

CHAPTER 5

Pollution



What you will learn in this chapter

Pollution

Overview of international regimes	2
The Civil Liability Conventions (CLC)	2
The IOPC Funds	2
Background to the Supplementary Fund, STOPIA and TOPIA	2
The Bunkers Convention	1
OPA 90 and the position in the USA	2
MARPOL 3	
Club cover of pollution risks and fines	2

5.1 Overview of civil and criminal laws

Liability for pollution is a relatively modern concern. Most laws in this field have come into being since the late 1960s following the first major tanker spill, *The Torrey Canyon* incident off Land’s End on the south-western tip of England. It prompted the growth of major environmental pressure groups, and governments represented at the United Nations undertook a whole range of new environmental commitments. Subsequent oil pollution disasters such as *The Amoco Cadiz* off Brittany in 1978, *The Exxon Valdez* in Alaska in 1989 and, more recently, *The Erika* and *Prestige* incidents off Western Europe, resulted in further legal changes and greater financial liability for pollution from ships.

Pollution liability regimes were among the first to introduce compulsory insurance in the maritime sector along with rights of direct action against the liability insurer.

Today, even minor pollution incidents commonly produce very significant financial losses for shipowners and their insurers, both in the form of compensation claims and by way of criminal fines. A serious oil spill is a crisis which shipping executives commonly fear more than any other casualty, not least because of the considerable publicity that is often generated by them. P&I Club managers may find incidents of this kind more complex and challenging than any other.

Insurance against pollution liability risks is therefore a very important feature of Club cover, not only to enable shipowners to comply with compulsory insurance requirements but also to protect them against some of their biggest potential exposures.

Liability for oil pollution

Liability to pay compensation for oil pollution from ships is in general governed by the law and practice of the jurisdiction where the pollution is suffered. A substantially similar approach is taken in many parts of the world as a result of international treaties establishing uniform laws. This makes it possible to examine the subject on a global basis by reference to two principal sets of liability regimes, one international and the other exclusive to the United States of America.

In most parts of the world outside the United States of America, laws governing compensation for oil pollution from ships are based on one or other of two international regimes, the first applying to oil tankers and the second to bunker spills from other types of ships.



Torrey Canyon incident off Land's End on the south-western tip of England

Spills from oil tankers

Compensation for oil pollution from oil tankers in most maritime countries is governed by an international system established by three international conventions. These do not cover pollution from all types of oil but apply to most spills from tankers which involve cargoes of persistent oil including bunkers (see also Definitions in next sections).

The Civil Liability Conventions 1969 and 1992 (CLC) govern the liability of the tanker owner for pollution damage resulting from an escape of oil from their ship. The two conventions are very similar in structure, each channelling all pollution liabilities to the registered owner of the ship and each providing for strict liability of the registered owner up to a financial limit calculated by reference to the tonnage of the ship. They also require tankers to be issued with certificates showing that adequate insurance is in place to meet the owner's liabilities under the conventions, with rights of direct action against the insurer.

The main difference between CLC 69 and CLC 92 is that CLC 92 provides for compensation up to higher limits. CLC 92 has largely superseded CLC 69 but the earlier convention remains in force in a number of states.

Most states where CLC 92 is in force are also parties to the Fund Convention 1992, which makes a second tier of compensation available from the International Oil Pollution Compensation (IOPC) Fund.

The IOPC Fund is an intergovernmental body which is headquartered in London, and has a close relationship with the International Maritime Organization (IMO). It is financed by levies imposed on oil receivers in IOPC Fund member states. Its object is to pay additional compensation in cases where the amounts recoverable from the shipowner are insufficient to pay legitimate claims. This additional compensation is subject to an overall limit of Special Drawing Rights (SDR) 203 million inclusive of amounts recovered from the shipowner under CLC 92.

Between them, CLC and the Fund Convention jointly provide a system of compensation in which the cost of most oil spills is borne entirely by the shipowner, while additional amounts are paid by the oil industry in major cases involving substantial claims which exceed the limit of liability of the shipowner concerned. They are both in force in over 100 coastal nations.

In some states, a third tier of compensation is available under the Supplementary Fund Protocol 2003. The object of the Supplementary Fund is to pay additional compensation in major incidents where established claims exceed the SDR 203 million limit of compensation available from the IOPC Fund. The Supplementary Fund is financed by levies imposed on oil receivers in states which are parties to the Protocol. It is administered by the same secretariat as the IOPC Fund. Its liability is subject to a limit of SDR 750 million inclusive of the amounts recovered from the shipowner and from the IOPC Fund. The diagrams under Layers of Compensation Under the International Regime illustrate the three different tiers of compensation.

