



MONALISA 2.0 – Activity 4

Proposal of procedures after the accident

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PROPOSAL OF PROCEDURES AFTER THE ACCIDENT

INTRODUCTION

The post-accident scenario comes with a new and complex forecast, ranked in different levels in which the State, one way or another, intervenes along with other actors that are involved depending on the type of accident and the consequences it brings.

On the one hand, the population is afraid that their health and way of life may be in danger and upset about the fact that the landscape that has been intact over generations becomes hostile in a short time.

On the other hand, maritime insurance companies take part on the post-accident scenario, as well as insurance companies or P&I Clubs for civil liability on the damage caused by hydrocarbons, dangerous products, fuel and nuclear substances. Complementary Funds as the International Fund for Compensation for Oil Pollution Damage (IOPCF) take action as well.

Safe and rescue private and public companies also intervene, as well as their own compensations for taking part in the accident. It is not strange that shipyards, repairing shops, equipment and installations suppliers and classification societies take part in this scenario too.

In this complex perspective, the State takes usually part in each scenario, although its main role is the human life saving, both the people on board and the coastal population, and protecting the coast and waters from the harmful effects of the accident.

Many cases exist in which the parts involved disagree, causing cross-arbitrations and lawsuits.

As an example, the case of the vessel "PRESTIGE" brought cross-claims between the Competent Authority, the Shipowners Companies, victims, ecological organizations and Spanish politic parties on crimes against natural resources and the environment and reckless damage crimes. In this way, the criminal conviction requested by the parties of the law suit connected with other economic sanctions to which, depending on the case, the civil responsible subsidiary of the Competent Authority, the Captain and two indicted officers should respond.

Furthermore claims were brought by the Spanish State against the Classification Society of the vessel and the Director of the IOPCF was requested to make a claim as well against the Classification Society.

The first function that the internal arrangements and the International Organizations commend to the State in vessel accidents episodes is very clear: Save human lives and try to keep the population safe from the consequences the accident might bring against their health.

The second function is fighting against the pollution of the marine environment taking into account the preservation of the population's way of life and the conservation of the fragile marine ecosystem and biodiversity.

As explained in previous tasks, the faculty of the States to intervene in maritime accident processes is regulated by International Conventions, as UNCLOS, the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties and European Regulations, such as the Directive 2002/59, amended by the Directives 2009/17 and 2011/15.

The UNCLOS Convention, in its Article 117 et seq. imposes the States the obligation of adopting measures for the conservation of the living resources in the high seas related with the population.

The international system of the law is complemented with the intern regulations constituting a tool for the State for the requirement and complaints about the liabilities of the responsible of the accident and the defense against the accidents that may affect the population, its waters or its coasts.

After or during the accident, and depending on the circumstances it brings, the first action to be taken by the State through its department for Civil Protection shall be the attention to the victims. In case that, in a politic field, social, economic or financial measures were taken, the ministerial competent departments shall take part in the actions.

Simultaneously, the State shall activate the available resources, as much to their own as to third parties' that voluntarily or in virtue of bilateral or multilateral agreements offer to preserve the life and health of the people, minimize the environmental effects, achieve its recovery and fight against marine pollution.

The second action to be taken is the preparation of an adequate strategy for better demanding the rights, requiring the state workers that, directly or supported by specialized lawyer's offices, are channeling the claims and arbitrations, have good knowledge of the maritime legislation and the technical preparation that allows the State, as appropriate according to the law, present any type of claims at judge, arbitration assemblies, insurance companies, compensation funds, etc., and defend the State from the different claims that other parties affected by the actions taken by the State during the accident may bring.

Taking into account that each accident is different, the common parameters to almost every accident that the State should analyze in order to compensate the affected population and the costs of the environment, marine ecosystem and coastal recovery are exposed in the following paragraphs.

These parameters refer not only to the direct actions with the population, waters and seabed cleaning, but also to those actions that could bring inconvenience at the time of taking them in order to demand the liability to which the people that caused the damage should respond in court. In this case, due to the magnitude of the international and communitarian maritime regulations, a list of the Conventions, Resolutions, Directives and Regulations has been collected in order to facilitate the work of those acting on

behalf of the State, identifying the specific articles considered to this end, not being exhaustive, but satisfying the rights of the States in case of maritime accident.

At the end of this document, additional tools for obtaining information, through the IMO or the European Union, on the accidented vessel have been included.

ASSISTANCE TO THE VICTIMS AND ENVIRONMENT RECOVERY

1. Natural and legal persons

Regardless the services of Search and Rescue of Human life at Sea carried out by the Maritime Authority, according to the SOLAS Convention, the Maritime Search and Rescue and Contingency plans approved by each Member State, the victims on shore require the immediate assistance of the Civil Protection Services, and basic services such as emergency medical services and medical evacuation to hospitals, hygiene, accommodation, feeding and psychological assistance.

