Pravni fakultet u Rijeci

International regimes on liability and compensation for ship-source pollution

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International regimes governing civil liability for ship source pollution

CLC 1992 FUND 1992 FUND 2003	HNS 1996 PROT. 2010	Bunker 2001
Persistent oil from tankers	**Hazardous and noxious substances**	**Bunker oil**
✓ entered into force	✗ not in force	✓ entered into force

1. International legal framework – CLC/Funds

A) 1969 International Convention on Civil Liability for Oil Pollution Damage (**CLC/69**) entered into force in 1975

1976 Protocol (entered into force in 1981)

1984 Protocol (never entered into force)

1992 Protocol (**CLC/92**) entered into force in 1996

B) 1971 International Convention of the Establishment of an International Fund for Compensation for Oil Pollution Damage (**Fund Convention/71**), entered into force in 1978, not in force since 2002

1992 Protocol (**Fund Convention/92**), entered into force in 1996

2003 Protocol (**Supplementary Fund Protocol**), entered into force in 2005

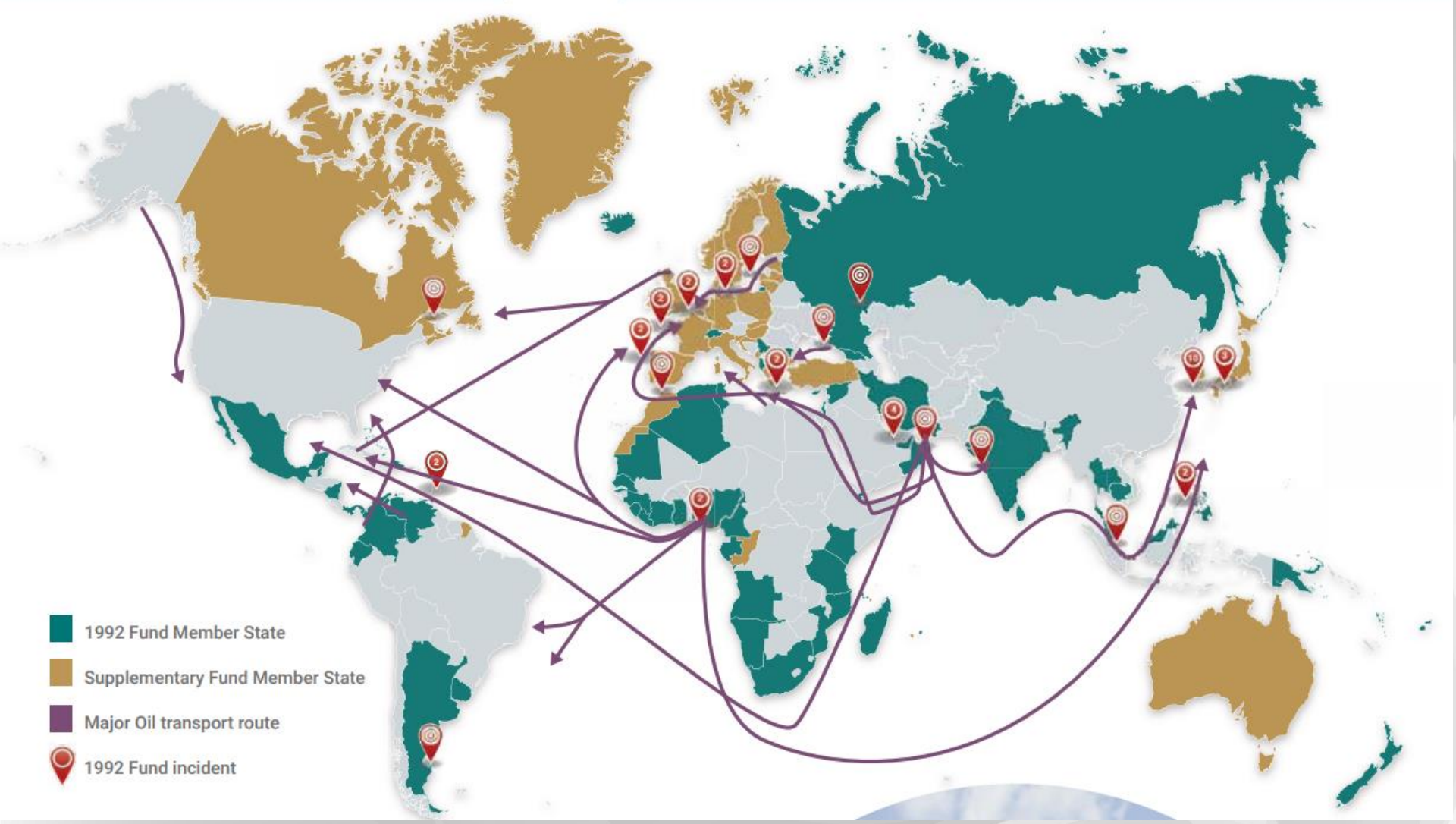
Status of Treaties – CLC/Funds Conventions