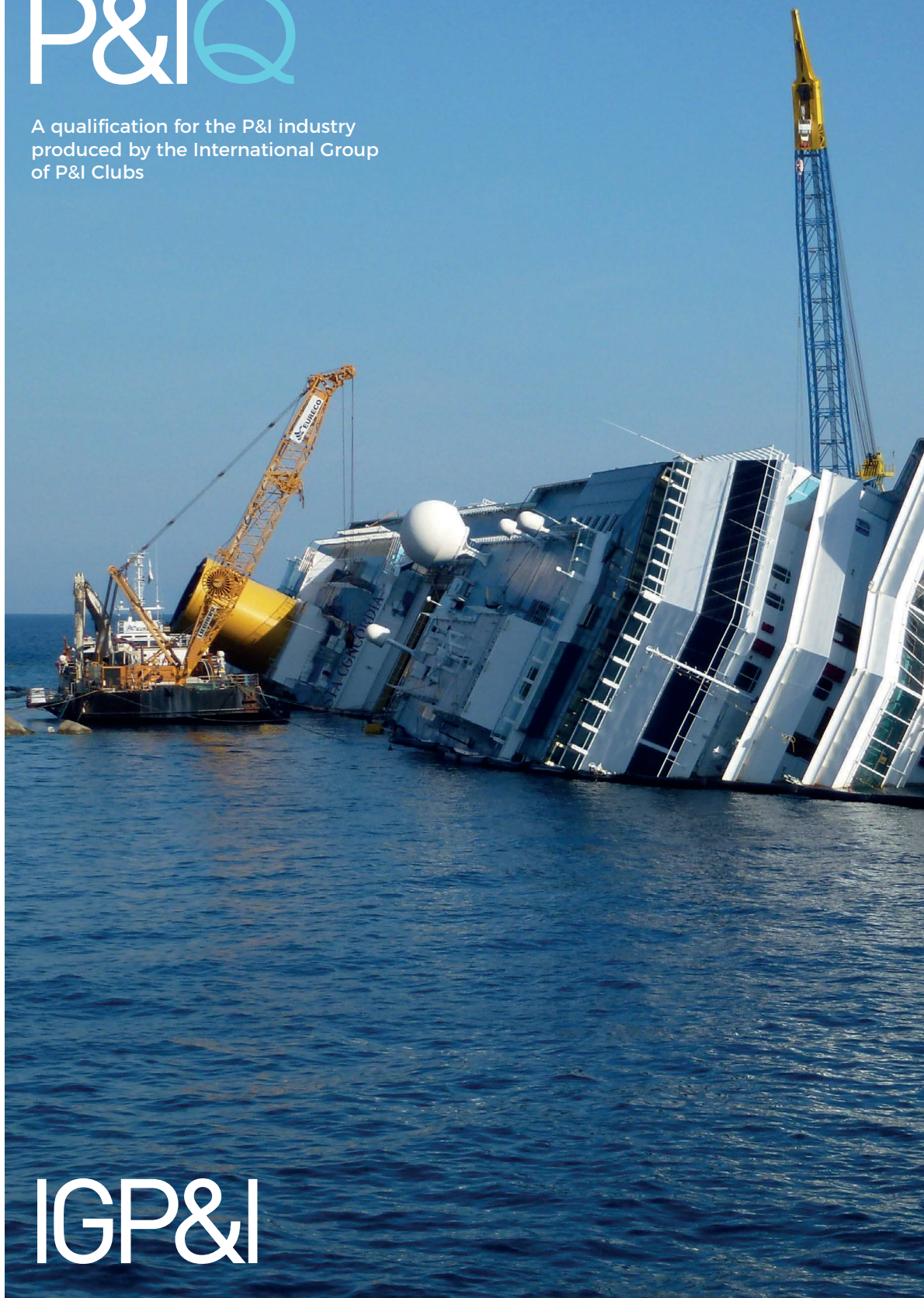
Bunker spills

The international regime of compensation for oil pollution from tankers carrying persistent oil or residues thereof as cargo applies to bunker spills from those tankers but not to oil pollution from other types of ships. Bunker spills falling outside that regime are the subject of the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (the Bunkers Convention) which came into force in November 2008.

The Bunkers Convention has a number of features in common with CLC but it establishes only a single-tier regime of compensation payable by the shipowner up to the limit of their liability under the applicable limitation regime. Like CLC, the Bunkers Convention incorporates a certification requirement to ensure that the vessel has adequate insurance to cover its liabilities under the Bunkers Convention, up to a limit based on the Limitation Convention; again with rights of direct action against the insurer. Having been adopted much later than the regime applying to tankers, the Bunkers Convention is less widely in force. In many parts of the world liability of this kind will depend on domestic laws.

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