REPORT

Remote Legal Assistance on the effective implementation of IMO conventions relating to oil pollution and liability and compensation

Nigeria
2020

Global Initiative for Western, Central and Southern Africa

Consultant:

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* The views expressed in this report are those of the consultant and do not necessarily represent the views of IMO or IPIECA.

NOTE

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Executive summary

The remote review provided an opportunity for the consultant, together with the GI WACAF Project team, IMO officers, the IOPC Funds representatives and the Focal Points for the participating countries i.e. the Gambia, Liberia, Namibia and Nigeria, to remotely review the respective national legislation relating to oil pollution and liability and compensation. The review analyzed the gaps in the existing pieces of legislation and made recommendations towards the transposition of relevant IMO conventions into national legislation and their effective implementation. Oral feedback would subsequently take place with the National Focal Points to iron out areas of complexities and address outstanding issues before a finalization of the Report.

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Overview of the GI WACAF Project

Launched in 2006, the Global Initiative for West, Central and Southern Africa (GI WACAF) Project is a collaboration between the International Maritime Organization (IMO) and IPIECA, the global oil and gas industry association for advancing environmental and social performance, to enhance the capacity of partner countries to prepare for and respond to marine oil spills.

The mission is to strengthen the national system for preparedness and response in case of an oil spill in 22 West, Central and Southern African Countries in accordance with the provisions set out in the International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990 (OPRC 90).

To achieve its mission, the GI WACAF Project organizes and delivers workshops, seminars and exercises, that aim to communicate good practice in all aspect of spill preparedness and response, drawing on expertise and experience from within governments, industry and other organizations working in this specialized field. To prepare and implement these activities, the Project relies on the Project's network of dedicated government and industry focal points. Promoting cooperation amongst all relevant government agencies, oil industry business units and stakeholders both nationally, regionally and internationally is a major objective of the Project during these activities.

GI WACAF operates and delivers activities with contributions from both IMO and seven oil company members of IPIECA, namely BP, Chevron, ExxonMobil, Eni, Shell, Total and Woodside.

More information is available on the Project's website.

1. Introduction

This remote assistance assignment for the enhancement of the capacities of four partner countries, initially consisted of a sub-regional workshop on the ratification and effective implementation of IMO Conventions relating to pollution and liability and compensation which was to be held in Accra, Ghana from 27th to 30th April, 2020. Seven English-speaking countries of the region were invited. The workshop was expected to address various challenges faced with the ratification and effective implementation of key IMO conventions as noted by participants of the 8th GI WACAF Regional Conference held in October, 2019[1].

However, due to the COVID- 19 Pandemic, the workshop was postponed and a remote legal assistance was initiated to achieve some of the activity's objectives remotely with the voluntary countries pending the possible organization of a sub-regional workshop.

As a preparatory step, questionnaires were sent to the National Focal Points of the four countries and the responses provided together with additional information on some of the relevant national legislation formed the basis for an overview of the conventions and gap analysis of the existing policy and legislative framework and the national legislation giving effect to the IMO Conventions. The questionnaires and responses are attached herewith as **Annex I**.

1.1. Objectives

The objectives as stated in the Terms of Reference, is to:

(i) assist policy makers, legislative advisers and/or drafters, responsible for the effective implementation, and transposition of IMO conventions into their domestic legislation.

(ii) provide the policy makers, drafters and legislative advisers with a deeper understanding of the underlying principles and objectives of the conventions.

(iii) guide policy makers, legislative drafters/or advisers on the legislative mechanisms that should be applied when developing and updating national laws.

To provide an insight into the legal implications of the ratification and adoption of the Marine Pollution Instruments, in particular the International Convention on Oil Pollution Preparedness, Response and Cooperation 1990 (OPRC 1990), The International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (Bunkers 2001), The International Convention on Civil Liability for Oil Pollution Damage 1992 (CLC 1992), The International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND 1992), the Protocol of 2003 to the FUND 1992 Convention (Supplementary Fund Protocol), and the Convention on Limitation of Liability for Maritime Claims 1976, as amended by the Protocol of 1996 (LLMC 1996).

The Terms of Reference are attached herewith as **Annex II**.