In addition to the immediate assistance, depending on the impact of the accident, the support by the Government to the affected persons shall have the condition of being comprehensive. In the General Catalogue of the measures adopted destined to the affected collectives, the following measures should be pointed out:

- a. Direct helps for cessation of business caused by the accident: Compensation according to a stipulated daily amount exempt from taxes cofinanced by the State, the local authorities and the European Union.
- b. Reduction of tax burdens to the affected persons: tax deductions on the incomes, the VAT and other taxes that affect the business activities. These reductions shall be progressively reduced as the normal business activity is reached.
- c. Tax reduction for those persons or entities that carry out business activities developed at sea, such as fishing, shell fishing and marine aquiculture, as well as the companies that depend on the extractions that have stopped or whose activity has been reduced as a consequence of the medical measures or measures for the protection of species adopted by the State.
- d. Tax deduction for those business activities related with tourism, subaquatic activity courses, renting of nautical recreational equipment, etc.
- e. Tax deduction, in percentage of the whole donated amount, of the income tax or the corporate tax for those that have offered donations in favor of the victims.
- f. Tax benefits for the investments in the affected townships and reduction of other taxes and local fees.

- g. Obtaining low-interest credits extended to individuals whose, one way or another, economical interests have been affected. This way, the companies dedicated to indirectly damaged business sectors shall be able to anticipate the repair or reposition of the installations, fulfill outstanding obligations or renew credits for the acquisition of capital goods.

First, a direct line addressed to individuals and to small and medium-sized enterprises could be committed. These entities shall be able to replace the credits contracted for the acquisition of investment goods with credit lines at subsidized rate during the whole period that is left to fulfill. Besides, the State shall take charge of the cancellation expenses that have to be paid to the bank entities for carrying out the operation.

Second, a mediation line shall be established to allow the indirect victims, regardless the size of the company, to postpone during a period stipulated by the State, the capital amortization of the contracted line of credit. During this period a residual interest shall be paid. The State shall compensate the agreed interest rates.

- a. Specific lines of credit for Fishing, Shell fishing and Aquiculture Associations, legally established with subsidized amortization interests and annuities. These conditions allow the beneficiaries to only pay a determined percentage of the total credit amount back.
- b. Bonus of the 100% of the Social Security fees for affected workers and entrepreneurs.
- c. Subsidies granted to the Local Corporations through a State Economical Local Cooperation to mitigate the damages in public infrastructures caused by the accident, as well as subsidize the actions to be taken in the polluted areas in order to counteract the environmental impact, beach regeneration, natural resources recovery and any other intervention needed to repair the damages.

2. Beach and Coast Cleaning

There is a necessity of having a Plan of Cleaning and Regeneration of the Coast elaborated, mainly in case of Hydrocarbons spilling.

The basis of such Plan could be:

- a. Division of the affected territory into action areas having each one an Operative Centre available from which the actions are coordinated in reference to the team members and the machinery and material means. Complementary, a Collecting Data Centre where the information is received, processed and managed should be created.
- b. Removal of the remaining oil in the beaches. For carrying out these labors manual methods because it is the procedure that reduces to the maximum the

amount of sediments that come along with the oil. This requires a number of people.

In reference to the accidented vessel “Prestige”, from the beginning of December until the end of January, the main labor in the Atlantic Islands National Park consisted of the removal of the fuel residues accumulated in the coast, specially the sand areas. Currently the beaches of these islands are clear of fuel residues.

- c. Sandy Areas analysis and cleaning of rocky areas. As an example, from the accident of the vessel “Prestige”, to determine the possible internal pollution of the sandy areas, an analysis of such sand was carried out according to a control procedure based on samples. The cleaning of such sandy areas was carried out and in March 2003, just two of the 4.500 collected samples presented deep pollution. In the Cantabrian Sea 2.300 samples were taken, all of them with negative results.

Continuing with the “Prestige” case, at the end of February 2003, a Plan for cleaning rocky areas was elaborated in which physiographic areas affected by spilling were included, defining, among other considerations, the biological and shellfishing richness, accessibility and landscape and social criteria and concluding with the affected areas and actions proposed, for which pressure washers and, where these could not reach, other specific cleaning methods adapted to the special features of the area were applied.

Two categories for action taking were distinguished:

- Action taken by the sea waters in rocky coasts: It is hard to specify a period of cleaning in this area because it is depurated by the action of the waves and tides movements. As estimation, an approximate area of 500.000 m² of the 1.328.000 m² of affected surface was cleaned by the sea waters action.
- Cleaning with pressure water in rocky coasts: The coast area cleaned with the pressure washers was the rest of the affected surface.

In the “Exxon Valdez” accident, four procedures were followed:

- Chemical dispersants: This was the first attempt of cleaning. On the 24th March, a company applied chemical dispersants using a helicopter, but as there was not enough wave action to mix the dispersants with the oil in the water. The use of these was discontinuous.
- Mechanical cleaning: Initiated after finishing the application of chemical dispersants. For the cleaning, skimmers and pump bombs were used. However, skimmers could not be used during more than 24 hours. Being obstructed by the oil and seaweed, the works of repairing these machines ended up as a waste of time.

- **Burning:** a burning was ordered during the first hours of the spilling. The method consisted of isolating the fuel spilled with fire resistant material. This test resulted in success, reducing 11.400 liters of oil to 1.134 liters, but due to the bad meteorological conditions no more procedures for the cleaning were tried.
- **Microorganisms:** North American Government used the “Arqueas” microorganisms, which have the ability to metabolize hydrocarbon molecules.

