

PACPLAN 2018 Workshop

International Liability and Compensation Conventions

Professor Nick Gaskell ©

Professor of Maritime and Commercial Law

Marine and Shipping Law Unit

TC Beirne School of Law

University of Queensland



Legal Problems and Solutions

- **Legal problems**
 - **Prevention issues (regulation)**
 - **Compensation issues, eg**
 - **Who can be sued?**
 - **Basis of liability and defences**
 - **Damages recoverable and limitation of liability**
 - **Financial security (e.g. insurance)**
 - **Jurisdiction and recognition of judgments**
- **Legal solutions?**
 - **National law**
 - **Voluntary industry liability schemes**
 - **International Conventions**
 - **1969-2010 IMO produced a suite of liability conventions**
 - **Many similar concepts and drafting**
 - **But different: State parties, rules, limits of liability**

Pollution Liability Regimes

- **Oil tankers**
 - **Civil Liability for Oil Pollution Damage Convention (CLC), 1969, 1992**
 - **Fund Convention for Compensation for Oil Pollution Damage (Fund), 1971, 1992**
 - **Supplementary Fund 2003**
- **Chemical/dangerous goods carriers**
 - **Hazardous and Noxious Substances Convention (HNS), 1996, 2010**
 - **Hazardous waste cargoes: Basel Convention 1989/Protocol 1999**
- **Ordinary cargo/passenger ships [fuel]**
 - **Bunker Oil Pollution Damage Convention (BPC) 2001**
- **Removal of wreck and cargo**
 - **Wreck Removal Convention (WRC) 2007**
- **Spills from offshore platforms, FPSOs etc**
 - **No existing international regime**
 - **Voluntary schemes, eg OPOL 1975-2017 (N. Europe)**

Limitation of Liability: LLMC

- **Convention on Limitation of Liability for Maritime Claims, 1976**
 - **LLMC 1976; LLMC 1996 (as amended by 1996 Protocol)**
 - Higher limits
 - Allows IMO to agree automatic updating of limits [2012 increases: in effect 2015]
- **LLMC aims**
 - **Does NOT create any liabilities**
 - **Limits (caps) liability of shipowners generally for maritime claims**
 - Eg Collisions, Cargo loss, Injury or Death
 - Contract or Tort claims
 - **Result: claimants will not receive full compensation**
 - **But enables shipowners to have certainty, so can obtain insurance**
 - **Shipowner can establish single ‘global’ Limitation Fund for [all] claimants**
- **Two questions**
 - **How are the limits calculated?**
 - **How does LLMC work with other Liability Conventions**

LLMC 1996/2015: Calculation of Limits

- LLMC limits vary according to ship size (not value)
- Multiply tonnage of ship x LLMC tables [using sdrs]

Examples of LLMC limits for all “property” claims

2000 gt ship	1,000,000 sdr	US\$2,142,131
5000 gt ship	2,200,000 sdr	US\$4,712,989
10,000 gt ship	4,200,000 sdr	US\$8,996,951
80,000 gt ship	26,200,000 sdr	US\$56,123,840

53,409gt container ship

LLMC 1996[2015]: 29,479,277sdr = US\$41,177,547

LLMC 1996: 19,522,700sdr = US\$27,269,899

LLMC 1976: 8,144,625 sdr = US\$11,376,881

NB LLMC 1996 limits increased from June 2015 by about 51%

- On 4 June 2018 Rate of IMF Special Drawing Right (sdr)
 - 1 sdr = US\$1.41863
 - 1 sdr = Au\$1.86294

Features of Liability Conventions

- **Liability system (e.g. CLC 1992)**
 - **Strict (no fault) liability of registered shipowner**
 - Limited defences for owner
 - Financial limits of liability for owner under CLC
 - **“Channelling” of liability to registered shipowner only**
- **Definition of “pollution damage” claimable**
 - **Not an ‘open cheque’ – restricted**
 - **Clean up, economic loss and actual reinstatement costs**
- **Financial security**
 - **Compulsory insurance of registered shipowner**
 - **Direct action against insurer**
 - E.g. for insolvent or single ship company
 - **Insurance certificate for Port State Control**

Features of Liability Conventions

- **One or Two level compensation system?**
 - **CLC** Shipowner liable for first level (up to limits of liability)
 - **IOPC Fund** liable for second level
 - Contributed by cargo importers generally (not States)
 - After-event collection system from all importers worldwide (tax?)
 - 150,000t per year threshold
 - **BPC 2001** and **WRC 2007** single level (only “shipowner” liable)
- **Jurisdictional Cooperation**
 - Pollution damage in State Party’s seas or EEZ
 - No international tribunal – national court jurisdiction
 - Recognition and enforcement of judgments
 - Shipowner’s limitation fund
- **Time Bar - 3/6 years**
- **Practicality of IOPC Fund system in operation**
 - Shipowners’ insurers (P&I Clubs) cooperate with 1992 Fund
 - States (claimants and potential contributors) influence and develop practice

