



## International Conventions for marine pollution

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24 August 2022



## Overview

### Today's presentations (Parts one and two)

1. The liability and compensation regime for oil spills from tankers and the role of the IOPC Funds
2. Other International Conventions for Marine Pollution



Source: IOPC





## Scope of presentations

*After the incident*



Focus of today's presentations:

**Liability and compensation** issues arising from an incident

- Who is liable to pay for the damage and the costs?
- What kind of damage and costs are compensated?

Prevention of  
Marine Pollution

Incident  
Response to  
Marine Pollution

Liability and  
Compensation for  
Marine Pollution



## Overview of Conventions

*IMO Conventions for marine pollution*



IMO has developed several Conventions for dealing with liability and compensation arising from marine pollution

Conventions	Type of substance
Civil Liability Convention Fund Convention	Persistent Oil (cargo & bunker)
Bunkers Convention	Bunker Oil
HNS Convention	Hazardous and Noxious Substances (HNS)

**Convention on Limitation of Liability for Maritime Claims (LLMC)**  
 → dealing with the limitation of liability for various types of claims

These Conventions create **international uniformity** in maritime law



## Bunkers Convention

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



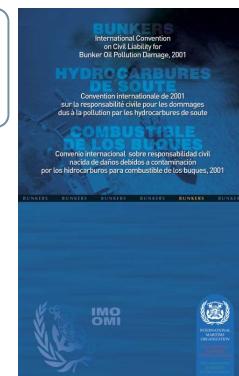
## Outline of the Convention

### *Scope of application*

This Convention applies to:

- pollution damage caused by spills of bunker oil from ships in the territory (including territorial sea) and exclusive economic zone (or equivalent) of Member States
    - cf. definitions (Article 1)
- ‘pollution damage’: same as the 1992 CLC  
 ‘bunker oil’: persistent & non-persistent oil  
 ‘ship’: any seagoing vessel

Bunker Convention does NOT apply to  
pollution damage defined under the 1992 CLC  
(Article 4.1)





## Bunkers Convention *Legal framework*

### Current regime

Bunkers Convention 2001  
(104 Member States)

As at 14 June 2022



## How the Convention works *Single Tier system*

Bunkers Convention is modelled on the 1992 CLC

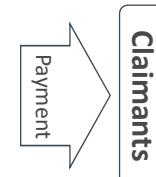
Source of money

Shipowner



Paying organisation/  
Compensation regime

Insurer  
First Tier



Claimants

Why no second tier?

- It was considered that such a regime would be sufficient in most cases to ensure full compensation



## Bunkers Convention Shipowners' liability

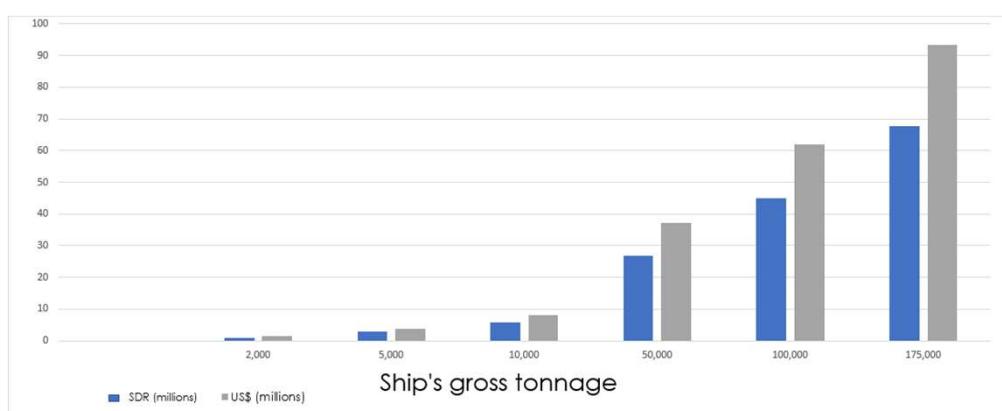
### Main features

- Strict liability of 'shipowner'
  - registered owner
  - bareboat charterer
  - manager
  - operator
- NO provision for channelling of liability to registered owner
- Limitation of liability based on the LLMC 1976/1996
- Few exceptions to liability (same as the 1992 CLC)



## Bunkers Convention

*Limitation of liability based on the LLMC 1976/1996*



**IGP&I** International Group of P&I Clubs



## Bunkers Convention

### *Other features*



- Registered owner (vessels greater than 1 000 GT) required to have **compulsory third party insurance** and certificate

General view: Oil tankers are required to have both the CLC certificate and Bunkers Convention certificate

- **Direct action** against insurer available (same as the 1992 CLC)