3. Seabed cleaning

The cleaning and recovery of the seabed causes more expenses and is slower than the cleaning of the waters, beaches and coasts. The oil, once it reaches the bottom, remains stuck to the surface creating an emulsion with the water, that amalgamates the sand and subaquatic flora it is stuck on, kills it and turns into a desert. Its cleaning shall count with the help of divers and support vessels and dredgers. The experiences on cleaning the seabed after the accident of the vessel “Prestige” in which 21 couples of divers participated during months to finally obtain just 250 tons of residue show the toughness and high costs that spilling in areas with short depths cause. The removal of the same amount of fuel at sea before it reached the bottom would have been faster, cheaper and less aggressive with the marine environment. At least the biodiversity would have been better preserved.

Many of the accusations against the Spanish Government, who accorded with the Save and Rescue company the distancing of the vessel to 120 miles far from the coast, gave as an alternative to move to an anchoring area close to the coast a vessel, the “Prestige”, that, as later demonstrated, was adrift, with no machinery nor control, with inoperative emergency towing equipment, the deck equipment out of service, as well as the booster pump, with auxiliary machinery with functioning issues, at the mercy of the waves, the wind and the tides, drifting towards the coast with high risk of running aground, steadily spilling its fuel cargo, in sequential phase of breaking due to structure collapse. Other alternative was the delimitation of a sacrifice area close to the coast, where it would be in serious danger of running aground or break, such as finally happened. As an example of the pollution of seabed and coasts, the case of the Exxon Valdez, 25 years after the accident, and after spending the American government more than 20.000 million dollar, rests of the pollution still remain.

4. Recovery of the birdlife

There is a need of disposing a veterinaries team and specialized personnel in order to pay attention to the birds. Initially the stabilization of vital signs and hydration are recommended. The existence of some place destined to its recovery facilitates the preservation.

It is as well convenient making inspections in situ of the most inaccessible areas (coves and islets) using small boats.

5. Regular Analysis of the environmental quality

The periodic evaluation of the environmental quality is recommendable in the affected area, using the following parameters:

- Concentration of parts per million of hydrocarbons in sandy areas and the coast.
- Concentration of hydrocarbons in the water, in weight per liter
- Concentration of hydrocarbons in the seabed, in weight/surface area
- Concentration of hydrocarbons in the sediments of the marine platform, in weight /unit of sediment weight
- Concentration of hydrocarbons in marine organisms, biomass rates, in weight/time of trawling

Based on the data obtained, the competent health authorities shall take the opportune measures.

ENFORCEABLE LIABILITY

The idea of this section is to help the persons or organizations with responsibilities in the State over the international regulations related to the demand of responsibilities by the affected States due to the accident of a vessel. The articles of the international convention focused on civil liability have been identified, understanding that during the management of an accident the most important thing is to have quick and easy access to the adequate documents.

Conventions approved in the IMO scenario that regulate the Civil Liability of the vessel for damages caused by accidents

1. BASIC CONCEPTS

- The intern laws and observance of the treaties. One party cannot invoke the provisions of its internal law as a justification for its failure to implement the Convention.

- The ship owners shall guarantee that the liability for the relevant compensations up to the limits established in articles 6 and 7 of the Convention on Limitation of Liability for Maritime Claims (LLMC) is taken.
- The limit of the liability is laid down by the Convention on Limitation of Liability for Maritime Claims, 1976 and the Protocol of 1996, as amended¹.
- The limitation of the liability will not apply for certain claims and conduct, as articles 3 and 4.

2. BUNKERS 2001 - INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE, 2001.

This convention and the legislation linked to its development, cover the regulatory gap that existed in terms of civil liability derived from the pollution caused by the fuel of the vessels, that was recently evidenced by the casualties of the vessels “Tawe” and “Fedra”, which had high impact in Spain and especially in Algeciras Bay.

The Convention shall be applied in cases of damaged produced by pollution due to hydrocarbons used for the exploitation or propulsion of the vessel and also due to the residue of such hydrocarbons in the territory of a Member State, including the territorial sea and the exclusive economic zone, wherever the vessel is placed at the time of the spilling.

In such cases, the Convention foresees a liability system in which the ship owner responds joint and several liability for the loss or the damage occasioned by the pollution produced by the leak or fuel discharge as well as for the expenses, the loss or the damage occasioned by the utilization of preventive measures destined to avoid or reduce the pollution.

Except some circumstances included in the article 3, the shipowner at the time of an accident shall be liable for pollution damage caused by any bunker oil on board or originating from the ship, provided that, if any accident consist of a series of occurrences having that same origin, the liability shall attach to the ship owner at the time of the first of such occurrences.

3. INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE (CLC)

The Convention on Civil Liability of 1992 regulates the liability applicable to the ship owners by damage caused by pollution due to hydrocarbons stipulating the principle of the objective liability of the ship owners and creating a system of compulsory

¹ Germany, Malta, Norway, UK and Russia Federation with some reservation in the ratifications respective

liability insurance. Normally the ship owner has the right of limiting the liability to an amount which is linked to the tonnage of his ship.