Oil Tanker Limits of Liability

1992 CLC Liability Convention

Shipowner liability: minimum 5,000gt: 4.51 million sdr: =US\$6,398,021
then 631 sdr **\$895** per ton up to

Shipowner liability: maximum: 89.77 million sdr: =US\$127,350,415

Aframax 57,017 gt = \$6,398,021 + \$46,563,305 [\$895 x 52,017]
= US\$52,961,327

1992 Fund Convention

203 million sdr

Fund maximum

US\$287,981,890

Supplementary Fund Protocol 2003

Supplementary Fund max: 750 million sdr

US\$1,063,972,500

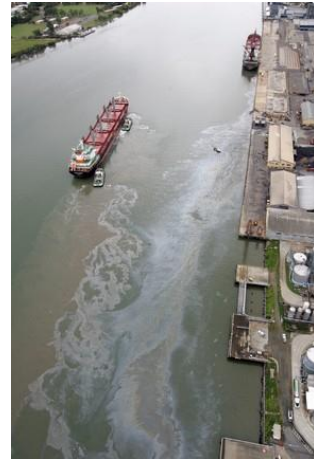
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Bunker Pollution Convention 2001

- **Compensation regime for Bunkers and lubeoil of non-tankers**
 - [CLC applies to tankers]
- **Strict Liability of shipowner**
- **Channelling: who is liable?**
 - “Shipowner” includes bareboat charterer, manager and operator: Art. 1(3)
 - No exclusion of claims against crew, salvors or time charterers
- **No second level “Fund” to:**
 - Top up claims above shipowner limits
 - Pay if insurer insolvent
- **Compulsory Insurance**
 - By registered shipowner only
 - Not bareboat charterer, manager, operator
 - Ships over 1000 gt
 - Direct action against insurer
 - Insurer always has right to maximum liability under BPC 2001 , but
 - Calculated according to LLMC 1996
- **Any limit to shipowner liability (eg LLMC)?**



Chemical Pollution Disaster?

- Bulk or packaged goods pollution
 - Explosion of LNG/LPG ship
- Hazardous and Noxious Substances Convention (HNS) 1996/2010
- Not in force
 - National law adequate?

