DURING the 1990s, the United States’ use of criminal penalties to enforce environmental laws, particularly as related to the maritime industry, was viewed by the rest of the world as heavy handed and unnecessary. Today, however, like the US, many countries are using criminal enforcement as an important tool in their effort to protect the environment and achieve compliance through deterrence. The historical inclination of regulatory authorities to emphasize compliance over punishment is changing and punishment is increasingly taking a greater role in environmental enforcement.

This is exemplified by the recently adopted European Commission (EC) ship-pollution directive, focused on criminal enforcement, whereas previous European Union (EU) environmental directives have focused on policy-making aspects of environmental laws and programmes while ignoring issues of implementation and enforcement. On 5 March 2003, the EC adopted a ship-source pollution directive which, if adopted by the European Parliament and Council, will lead to the imposition of criminal sanctions for those responsible for ship pollution. According to an EC vice-president, the ‘existing civil liability regimes for pollution by ships [do] not provide sufficient financial disincentives for shipowners and others involved in the transport of dangerous cargoes by sea to behave in the most responsible way’.

Article 6 of the proposed directive states that ‘intentional or grossly negligent’ pollution by vessels should be regarded as criminal offences. Sanctions will be applicable to any person – including the master, the owner, the operator and the charterer of a ship and to the classification society – who has been found to have caused or contributed to illegal pollution, intentionally or by means of gross negligence. The penalties include fines and imprisonment.

The proposal is an effort by the EC to stop the discharge of waste, including cargo residue, from ships in EU and international waters. Specifically, the directive provides detailed rules for the discharge of polluting substances, including oil and chemicals, and makes any violation of those rules illegal in EU waters. In addition, the proposed directive prohibits pollution on the high seas, irrespective of the flag of the ship.

This directive has drawn much criticism from the shipping industry. In response to the directive, INTERTANKO, the International Chamber of Shipping, the European Community Shipowners’ Association and the Oil Companies International Marine Forum have submitted a joint position paper to the European Parliament highlighting potential problems with the proposal, including concern that some of the criminal sanctions outlined in the directive would undercut internationally agreed standards and be in direct conflict with the International Convention for the Prevention of Pollution from Ships (MARPOL) and the United Nations Convention on the Law of the Sea.

This newfound aggressiveness of the EU rivals that of the US, which has been criminally prosecuting environmental cases against the maritime industry since the mid-1990s and continues to do so, more aggressively than ever, through the United States Department of Justice’s (DOJ) Vessel Initiative. The DOJ continues to focus on the maritime industry. Government officials warn that the Vessel Initiative will continue until the number of referrals ‘dwindles to zero’ and has recently stated that the pollution problem is ‘so rampant and so pervasive within the maritime community’ that it has ramped up enforcement and is prosecuting cases up and down all US coasts.

OVERVIEW OF CRIMINAL CASES AGAINST THE MARITIME INDUSTRY THROUGHOUT THE WORLD

As the following list of cases illustrates, many countries are not waiting for the EU directive but rather are criminally prosecuting maritime cases under national environmental laws.

AUSTRALIA

➔ In July 2003, Mobil pleaded guilty after it caused a 50 metre wide oil spill off the Victoria coast in 1999. The company faced a fine of up to Aus$1 million for the spill from Mobil’s Sylvan Arrow, allegedly caused by equipment failure.

➔ In February 2001, the owner of the Bunga Teratai Satu pleaded guilty to negligently grounding a containership on the Great Barrier Reef and was fined Aus$400,000. The officer responsible for the grounding also pleaded guilty.

➔ In November 1999, criminal proceedings were launched against the owner and officers of the tanker Laura D’Amato, which caused Sydney Harbour’s worst oil spill. In March 2000, the New South Wales Land and Environment Court fined the ship’s owner Aus$510,000 and ordered it to pay Aus$4.5m in cleanup costs, plus Aus$400,000 in legal fees. Charges against the ship’s master were dismissed but the chief officer was found directly responsible for the spill and fined Aus$110,000.

Criminal environmental prosecutions and the maritime industry - a world-wide trend

JANE F. BARRETT and JEANNE M. GRASSO
Partners, Blank Rome LLP
In November 1999, Australia had its first successful conviction for illegally disposing of garbage pursuant to legislation implementing Annex V of MARPOL. In this case, a yacht owner observed plastic and other garbage being thrown into a lagoon from a yacht and reported it to authorities.