- CLC 1969 - International Convention on Civil Liability for Oil Pollution Damage, 1969
- CLC PROT 1976 - Protocol to the International Convention on Civil Liability for Oil Pollution Damage, 1969
- CLC PROT 1992 - Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969. (CLC 92)

Except in those cases stipulated in paragraphs 2 and 3 of article III, the ship owner at the time of an event or, if it is compounded by a serial of events, at the time the first occurrence happens, will be the responsible of all damage resulting from pollution deriving from the vessel as a consequence of such event.

No claim can be brought for compensation of damage caused by pollution, meeting or not this Convention, against:

- a. The employees or ship owners agents, nor the crew
- b. The pilot or any other person that, not being part of the crew, gives service to the vessel
- c. The charterer, naval manager or ship operator
- d. No person that carries out the rescue operations under the consent of the ship owner and following order from a competent public authority
- e. No person taking preventive measures
- f. No employee or agent of the persons mentioned in c), d) and e)

Unless the damage are caused by an action taken by these persons or an omission, and that they have acted this way with the intention of causing such damage, or recklessly and knowing that the damage would be probably caused.

The owner will not have the right to limit the liability in virtue of this Convention if it is proven that the damage caused by the pollution are consequence of an action or omission of his, and that he acted this way with the intention of causing such damage, or recklessly and knowing that the damage would be probably caused.

Limitation of liability: the ship owner will have the right to limit the liability in virtue of this convention, in respect for each event, to a total amount that shall be calculated as follows:

- a. 4.510.000 units of account for vessels with a gross tonnage that does not exceed 5.000 units of tonnage.
- b. Vessel with a gross tonnage exceeding the previously mentioned, each additional tonnage unit will add 631 units of account to the total amount mentioned in subparagraph a); not exceeding the total amount in any case the quantity of 89.770.000 units of account.

To benefit from the limitation of liability stipulated in paragraph 1 of this article, the ship owner shall constitute a fund with a total amount equivalent to the limit of the liability, before the court or the competent authority of any of the Contracting States in which the actions are brought in virtue of article IX or, if no action is brought, before any court or competent authority of any of the Contracting States in which the actions can be brought in virtue of article IX. The fund may be constituted by depositing the amount or providing a bank or any other type guarantee acceptable in accordance with the Contracting State legislation in which the fund has been constituted and the court and the competent authority considers it sufficient.

4. INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE

The compensation payable by the 1992 Fund in virtue of the Convention with the same name for any casualty occurred before the 1st November of 2003 was limited to 135 million Special drawing rights (XDR) of the International Monetary Fund. In May 2003, a Protocol amending the Convention of the Fund of 1992 (Protocol of the Complementary fund) was approved, establishing a third level of compensation with the International Complementary Fund for the compensation of damage occasioned by hydrocarbons pollution. The affiliation to such Complementary Fund is optional and open to the State Members part of the Fund of 1992. The maximum amount payable for any casualty is 750 million XDR.

- FUND 1971 - International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971
- FUND PROT 1976 - Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971
- FUND PROT 1992 - Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971
- FUND PROT 2000 - Protocol of 2000 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1972

- FUND PROT 2003 - Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992.

1. For the purpose of fulfilling its function under Article 2, paragraph I (a), the Fund shall pay compensation to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for the damage under the terms of the Liability Convention,

- a. Because no liability for the damage arises under the Liability Convention;
- b. Because the owner liable for the damage under the Liability Convention is financially incapable of meeting his obligations in full and any financial security that may be provided under Article VII of that Convention does not cover or is insufficient to satisfy the claims for compensation for the damage; an owner being treated as financially incapable of meeting his obligations and a financial security being treated as insufficient if the person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due under the Liability Convention after having taken all reasonable steps to pursue the legal remedies available to him;
- c. Because the damage exceeds the owner's liability under the Liability Convention as limited pursuant to Article V, paragraph 1, of that Convention or under the terms of any other international Convention in force or open for signature, ratification or accession at the date of this Convention.

Expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize pollution damage shall be treated as pollution damage for the purposes of this Article.

2. The Fund shall incur no obligation under the preceding paragraph if:

- a. It proves that the pollution damage resulted from an act of war, hostilities, civil war or insurrection or was caused by oil which has escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the incident, only on Government non-commercial service; or
- b. The claimant cannot prove that the damage resulted from an incident involving one or more ships.

3. If the Fund 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 Fund may be exonerated wholly or partially from its obligation to pay compensation to such person provided,

however, that there shall be no such exoneration with regard to such preventive measures which are compensated under paragraph 1. The Fund shall in any event be exonerated to the extent that the ship owner may have been exonerated under Article III, paragraph 3, of the Liability Convention.