YM *Efficiency*, 42741 gt, lost 83 containers off NSW, 31 May 2018



HNS 2010 shipowner limits

If Bulk HNS maximum limits – **US\$140 million**

If Packaged HNS/ Bulk HNS maximum **US\$161 million**

“HNS Fund” second tier: **US\$350 million**

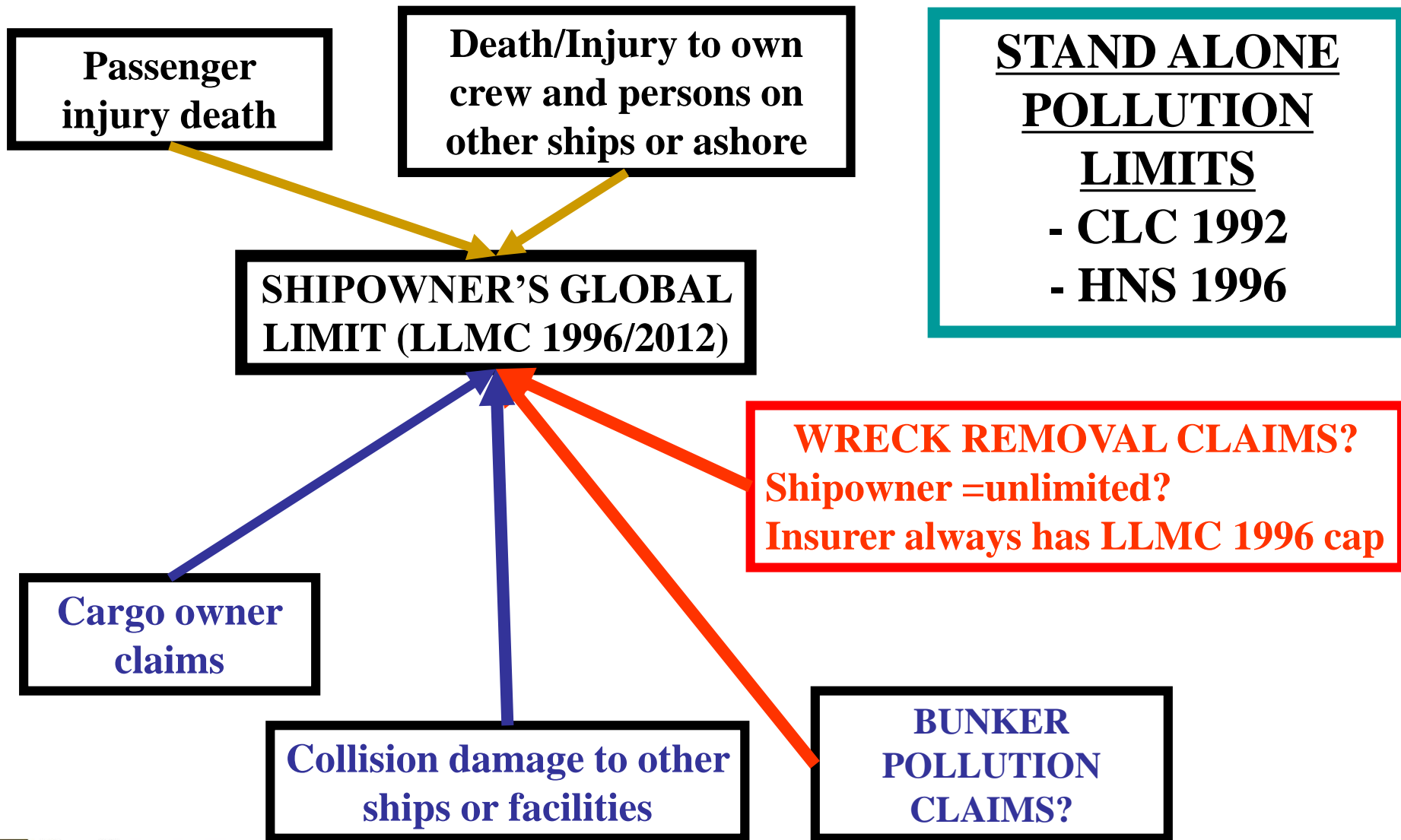
Wreck Removal Convention 2007: Overview

- **National wreck removal laws—defects**
- **WRC Objective: Art. 2**
 - State can “take measures in relation to the removal of wreck if hazard in Convention area [EEZ]”
 - Proportionate, reasonably necessary, limited duration, minimum interference with rights of owner or flag state
 - Triggers to action: need
 - “Maritime casualty to a ship”, “wreck of ship and cargo” ,
 - “Hazard”: includes navigation and environmental and “related interests” of a State (eg fishing/tourism)
- **State option to extend WRC into territorial waters**
- **What actions does WRC 2007 allow or cover?**
 - **Physical Actions:**
 - Reporting ; Locating; Marking; Removal
 - Owner obligation to remove wreck
 - **Legal Claims**
 - **Strict liability of shipowner**
 - For costs of removal, locating, marking
 - Includes cargo removal
 - **Limitation of liability depends on national law, eg LLMC 1996 (and reservations)**
 - **Compulsory insurance and direct action against insurer**
 - **Time bar: 3/6 years**

Limitation of Liability and the WRC

- **Limitation of liability like Bunker Convention 2001**
 - **No stand alone limits**
 - **“limit liability under any applicable national or international regime, such as [the LLMC 1976 or 1996]”**
 - **Shipowner liability depends on national limitation law**
 - **For LLMC 1976/1996 States Art 18 is important**
 - **Opt-out [reservation]** for claims in in Art. 2(1)(d),(e)
 - Raising of wreck or contents (eg cargo)
 - **Many developed states (Australia) have made reservation to LLMC so shipowner liable for wreck removal without limits**
 - **No PACPLAN island States have made LLMC reservations**
 - Eg Kiribati, Tuvalu, Vanuatu
 - **NB Insurer maximum liability is LLMC 1996**

Limits of Liability for Wreck Claims?



LLMC 1996/2015: Calculation of Limits

MSC Napoli [2007] 53,409 gt (4,734 Teu), 3500t bunkers

LLMC 1996 [2015]: 29,026,277 sdr = US\$41,177,547 [cf HNSC 2010]

Madrid Maersk (EEE class) 214,286 gt (20,568 TEU)

LLMC 1996 [2015]: 80,116,372 sdr = US\$113,655,489

Rena [2011] 38,788 gt (3351/1368 Teu)