- **Time bar** (same as the 1992 CLC)
- **Jurisdiction, enforcement of judgment** (same as the 1992 CLC)



## HNS Convention

International Convention on Liability and Compensation for  
Damage in Connection with the Carriage of  
Hazardous and Noxious Substances by Sea, 2010





## Outline of the Convention

### *Scope of the Convention*

The purpose of this Convention is to provide compensation for loss or damage to persons, property and the environment arising from the carriage of HNS by sea  
 (HNS: Hazardous and Noxious Substances)

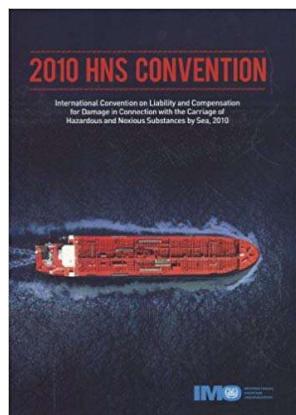


HNS Convention is the last gap in the compensation regime from ship-source pollution



## The HNS Convention

### *An introduction*



2010 HNS Convention combines:

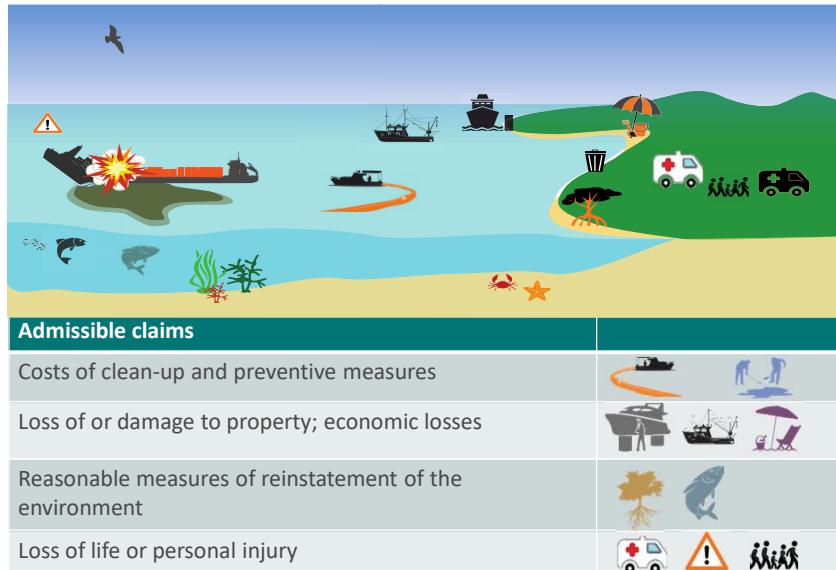
- The 1996 HNS Convention
- The 2010 HNS Protocol

2010 HNS Protocol addressed the practical problems perceived to prevent many States from ratifying the original Convention BUT it is still not yet in force.



## The HNS Convention

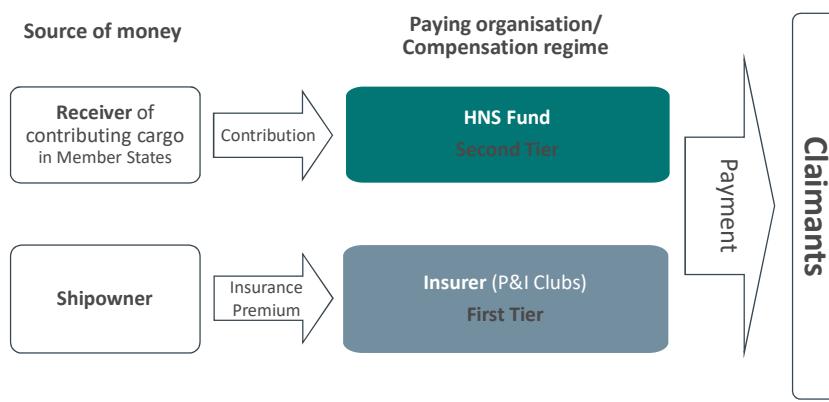
*Which claims are covered*



## How the Convention works

*Two Tier system*

HNS Convention is based on the international oil pollution compensation model





## Liability of shipowner

*First Tier*

### Main features

- Strict liability
- Limitation of liability
- compulsory third party insurance and certificate
- Direct action against insurer
- Few exceptions to liability