The damage covered by the Fund are limited to:

- a. Damage occasioned by pollution:
 - i. In the territory of the Contracting State, including the territorial sea, and
 - ii. The exclusive economic zone of a Contracting State established according to the international laws, or, if a Contracting State has not established such zone, the area situated beyond the territorial sea of such State according to the international law and not extending more than 200 marine miles counting from the base line from which the width of the territorial sea of the State is measured.
- b. The preventive measures, wherever they are taken, to avoid or reduce to the minimum such damage

In general, the total amount of the compensation to be paid by the Fund in virtue to this article in respect to the occasioned damage by pollution result from a natural exceptional, unavoidable, irresistible phenomenon shall not exceed 203.000.000 units of account.

Fund Protocol 2003. The aggregate amount of compensation payable by the Supplementary Fund under this article shall in respect of any one incident be limited, so that the total sum of that amount together with the amount of compensation actually paid under the 1992 Liability Convention and the 1992 Fund Convention within the scope of application of this Protocol shall not exceed 750 million units of account.

INTERNATIONAL CONVENTION ON LIABILITY AND COMPENSATION FOR DAMAGE IN CONNECTION WITH THE CARRIAGE OF HAZARDOUS AND NOXIOUS SUBSTANCES BY SEA

In the 90's decade, a number of maritime incidents involving spilling of HNS highlighted a gap in the marine liability system so the International Community had to take action. Through the IMO, a liability system was devised in order to compensate claimants in case of spills involving chemicals and other hazardous substances. In 1996 the HNS Convention was adopted, counting with the support of the International Maritime Organization.

HNS 1996 - International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996

HNS PROT 2010 - Protocol of 2010 to amend the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996.

HNS For the purposes of the HNS Protocol, a Hazardous and Noxious Substance is defined as any substance other than oil which, if introduced into the marine environment is likely to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.

The HNS Protocol ensures that ships carrying hazardous and noxious liquid substances are covered by preparedness and response regimes similar to those already in existence for oil incidents. For the purposes of the OPRC-HNS Protocol, HNS means any substance other than oil which, if introduced into the marine environment, is likely to create hazards to human health, to harm living resources and marine life, to damage amenities, or to interfere with legitimate uses of the sea. Such a definition will include:

- Noxious liquid substances described in Annex II of MARPOL 73/78 and the International Bulk Chemical Code (IBC Code).
- Dangerous goods described in the IMO Dangerous Goods Code (IMDG Code).
- Solid cargoes covered by the Code of Safe Practice for Solid Bulk Cargoes (BC Code)

Under the 2010 Protocol, if damage is caused by bulk HNS, compensation would first be sought from the ship owner, up to a maximum limit of 100 million Special Drawing Rights (SDR). Where damage is caused by packaged HNS, or by both bulk HNS and packaged HNS, the maximum liability for the ship owner is 115 million SDR.

1. CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS

- LLMC 1976 - Convention on Limitation of Liability for Maritime Claims, 1976.
- LLMC PROT 1996 - Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976.

According to the International Maritime Convention, limits are specified for two types of claims - claims for loss of life or personal injury, and property claims (such as damage to other ships, property or harbour works).

The limits under the 1976 Convention were set at 333,000 XDR for personal claims for ships not exceeding 500 tons plus an additional amount based on tonnage. For other claims, the limit of liability was fixed under the 1976

Convention at 167,000 XDR plus additional amounts based on tonnage on ships exceeding 500 tons.

The Convention provides for a virtually unbreakable system of limiting liability. Shipowners and salvors may limit their liability, except if "it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such a loss, or recklessly and with knowledge that such loss would probably result".

General

CONSIDERING that it is desirable to amend the Convention on Limitation of Liability for Maritime Claims, done at London on 19 November 1976, to provide for enhanced compensation and to establish a simplified procedure for updating the limitation amounts, the liability of a ship owner shall include liability in an action brought against the vessel itself.

An insurer of liability for claims subject to limitation in accordance with the rules of this Convention shall be entitled to the benefits of this Convention to the same extent as the assured himself.

The act of invoking limitation of liability shall not constitute an admission of liability.

Claims subject to limitation

- a. Claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbor works, basins and waterways and aids to navigation), occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;
- b. Claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;
- c. Claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or salvage operations;
- d. Claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship;
- e. Claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;
- f. Claims of a person other than the person liable in respect of measures taken in order to avert or minimize loss for which the person liable may limit his liability in accordance with this Convention, and further loss caused by such measures.

Claims set out in paragraph 1 shall be subject to limitation of liability even if brought by way of recourse or for indemnity under a contract or otherwise. However, claims set out under paragraph (d), € and (f) shall not be subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable.

Claims excepted from limitation

The rules of this Convention shall not apply to:

- a. Claims for salvage, including, if applicable, any claim for special compensation under Article 14 of the International Convention on Salvage 1989, as amended, or contribution in general average;
- b. Claims for oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage, dated 29 November 1969 or of any amendment or Protocol thereto which is in force;
- c. Claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage;
- d. Claims against the ship owner of a nuclear ship for nuclear damage;
- e. Claims by servants of the ship owner or salvor whose duties are connected with the ship or the salvage operations, including claims of their heirs, dependents or other persons entitled to make such claims, if under the law governing the contract of service between the ship owner or salvor and such servants the ship owner or salvor is not entitled to limit his liability in respect of such claims, or if he is by such law only permitted to limit his liability to an amount greater than that provided for in Article 6.