Similarly, in November 1999, the owners of the cruise ship Fairstar were convicted and fined Aus$10,000 for an illegal discharge of garbage in Australian waters. The pollution was reported by two members of the public who collected the loose garbage that had washed up on the beach.

**CANADA**

- In February 2002, Canada prosecuted the M/V Baltic Confidence, a Philippines-registered bulk carrier, for unlawfully discharging an oily substance in Canadian waters. The operator of the vessel pleaded guilty and was fined the largest penalty ever issued for ship-source pollution in Canada. This investigation began because an oil discharge from the ship had been sighted by a Canadian Coast Guard helicopter and a private aircraft.
- In April 2001, the operator of the M/V Sandviken pleaded guilty and was fined for unlawfully discharging an oily substance in Canadian waters. Again, the investigation was initiated after an oily discharge was detected during a routine surveillance mission.
- In April 1999, the operator of the F/V Hogfossur pleaded guilty and was fined for unlawfully discharging an oily substance. The investigation ensued after reports of an oil spill during the fuelling operations, whereby Canada determined that the vessel operator had not taken basic precautions to prevent or minimise the resulting pollution.

**FRANCE**

- In August 2003, a Bulgarian-registered cargo ship, Dobrudja, was prosecuted after dumping oil in the Bay of Biscay. A patrol aircraft spotted a slick in the water and samples taken from the ship's hold confirmed that the Dobrudja was to blame. In December 2003, the ship's captain was fined €200,000.
- In February 2002, the chief officer of the containership Melbridge Bilbao was convicted for failing asleep while on duty and switching off alarms before the ship grounded on the coast of Brittany.
- In December 2000, the owner and master of the Fareast Victory were charged in absentia with causing pollution after the release of fuel residues. The master initially claimed that he had only washed out his cargo tanks, which had carried coal on a previous voyage; however, he ultimately admitted that coal residues do not produce the type of slick that was present near the Fareast Victory.

**GERMANY**

- In March 2000, the master and chief engineer of the Maltese bulk carrier Mimi Selmer were charged criminally for negligently polluting the water and illegally disposing of hazardous waste after an oil spill on the Baltic Coast.

**SINGAPORE**

- In February 2002, Meridian Petroleum had its licences cancelled as a bunker supplier, for supplying contaminated fuel and because of plans to prosecute it for breach of anti-pollution laws. Meridian failed to comply with the legal requirements for bunker barges and tankers. This crackdown on errant bunkers follows a recent trend in Singapore and the owners and masters of the vessels are to be charged with contravention of the Prevention of Pollution of the Sea Act for failing to maintain oil record books as required.

- In July 1998, the master of the VLCC Orapin Global pleaded guilty to charges of negligence and speeding in connection with an oil spill resulting from a collision. The master was fined and sentenced to two months in jail, and the master of the other vessel was charged with breach of duty and failing to take action to avoid the collision. He also admitted to failing to keep a proper lookout and was fined and sentenced to three months in jail.

**SPAIN**

- In February 2003, the captain of the Prestige was released on a US$3 million bail after being detained in connection with the sinking of the Prestige. The ship sank more than 100 miles off the coast, releasing almost 20,000 tonnes of heavy fuel oil, causing multi-million dollar damage to the fishing and tourist industries.

**THAILAND**

- In December 2002, the government filed a complaint against the operators of the tanker Sky Ace and the cargo ship Kota Wijaya. The ships collided and spilled diesel. A criminal prosecution is ongoing.
- In January 2002, the captain of the Eastern Fortitude was sentenced to six months in jail for failing to report promptly an oil spill after the ship hit a rock and spilled diesel.

**UNITED KINGDOM**

- In August 2002, the owner and skipper of the fishing vessel St Jacques II made history by being the first ‘third party’ to be prosecuted for causing pollution by a tanker. The spill resulted from a collision in the English Channel between the fishing vessel and the Gudermes. The ‘polluter pays’ principle was applied as the collision was caused by the fishing vessel.
- In November 2000, the owners of the shuttle tanker Stena Alexita were prosecuted for violating pollution laws. The owners were fined and forced to pay clean-up costs after being photographed discharging oily water overboard during routine operations, where there was a breakdown in ship’s procedures.
- In August 2000, the owner of the containership Coastal Bay was fined after grounding on a Welsh beach, causing a diesel spill. The owner was found guilty of failing to implement a safe watchkeeping system.
- In 1995, the Milford Haven Port Authority and the harbourmaster were prosecuted for the Sea Empress oil spill for salvage-related issues. Ultimately, the harbourmaster was acquitted.