[1] Full report available through the following link: https://www.giwacaf.net/en/our/activities/8th-gi-wacaf-regional-conference/report

1.2. Expected outcomes

(a) To provide the four (4) beneficiary countries with a written gap analysis based on the review of the relevant national legislation.

(b) To provide the designated National Focal Points of the four (4) countries with tailored and comprehensive written and oral feedback for the domestication of the relevant IMO conventions.

1.3. Facilitators

Legal Affairs and External Relations Division of IMO

Mr. Jan de Boer, Senior Legal Officer

Ms. Aicha Cherif, Legal Officer

Marine Environment Division

Sub-Division for Implementation

Ms. Colleen O'Hagan, OPRC and OPRC-HNS Technical Officer

Mr. Clement Chazot, Technical Officer

GI WACAF Team

Mr. Julien Favier, GI WACAF Project Manager

Ms. Emilie Canova, GI WACAF Project Coordinator,

International Oil Pollution Compensation Funds (IOPC Funds)

Mr. Thomas Liebert, Head, External Relations & Conference

Mr. Mark Homan, Claim Manager,

2. Activities

On the 8th June 2020, Ms. Emilie Canova organized a meeting on Microsoft Teams in which Thomas Liebert, Jan de Boer, Aicha Cherif, Julien Favier, Clement Chazot and Dr. Mbiah participated. The meeting highlighted the objectives of the remote legal assistance on the effective implementation of IMO Conventions relating to oil pollution and liability and compensation. It also spelt out the modalities for the successful accomplishment of the assigned tasks. It noted in particular the gaps in the existing national legislations that seek to implement the relevant IMO Conventions.

The discussions during the Microsoft Team meeting also pointed out the need to provide an overview of the relevant conventions and the pertinent and underlying principles that should reflect in national legislation to make for effective implementation. Based on the said meeting, Emilie Canova got in touch with the National Focal Points of the respective countries and provided further materials in relation to the gap analysis of the various national legislation.

On 11th June, 2020, Jan de Boer, Senior Legal Officer and Aicha Cherif, Legal officer of the Legal Affairs and External Relations Division of the IMO also had a Microsoft Teams meeting with the Consultant. The meeting focused especially on the Bunkers Convention, the LLMC as amended and the limits of liability under the CLC and Fund Conventions. It noted the challenges that existed with some sections of the national legislations of some of the countries seeking to implement the provisions of the CLC and Fund Convention.

3. General observations

As indicated earlier, as part of the process of gathering information with respect to the current state of affairs of the respective countries, in relation to the relevant IMO conventions, questionnaires were sent to the respective countries. The Gambia responded with respect to The Gambia's acceptance of the relevant instruments, steps taken towards providing national legislation and the level of implementation.

Part 1 - Overview of the international instruments

1. International convention on oil pollution preparedness, response and cooperation 1990 (OPRC 1990)

Recognizing the serious threat posed to the marine environment by oil pollution incidents involving ships, offshore units, and oil handling facilities, IMO, in collaboration with other like-minded international organizations, worked to put together a convention on oil pollution preparedness, response and cooperation: the OPRC 1990.

1.1 Oil Pollution Emergency Plans

The Convention requires operators of offshore units, port authorities, terminals and oil handling facilities in contracting States to have an oil pollution emergency plan. It requires that when such plans are put in place, they should be harmonized with the national environmental pollution plans. In the same vein, ships are required to have on board an oil pollution emergency plan in line with the appropriate provisions of MARPOL.

1.2 Reporting Requirements

The Convention also requires ship masters and others in charge of ships, offshore units, sea ports and oil handling facilities, maritime inspection vessels or aircraft, and pilots of civil aircrafts to report any discharge or probable discharge of oil or the presence of oil.

Another very important provision is Article 5 which requires that as soon as the relevant authorities receive a report of pollution, an immediate assessment of its extent ought to be conducted. Once information is gathered based on the assessment, and if any action has been taken, same shall be communicated to other States with affected interests or States whose interests are likely to be affected by the pollution. It is also a requirement that this information be transmitted to the IMO or through the relevant regional organization, especially where the pollution damage is severe.