Conduct barring limitation

A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

2. ATHENS CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA, 1974

- PROTOCOL TO THE ATHENS CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA, 1974

- PROT 1990 - PROTOCOL OF 1990 TO AMEND THE ATHENS CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA, 1974
- PROTOCOL OF 2002 TO THE ATHENS CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA, 1974

Under the 1974 Athens Convention a carrier was liable for the damage suffered as the result of the death of or personal injury to a passenger or loss or damage to luggage if the incident which caused the damage was due to his fault or neglect and occurred in the course of the carriage. Fault or neglect of the carrier was presumed, unless the contrary was proven, if the death or injury arose from a shipwreck, collision, stranding, explosion or fire or defect in the ship.

If liable the carrier could, under the 1974 Convention, limit his liability to 46,666 Special Drawing Rights (XDR) per carriage unless he had acted with intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

Under the 2002 Protocol, where the loss suffered as a result of the death or personal injury to a passenger is caused by a “shipping incident” (as defined in the Protocol) the limit is raised to 250,000 XDR per passenger and the carrier is strictly liable unless he can prove that the incident resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional.

3. DIRECTIVE 2005/35/EC ON SHIP-SOURCE POLLUTION AND ON THE INTRODUCTION OF PENALTIES, INCLUDING CRIMINAL PENALTIES, FOR POLLUTION OFFENCES, AS AMENDED BY DIRECTIVE 2009/123.

The purpose of this Directive is to incorporate international standards for ship-source pollution into Community law and to ensure that persons responsible for discharges are subject to adequate penalties as referred to in Article 8, in order to improve maritime safety and to enhance protection of the marine environment from pollution by ships.

The introduction of penalties applying to any person who causes or contributes to marine pollution; penalties should be applicable not only to the ship owner or the master of the ship, but also the owner of the cargo, the classification society or any other person involved.

Ship-source discharges of polluting substances should be regarded as infringements if committed with intent, recklessly or by serious negligence. These infringements are regarded as criminal offences by, and in the circumstances provided for in, Framework Decision 2005/667/JHA.

Penalties for discharges of polluting substances from ships are not related to the civil liability of the parties concerned and are thus not subject to any rules relating

to the limitation or channeling of civil liabilities, nor do they limit the efficient compensation of victims of pollution incidents.

The purpose of this Directive is to incorporate international standards for ship-source pollution into Community law and to ensure that persons responsible for discharges of polluting substances are subject to adequate penalties, including criminal penalties, in order to improve maritime safety and to enhance protection of the marine environment from pollution by ships.';

This Directive shall apply, in accordance with international law, to discharges of polluting substances in:

- a. The internal waters, including ports, of a Member State, in so far as the Marpol regime is applicable;
- b. The territorial sea of a Member State;
- c. Straits used for international navigation subject to the regime of transit passage, as laid down in Part III, section 2, of the 1982 United Nations Convention on the Law of the Sea, to the extent that a Member State exercises jurisdiction over such straits;
- d. The exclusive economic zone or equivalent zone of a Member State, established in accordance with international law; and
- e. The high seas.

Member States shall ensure that any act of inciting, or aiding and abetting an offence committed with intent and referred to in Article 5a(1) and (3), is punishable as a criminal offence.

The liability of a legal person shall not exclude criminal proceedings against natural persons involved as perpetrators, inciters or accessories in the criminal offences

Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant is punishable by effective, proportionate and dissuasive penalties.

4. REGULATION 392/2009 ON THE LIABILITY OF CARRIERS OF PASSENGERS BY SEA IN THE EVENT OF ACCIDENTS.

This Regulation lays down a harmonized regime of liability and insurance for the carriage of passengers by sea, based on:

- Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974, as amended by the Protocol of 2002 on the carriage of passengers; and
- International Maritime Organization (IMO) Resolutions and Guidelines for Implementation of the Athens Convention, adopted by the Legal Committee of the IMO on 19th October 2006.

Scope

This Regulation applies to all international carriage * and carriage by sea within a single Member State on board ships of Classes A * and B pursuant to Directive 98/18/EC when:

- the ship is flying the flag of or is registered in a Member State;
- the contract of carriage has been signed in a Member State;
- The place of departure or of destination as laid down in the contract of carriage is situated within a Member State. Member States are free to extend the scope of this regulation to all domestic sea-going voyages.

Liability and insurance

According to the new liability regime established by the Regulation and taken from the Athens Convention, for damages related to navigation accidents victims shall be covered by an ipso jure liability regime but must prove a fault on the part of the carrier in order to be compensated for damages falling under the category of “innkeeper” liability.

The limitations of liability to which carriers are entitled under the Athens Convention and the 2002 Protocol are also included and the overall limitations of liability established in application of the 1976 Convention on Limitation of Liability for Maritime Claims, as amended by the Protocol of 1996, are not affected.

Carriers must all maintain insurance and victims shall be entitled to make claims directly against the insurer.