OLD REGIME

- **1969 CLC - 32 States Parties** (2,90% of WT)

NEW REGIME

- **1992 CLC - 146 States Parties** (97,55% of WT)
- **1992 Fund Convention 121 States Parties** (94,45% of WT)
  - **25 States Parties** to the **1992 CLC** Convention **but not** to the **FUND Convention**
- **Supplementary Fund Protocol - 32 States Parties** (15,76% of WT)



Source: https://iopcfunds.org/about-us/

International legal framework

HNS Convention

International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS 1996), London – not yet in force

Protocol of 2010 to the HNS 1996 (HNS PROT 2010), London – not yet in force, 6 States Parties (min. 12), 4 of these have more than 2 mill. units of gross tonnage (OK), but total quantity of cargo is to low.

BUNKER

International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001

- adopted on 23 March 2001
- entered into force 21 November 2008
- **104 State Parties** (**95.20%** of the gross tonnage of the world's merchant fleet)

2.a) Scope of application: Geographical criterion Art. II CLC and Art. 2 Bunker

a) pollution damage caused
   i. **in the territory of a Contracting State** (including territorial sea)
   ii. **in the EEZ** or equivalent area of a Contracting State

↳ **geographical criterion** for applicability!

b) preventive measures, **wherever taken,** to prevent or minimize pollution damage

The nationality of the ship is irrelevant!

2.a) Scope of application: Geographical criterion

Art. 3 HNS

(a) to **any damage** caused in the **territory, including the territorial sea, of a State Party**

(b) to **damage by contamination of the environment** caused in the **exclusive economic zone of a State Party**, or, in an equivalent area of a State Party

↳ **geographical criterion** for applicability!

(c) to **damage**, other than damage by contamination of the environment, caused outside the territory, including the territorial sea, of any State, if this **damage has been caused by a substance carried on board a ship registered in a State Party**

↳ **nationality of the ship**

(d) to **preventive measures**, wherever taken, to prevent or minimize such damage as referred to in (a), (b) and (c) above.

2.b) Scope of application: Geographical criterion
UND Adriyatik, Croatia, February 2008

- In February 2008 the cargo (ro-ro) vessel UND Adriyatik (Turkish flag) caught fire in the Croatian EEZ as it was navigating from Istanbul to Trieste
- The ship was carrying 200 trucks, 11tons of the dangerous materials and about of 900 tons of ship fuel oil
- The ship's 22 crew members and 9 passengers were rescued

The Croatian competent bodies have been taken preventive measures to prevent pollution damage and the environmental disaster has been alerted!!!
At the time of the incident the **Croatia was state party to the 1992 CLC/Fund regime - State party to the Bunker Convention has become in November 2008!**

2.b) Scope of application: Geographical criterion
UND Adriyatik, Croatia, February 2008

Question: Weather and which international liability regime could we apply to the issue of the compensation of the costs of preventive measures taken by Croatian bodies?

- No pollution occurred!!!
- UND Adriyatik was a cargo ship!!!
- It was carrying trucks, dangerous materials, fuel oil!!!
- The incident occurred in the Croatia EEZ (outside of its TW)!!!
- At the time of the incident Croatia was state party only to the 1992 CLC/Fund regime!!!!

2.b) Scope of application: Definition of the ship

CLC

"Ship" means any sea-going vessel and seaborne craft of any type whatsoever **constructed or adapted for the carriage of oil in bulk as cargo**, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship **only when it is actually carrying oil in bulk as cargo** and during **any voyage following such carriage unless it is proved that it has no residues of such carriage** of oil in bulk aboard (Art. I/1.1. CLC)

→ **OIL TANKER**

BUNKER CONVENTION and **HNS**

- any seagoing vessel and seaborne craft, of any type whatsoever (Art. 1/1/1 HNS, Art. 1/1/1 Bunker Convention).

2.b) Scope of application: Definition of the ship Exclusions

CLC, Bunker Convention and HNS

Provisions of those Conventions shall not apply to

- warships and naval auxiliary
- ships owned or operated by state and used on government non-commercial service (Art. 4/4 HNS, Art. 4/2 Bunker Convention)

Bunker Convention shall not apply to pollution damage as defined in the CLC.

tankers (when carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard) **are excluded** (Art. 4/1 Bunker Convention)

HNS: damage has to be in connection with their carriage by sea on board the ship (Art. 7/1 HNS)

does not apply to bunker oil

2.b) Scope of application: Definition of the ship
Questionable interpretation: *Slops* incident

***Slops* incident** (Greece, 2000)

– originally designed and constructed for the carriage of oil in bulk

– major conversion, officially sealed, permanently at anchor, used exclusively as waste storage and processing unit

Question: Should *Slops* be regarded as a ship for the purpose of the 1992 Conventions?