1.3 Designation of Competent Authorities

As a minimum requirement, the OPRC convention also requires under Article 6 that State Parties designate competent authorities for oil spill preparedness and response, receipt and transmission of oil spill reports, as well as those responsible for decision making. This is expected to be incorporated into an oil spill contingency plan. Article 6 is also important in view of the obligation it imposes on

contracting States to have at all times a minimum level of oil spill combating equipment, as well as a training and drills programme with a communication plan for coordination and response.

1.4 International Cooperation

One of the cardinal features of the OPRC Convention is the opportunity it provides for countries through the application of their national legislation to cooperate with other member States with respect to technical support services, equipment in dealing with marine pollution incidents should they arise. Coupled with the above provision is also the encouragement given to States to exchange information on research and development and to encourage dialogue for the development of standards in combating pollution. The above provisions are also buttressed by provisions in the convention which call for provision of support, transfer of technology and the development of joint research and development programmes, all geared towards effectively dealing with marine pollution. The Convention also in the spirit of cooperation, encourages bilateral and multilateral arrangements between States for effective preparedness and response in dealing with marine pollution.

National legislation could also be guided by provisions in the Convention that designate the IMO to perform functions and activities related to information services, education and training, technical services and technical assistance.

It is also important to mention that annexed to the Convention is a guidance on the reimbursement of the costs of assistance in accordance with the provisions of the International Oil Pollution Compensation Funds. The critical elements to note for the purpose of the transposition of the OPRC 1990 into national legislation is attached herewith as Annex V.

2. The international convention on civil liability for oil pollution damage 1992 (CLC 1992) and the international convention on the establishment of an international fund for compensation for oil pollution damage 1992 (Fund 1992)

2.1. International regime for ship source pollution

The international legal regime for the regulation of liability and compensation with respect to ship source pollution is governed essentially by three regimes, taking into account that the 2007 Nairobi Wreck Removal Convention may also apply, namely:

(i) **Tanker oil spills** – CLC 1992, Fund 1992 and the Supplementary Fund Protocol 2003.

(ii) **Bunker Oil Spills** – Bunkers 2001

(iii) **Damage caused by Hazardous and Noxious Substances** – International Convention on Liability and Compensation for Damage in Connection With the Carriage of Hazardous and Noxious Substances by Sea 2010 (HNS Convention).

For a country to cover issues of liability and compensation for pollution damage it needs to ratify or accede to all of these conventions. There are many IMO Member States who are parties to the CLC 1992 and the Fund 1992.

2.2. Salient features of the CLC 1992

The impetus for the development of the civil liability convention of 1969 was driven by the *Torey Canyon* disaster of 1967. The current international compensation regime for oil pollution damage is based on the CLC 1992, the 1992 Fund Convention and the Supplementary Fund Protocol of 2003.

The current international regime in its scope of application, **applies to pollution damage caused by spills of persistent oil from tankers in the territory (including the territorial sea) or the Exclusive Economic Zone (EEZ)** or equivalent area of a State party to the respective treaty instrument.

Under the CLC 1992, all liability is channeled to the registered shipowner with strict liability for pollution damage caused by the escape or discharge of persistent oil from the ship of the owner. By implication, the owner is therefore liable without proof of fault. i.e. the liability of the shipowner is not fault based.

The owner would however be exempt from liability under certain specific circumstances. The owner would have to prove that:

(i) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character or

(ii) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party, or

(iii) the damage was wholly caused by the negligence or the wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids, in the exercise of that function.

The Convention defines pollution damage as “loss or damage caused by contamination”. In the case of environmental damage (other than loss of profit from impairment of the environment) compensation is restricted to costs actually incurred or to be incurred for reasonable measures to reinstate the contaminated environment.

Generally speaking, an oil pollution incident can give rise to claims for five types of pollution damage:

(i) Property damage

(ii) Cost of clean-up operations at sea and on shore

(iii) Economic losses by fishers or those engaged in mariculture

(iv) Economic losses in the tourism sector

(v) Costs of reinstatement of the environment.

It is important to stress especially for the sake of national legislation, that under the convention, pollution damage includes measures, wherever taken to prevent or minimize pollution damage on the territory, territorial sea, or EEZ or as mentioned earlier, when dealing with the issue of scope of application, the equivalent area of a State party to the convention.

