i.e. is it not the captain who is best placed to estimate the impending damages? If we answer these questions in the affirmative, the refusal to follow instructions, as mentioned in the conventions, should be evaluated using the same conceptual framework that is already in place in international criminal law regarding war crimes and crimes against humanity, i.e. that the refusal to follow orders in order to serve a greater good is not only permissible but even an imperative duty.

The *Prestige* case did not present an opportunity to find answers to all these questions, since the captain lodged an application with the ECtHR concerning only a small segment of the criminal proceedings against him, i.e. regarding the matter of bail. In *Prestige*, it is clear that the rights of a defendant collided with the protection of the environment afforded by criminal law, and the conclusion of the case was detrimental to the rights of the defendant, which are otherwise rather leniently treated by the ECtHR, due to environmental considerations. It does not make much difference that, eventually, the proceedings in Spain were also brought to an end over a decade later. It is certainly a favourable development that environmental considerations gained legitimacy in human rights related proceedings, but we should also expect the strengthening of voices expressing concerns regarding the promotion of environmental considerations to the detriment of other interests. Nevertheless, it seems certain that closer cooperation between the various actors and stakeholders is needed to prevent the occurrence of oil spills on sea.