## HNS Fund

*Second Tier*



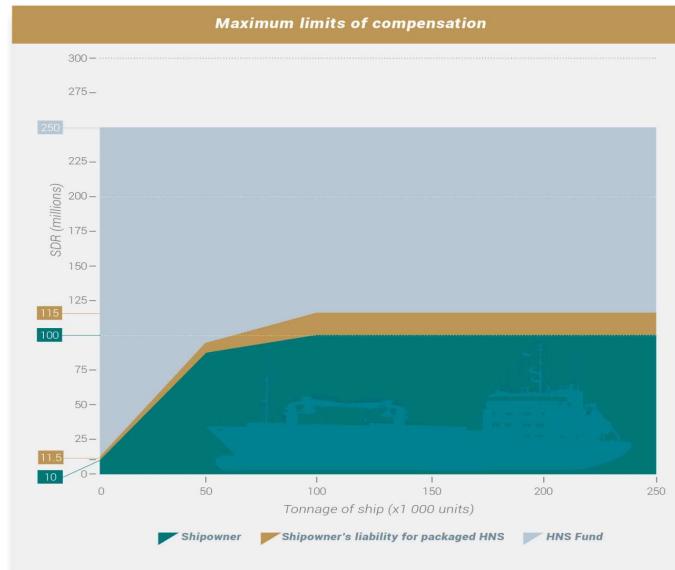
### Main features

- Pays compensation when:
  - damage exceeds shipowner's liability limit
  - shipowner financially incapable of meeting their obligations
  - no shipowner's liability
- Maximum compensation **SDR 250 million**, including shipowner's liability
- Contributions from **receivers of contributing cargo** in States Parties to the Convention
- Very limited exceptions
  - damage resulted from an act of war,
  - damage caused by a State ship
  - claimant cannot prove that damage resulted from incident involving ship(s)



## The Convention in figures

### Liability limits



## The HNS Convention

### Scope of application

This Convention applies to (Article 3):

- any damage caused in the territory or territorial sea of Member States
- Damage by contamination of the environment in the exclusive economic zone of Member States
- damage other than by contamination of the environment outside the territory or territorial sea of any State caused by HNS on a ship registered in Member State.
- costs of preventive measures wherever taken

Compared to the Civil Liability Convention, the applicable geographical area is wider.



## The HNS Convention

### *Scope of application*

This Convention does NOT apply to:

- pollution damage as defined in the **1992 CLC** (whether or not compensation is payable)
- damage caused by a **radioactive material** (in the IMDG Code or IMSBC Code)
- optional – ships up to 200 GT doing cabotage and carrying HNS in packaged form only



## The HNS Convention

### *Definition of 'damage'*

- **Loss of life or personal injury** on board or outside the ship carrying HNS caused by those substances
- **Loss of or damage to property** outside the ship carrying HNS caused by those substances
- **Loss or damage by contamination** of the environment caused by HNS
- Cost of **preventive measures**, further loss or damage caused by preventive measures

**Damage caused by bunker of the ship is not covered under the HNS Convention**



## The HNS Convention

### What is HNS?



HNS defined by reference to a list of individual substances previously identified in a number of IMO International Conventions and Codes



Substances Carried in bulk	
I Oils	Regulation I Appendix I MARPOL 73/78
II Liquids	Regulation 1.10 Annex II MARPOL 73/78
III Liquids	Chapter 17 of IBC Code
V Gases	Gases - Chapter 19 of IGC Code
VI Liquids	Flammable/combustible liquids having a flash point not exceeding 60°C
VII Solids	Both in IMSBC Code and IMDG Code in effect in 1996

Packaged goods	
IV	IMDG Code

*Detail of the definition can be found in Article 1.5 (2010 HNS Convention)*



## Time bar

### Limitation of actions



Rights to compensation shall be extinguished unless:

- action against shipowner/ insurer/HNS Fund is brought within **3 years** from the **date of damage**
- however, in no case shall an action be brought after **10 years** from the **date of the incident**



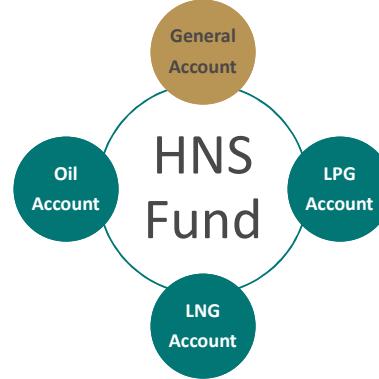
## HNS Fund

*Four separate accounts*

There is **one general account** (bulk solid sector and other HNS sector) and **three separate accounts** in the HNS Fund.

Each account will meet the cost of compensation payments (no cross-subsidization).

Each account activated when the total quantity of contributing cargo reaches the required threshold.