In addition, and especially, as some of these matters are subject to practical application, it is important to state that where preventive measures are undertaken which are deemed to be reasonable, the expenses are recoverable even where there is no spill of oil provided it can be established that there was a grave and imminent threat of pollution damage.

2.2.1 Limitation of Liability

The shipowner is normally entitled to limitation of liability in an amount determined by the tonnage of the ship for any one incident. It is also important to note that the unit of account for the limitation of liability is the Special Drawing Rights (SDR) of the International Monetary Fund. Adequate provision is made in the Merchant Shipping Marine Environment Regulations 2012 reflecting the application of the Special Drawing Rights.

Limitation Amounts

The shipowner is normally entitled to limit his liability to an amount determined by the size of the ship, as set out in the following table.

SHIPS TONNAGE	**CLC LIMIT**
Ship not exceeding 5000 units of gross tonnage	4510 000 SDR
Ship between 5000 and 140000 units of gross tonnage	4510 000 SDR plus 631 SDR for each additional unit of tonnage
Ship 140000 units of gross tonnage or over	89 770 000 SDR

2.2.2 Compulsory Insurance

For ships carrying more than 2,000 tonnes of oil as cargo in bulk, the shipowner is obliged to maintain insurance to cover the shipowner's liability under the convention. One very important aspect of the CLC 1992 is the right of the claimant to direct action against the insurer. The Convention deals with laden oil tankers, and to bunker spills from unladen oil tankers having residues of persistent oil from a previous voyage on board following the carriage of oil in bulk as cargo. Tankers are required to carry on board a certificate of proof of insurance coverage and requisite provisions ought to be included in national legislation not only for ships flying the flag of State parties to the Convention but also to non-parties to the CLC 1992 Convention.

2.2.3 Channelling of Liability

As mentioned earlier, due to the channeling of liability to the registered owner, the 1992 CLC prohibits claims against the servants or agents of the owner, the members of the crew, the pilot, the charterer (including a bareboat charterer), manager or operator of the ship, or any person carrying out salvage operations or taking preventive measures, unless the pollution damage resulted from the personal act or omission of the person concerned, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

For ships not registered in a State party, the Competent Authority of any State Party may issue the insurance certificate or inspect the certificate in standard form (known as the Blue Card) issued by the insurer as evidence of cover.

2.2.4 Scope of Application

It is also important to state that the CLC 1992 applies to any sea-going vessel and any seaborne craft of any type whatsoever constructed or adopted for the carriage of oil in bulk as cargo. The convention in principle applies to barges if they are sea-going and this must be noted for the purposes of national legislation. It is also important to note that the Convention defines oil as "any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil whether carried on board a ship as cargo or in the bunkers of such a ship". In effect the convention does not cover gasoline, light diesel oil, kerosene, palm oil, whale oil, olive oil, biofuels.

2.2.5 Jurisdiction

Courts of the State Party to that Convention in whose territory, territorial sea or EEZ or equivalent area the damage occurred can assume jurisdiction in actions against the owner for compensation for oil pollution damage. National legislation should thus make provision to ensure that State Courts are clothed with the requisite jurisdiction to handle such matters.

2.3. Salient features of the 1992 Fund Convention

The 1992 Fund Convention is supplementary to the 1992 CLC and establishes a regime for compensating victims when compensation under the 1992 CLC is unavailable or inadequate. The Fund pays compensation in situations where:

(i) the damage (claims) exceeds the limit of the ship owner's liability under the 1992 CLC; or

(ii) the owner is exempt from liability under the CLC; or

(iii) the owner is financially incapable of meeting the claims obligations under the CLC and there is insufficient insurance cover for all the claims.

States are required to be parties to the 1992 CLC in order to become parties to the 1992 Fund Convention.

2.3.1 Contribution oil (cargo)

The 1992 Fund is financed by contributions levied on any person who has received in one calendar year more than 150,000 tons of crude oil and or heavy fuel oil (contribution oil) in a Member State of the Fund. Again, requisite provisions ought to be made in national legislation to take account of this. It is also important to note that the 1992 Fund would not pay compensation where:

(a) the damage occurred in a State which was not a member of the 1992 Fund; or

(b) the pollution damage resulted from an act of war or was caused by a spill from a warship; or

(c) the claimant cannot prove that the damage resulted from an incident involving one or more ships as defined (i.e. a sea-going vessel or seaborne craft of any type howsoever constructed or adopted for the carriage of oil in bulk as cargo).

