

Annex 1: Benefits and implications of ratifying conventions - Decision-making support chart

Name of convention	Benefits of being a party (obstacles resolved; social, economic, environmental, commercial, political advantages)	Obligations/responsibilities of being a party to this convention	Financial implications (does becoming a party to this convention have cost implications for the State Party?)
<p><i>Bunker Oil and LLMC Conventions</i></p>	<p>These conventions provide, together with the CLC and Fund Conventions, a comprehensive legal arsenal of liability and compensation regimes to cope with marine pollution damage from oil.</p> <p>These conventions provide a clear, known and proven system that is also harmonized and uniform, which many countries use.</p> <p>This system is more favourable to victims in that it:</p> <ul style="list-style-type: none"> - avoids having to sue the party responsible (with all the slowness and uncertainty that entails) and prove they are at fault, thanks to strict liability; - offers the possibility of benefiting from the joint and several liability of the parties implicated, where applicable, without having to establish fault; 	<p>Issue insurance certificates for ships registered with the State Party, making sure that the requirements of articles 7.1 and 7.2 are met (model certificate annexed to the Bunker Oil Convention).</p> <p>For certificates issued by another State Party, review the entries and check the date of validity.</p> <p>In the event that the issuing of certificates is delegated to a financial institution or body, notify the IMO Secretariat of the conditions for authorization and withdrawal.</p> <p>Check their financial standing (see Circular Letter No.3464 of 2 July 2014)</p>	<p>No particular financial implications</p>

	<p>- allows one to take the risk of them being insolvent, with compulsory insurance and direct action against the insurer.</p> <p>With the proliferation of very large modern ships, pollution from leakage or discharge into the sea of bunker oil can be catastrophic and it has become necessary to have an equivalent to the liability/IOPC regime. The Bunker Oil Convention incorporates the principles of that regime.</p> <p>The Bunker Oil Convention cannot function on its own and needs another instrument to set the limits of liability.</p> <p>The national liability regime is not recommended, as it is longer and more complicated to implement, only usable at national level. Compensation amounts would in any case be limited, as regards compulsory insurance, to the maximum amounts in LLMC 1996.</p> <p>LLMC 1996 is adapted to the size of modern ships and its amounts can be easily reviewed thanks to the simplified procedure of tacit acceptance (which is not possible with LLMC 1976 whose compensation amounts are much lower).</p> <p>It is strongly recommended to ratify directly LLMC modified by the 1996 Protocol, if LLMC 1976 was not</p>	<p>Check that all ships that reach a port or offshore installations in the territorial sea actually have on board a correct, valid certificate.</p> <p>Designate the competent authority responsible for issuing certificates and/or checking them.</p> <p>Designate the competent tribunals, in accordance with your internal court organization, before which claims for compensation may be brought, and the limitation funds constituted.</p> <p>Provide in the implementing instruments for the necessary sanctions.</p> <p>Check whether it is advisable make reservations, as the possibility to do so is given in the Convention, inter alia in articles 6.3, 8, 10, 11, 15, 15.3bis, and 18 of the 1996 LLMC Convention.</p>	
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	already ratified. If that is not the case, it is important to denounce LLMC 1976 to avoid being bound by two regimes and two different sets of limitation amounts.		
MARPOL	<p>The OPRC Convention, in its legally binding provisions, refers to the MARPOL Convention.</p> <p>The MARPOL Convention provides States Parties with the legal basis to:</p> <p>a) enforce compliance by ships flying the national flag and ships flying the flag of a third State, as well as by fixed or floating platforms engaged in exploration and exploitation of oil and gas in the maritime areas under their jurisdiction, with the (applicable) provisions of the MARPOL Convention, including concerning:</p> <p>Discharge into the sea of oil and oily mixtures;</p> <p>The shipboard emergency plan;</p> <p>The obligation to immediately notify and to report on incidents involving the discharge or possible discharge of oil (or other harmful substances); and</p> <p>b) sanction breaches of the provisions of the Convention either through the legislation of the authority on which the ship or platform depends or through the legislation of the party in whose jurisdiction the breach was committed.</p>	<p>a) Transpose the provisions of the Convention into the internal legal order.</p> <p>b) Adopt specific laws to deal with breaches of the Convention.</p> <p>c) Issue certificates and inspect ships flying the national flag and inspect and control ships of third countries as port State and coastal State.</p> <p>c) Clearly define and allocate responsibilities with regard to implementation, control, policing and sanctions.</p> <p>d) Designate the competent body to receive and process reports on incidents.</p>	<p>No direct financial implication, but some provisions of the Convention imply the following indirect costs:</p> <ul style="list-style-type: none"> - Putting in place the human and material resources to regulate, administer and enforce the Convention. - Sufficient number of trained legal and administrative personnel. - Sufficient number of trained port State control inspectors.

