

Technical Assistance on 2010 HNS Convention National Workshop

Port Klang, Malaysia, 6-8 November 2013

Session 2: International Legal and Operational Framework



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Session 2: International Legal and Operational Framework

History and background

- **1967 Torrey Canyon at coastline Great-Britain and France**
- **First major oil pollution incident, urgent international action required**



Session 2: International Legal and Operational Framework

History and background

- **1969 Civil liability Convention on oil pollution by ships (CLC)** with supplementary **1971 Fund Convention**;
- **1969 Intervention Convention**; **1973 Intervention Protocol** (substances other than oil: HNS)
- **1984 and 1992 Protocols to CLC and Fund Convention** (increased limits of liability);
- **1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention)**
- **2001 International Convention on Civil Liability for Bunker Oil Pollution Damage**;
- **Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992**
- **2007 Nairobi International Convention on the Removal of Wrecks** (liability and coastal state powers)

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History and background

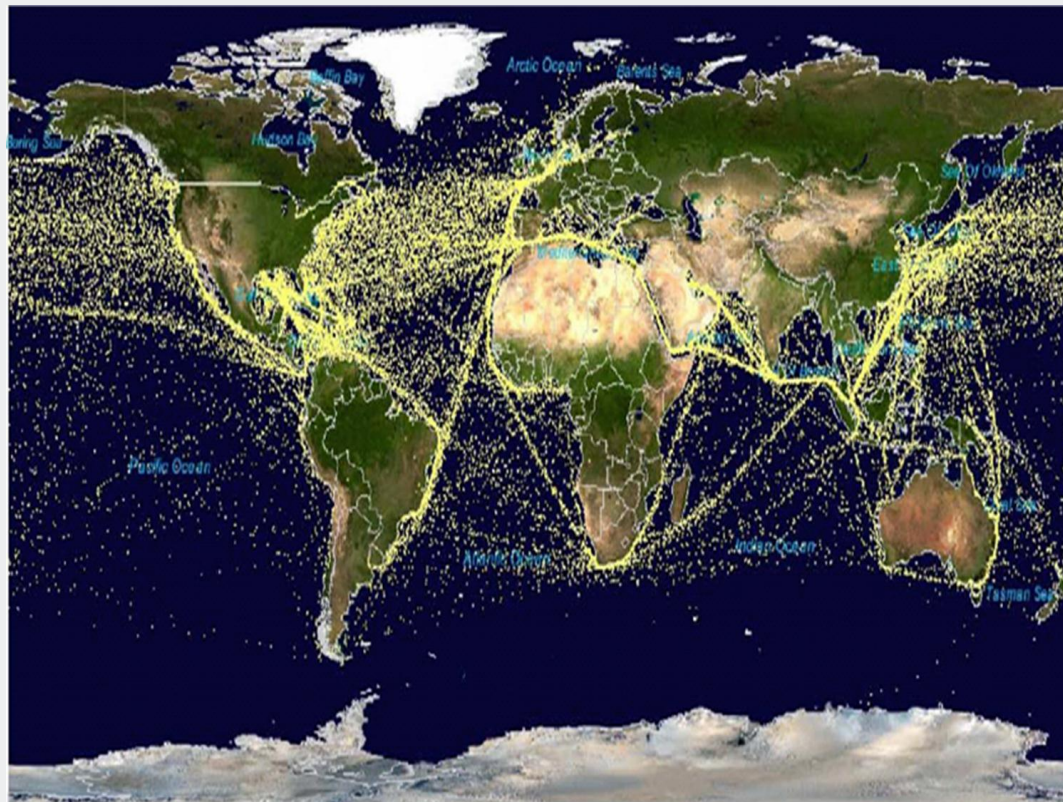
- **2010 Protocol to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (2010 HNS Protocol)**
- **Two-tier system for compensation:**
 1. **Compulsory insurance by ship owners with limited liability;**
 2. **Supplementary compensation by the HNS Fund**
- **Robust solution on three issues:**
 1. **no contribution by containers;**
 2. **reporting; and**
 3. **contribution for LNG**
- **Further guidance by IMO Legal Committee:**
 - **Overview of the 2010 HNS Convention** (adopted at **LEG 98** on 18 April 2011)
 - **Guidelines on reporting of HNS contributing cargo** (adopted during the **HNS Workshop** held at IMO on 12 and 13 November 2012 and endorsed at **LEG 100** on 19 April 2013)