Fund Assembly:

- FSUs and FPSOs should be regarded as "ships" under the 1992 Conventions **only when they carry oil as cargo** on a voyage to or from a port or terminal **outside the oil field** in which they normally operate.

2.b) Scope of application: Definition of the ship Nathan E. Stewart/DBL 55ATB, Canada

On 13 October 2016, the articulated tug-barge (ATB) composed of the **tug** *Nathan E. Stewart* and the tank **barge** *DBL 55* ran aground approximately 10 nautical miles west of Bella Bella, British Columbia, Canada - ***state party of the 1922 CLC/Fund regime, Bunker Convention***

- The tug's hull was eventually breached and approximately 107 552 litres of diesel bunker oil and 2 240 litres of lubricants were released into the environment and caused pollution damage. The tug subsequently sank and separated from the barge
- At the time of the incident, the barge was empty and therefore, was not carrying oil in bulk as cargo

2.b) Scope of application: Definition of the ship Nathan E. Stewart/DBL 55ATB, Canada

Question: Whether the *Nathan E. Stewart* could be considered a 'ship' under Article I(1) 1992 CLC?

(… ship capable of carrying oil and other cargoes shall be regarded as a ship ONLY when it is actually carrying oil in bulk as a cargo and during any voyage following such carriage unless is proved that it has no residues of such carriage of oil in bulk aboard)

Question: Whether it was carrying any persistent oil during any previous voyage?

(at the time of the incident the barge was not carrying oil in bulk as cargo. In addition, it has not been established whether during any previous voyage it had carried any persistent oil in bulk as cargo. Its last known cargo was jet fuel and gasoline, which are non-persistent products!!!)

2.b) Scope of application: Definition of the ship Nathan E. Stewart/DBL 55ATB, Canada

Question: Applicability of the 1992 CLC/Fund regime?

NO - **The barge is not a 'ship'** because at no time did it carry any type of persistent oil as cargo!!

- × at the time of the incident it was not carrying oil in bulk as a cargo
- × previous voyage – it was carrying non-persistant oil

- **The tug is not a 'ship'** because it was not capable of carrying oil as cargo.

- The diesel fuel and lubricants that were released during the incident were bunkers used solely for the operation or propulsion of the tug!!!

Question: Can we apply Bunker Convention?

2.c) Scope of application: Definition of pollutant

CLC, Art. I/1.5.

"**Oil**" means any **persistent** hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as **cargo** or **in the bunkers** of such a ship.

✗ gasoline, light diesel oil, kerosene, non-mineral oil (palm oil, whale oil…)

Bunker Convention, Art. 1/1/5

"**Bunker oil**" means any hydrocarbon mineral oil, including lubricating oil, **used or intended to be used for the operation or propulsion** of the ship, and any **residues of such oil**.

Question: Is this overlap of pollutants covered by CLC and Bunker Convention a problem?

2.c) Scope of application: Definition of pollutant

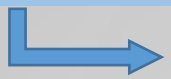
HNS, Art. 1/1/5

(a) any substances, materials and articles carried on board a ship as cargo,

i. oils carried in bulk (MARPOL 73/78, Annex I)
ii. noxious liquid substances carried in bulk (MARPOL 73/78, Annex II)
iii. dangerous liquid substances carried in bulk (IBC Code, Chapter 17)
iv. dangerous, hazardous and harmful substances, materials and articles in packaged form (IMDG Code)
v. liquefied gases (IGC Code)
vi. liquid substances carried in bulk with a flashpoint not exceeding 60°C
vii. solid bulk materials possessing chemical hazards (covered by the BC Code)

(b) residues from the previous carriage in bulk of substances referred to in (a)(i) to (iii) and (v) to (vii) above.

Question: Is this overlap of pollutants covered by HNS on one side and CLC and Bunker Convention on the other side a problem?



See Art. 4 HNS

3. Definition of damage

CLC and Bunker Convention (very similar in Art. 1/6 HNS)

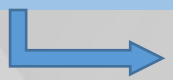
"Pollution damage" means:

(a) **loss or damage caused outside the ship** by contamination resulting from the escape or discharge of oil [BK: bunker oil, from the ship, wherever such escape or discharge may occur, provided that **compensation for impairment of the environment** other than loss of profit from such impairment shall be limited to **costs of reasonable measures of reinstatement** actually undertaken or to be undertaken;

(b) the **costs of preventive measures** (any reasonable measures taken to prevent or minimize pollution damage) and further loss or damage caused by preventive measures.

