

DEALING WITH BIG MARINE CASUALTIES IN SPAIN



International Law Seminar 2010

*As in many other countries,
shipping operations are monitored
more actively than ever in Spain.*





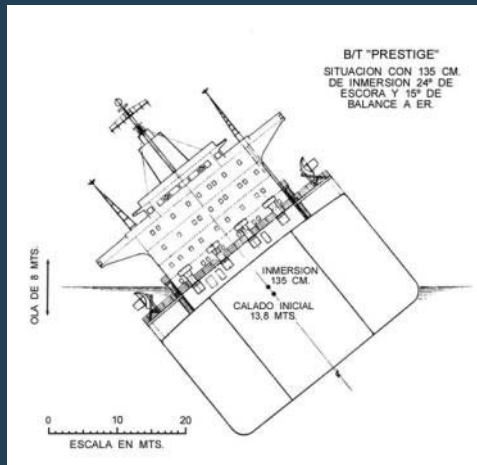
Spanish Marine Authorities have established a severe system involving high administrative fines (up to 3 million €) for marine pollution infringements, which are imposed in administrative sanctioning proceedings.

On the other hand, marine pollution is considered in Spain a serious offence.



Regrettably, Spain witnessed in the past some of the major oil spills in modern times, the last being the “**Prestige**” disaster, which is one of the biggest ever pollution cases.





As you will recall, in November 2002 this vessel carrying about 77,000 tonnes of heavy fuel oil, began listing and leaking oil.

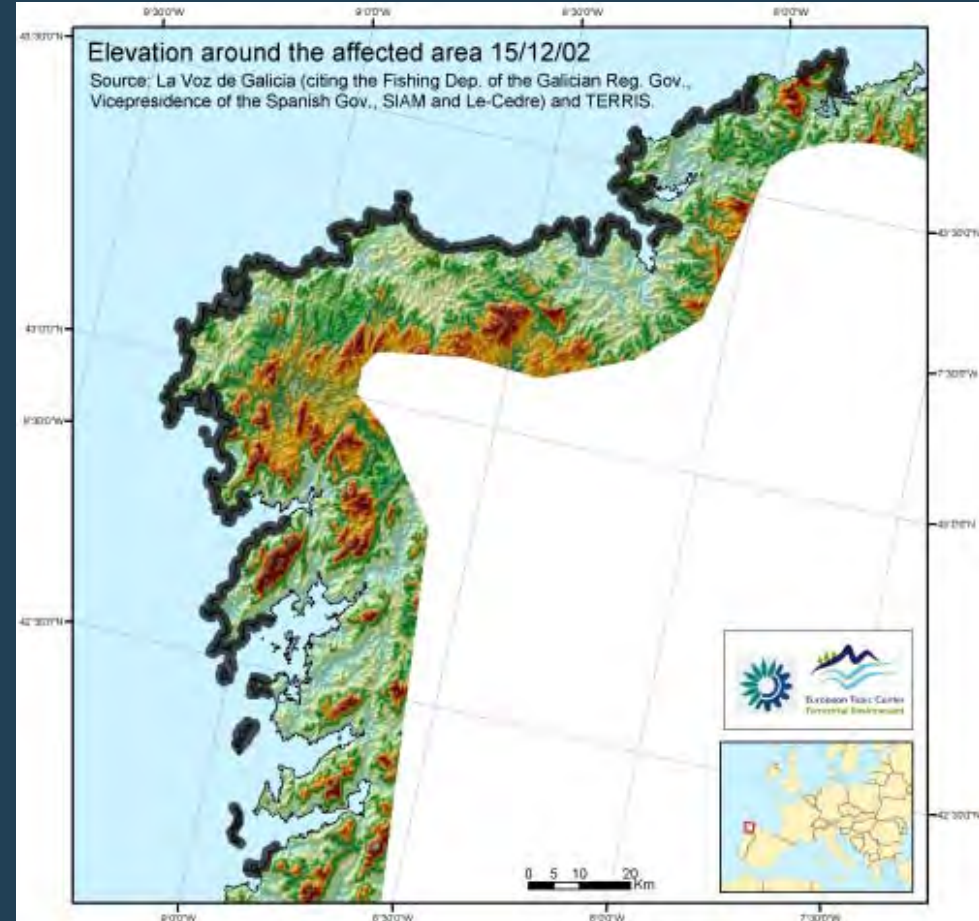
Whilst under tow away from the coast ordered by Spanish Authorities, the vessel broke in two and their sections sank some 250 kilometres west Spain coast.