2.3.2 Limits of Compensation

The maximum compensation payable by the 1992 Fund is 203 million SDR for incidents occurring on or after 1st November 2003, irrespective of the size of the ship. For incidents which occurred before the 1st November 2003, the maximum amount payable is 135 million SDR. These maximum amounts include the sums actually paid by the shipowner by virtue of the provisions of the 1992 CLC.

2.3.3 Jurisdiction

Courts of the State Party to that Convention in whose territory, territorial sea or EEZ or equivalent area the damage occurred can assume jurisdiction in actions for compensation under the 1992 Fund.

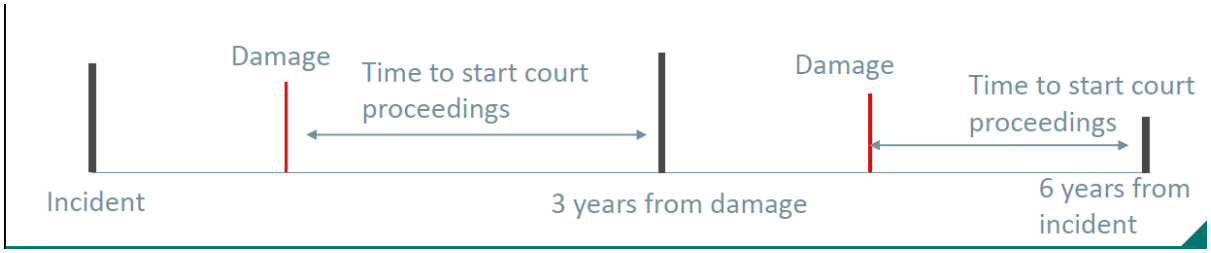
2.3.4 The Supplementary Fund Protocol

The supplementary Fund Protocol was adopted in 2003 and entered into force in 2005 and thus brought into being the Oil Pollution Compensation Supplementary Fund, 2003 (Supplementary Fund).

The Supplementary Fund is purposed to provide additional compensation beyond the amount available under the 1992 Fund Convention in 1992 Fund Member States which are also parties to the Protocol. The total amount available for each incident is 750 million SDR including the amounts payable under the 1992 Conventions (i.e. the CLC and Fund Conventions). Membership of the Supplementary Fund is optional and any State which is a member of the 1992 Fund may join the Supplementary Fund. The Gambia is not a party to the Supplementary Fund.

2.3.5 Time bar

Rights to compensation under the 1992 CLC, the 1992 Fund Convention and the Supplementary Fund Protocol shall be extinguished unless action is brought within 3 years from the date when the damage occurred. However, in no case shall an action be brought after 6 years from the date of the incident which caused the damage. This is to take account of latent pollution damage. It should be noted that notification to the Fund of an action against the shipowner does not interrupt the six years period.



For the proper and equitable functioning of the liability and compensation regimes for oil pollution damage, it is crucial that the conventions are applied and implemented uniformly in all States so that claimants would be given equal treatment with regards to compensation enjoyed by all State parties. This is why it is important that national legislation reflects accurately the tenets of the instruments.

In this regard, it is also essential that State parties set a comparable time of three years from the date of damage being incurred, for filing claims at any limitation court established, in order to ensure that claimants are given full opportunity to file claims and receive any compensation they may be due.

3. The international convention on civil liability for bunker oil pollution damage 2001 (Bunkers 2001)

3.1 Salient Features of the Bunkers Convention

After the adoption of the Civil Liability and Fund Conventions, it became clear that there was still an "orphan" in the liability and compensation regime that had not been attended to. The CLC regime dealt with oil tankers and not other ships whose bunkers had the capacity to pollute. The Bunkers Convention, even though modeled on the Civil Liability Convention for oil pollution damage is a free-standing instrument covering pollution damage from ships' bunker oil only.

The Convention was adopted to ensure that adequate, prompt and effective compensation is available to persons who suffer damage caused by spills of oil when carried as fuel in ships' bunkers. The Convention applies to damage caused on the territory, including the territorial sea, and in the Exclusive Economic Zones of States Parties to the Convention.