HNS: **loss of life or personal injury** on board or outside the ship carrying the HNS and caused by those substances (Art. 1/6 HNS) + **damages to property**

Question: Are the HNS provision on damage caused by death or personal injury and to property applicable to damages caused by oil tankers?



See Art. 4 HNS

3.a) Admissible claims: Pollution damage

- **property damage** (fishing gear, fishing boats, yachts, piers…)
- **economic losses** of people engaged in fisheries and mariculture, losses in tourism sector) if there is **direct link or causation** between incident and damage and damage can be **certain and expressed in monetary terms**
    - **consequential economic loss** – due to the non-use of the contaminated property (for example – fisherman's loss of income because he's unable to fish while his fishing gear is being cleaned)
    - **pure economic loss** – losses of persons whose property has not been damaged (for example – hotelier or restaurateur whose premises are close to the beach and suffer damage because of the decrease of guests…)

Importance of the 1992 Fund's Claims Manual – contains criteria for admissibility

Environmental damage, other than those of economic nature are excluded.

3. Definition of damage – Environmental damage Erika, France 1999

- The incident occurred on 12 December 1999
- Maltese 19,666 grt tanker *Erika* broke in two in the Bay of Biscay some 60 nautical miles off the coast of Brittany, France
- The tanker was carrying a cargo of 30,000 tonnes of heavy fuel oil of which some 14,000 tonnes were spilled. An estimated quantity of about 10,000 tonnes of cargo remained in the bow section and a further 6,000 tonnes in the stern section,
- The casualty was an exceptionally serious oil pollution incident, which affected 400 km of France coastline
- At the time of the incident France was state party to the 1992 CLC/FUND regime.

3. Definition of damage – Environmental damage Erika, France 1999

- Claims for damage to the **marine environment *per se*** not admissible under the 1992 Convention!!!
- Only claims for the economic consequences of damage to the environment qualify for compensation (losses suffered by fishermen or businesses in the tourism industry resulting from such damage and claims for reasonable costs of reinstatement of the polluted environment)!
- **ERICA case – the French courts awarded compensation for the environmental damage *per se* – this does not contravene the CLC** since **liability was not based on the Convention** -the judgments by the Court of Appeal and Court of Cassation were rendered against four defendants other than the registered owner, who were deemed not to be entitled to benefit from the channelling provisions, and their **liability was based on French domestic law.**

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3. Definition of damage – Environmental damage Erika, France 1999

- awarded compensation in respect of pure ecological damage defined by the Court as 'all non-negligible damage to the natural environment, notably the air, the atmosphere, water, the soil, land, countryside, natural sites, the biodiversity and interaction between these elements, which has no repercussions on specific human interest but affect a legitimate public interest.
- proclaimed the existence of a right to compensation through monetary equivalents for ecological damage to resources which do not have a market value.
- accepted moral damage resulting from the pollution, including loss of enjoyment, damage to reputation and brand image and moral damage arising from damage to the natural heritage.
- gave the right to claim compensation for environmental damage to persons having been entrusted with the task of maintaining and improving the environment, i.e. local and regional authorities which under French law had the mission to protect the environment as well as associations for the protection of the environment

3. Definition of damage – Environmental damage Erika, France 1999

The challenges faced by CLC/FUND regime

?? uniform interpretation and application of the international regime

-The French courts applied a concept as to the types of damage compensable in cases of tanker oil spills which is different from the concept in the international conventions. Such an approach could lead to the creation of parallel systems of compensation for such oil spills.

?? legal status of the IOPC Fund's Criteria for admissibility of compensation claims

-not binding on national courts, which may lead to differences in interpretation between jurisdictions of states parties to these treaties, the importance of national courts in states parties giving due consideration to the decisions by the governing bodies of the Funds on the interpretation and application of the Conventions.

4.a) Liable persons: Owner

CLC, Bunker Convention, HNS

…**the owner** of a ship at the time of an incident shall be liable …

BUT, there are different definitions of the owner!

A) CLC and HNS (Art. I/1.3 CLC, Art. 1/1/3 HNS)

"**Owner**" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship

B) Bunker Convention (Art. 1/1/4 Bunker Convention)

"**Shipowner**" means:

a) the owner of the ship (including registered owner),

b) bareboat charterer,

c) ship's manager,

d) ship's operator

Persons falling within the definition of the owner are **jointly and severally liable**

No claim shall be made against the owner otherwise than in accordance with those Conventions.