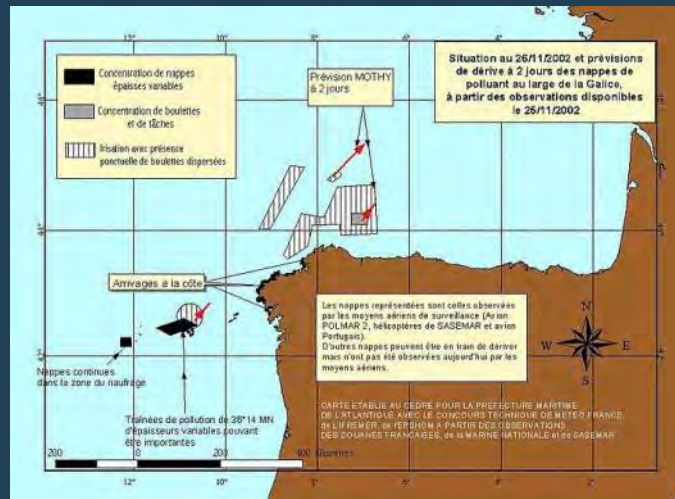


The break-up and sinking released about **63.000 tonnes** of cargo. Over the following weeks oil continued to leak from the wreck.



Due to the highly persistent nature of the cargo carried by the Prestige, released oil drifted with winds and currents travelling big distances.





The coast of Galicia
was heavily
contaminated and oil
moved affecting also
the north coast of Spain
and France.



No oil came ashore in Portugal but clean-up operations at sea were also carried by the Portuguese authorities.





The work to remove the remaining oil from the wreck of the Prestige was ended in September 2004 at a very high cost.

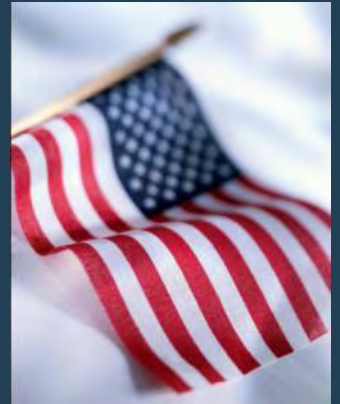


Many claims, totalling about **1,200,000,000 €**, have been lodged in the criminal legal proceedings before the Criminal Court in Corcubion, which has now recently finished the investigative stage of said criminal proceedings.



At that time, environmental crime was one of the EU's central concerns but it was only after the sinking of the Prestige when the European Council declared in December 2002 the EU's determination to adopt all the necessary measures to preclude further disasters , including those relating to liability and the corresponding penalties.





*Similarly, the Exxon Valdez
grounding led directly to the US
Oil Pollution Act, 1990.*





In Europe, as all you know, Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements was approved as a consequence of above EU's determination.

All you also know, that it was disputed by INTERTANKO, INTERCARGO and other but the validity of Directive 2005/35/EC was confirmed by the European Court of Justice.



Popular or not, the increasing use of criminal law sanctions in the industry has supposed a significant reduction in maritime accidents involving marine pollution.



The Prestige case is among other things a clear example of the (increasing) criminalisation of seafarers and it was indeed one of the (many) cases that have highlighted concerns about fair treatment of Seafarers.



All remember how Captain Mangouras was detained in Spain for two years, *including more than 80 days in prison*, whilst at that time there was no clear cause of damage and, on the other hand, the ship was ordered out to sea by the Spanish Authorities without regard to her condition.



*Nowadays, Mr. Mangouras is incriminated
in the Spanish criminal proceedings
together with other two members of the
crew for an environmental offence and
other.*

However, criminal charges have been also brought in said proceedings against the General Director of the Spanish Merchant Shipping who ordered the vessel to go back to sea.



Those who appear in the criminal proceedings as liable for civil damages, directly and subsidiarily, are the P&I involved as well as the IOPCF, and, on the other hand, the Owners and the Manager of the vessel as well as the Spanish Estate.

This has already indemnified a very big proportion of the damages arisen by the casualty.



The Spanish Estate took action against the vessel's Classification Society in US and this has failed up to now. Said Classification Society is not involved in the Spanish criminal proceedings.

The Prestige case is continuing and I am not going to say much about it.

Merely, that given the compensation available from the Shipowners' liability insurers and from the 1992 Fund, real payers of this big disaster would be the

Spanish tax payers!



As already mentioned, it is obvious that maritime accidents involving environmental damage have decreased as a consequence of the increasing criminal law sanctions but it would be desirable that at the same time legal proceedings to find those criminal liable and those liable for civil damages were quick ones, which unfortunately is not usually the case.

The Prestige's oil spill was in 2002 and it has been only recently when the criminal court of Corcubion has finished the investigative preliminary stage of the proceedings. It is clear that criminal liability can be imposed only after a proper judicial process but 7 years is too much time for investigations!



But this is not only in Spain. In the Exxon Valdez two decades later the saga is only hearing now the end. In the Erika oil spill in 1999, it was in March 2010 when the Paris Court of Appeal issued its decision that has been appealed to the French Supreme Court.



Thanks for your attention.

Luis de San Simón