## HNS Fund

*Accounts and reports*

Each account has a different threshold for its establishment:

	Threshold for Establishment of account	Threshold for contribution
General Account • Bulk solids • Other HNS	40 million tonnes*	20 000 tonnes
Oil Account • Persistent oil • Non-persistent oil	350 million tonnes	150 000 tonnes 20 000 tonnes
LPG Account	15 million tonnes	20 000 tonnes
LNG Account	~20 million tonnes	No minimum

\*Condition for entry into force

- Member States are required to report to the HNS Fund the name and address of receivers, with the quantities of cargo received by each
- No compensation is payable by the HNS Fund until these reporting obligations have been fulfilled **except for death and personal injury**



## The HNS Convention

*Legal framework*

### Current regime

#### 2010 HNS Convention

- The 1996 HNS Convention
  - The 2010 Protocol
- (6 Ratifications)

As at 1 August 2022



## Current status of the Convention

### Current status

- 6 Contracting States:
- Norway (21/4/17)
  - Canada (23/4/18)
  - Türkiye (23/4/18)
  - Denmark (28/6/18)
  - South Africa (16/7/19)
  - Estonia (10/1/22)
- 4 Signatories: France, Germany, Greece, Netherlands



Source: IMO

### Requirements

When minimum of

**12 States ratify**

Protocol enters into force

**18 months later**

1. Including 4 States each with fleet greater than **2 million** gross tonnage
  - ✓ Achieved
2. Total general account's contributing cargo volume at least **40 million tonnes**



## Role of IOPC Funds

### April 2010—Adoption of the 2010 HNS Protocol

- Resolution 1 of the International Conference requests the 1992 Fund Assembly to instruct the IOPC Funds to carry out tasks necessary to set up the HNS Fund

### October 2010—1992 Fund Assembly instructed the Director:

- To carry out the administrative tasks for setting up the HNS Fund
- To give all necessary assistance to IMO
- To make the necessary preparations for the first Assembly of the HNS Fund



## What has been done so far

### *Identifying and reporting HNS*

HNS is defined by reference to a list of individual substances previously identified in a number of IMO international Conventions and Codes.

Tools developed to assist:

- Reporting form for States and contributors
- HNS Finder to identify contributing cargo
- HNS contributing cargo reporting guidelines

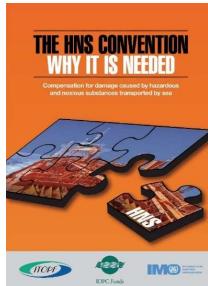
NAME	UN HS	TRANSPORT MODE	CONTRIBUTION	FREQUENCY
12345678901234567890	Bulk	Bulk	✓ General - Other HNS	✓
12345678901234567891	Bulk	Bulk	✓ General - Other HNS	✓



## What has been done so far

### *Information services*

Creating awareness and knowledge of the Convention through the production and dissemination of information.



- Joint IMO, IOPC, ITOPF **Why it is needed Brochure** (2016)
- **HNS Convention Brochure** (2014)
- Website: [www.hnsconvention.org](http://www.hnsconvention.org)
- **HNS Blog** – Ask us your questions directly



## What has been done so far

### *Outreach activities*

Assistance with implementation is available through direct engagement, including national and regional workshops.



States considering ratification are encouraged to contact the IOPC Funds' Secretariat for guidance or to discuss a potential workshop.



## The HNS Convention is the missing piece

The IOPC Funds are working together with IMO to assist and encourage States to ratify this Convention and to complete the puzzle in terms of liability conventions



Important to remember:

- Incidents do happen.
- Volume of HNS transported by sea is increasing.
- Potential consequences severe.

For more info visit:

[www.hnsconvention.org](http://www.hnsconvention.org)



## Other national systems



## Other national systems

*People's Republic of China*

China is a Member State of the 1992 CLC and the 1992 Fund Convention, the latter applies to the Hong Kong Special Administrative Region only



**Chinese Ship-source Oil Pollution Compensation Fund (COPC Fund)** provides additional compensation for oil pollution in Chinese waters

- Second layer of CLC, Bunkers Convention
- Maximum compensation: US\$4.7 million per incident



## Other national systems

*United States of America*

USA is not a party to the 1992 CLC and the 1992 Fund Convention



**Oil Pollution Act of 1990 (OPA 90) Title I**

- Responsible Party: strict but limited liability for removal costs and damages
- Claims are presented to the responsible party first, if not settled in 90 days, claims can be presented to OSLTF
- Financial responsibility requirement: Certificate of Financial Responsibility (COFR) issued by USCG National Pollution Funds Center (NPFC)
- Individual States in the USA can implement more stringent law
- Maximum payments: USD 1 billion per incident



[www.iopcfunds.org](http://www.iopcfunds.org)