4.b) Liable persons: Channelling of liability

Art. III/4 CLC and Art. 7/5 HNS

No claim for compensation for damage under this Convention or otherwise may be made against: servants, agents, crew members, pilot, any other person who performs services for the ship, any charterer, manager or operator of the ship, persons performing salvage operations, person taking preventive measures and all servants or agents of mentioned persons

unless the damage resulted from their **personal act or omission**, committed with the **intent to cause such damage**, or **recklessly and with knowledge that such damage would probably result.**

CHANNELLING OF LIABILITY – OWNER

BUT – the owner has the **right of recourse**

Bunker Convention – does not provide for such a privilege

4.b) Liable persons: Channelling of liability Erika, France 1999

- After incident a number of public and private bodies brought actions in various courts in France
- The Court of Cassation held the following parties criminally liable for the offense of causing oil pollution:
  - the representative of the registered shipowner,
  - the president of the management company,
  - the classification society (Rina),
  - Total Sa.
- The Court held the four criminally liable parties also civilly liable, jointly and severally, for the oil pollution resulting from the Erika.
- France is a state party to the 1992 CLC/FUND regime, but the 1992 CLC only governs the liability of the registered shipowner. The liability of all other parties is to be determined pursuant to the applicable national law (in *ERICA* case – French national law) except if the person in question is entitled to benefit from the protection of the channelling provisions in the Convention!

4.b) Liable persons: Channelling of liability Erika, France 1999

- **RATIO** – exclude liability of various parties other than the owner (listed in art.III.4.(c) of the 1992 CLC) of the ship. In other words, these parties are not only free from liability for oil pollution under the Conventions, but are indeed immune from any liability they might have incurred for it on some other basis

- **BUT the exemption from liability will be lost** if the damage resulted from the **defendant's personal act or omission,** committed with the **intent** to cause such damage, or **recklessly and with knowledge** that such damage would probably result.

4.b) Liable persons: Channelling of liability Erika, France 1999

Question: Who was the charterer of the ERICA?

TOTAL SA (holding company) – exercising a power of control over the ship accepted for the charter

TOTAL TC (subsidiary of the TOTAL - voyage charterer)

Paris High Court - TOTAL SA was not to be entitled to rely on the channelling provisions because it was neither the charterer of the tanker nor a servant or agent of the owner! TOTAL have acted imprudently in approving the ship for charter by its subsidiary TTC - it is jointly and severally liable with other defendants liable for pollution damage

Court of the Appeal/Court of the Cassation - TOTAL SA is *de facto* the charterer of the ERICA, and channelling provision applied to the civil claims against TOTAL SA!!!

4.b) Liable persons: Channelling of liability Erika, France 1999

Question: Weather TOTAL SA could be exempted from liability under channelling provision?

Court of the Appeal

NO - the imprudence committed in its vetting of the ship **did not involve intent** to cause pollution damage**, or recklessness with knowledge** that such damage would probably result!!!

Court of Cassation

YES - Total could not rely on the channelling provisions because the **damage had resulted from its recklessness**!!!!

5.a) Liability for damage

Art. III/1 CLC, Art. 3 Bunker Convention, Art. 7 HNS

…the owner of a ship at the time of an incident… shall be liable for any pollution damage caused by the ship as a result of the incident.

↳ **STRICT LIABILITY**

5.b) Liability for damage: Exemptions

Art. III/2 CLC, Art. 3/3 Bunker Convention and Art. 7/2 HNS

No liability for pollution damage shall attach to the owner **if he proves** that the damage:

(a) resulted from an act of **war, hostilities, civil war, insurrection** or a **natural phenomenon** of an exceptional, inevitable and irresistible character (*vis major*), or

(b) was **wholly** caused by an **act or omission done with intent** to cause damage by a **third party**, or

(c) was **wholly** caused by the **negligence or other wrongful act** of any Government or other **authority responsible for the maintenance of** lights or other **navigational aids** in the exercise of that function.

5.b) Liability for damage: Exemptions

Additionally - HNS

(d) the **failure of the shipper or any other person to furnish information** concerning the hazardous and noxious nature of the substances shipped either

(i) has caused the damage, wholly or partly; or

(ii) has led the owner not to obtain insurance in accordance with article 12;

provided that neither the owner nor its servants or agents knew or ought reasonably to have known of the hazardous and noxious nature of the substances shipped.

5.b) Liability for damage: Exemptions

Art. III/3 CLC, Art. 3/4 Bunker Convention, Art. 7/3 HNS

If the owner proves that the pollution **damage resulted wholly or partially** either from an act or omission done with intent to cause damage by the **person who suffered the damage** or from the negligence of that person, the owner may be exonerated wholly or partially from his liability **to such person**.

BUT, his liability to other persons is not affected!!