**VENEZUELA**

- In May 2000, the master of the Nissos Amorgos was convicted in absentia and sentenced to 16 months in prison after a 1997 oil spill in the Maracaibo Channel as a result of a grounding.
UNITED STATES

In 2002 in the United States, there were at least ten prosecutions of vessel cases, resulting in 21 guilty pleas - ten for companies and 11 for individuals. Eight of the 11 individuals were either detained for a lengthy period of time in the US or sentenced to jail for a period ranging from three months to one year. The other three individuals have yet to be sentenced but are likely to spend time in jail. The fines paid by the ten companies exceeded US$25 million, plus almost every company was required to implement a court-supervised environmental compliance plan (ECP), which generally involves millions of dollars more. The majority of the cases brought in 2002 focused on falsifications of oil record books and bypassing of oil-water separators.

Of particular note was the case brought against M/V Khana and M/V Sohoh/Boyang Maritime, Boyang Limited, Oswego Limited, and Trans-Ports International. Four companies that operated and managed the freighters pleaded guilty in Alaska and paid a $5 million fine relating to bypassing oil-water separators, falsification of logbooks and obstruction of justice; the captain of the Khana and two chief engineers pleaded guilty to false statements, obstruction of justice and witness tampering and were sentenced to six months, six months and eight months in prison; a member of the board of directors and two senior shoreside managers also were indicted for conspiracy and obstruction of justice for their roles in bypassing oil-water separators and encouraging crew members to lie about it.

This disturbing trend continued into 2003, with seven vessel cases already prosecuted and many others being investigated. Despite the number of prosecutions, the significant fines and unprecedented prison sentences, vessel owners and operators are seemingly not doing enough to avoid prosecution.

The 2003 prosecutions include the following:

1. Star Evviva (Star Shipping) - January, South Carolina. Billabong II ANS, a Norwegian company that owns the M/V Star Evviva, pleaded guilty to discharging a harmful quantity of oil into the ocean. Billabong and two of the ship's officers were charged in connection with a 23,000 gallon oil spill off the coast of South Carolina. Billabong's plea agreement requires the company to pay fines totalling $500,000. The former ship's captain and chief engineer were indicted for conspiracy to obstruct justice, making false statements, and violations of the Clean Water Act. Billabong terminated both officers' contracts following the incident and they are currently considered fugitives.

2. Ever Group (Evergreen Marine) - March, Washington. Evergreen was fined $67,500 by the state for spilling 500 gallons of oily waste from the Ever Group, a containership. The vessel operator denied responsibility for the spill and did not report it or respond to it. The lab analysis of the oil and fuel samples taken from ships and facilities in the area, however, confirmed that the oily waste came from the Ever Group. The DOJ and the Coast Guard are in the midst of a major criminal investigation.

3. M/V Grand Glory - April, Washington. Ta Tong Marine Co. Ltd, a Taiwanese operator of the Grand Glory, pleaded guilty to making false statements and failure to maintain proper records associated with the ship's handling of
waste oil. If the plea agreement is approved, Ta Tong will pay a fine of $750,000, will be required to implement a comprehensive ECP and will serve four years on probation. The chief engineer also pleaded guilty to making false statements and admitted in the plea agreement that he directed the engine crew to discharge over 20 tons of oily waste through a bypass hose into the ocean, and to falsify records to conceal the illegal discharges. The chief engineer faces up to five years’ imprisonment and $250,000 in fines.

(4) M/V Grumant (Grid Odessa Ltd) – May, Oregon. The operator of the cargo ship pleaded guilty to one felony count of violating the Act to Prevent Pollution from Ships, was fined $275,000 and was placed on probation. The charges resulted from a Coast Guard investigation which began when the Grumant entered port to load. At that time, investigators found evidence that waste water had been dumped overboard. According to the Coast Guard, the Grumant’s oil log indicated that the ship had lawfully incinerated its oily waste; however, the onboard incinerator was not functional.

(5) SS Juneau and SS Trinity (Sabine Transportation) – July, Iowa. Sabine pleaded guilty to eight counts of illegal dumping of waste materials, including oily water, contaminated grain and plastics, from SS Juneau and SS Trinity and for failing to maintain required records. Sabine was fined $2 million and required to implement an ECP.