Session 2: International Legal and Operational Framework

The role of IMO

Safe, Secure and Efficient Shipping on Clean Oceans



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The role of IMO

United Nations specialized agency for the safety and security of shipping and the prevention of marine pollution by ships



Session 2 (continued): International Legal and Operational Framework

Preparedness and Response Issues

Legal basis for Government Intervention:

- **Sovereignty over Territorial Sea**
- **1969 Intervention Convention** and **1973 Intervention Protocol**: measures to prevent, mitigate or eliminate **grave and imminent** danger from pollution of the sea;
- **1982 United Nations Convention on the Law of the Sea (UNCLOS), Article 221**: provides for a **lower intervention threshold** in case of pollution of the sea;
- **Safety of navigation**: protection of security and vital interests
- **1990 International Convention on Oil Pollution Preparedness, response and co-operation (OPRC)**; **2000 OPRC-HNS Protocol**
- **2007 Nairobi International Convention on the Removal of Wrecks**

Nairobi International Convention on the Removal of Wrecks, 2007

- Primary aim: **clarify rights, duties and responsibilities** relating to the removal of wrecks beyond the territorial sea;

- How does the Convention work?

Scope of application:

- geographical areas
- safety/environment
- wrecks/ships

Limitation of liability/compulsory insurance

Session 2: International Legal and Operational Framework Preparedness and Response Issues

How will the Nairobi Convention work?

- **primary responsibility shipowner** for the removal of a hazardous wreck;
- **deadline** by State in whose Convention area the wreck is located;
- State may **remove** the wreck at the **shipowner's expense**;
- State responsible for **determining** whether a hazard exists and for the **marking** of the wreck;
- Shipowner **report** and **strictly liable** for the costs of **location, marking and removal**

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Preparedness and Response Issues



Session 2: International Legal and Operational Framework Preparedness and Response Issues

Geographical application Nairobi Convention

Options:

- **application only** to waters **beyond** the territorial sea;
- **optional application** to the territorial sea and **mandatory application** to waters beyond the territorial sea;
- **mandatory application both** within and beyond the territorial sea;
- **application only** to waters **within** the territorial sea.

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Preparedness and Response Issues

Navigational and environmental concerns

- safety of navigation;
- marine environment;
- coastline or related interests

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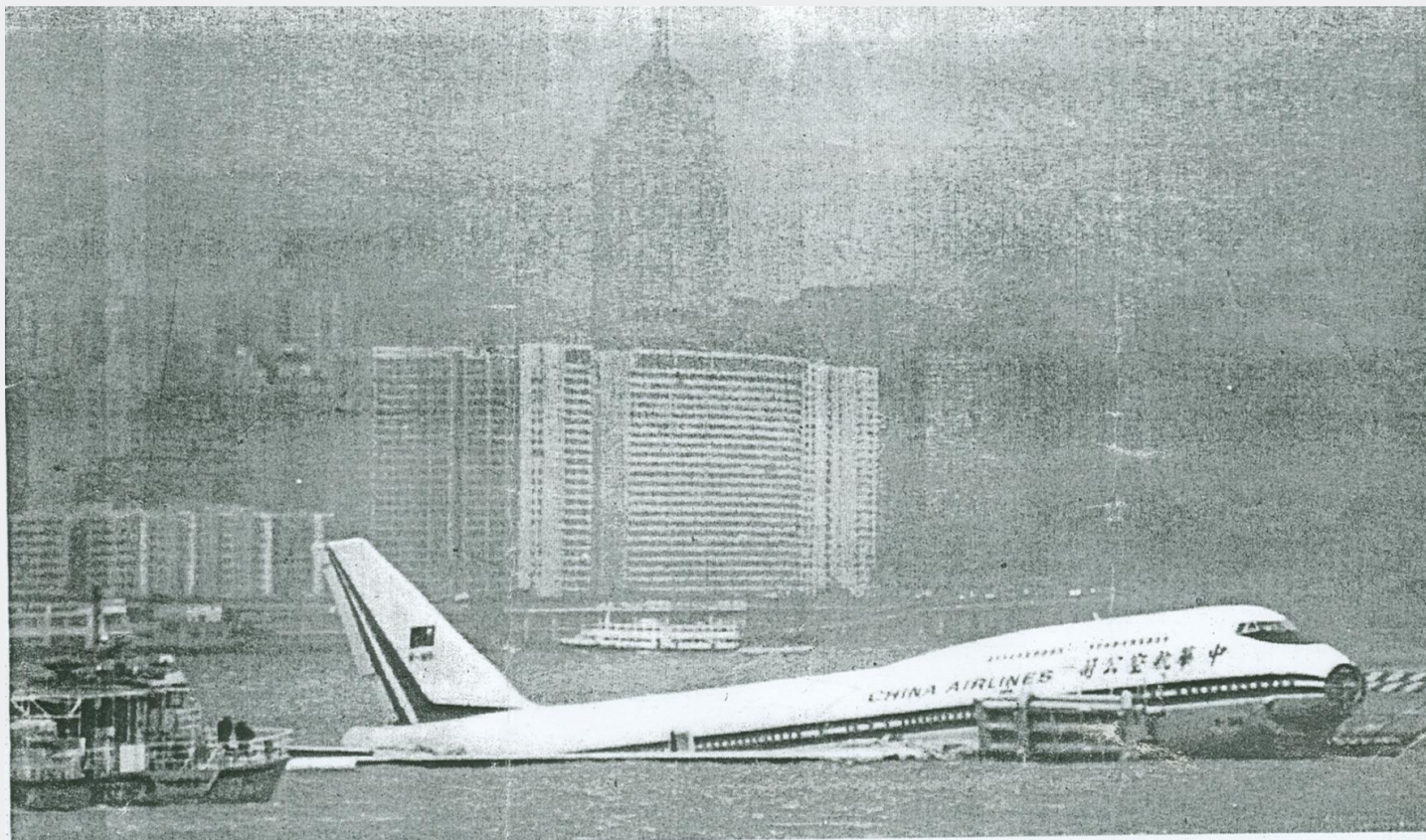
Preparedness and Response Issues