The main features of the Bunkers Convention include the strict liability of the shipowner including the registered owner, the bareboat charterer, manager and operator of the ship. Under the Convention, the shipowner is entitled to limitation of liability but must obtain compulsory insurance and the Convention also provides for direct action against the insurer.

Even though the Bunkers Convention is modelled along the lines of the CLC 1992, there are marked differences between the two regimes which ought to be taken note of, especially in the elaboration of national legislation. The definition of oil (bunker oil) is different from the definition of oil under the CLC. Under the Bunkers Convention, the bunker oil of a ship includes "any hydrocarbon mineral oil, including

lubricating oil, used or intended to be used for the operation or propulsion of the ship, and any residues of such oil".

For national legislation therefore, it must be noted that an acceptance of the CLC regime cannot be a substitute for the adoption of the provisions of the Bunkers Convention and separate legislation ought to be enacted to give vent to the Bunkers Convention.

The definition of bunker oil under the Bunkers Convention, even though broad, still requires proof of intention of use for a distinction to be made between fuel and cargo oil.

Apart from the definition of bunker oil, other definitions are of significant importance and they must be made to reflect appropriately in national legislation.

The shipowner is defined to include the registered owner, bareboat charterer, manager and operator of the ship. It is therefore important to bear in mind that there is no civil liability responder immunity; so while the registered owner, bareboat charterer, manager, operator of the ship may be covered by the immunity of the shipowner, others that are associated with the operations of the ship such as the crew and salvors may be left exposed to claims especially where the national law imposes strict liability in all circumstances. The same may apply to State Authorities where they respond to an oil spill.

It is however important to note that the Conference which adopted the Bunkers Convention also adopted Resolution 3 on Protection for persons taking measures to prevent or minimize the effects of oil pollution, attached to the Final Act of the Bunkers Convention. By virtue of the Resolution, State Parties are permitted to legislate at the national level for such immunity to persons taking measures to prevent or minimize the effects of bunker oil pollution damage. The legislative drafter should thus take cognizance of this and include appropriate provisions of immunity to encourage measures to prevent or minimize bunker pollution damage. Pollution from warships or ships on Government non-commercial service unless a State Party decides otherwise, are excluded from the application of the Convention. It needs to be noted that where State owned ships are used for commercial purposes they then come under the purview of the Convention and the jurisdiction provisions become applicable.

3.1.1 Limitation of Liability

The Convention permits the shipowner or any other person providing insurance or other financial security the right to limitation of liability. It is however worthy of note that unlike the 1992 CLC, the Convention permits such limitation under any applicable national or international regime such as the Convention on Limitation of Liability for Maritime Claims 1976, as amended. In this regard, and for the purposes of national legislation, it is important to note that attached to the Final Act of the Conference that adopted the Bunkers Convention is Resolution 1 on Limitation of Liability which urges all States to ratify or accede to the 1996 Protocol to the LLMC 76. The purpose is to create flexibility for the increase of the Fund available for all claims, including bunker pollution claims.

3.1.2 Compulsory Insurance

The threshold for maintenance of insurance by the registered owner is ships with a gross tonnage of 1,000 and above. The insurance is expected to cover the liability in an amount equal to the limits of liability under the applicable national or international regime but not exceeding an amount calculated

in accordance with the Convention on limitation of liability for Maritime Claims 1976 as amended. It is thus clear that the Bunkers Convention sets no limits of its own and national legislation may thus set the limits in accordance with the LLMC 76, as amended.

Article 7(1) of the Bunkers Convention dealing with compulsory insurance or financial security states the following:

> 'The registered owner of a ship having a gross tonnage greater than 1000 registered in a State Party shall be required to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover the liability of the registered owner for pollution damage in an amount equal to the limits of liability under the applicable national or international limitation regime, but in all cases, not exceeding an amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.'

In effect, in drafting national legislation on the Bunkers Convention, it would be important to align the Bunker Pollution Damage Limitation Amount (which in this case does not include claims in respect of death or personal injury except if these are caused by contamination) to the amounts provided under the LLMC 76, as amended. Indeed, this is important in view of the fact that if higher limits should be provided under national law there would be no insurance cover for any higher limits which go beyond the LLMC 76, as amended.