			<ul style="list-style-type: none"> - Resources to carry out monitoring, observation and detection of discharge and spillage.
OPRC 1990	<p>The OPRC Convention provides the elements to put in place effective national and regional systems for response preparedness and response, and it underlines the vital role played by the oil and maritime industries in that regard.</p> <p>It establishes the bases and arrangements for international assistance in the event of a serious pollution incident and encourages bilateral and regional cooperation.</p> <p>It (the Parties) calls on IMO, subject to its agreement and the availability of resources, to:</p> <p>Provide assistance with helping to identify sources of provisional funding of assistance costs:</p> <p>Promote training in response preparedness;</p> <p>Provide advice and technical assistance to States establishing national or regional capabilities in response preparedness and response to pollution incidents.</p>	<p>Laws and regulations (attributing decrees) should determine attributions and designate the national competent authorities responsible for response preparedness and those responsible for response to pollution incidents.</p> <p>Regulatory provisions (e.g. decrees, orders) on the organization of public authorities should organize cooperation and ensure coordination of all the administrations and bodies that must contribute to developing and maintaining the response preparedness and response mechanism.</p> <p>Laws and regulations to require operators of offshore units and operators responsible for seaports and oil handling facilities under national jurisdiction to have emergency plans coordinated with the national system and approved in accordance with the procedures provided for by the competent national authority.</p>	<p>No direct financial implication, but some provisions of the Convention imply the following indirect costs:</p> <ul style="list-style-type: none"> - Have human and material resources available. - Trained personnel, training programmes and exercises. - Means of communication, minimum of means of intervention at sea (optimize existing

		Arrangements with the oil and maritime industries, port authorities and other entities to mobilize the necessary resources and coordinate response operations.	resources/State action at sea). Minimum quantity of oil spill response equipment.
1992 Civil Liability Convention	It governs the liability of shipowners for oil pollution damage resulting from spills of persistent oil from tankers . It lays down the principle of their strict liability and institutes a compulsory liability insurance system. The owner of a ship normally has the right to limit its liability to an amount according to the tonnage of its ship.	Need to ensure it is implemented in the internal legal order so that its provisions are fully applicable in the event of pollution damage on the territory of the State Party affected.	
	<u>Territorial application</u> : This Convention is aimed at pollution damage occurring on the territory, in the territorial sea or in the exclusive economic zone (EEZ) or equivalent zone of a State Party to the Convention. The flag State of the tanker and the nationality of its owner are not taken into account in determining whether the Civil Liability Convention applies.	These provisions protect a coastal State that might be suffering pollution from a ship navigating off its coast in addition to those having commercial relations on its territory.	
	<u>Types of damage covered</u> : The term " pollution damage " is defined as loss or damage caused by contamination. Compensation for damage to the environment (other than loss of profit from impairment of the environment)		

	<p>is limited to costs of reasonable measures of reinstatement of the contaminated environment actually undertaken or to be undertaken.</p> <p>The notion of pollution damage encompasses the costs incurred by safeguarding measures, which are recoverable even if no oil spillage has occurred, provided there is a grave and imminent threat of such damage.</p>		
	<p><u>Definition of <i>ship</i></u>: It is aimed at spillage of oil as cargo or bunker oil coming from vessels built or adapted for transporting oil in bulk as cargo, and applies therefore both to laden tankers and, in certain circumstances, tankers in the light ballast condition (but not to dry cargo ships).</p>		
	<p><u>Liability of the shipowner</u>: The owner of a tanker has strict liability (that is to say it is liable even where there is no fault) for pollution damage caused by oil which its ship has spilled following an accident. No liability for pollution damage shall attach to the shipowner if the shipowner proves that:</p> <ul style="list-style-type: none"> a) the damage resulted from an act of war or a serious natural disaster; or b) the damage resulted wholly from an act of sabotage committed by a third party; or 		