If mobility equipment or any other equipment used by a passenger with reduced mobility is lost or damaged, the carrier shall be liable if the loss arising is the result of a fault or neglect on their part.

Advance payment

In the event of death or personal injury to a passenger caused by a shipping incident, the carrier responsible for all or part of the carriage shall make an advance payment proportionate to the damages suffered. However, this advance payment shall not constitute recognition of liability.

Information to passengers

The carrier or performing carrier shall ensure that passengers are informed clearly and precisely of their rights under this Regulation. The information shall be provided in the most appropriate format:

- at all points of sale, including by telephone and via the Internet where the contract of carriage is signed in a Member State;

- prior to departure where the place of departure is in a Member State;
- upon departure in all other cases
- Reporting

The Commission shall present a report on the application of the Regulation three years after the date of its application. The report shall take into account developments in international fora and those in the economic situation.

Committee procedure

The Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) established by Regulation 2099/2002/EC shall assist the Commission.

Transitional provisions

Where carriage by sea is carried out within a single Member State, Member States may defer the application of this Regulation:

- for ships of Class A until four years after the date of its application;
- for ships of Class B until 31 December 2018
- Entry into force

This Regulation shall apply from the date of the entry into force of the Athens Convention for the Community and in any case from no later than 31 December 2012.

5. DIRECTIVE 2009/20 ON THE INSURANCE OF SHIPOWNERS FOR MARITIME CLAIMS

Insurance for maritime claims

Each Member State shall require that ship owners of ships flying its flag have insurance covering such ships.

Each Member State shall require ship owners of ships flying a flag other than its own to have insurance in place when such ships enter a port under the Member State's jurisdiction. Member States shall lay down a system of penalties for the breach of national provisions adopted pursuant having the insurance and shall take all the measures necessary to ensure that those penalties are applied. The penalties provided for shall be effective, proportionate and dissuasive.

This shall not prevent Member States, if in conformity with international law, from requiring compliance with that obligation when such ships are operating in their territorial waters. The insurance referred shall cover maritime claims subject to limitation under the 1996 Convention. The amount of the insurance for each and

every ship per incident shall be equal to the relevant maximum amount for the limitation of liability as laid down in the 1996 Convention.

EXPERT REPORTS

In any case, more if the accident is going to be object of a court case, the member State, in order to prepare the defense and demand compensations, shall at least investigate the following factors, referred to the crew's diplomas, courses, training and protocols followed during the accident in terms of information and reporting.

a. Check the attitudes of the Captain, Officers and rest of the crew

STCW Convention: Section 2. Requirements for the diplomas. Analysis of the compliance.

- STCW diplomas
- Diplomas and general requirements by status
- Other required diplomas depending on the functions executed onboard and the type of vessel (in general, tankers and passenger vessels)

b. Information and reporting of the accident

Communications according to:

- INMARSAT
- RESOLUTION A. 949 (23)
- RESOLUTION A. 851 (20). Approved on the 27th November 1997
- SOLAS Convention, Chapter V: Safety of Navigation, Regulation 11 (regardless the reporting systems established by the SAR Convention of 1979)
- SOLAS, Chapter V. Regulation 31. Danger messages
- SOLAS, Chapter VII: Transport of Dangerous Goods. Regulation 7.4 Reporting of incidents involving dangerous goods.
- MARPOL Protocol, Provisions concerning Reports on Incidents Involving Harmful Substances (in accordance with article 8 of the Convention)
- The protocol on preparedness, response and co-operation to pollution incidents by hazardous and noxious substances
- IMO STANDARD MARINE COMMUNICATION PHRASES Resolution A.918(22)
Adopted on 29 November 2001

- c. Test of compliance of the obligations of the Captain and Officers
- d. Test of compliance of the emergency plans
 - SOLAS, Chapter III on lifesaving appliances and arrangements. Regulation 19
Emergency training and drills
 - SOLAS, Chapter III on lifesaving appliances and arrangements. Regulation 20
Operational readiness, maintenance and inspections
 - UNCLOS. Article 199. Emergency plans against pollution
 - OPRC 1990 Art. 3b)
 - HNS Convention 2000. Art. 3.1 Emergency plans and reporting
 - SOLAS, Chapter IV. Regulation 15 Maintenance requirements
 - SOLAS, Chapter I. Regulation 11 Maintenance of conditions after survey
 - MARPOL, Regulation 6.4.3 of Annex I
- e. Compliance with the OIT Conventions
 - The Maritime Labor Convention, 2006
 - Recruitment and Placement of Seafarers Convention, 1920
 - Recruitment and Placement of Seafarers Convention, 1926
 - Officers' Competency Certificates Convention, 1936 (No. 53)
 - Hours of Work and Manning (Sea) Convention, 1936 (No. 57)
 - Food and Catering (Ships' Crews) Convention, 1946 (No. 68)
 - Accommodation of Crews Convention, 1946 (No. 75)
 - Accommodation of Crews Convention (Revised), 1949 (No. 92)
 - Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133)
 - Wages, Hours of Work and Manning (Sea) Convention, 1946 (No. 76)
 - Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949 (No. 93)
 - Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109)
- f. Structural conditions (structural resistance and resistance module), condition of the propulsion machinery, the equipment, installations and of the vessel's machinery.