5.c) Liability for damage: Liability in case of incident involving two or more ships

Art. IV CLC, Art. 5 Bunker Convention, Art. 8/1 HNS

When an incident involving two or more ships occurs and pollution damage results there from, the owners of all the ships concerned, unless exonerated, shall be **jointly and severally liable** for all such damage which is not reasonably separable.

6. Limitation of liability

Art. V/3, 4, 8 and 11 CLC and Art. 9 HNS

- for the purpose of benefitting from the limitation of liability, the **owner or the insurer** shall **constitute a fund**
- the fund shall be distributed among the claimants **in proportion to the amounts of their established claims**
- claims in respect of expenses reasonably incurred or sacrifices reasonably made by the **owner** voluntarily to prevent or minimize damage shall rank equally with other claims against the fund

Art. 11 HNS

Claims in respect of **death or personal injury have priority** over other claims save to the extent that the aggregate of such claims exceeds two-thirds of the total amount.

6.a) Limitation of liability: CLC

Art. V/1 CLC

The owner of a ship shall be **entitled to limit his liability** under this Convention in respect of any one incident to an aggregate amount calculated as follows:

(a) **4.510,000 units of account (SDR)** for a ship not exceeding 5,000 units of tonnage;

(b) for a ship with a tonnage in excess thereof, **for each additional unit of tonnage**, 631 units of account (SDR) in addition to the amount mentioned in sub-paragraph (a);

provided, however, that this aggregate amount shall **not in any event exceed 89.770,000 units of account.**

6.b) Limitation of liability: HNS

Art. 9/1 HNS

The owner of a ship shall be entitled to limit liability

a) Where the damage has been caused by **bulk HNS**:

(i) 10 million SDRs for a ship not exceeding 2,000 GT

(ii) + for each GT in excess thereof additional SDRs

BUT aggregate amount shall not in any event exceed **100 million SDRs.**

b) Where the damage has been caused by **packaged HNS:**

(i) 11.5 million SDRs for a ship not exceeding 2,000 GT

(ii) + for each GT in excess thereof additional SDRs

BUT aggregate amount shall not in any event **exceed 115 million SDRs.**

1 SDR = 1.300180 US$ (September, 2 2022)

6.c) Limitation of liability: Bunker Convention

Art. 6 Bunker Convention

- doesn't contain a special regime of liability as regards limitation of liability
- the shipowner can limit liability according to applicable national or international law

BUT POSSIBLE PROBLEMS

- different international instruments regulating subject matter
- number of states have not ratified either of those instruments
- possible unlimited liability when national law does not provide for limitation of liability

- the bunker claims will compete with other claims to the limitation applicable – a single limitation amount for the aggregate liabilities (for other types of claim)
- LLMC does not grant explicitly the right of limitation as regards pollution claims (especially problematic are claims for pure economic loss – fishermen and tourism)

6.d) Limitation of liability: Loss of right to limitation of liability

Art. V/2 CLC, Art. 9/2 HNS, Art. 4 LLMC 96

The owner shall not be entitled to limit his liability under this Convention **if it is proved** that the pollution damage resulted from his **personal act or omission**, committed with the **intent to cause such damage, or recklessly and with knowledge that such damage would probably result.**

7.a) Compulsory liability insurance

Art. VII CLC

The **owner** of the tanker **carrying more than 2000 tonnes of persistent oil as cargo** is obliged to maintain insurance to cover its liability under CLC.

Art. 12 HNS

The **owner** of a ship **actually carrying HNS** is required to maintain insurance or other financial security in the amount of its limits of liability (**irrespectively of the ships' tonnage**)

Art. 7 Bunker Convention

The **registered owner** of a **ship of over 1000 gt** is required to maintain insurance or other financial security (bank guarantee or other financial institution) to cover an amount **equal to limits of liability under the applicable national or international regime**, but max. amount calculated in accordance with the LLMC 76/96

7.a) Compulsory liability insurance

CLC, Bunker Convention, HNS 2010

- **compulsory insurance certificate**
  - attesting that insurance or other financial security is in force
  - shall be carried on board the ship

- **right of direct action against the insurer**
  - insurer is entitled to limitation of liability
  - may invoke the same defences as the owner (except bankruptcy od winding up of the shipowner)
  - may invoke that the damage resulted from the wilful misconduct of the shipowner

7.a) Compulsory liability insurance Alfa1, March 2012, Greece

- Greek- flagged tanker
- Shipowner – Via Mare SC, Greece
- Use for the carriage of oil in bulk
- On 5 March 2012 in Piraeus hit a submerged object and sank, unknown quantity of oil was released from Alfa 1
- At the time of the incident Alfa 1 was loaded with **1800 tonnes of cargo!**
- Aigaion Insurance Co SA (Aigaion) – had insured the ship for civil liability for pollution damage according to the CLC 92, Piraeus Port Authority issued CLC certificate (art. 7.2 of the CLC 92)