	<p>c) the damage resulted wholly from the negligence of the public authorities responsible for maintaining lights or other navigational aids.</p>		
	<p><u>Limitation of liability</u>: The owner of a ship is authorized, under certain conditions, to limit its liability, with a maximum of SDR89.7 million (~\$124.9 million) for a ship with a gross tonnage of 140,000 units or over.</p>	<p>The limits on liability in the Conventions may be changed by a decision of all the States Parties. It is important to maintain legal monitoring to guarantee application in national law of the most recent limits.</p>	
	<p><u>Compulsory insurance</u>: The owner of a tanker transporting a cargo of more than 2,000 tons of persistent oil is required to maintain insurance to cover liability. A certificate attesting the insurance coverage must be located on board. It is also required of ships flying the flag of a State that is not party to the Convention when such ships reach or leave a port or terminal of a State Party to this Convention.</p>	<p>Importance for all States to check the financial standing of companies providing these financial guarantees, for all ships wherever they may be registered.</p> <p>Reference to IMO Circular Letter No.3464 of 2 July 2014 on <i>Guidelines for accepting insurance companies, financial security providers and the International Group of Protection and Indemnity Associations (P & I Clubs)</i>.</p>	
	<p><u>Channelling of liability</u>: Claims can only be made against the person in whose name the tanker in question is registered.</p> <p>This does not prevent victims from seeking to be compensated outside this Convention by persons other than the owner, and the owner has the right to enter recourse claims against third parties under national law.</p>	<p>Importance of properly separating in national law actions for civil liability within the framework of the CLC Convention from other actions for liability (civil or criminal) conducted outside this convention framework.</p>	

	<p><u>Competent courts</u>: Actions for compensation against the owner of the ship and its insurer can only be brought before the courts of the State Party to the Convention in which the damage occurred.</p>	<p>Need to identify the competent courts to address these issues.</p>	
1992 Fund Convention	<p>This Convention, which supplements the 1992 Civil Liability Convention, establishes a regime of compensation for victims which comes into play when the compensation provided for under the applicable civil liability convention is insufficient. The International Oil Pollution Compensation Fund, 1992 (IOPC Funds or 1992 Fund) was established under the 1992 Fund Convention.</p>		
	<p><u>IOPC Funds</u>: The 1992 Fund (IOPC Funds) is a global intergovernmental organization which was set up to administer the compensation regime instituted by the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992. By becoming a Party to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, a State becomes a member of IOPC Funds. The headquarters of IOPC Funds is in London.</p>	<p>The participation of every IOPC Funds Member State in the meetings of the governing bodies of the organization is necessary to ensure that it functions properly and to participate in the directions and decisions of IOPC Funds.</p>	<p>Article 31.1 of the Convention:</p> <p>Each State Party to the Convention bears the salary, travel and other expenses of its own delegation to the Assembly and of its representatives on subsidiary bodies.</p>

	<p><u>Relationship to other conventions:</u> To be a party to the 1992 Fund Convention, a State must also become a party to the 1992 Civil Liability Convention.</p>	<p>Ensure accession to the 1992 CLC Convention as a priority followed by the 1992 Fund Convention.</p> <p>Also ensure that 1969 CLC Convention is denounced if still in force in national law.</p>	
	<p><u>Scope:</u></p> <p>This Convention also applies when:</p> <ul style="list-style-type: none"> a) the owner of the ship is relieved of its liability under the 1992 CLC Convention because it can invoke one of the exemptions provided for in this convention; or b) the owner of the ship is financially incapable of fully meeting its obligations under the 1992 CLC Convention and its insurance is insufficient to satisfy the claims for compensation for the pollution damage; or c) the damage exceeds the amount of liability falling to the shipowner under the 1992 CLC Convention. 		
	<p><u>Compensation limits:</u> The maximum amount payable by IOPC Funds for an incident is SDR203 million (\$282.3 million on 31/12/18)</p>	<p>The limits on liability in the Conventions may be changed by a decision of all the States Parties. It is important to maintain legal monitoring to guarantee application in national law of the most recent limits.</p>	
	<p><u>Financing:</u> IOPC Funds is financed by contributions received from any person who has received in a given</p>		