NZ\$600m + wreck removal claims

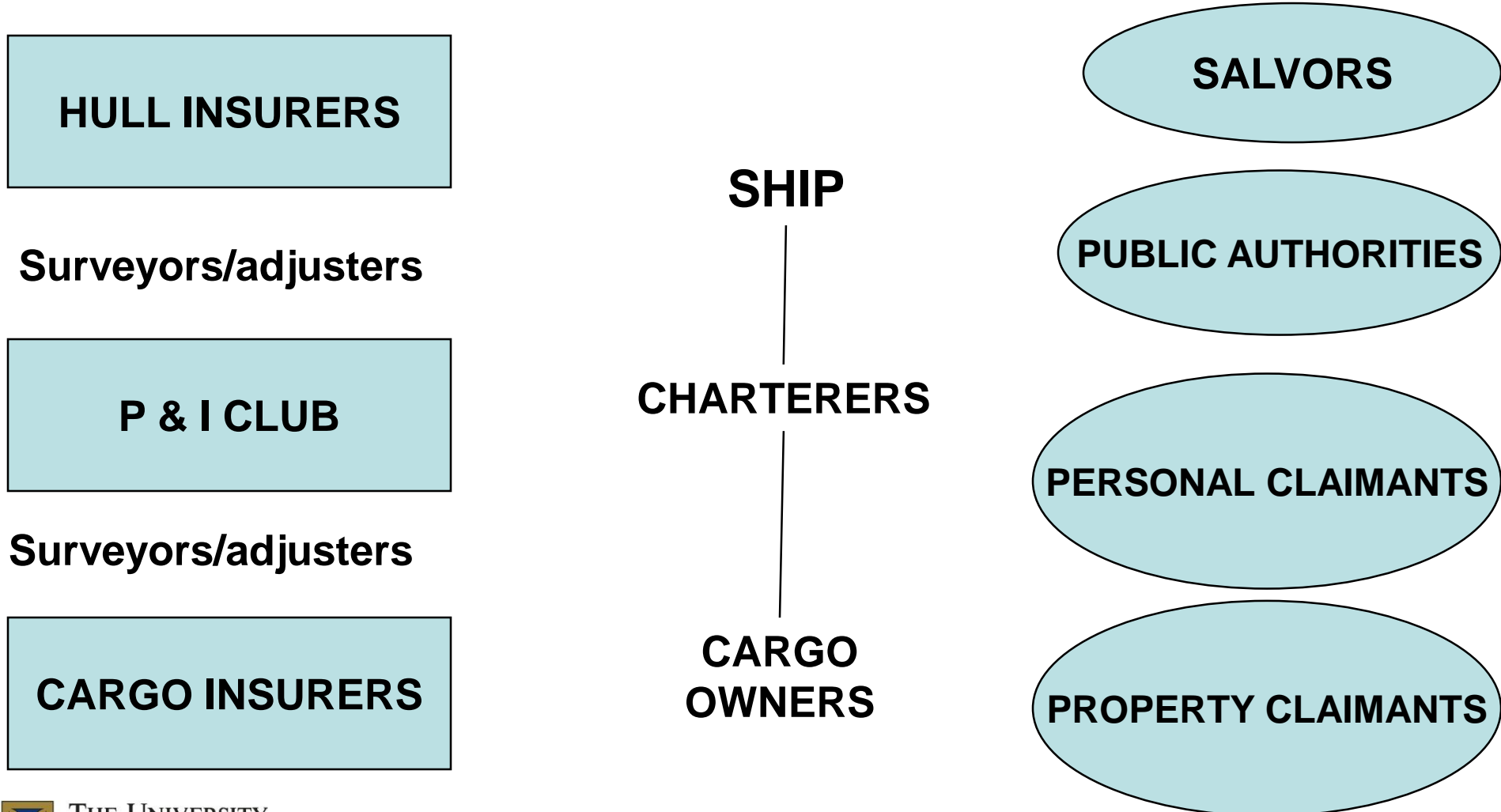
LLMC 1996 [2015]: 22,402,964 sdr = US\$31,781,517

YM Efficiency [2018] 42,741 gt

LLMC 1996 [2015]: 24,193,673 sdr = US\$34,321,870

Liaison with Commercial Parties

Persons Interested in a Single Ship Casualty



Salvors and State Interests

- **Environmental factors recognised in Salvage Convention 1989**
- **Increasingly states will exercise intervention powers**
 - **Need to work with experts in industry**
 - **Salvage of property may coincide with state interests**
 - **Salvage of cargo may leave useless hull as wreck**
- **Most commercial salvage is undertaken by contract**
 - **Lloyd's Open Form (LOF) Salvage Agreement 2011**
 - **LOF usually incorporates SCOPIC clause (now 2014)**
- **Who is going to pay immediately for operations?**
 - **Shipowner and cargo interests?**
 - **Hull/cargo underwriters?**
 - **P&I Club?**
- **State may have powers, but who does removal work?**
 - **BIMCO Standard Form Wreck Removal Contracts**
 - **WRECKHIRE 2010 (Daily Rate)**
 - **WRECKSTAGE 2010 (Lump Sum, with Stage Payments)**
 - **WRECKFIXED 2010 (Fixed Price - No cure No pay)**