To what wrecks or ships does the Nairobi Convention apply ?

- shipwrecks;
- objects from ships at sea;
- drifting ships;
- offshore installations;
- wrecked aircraft

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Preparedness and Response Issues



Boeing drijft in haven van Hong Kong

Een Boeing van China Airlines ligt in de haven van Hong Kong. Het toestel, met 296 inzittenden, schoof donderdag tijdens een zware storm van de landingsbaan op een kunstmatig eiland het water. In. Via noodlijbanen konden alle passagiers het vliegtuig ongedeerd verlaten.

FOTO AP

Nairobi International Convention on the Removal of Wrecks, 2007:

Limitation of liability/compulsory insurance

- **status quo** limitation of liability of the shipowner;
- **1976** or **1996 LLMC** applicable;
- **CLC, HNS Convention** and **Bunkers Convention** continue to apply to liability issues wreckremoval;
- **compulsory insurance**

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Preparedness and Response Issues

Nairobi International Convention on the Removal of Wrecks, 2007

- **Avoid** difficult legal disputes and **lengthy** legal proceedings;
- **Rights, duties** and **liabilities** clarified;
- Supplement to **CLC**, **HNS Convention** and **Bunkers Convention**;
- Nairobi Convention attractive to **both authorities and industry**;
- Entry into force 1 year after **ratification by 10 States**;
- At present the **number of Contracting States is 8**;
- The IMO Legal Committee **urges States to ratify** the Nairobi Convention at earliest possible opportunity

Session 2: International Legal and Operational Framework United Nations Convention on the Law of the Sea (UNCLOS)

UNCLOS art.198: notification **to other States** likely to be affected by damage of the marine environment and **to the competent international organizations**

UNCLOS art.199: **international cooperation**; States are required to jointly develop and promote **contingency plans**



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OPRC and OPRC-HNS 2000

- **OPRC 1990: global framework for international cooperation:**
 - **shipboard oil pollution emergency plan;**
 - **all States concerned and IMO** informed in case of oil pollution;
 - international cooperation: **legal and administrative measures**
 - **IMO coordinating role** on information, education and training services, technical services and technical assistance
- **Protocol on Preparedness, Response and Cooperation to Pollution Incidents by Hazardous and Noxious Substances, 2000 (OPRC-HNS 2000)**
This Protocol entered into force on 14 June 2007

Questions and answers?