(6) Muskegon Clipper – August, Washington. The captain of a ferry boat was convicted of conspiracy and violations of the Ocean Dumping Act and APPS and sentenced to two years in prison and three years of supervised release, as the ‘person responsible’ for dumping trash bags full of asbestos and renovation debris into the Gulf of Mexico, the Pacific Ocean and the Caribbean. The crew was carrying out demolition work to convert the ferry into a riverboat gambling casino. The asbestos removal costs were estimated to be $600,000 to $1.7 million. Witnesses reported that ‘hundreds’ of bags were dumped overboard.

(7) M/S Hoegh Meverna – September, Washington. The chief engineer pleaded guilty to obstructing the US Coast Guard’s investigation of intentional dumping of waste oil into the ocean. According to the plea agreement, the chief instructed crew members to construct a ‘magic pipe’ that was subsequently used to bypass the oil-water separator and took steps to conceal evidence of the bypass activity from US Coast Guard inspectors by removing and hiding the bypass pipe, painting the pipe connections in the area where the bypass had been installed and making false and fraudulent entries in the vessel’s oil record book.

(8) Fairmont Shipping – November, Oregon. Canadian shipping company Fairmont Shipping Ltd. pled guilty to discharging oil in the Pacific Ocean in violation of the Act to Prevent Pollution from Ships. The Emerald Bulker’s current and former chief engineers also were indicted in connection with the discharges. The company was sentenced to four years probation and ordered to pay $450,000 in fines. In addition, Fairmont will be required to implement an environmental compliance plan and submit to monitoring by third-party inspectors. A crewmember aboard the ship informed authorities of the illegal discharges and was awarded half the fine under the U.S. Whistleblowers Protection Act.

(9) Norwegian Cruise Lines – December, Florida. Three cruise ship engineers employed by Norwegian Cruise Lines (NCL) were indicted for conspiracy to use false oil record books to conceal illegal discharges without the use of a properly functioning oil water separator. Another engineer aboard the vessel who reported the illegal conduct to authorities was awarded $250,000 pursuant to a bounty provision in the Act to Prevent Pollution from Ships. In 2002, NCL pled guilty and paid a $1 million fine plus $500,000 in community service.

CONCLUSION

The trends discussed above are disturbing and the maritime industry has been put on notice that countries throughout the world will not tolerate pollution. The prosecutions discussed above have ranged throughout the world and throughout all corners of the United States. The prosecutions have also covered almost every type of vessel – from ferries to tankers to car carriers to general cargo ships to cruise ships.

As criminal enforcement continues to gain momentum throughout the world and the threat of criminal liability increases, the maritime industry must recognise that failure to comply with environmental laws places their companies and employees at risk of criminal prosecution, which includes significant fines and imprisonment. It is critical that the industry understands the controlling laws and enforcement mechanisms in the countries in which they do business and take aggressive steps to ensure compliance.

1 In the United States, owners and operators must be sensitive to the protections and awards offered to whistleblowers through various statutes, including the Act to Prevent Pollution from Ships and the Sarbanes-Oxley Act.

2 These cases included the following: M/T Kaede, Unix Line PTE Ltd and Springs Navigation; Norwegian Cruise Lines; M/V Rubin Stella; Guadalupe/DMI Corporation; Allyson/Ionia Management; Cygnus/Fujitran Corporation; Carnival Corporation; M/V Asahi (Fairport Shipping).

OCCUPATIONAL BIOGRAPHY

Jane F. Barrett is a Partner at Blank Rome LLP. She is a member of the firm’s Maritime Practice Group and specializes in maritime and environmental law. Her practice involves issues confronting facilities, vessels and cargo owners on an international, federal and state level. Jane Barrett’s involvement in environmental incidents commonly includes crisis management at the time of the incident, conducting internal investigations, responding to grand jury subpoenas and coordinating with federal and state investigators, as well as compliance counseling.

BIOGRAPHY

Jeanne M. Grasso is a partner at Grid Odessa Ltd. She is a member of the firm’s Maritime Practice Group and specializes in maritime and environmental law. Her practice involves issues confronting facilities, vessels and cargo owners on an international, federal and state level. Jeanne Grasso’s involvement in environmental incidents commonly includes crisis management at the time of the incident, conducting internal investigations, responding to grand jury subpoenas and coordinating with federal and state investigators, as well as compliance counseling.