	<p>calendar year over 150,000 tonnes of crude oil and heavy fuel oil (contributing oil) in a State Party.</p> <p>Contributions are set according to the reports on oil receipts by the various contributors.</p>		
	<p><u>Obligation to submit reports</u>: Every Member State must communicate every year to IOPC Funds the name and address of all persons who, in that State, are required to contribute as well as indications of the amount of contributing oil received by each of those persons. That applies whatever the identity of the oil receiver - public administration, nationalized company or private operator.</p>	<p>Art. 15</p> <p>A competent administration must be identified with the responsibility to receive and check contributor reports for transmission to IOPC Funds.</p>	
	<p><u>Definition of contributing oil</u>: By oil received is meant the oil received in tanks or storage facilities immediately after transportation by sea. The place of loading is unimportant in this context; the oil may be imported from abroad, arrive at a different port in the same State or have been transported by ship from an offshore production platform. Oil received with a view to it being transferred to another port or transported by pipeline is also considered as having been received for the purposes of calculating contributions.</p>		
	<p><u>Contributions</u>: Annual contributions are received by IOPC Funds to enable it to meet anticipated payments of compensation as well as administrative expenses during the coming year. The amount to be collected is set each year by the Assembly.</p>	<p>Art. 13.</p> <p>Each Contracting State ensures that it makes provisions in order to meet the obligation to contribute to the Fund, in accordance with the present Convention, for the oil received on the territory of the State; it takes all the appropriate</p>	<p>Contributions are paid directly and exclusively by contributors.</p>

		legislative measures, including the sanctions it deems necessary, so that this obligation is met effectively, subject however to these measures targeting only those persons who are required to contribute to the Fund.	There are no contributions or annual subscriptions to be paid by Member States.
Supplementary Fund Protocol	On 3 March 2005, a third level of compensation was established in the form of a Supplementary Fund set up pursuant to a protocol adopted in 2003.	The participation of every Member State of the Supplementary Fund in the meetings of the governing bodies of the Fund is necessary to ensure that it functions properly and to participate in the directions and decisions of IOPC Funds.	
	<p><u>The Supplementary Fund</u>: An International Oil Pollution Compensation Supplementary Fund was established pursuant to the 2003 Protocol. It comprises an Assembly and a Secretariat headed by a Director which in practice is managed by the 1992 Fund and its Secretariat.</p> <p>Accession to this Supplementary Fund is optional and open to all Member States of IOPC Funds. The Supplementary Fund, which is administered by the IOPC Funds Secretariat, has its own Assembly composed of representatives of its Member States.</p>	The participation of every Member State of the Supplementary Fund in the meetings of the governing bodies of the organization is necessary to ensure that it functions properly and to participate in the directions and decisions of IOPC Funds.	<p>Art. 16 of the Protocol:</p> <p>Art. 31.1 of the Fund Convention applies to the Protocol:</p> <p>Each State Party to the Convention bears the salary, travel and other expenses of its own delegation to the Assembly and of its representatives on subsidiary bodies.</p>
	<u>Relationship to other conventions</u> : The Supplementary Fund provides supplementary compensation higher than the amount of compensation available under the 1992		

	Fund Convention for pollution damage in States that have become parties to the Protocol.		
	<u>Compensation limit:</u> The total amount of compensation available for each incident for pollution damage occurring in States that become members of the Supplementary Fund is SDR750 million (\$1,043 million on 31/12/19)		
	<p><u>Contributions:</u> The Supplementary Fund is financed by contributions received from any person who has received in a given calendar year over 150,000 tonnes of crude oil and heavy fuel oil (contributing oil) in a State Party to the Protocol.</p> <p>Contributions are set according to the reports on oil receipts by the various contributors</p>	<p>The contributions system of the Supplementary Fund differs from that of the 1992 Fund.</p> <p>For the purposes of payment of contributions, it will be considered that a minimum of 1 million tonnes of contributing oil is received each year in each Member State.</p>	<p>If the amount of oil received by the contributors is below this minimum, it is incumbent on the State to assume directly the obligation to contribute to the Supplementary Fund.</p>