Technical Assistance on 2010 HNS Convention National Workshop

Port Klang, Malaysia, 6-8 November 2013

Session 4: HNS Convention – General Provisions



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Session 4: HNS Convention – General Provisions

Definitions



- Article 1, paragraph 5 ***Hazardous and noxious substances (HNS)***
- Article 1, paragraph 5bis/5ter ***Bulk HNS / packaged HNS***

The major solution is to **retain compensation for packaged goods** by a HNS Fund supplementary to shipowner liability **while contributions to the HNS Fund for receipts of packaged goods will be abolished**

- abolition of contributions to the HNS Fund accompanied by a **modest increase of shipowners' limits for packaged goods** as a counter-balance to the increased liability for bulk cargo interests in the second tier

Session 4: HNS Convention – General Provisions

Definitions

Article 1, paragraph 6: ***Damage***

- **Personal damage** (death or injury)
- **Property damage** (outside the ship by which the dangerous goods are being carried)
- Damage by contamination of the environment for **reasonable measures of reinstatement** (to be) undertaken
- Costs of **preventive measures**



Session 4: HNS Convention – General Provisions

Scope of cover



- **geographical scope of application** similar to **1992 Civil Liability Convention** and **1992 Fund Convention** in respect of pollution damage;
- **compensation for pollution damage** that has occurred within the **territory, including the territorial sea** and the **EEZ**.
- damage **other** than pollution damage (for instance **death and injury incurred on board** as a result of explosions involving HNS substances) **compensation is provided regardless of the maritime zone** where the incident at the source of the damage took place.

Session 4: HNS Convention – General Provisions

Liability

elements of liability

- **strict liability**
- **prompt and adequate compensation**
- **channelling of liability**
- **limitation of liability**
- **fund for supplementary compensation**



Questions and answers?



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Session 6: HNS Convention – Implementation



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Session 6: HNS Convention – Implementation Requirements for ratification



- The **2010 HNS Convention** may only enter into force after **12 States** (including 4 States with not less than 2 million units of gross tonnage) with a **total of 40 million of contributing HNS cargo**, have ratified the 2010 HNS Protocol
- Without the robust solution in the **2010 HNS Protocol** on three issues (contribution by containers, reporting and contribution for LNG) these criteria for the entry into force could not be fulfilled..

Session 6: HNS Convention – Implementation

Implementation issues prior to entry into force

- Work on **identification of receivers**; procedures to **collect and audit data on contributing cargo**;
- HNS somewhat more complicated than IOPC Fund system, still **not insurmountable**;
- National procedures **correspond** with reporting procedures HNS Fund



Session 6: HNS Convention – Implementation

Implementation issues prior to entry into force

What we want to know:

- **relevant quantities received by physical/principal receivers**
- **quantities that contribute; but also: relevant for entry into force**
- **list of contributors to HNS Fund**

Session 6: HNS Convention – Implementation

Implementation issues prior to entry into force

HNS Fund: basic same system as IOPC Fund

- contributor Article 1 par. 4:
- **physical receiver in port, or**
- **principal of physical receiver**

How do we know?

basic same system as IOPC Fund:

Article 21 par.1

- **State Party reports to HNS Fund**

Session 6: HNS Convention – Implementation

Implementation issues prior to entry into force

- every receiver > 15,000 tonnes Bulk HNS reports to competent authority in Contracting State, or
- any appointed principal > 15,000 tonnes Bulk HNS has to report
- any LPG receiver > 15,000 tonnes has to report
- any LNG receiver (and titleholder if art. 19 par.1 *bis*(b) is applicable)
- oil account receiver > 100,000 tonnes has to report on same basis as IOPC Fund
- any receiver > 15,000 tonnes of non-persistent oil

Session 6: HNS Convention – Implementation

Implementation issues prior to entry into force

Contracting State reports to HNS Fund:

- physical receivers > 20,000 tonnes bulk HNS
- appointed principals > 20,000 tonnes bulk HNS
- LPG receivers > 20,000 tonnes
- any LNG receiver (or titleholder as in art.19 par.1 *bis*(b))
- oil account receivers > 150,000 tonnes on same basis as IOPC Fund
- any receiver > 20,000 tonnes of non-persistent oil

Session 6: HNS Convention – Implementation

Implementation issues prior to entry into force

National procedures same as under IOPC:

- **physical receivers/principals report themselves (and to HNS Fund);**
- **Contracting State verifies on basis national procedures;**
- **verification and audit (eg. information by customs, reporting procedures etc.);**
- **co-operation governmental authorities;**
- **intergovernmental co-operation; also with HNS Fund**

Session 6: HNS Convention – Implementation

Implementation issues prior to entry into force

Conclusion:

HNS Fund: basic same system as IOPC Fund

- contributor: physical receiver in port (or principal)
- obtaining knowledge by self-reporting and governmental audit



Questions and answers?



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