7.a) Compulsory liability insurance
Alfa1, March 2012, Greece

EPE (*Environmental Protection Engineering* – clean-up contractor, sued both the shipowner and insurer to pay for its services (cost for preventive measures taken after the incident - EUR 15 million)

- the shipowner refused to pay compensation,
- insurer defense – in this case the ship was carrying less then 2,000 tons of persistent oil as cargo at the time of the incident – the shipowner was not obliged to maintain the insurance and there is no room for the application of the art.7.8 of the CLC (claim may not be brought directly against the insurer)

Question: Does the carried amount of oil constitute a condition for the establishment of the insurer's liability pursuant to the CLC 92?

7.a) Compulsory liability insurance
Alfa1, March 2012, Greece

Greek Supreme Court judgment

-The shipowner's obligation to insure its civil liability from pollution damage refers to every tanker with a carrying capacity of more than 2,000 tons of bulk in oil (the definition of ship covers all tanker that are capable of carrying oil in bulk as a cargo, regardless of actual carriage)

(The wording of Article VII(1) of CLC 'carrying more than 2000 tons of oil in bulk as cargo' **should be interpreted to mean capable of carrying more than 2000 tons)**

The financial security/insurance relates to ship's ability to carry persistent oil in excess of 2,000 tons irrespective of the actual quantity carried on board !!!

8.a) The International Oil Pollution Compensation Funds: IOPC Fund 1992 (2nd tier) and Supplementary Fund (3rd tier)

Legal framework:

OIL POLLUTION:

- 1992 Fund Convention (2nd tier)
- Supplementary Fund Protocol (3rd tier)

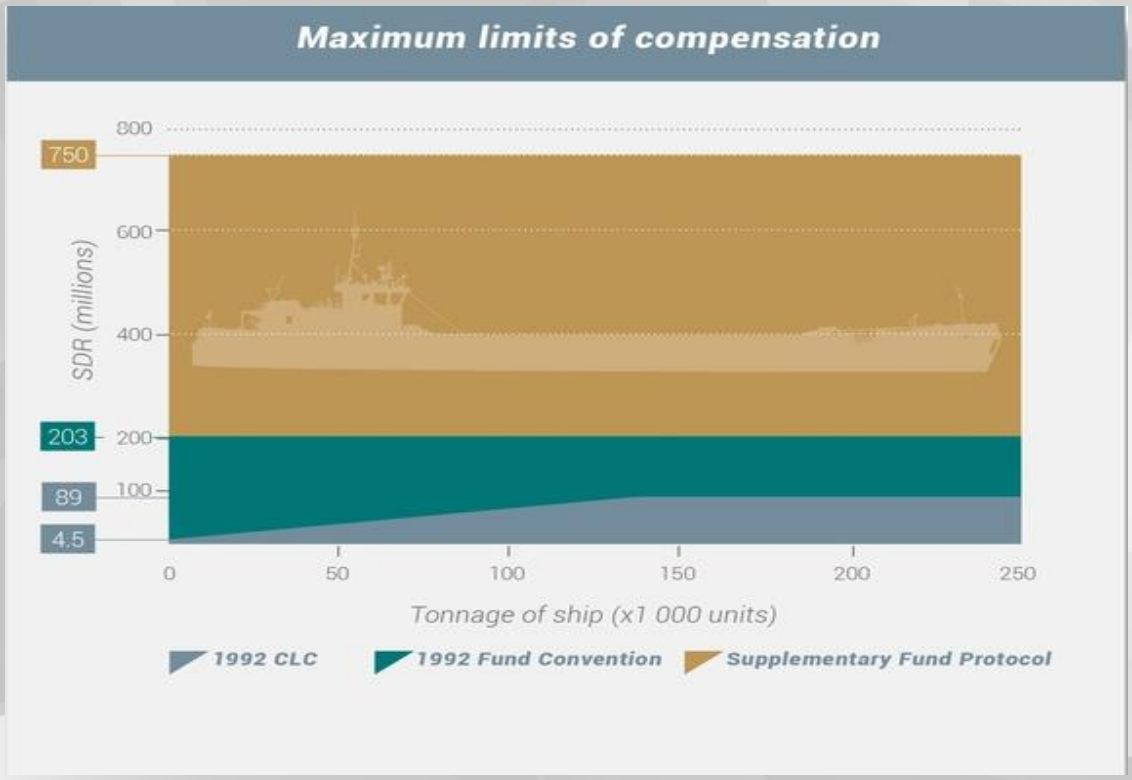
HNS

- **HNS 2010**

BUNKER X

8. Compensation in 2nd (and 3rd) tier

IOPC Funds (oil)