The certifications issued by the Flag State shall be valid, including where appropriate, the exemption certificates or those issued in its name by the Classification Society. Regulation 11 of Part B of the SOLAS Convention shall be specially respected, referring to the maintenance of the condition of the vessel after the inspections.

To the extent possible, counting, as appropriate, with the judicial authorization, special attention shall be paid to the following:

- Examination of the annotations in the navigation log, hydrocarbons registration and machine log, as well as the documents exchanged between the ship, the ship owner, the dockworker and the cosignatory.
- Checking of the changes and repairs
- Level of the structural corrosion. It shall be taken into account that in tankers of transport of fuel the areas more affected by the corrosion are concentrated in one half of the vessel. The protection of the structure against corrosion shall be checked (paint and sacrifice anodes)
- The Classification Societies impose the renovation of sheets or reinforcements when the real thickness is a determined percentage of the nominal thickness. It shall be taken into account that the renovated reinforcements are equivalent to the nominal quality and thickness. It shall be checked that the regulated hydrostatic tests have been carried out after the repairs of the tanks. Where advised, the list of onboard works shall be requested to the shipyard.
- In tankers suspected to have worked as fuel collecting and supplying vessels, it shall be checked that the steel has the resilience necessary to absorb the shock energy (naval quality steel, types: C, D and E)
- It shall be analyzed the cargo of the vessel and its colocation inside the tanks or the holds. The rules of the Classification Societies dispose that the resistant module of the mid-vessel section shall be calculated so that the traction and compression onboard and in the bottom does not exceed 10 kg/mm² in a wave range of the North Sea in winter (or 5 kg/mm² in calm waters). Additionally, the vessel structure is designed to be strained up to 8 kg/mm² just as a result of its cargo distribution and the impact in calm waters, although in oil tankers a margin of the 80% (6,4 kg/mm²) is established, and depending on the navigation, pressures of 18 kg/mm² can appear if the biggest wave comes or 13 kg/mm² when anchored in calm waters. The loss of material or thickness provokes the reduction of the steel surface which resists the tension. That is why, at the time of determining the tension on the structure, deriving from the bending moment or the shear, such reduction of thickness or loss of material shall affect the calculations.

- The condition of the main machine, boiler and auxiliary and onboard machinery, firefighting equipment, saving equipment, emergency tow, etc., shall agree with the issued certifications within the period of validity. It shall be pointed out that no vessel should sail without the certainty that the structure is intact, and the machinery, installations and equipment are in good condition to function, so in case of accident it is important to gather as many documents as possible to be part of the documentary proofs in an eventual arbitration or trial.

g. Stability. Compartmented and compliance with the stability criteria

The State shall gather information on the stability of the vessel to check the cargo and its distribution on board.

The compliance with the provisions in Chapter II-1 of the SOLAS Convention, Parts B and B-1- Subdivision and damage stability of cargo ships and passenger ships.

h. Freeboard

It shall be checked that the vessel complied with the conditions of appointment of Freeboard according to the Protocol of 1988 relating to the International Convention on Load Lines, 1966

It shall be paid special attention to the openings and closures of the freeboard deck or under it, as mentioned in regulation 18 et seq. of the Protocol of the Convention.

Additionally, the draft of the vessel shall be checked to determine if it corresponded to the maximum draft allowed in the area where the accident occurred.

i. Plan for the evaluation of the condition of the vessel (CAS) in bulk carriers and oil tankers.

The State shall be certain about the compliance of the CAS and in case it is thought as convenient, shall proceed to check that the real data are the same as the reflected in the documents. To that end, the CAS Recognition Plan shall be requested and the documentation of the Recognition Plan according to article 6.1 et seq. of the IMO MEPC Resolution 94 (46) as amended.

Res. MEPC 94 (46) has been amended by Res. MEPC 99(48); 112 (50); 131 (53) and 155 (55).

j. Additional tools with the aim of obtaining better information about the vessel, its cargo and course, provided by the IMO and the EU.

- AIS (Automatic identification system- IMO)
- EQUASIS (allow persons involved in maritime transport to be better informed about the performance of ships- UE)

- Cleanseanet (Satellite Oil Spill Monitoring-EMSA)
- Thetis (Assist Member States, Commission and States member with targeting and selecting the right vessel for inspection, Assist the Commission and EC and Member States by providing statistics on inspection results and performance-EMSA)
- LRIT (Long-range identification and tracking-IMO)

ANNEXES

ANNEXES TO THE DOCUMENT 4.4.4. PROPOSAL OF PROCEDURES AFTER THE ACCIDENT

In order to complement the procedures proposed in this document, the following legislation and regulations have been included as annexes.

- ANNEX I. International Convention on Civil Liability for Bunker Oil Pollution Damage – Bunkers 2001
- ANNEX II. International Convention on Civil Liability for Oil Pollution Damage
- ANNEX III. International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage
- ANNEX IV. Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage.
- ANNEX V. International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996.
- ANNEX VI. Convention on Limitation of Liability for Maritime Claims, 1976 as amended by the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims of 1976.



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