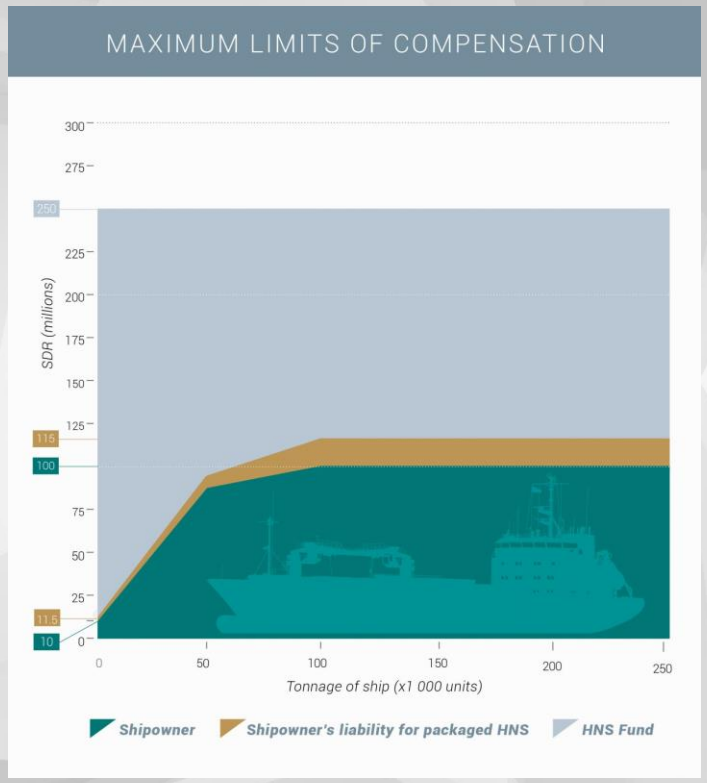


2nd tier – max. 203 million SDR

3rd tier – 750 million SDR

– paid by OIL RECEIVERS

HNS 2010



2nd tier – max. 250 mil. SDR

- paid by persons receiving contributing cargo (bulk HNS)

8.a) Compensation in 2nd tier

Art. 4 FUND Convention, Art. 14 HNS

Pays compensation when the compensation under the first tier is not obtained or is not obtained in full:

- ✓ because no liability for the damage arises under CLC / chapter II of HNS
- ✓ because the shipowner is **financially incapable** of meeting the obligations in full and financial security does not cover or is insufficient to satisfy the claims for compensation for damage
- ✓ **damage exceeds the ship owner's liability**

Not applicable:

- **damage** occurs **in State is not party to the Conventions**
- damage is caused by **an act of war, hostilities, civil war or insurrection**
- damage is caused by **spill from a warship**
- **claimant can not prove it came from a ship** ("mystery spill")

8.a) Compensation in 2nd tier: Mystery spill - Incident in Israel, February 2021.

- Pollution affected the coastline of the Israe l- resulted in property damage and economic loses, costs of clean-up operations
- Source of pollution was unknown!!!
- Israel authorities tried to locate suspected ships,
- Israel is state party to the 1992 CLC/Fund regime.

Question: Does the IOPC Fund provide compensation in the event of the mystery spill?

8.a) Compensation in 2nd tier: Mystery spill - Incident in Israel, February 2021.

The authorities of the affected state party

- must establish that the oil spilled was crude oil and not fuel oil!!!

- must establish that the crude oil found on the coastline could not have originated from any other source such as a pipeline, refinery or oil tank and that its origin must have been a passing oil tanker!!!

- Israel authorities have successfully proved that pollution originated from passing tanker – **IOPC Fund will provide compensation to the pollution victims!!!**

	CLC 1992	FUND 1992 Supp. FUND	Bunker Convention	HNS
Polluting substance	Persistent hydrocarbon mineral oil	Persistent hydrocarbon mineral oil	Bunker oil	Over 6000 hazardous and noxious substances
Liability and compensation	Strict liability of the owner, channeling of liability, direct action - insurer	- Compensation paid by oil receivers	Strict liability of the owner, no channeling of liability, direct action – insurer	Strict liability of the owner, channeling of liability, direct action – insurer + Compensation paid by HNS receivers
Limitation	Special limitation regime, 1st tier, linked to GT	2nd tier, max. 203 million SDR 3rd tier, max. 750 million SDR	Global limitation of liability	Special limitation regime, 1st tier (linked to GT) and 2nd tier, max. 250 million SDR
Compulsory insurance	Yes	No	Yes	Yes, amount of the 1st tier
Damage	Pollution damage + preventive measures		Pollution damage + preventive measures	Death and personal injury + pollution damage + preventive measures

Thank you for your attention!