In drafting national legislation, provisions with respect to liability and compensation on oil spills cannot be made generic to cover both the 1992 CLC and the Bunkers Convention. The CLC 1992 sets the compulsory insurance requirement to a ship carrying a minimum of 2,000 tonnes of oil as cargo while the bunkers convention sets the compulsory insurance limits of ships of 1,000 gross tonnes and above regardless of the type of ship.

The national legislation may also make provisions to exclude vessels on domestic voyages from the compulsory insurance requirement provided for in Article 7 (15). As pointed out earlier, personal injury and death is not covered under the Convention if not caused by contamination.

3.1.3 Jurisdiction

It is also worth noting that national courts which assume jurisdiction under the Convention may be called upon in special circumstances to interpret an incident that creates a "grave and imminent threat of causing such damage". Requisite provisions would thus have to be incorporated in national legislation on Bunker Pollution damage to take account of compensation for pro-active mobilization of equipment and support services.

3.1.4 Time Limits

The time limits of three and six years are as under the 1992 CLC and 1992 Fund Convention and same may be incorporated into national legislation. In drafting national legislation on Bunkers, where the country is already party to the 1992 CLC and the 1992 Fund Convention, it should be noted that under Article 4 (1) relating to exclusions, the Bunkers Convention does not apply to pollution damage as defined in the CLC 1992, whether or not compensation is payable under that Convention. The Bunkers

Convention is a stand-alone instrument and not an alternative or additional scheme to the 1992 CLC or the 1992 Fund Convention.

The Bunkers Convention is established to fill a gap in the liability and compensation regimes of oil pollution damage. In effect therefore, where pollution damage is caused by tankers, one can only look to the 1992 CLC and the 1992 Fund Convention or the 2003 Supplementary Fund as the case may be, for compensation.

A presentation by Jan de Boer which covers all the essential elements of the Bunkers Convention and which will be useful for the national Focal Points is attached herewith as **Annex III**. See also the Guidance on the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (Bunkers Convention) as **Annex IV**.

4. Convention on limitation of liability for maritime claims 1976 as amended by the 1996 protocol

4.1 Salient Features of the Convention

"I agree that there is not much justice in this rule, but limitation of liability is not a matter of justice. It is a rule of public policy which has its origins in history and its justification in convenience"

Per Lord Denning in his so-called final word in the case of the *Bramley Moore.*

Limitation of liability is thus a legal concept with historical origins, which places a limit on the financial exposure of the shipowner regardless of the actual claim for which he is to be liable. In its origins, it was based upon the concept of abandonment and indeed that was the basis for the development of the International Convention for the Unification of Certain Rules Relating to the Limitation of Liability of Owners of Sea going vessels 1924 bringing into being the concept of global limitation after the Titanic incident in 1912. Thus, the limitation amount was tied to the value of the ship after the casualty.

4.1.1 Limitation According to Tonnage of Ship

The International Convention relating to the Limitation of Liability of Owners of Seagoing Ships 1957 introduced the concept of limitation according to the tonnage of the ship and which has since been followed by the Convention on Limitation of Liability for Maritime Claims 1976 and its subsequent amendments.

The 1976 Convention, sets the maximum financial liability for ship owners and salvors in respect of all claims arising out of a maritime incident which involves property damage and injury and loss of life.

Persons entitled to limit liability is interpreted in Article 1 to include owner, charterer, manager and operator of a sea-going ship. It also includes salvors, any person for whose act or neglect or default the shipowner or salvor is responsible and insurers of liability to the same extent as the assured. National legislation would be required to set this out clearly.

4.1.2 Increased Limits

The 1976 Convention increased substantially the limits of liability set by the 1957 Convention and as a *quid pro quo* for the increase, it provided for a practically unbreakable system of limiting liability. Limitation of liability could only be broken by proving that that loss was occasioned by the personal act or omission of the shipowner, committed with the intent to cause such a loss, or recklessly and with knowledge that such loss would probable result.

In setting the maximum limits, the Convention distinguished between claims for personal injury and death, and other claims.

Even though the limits were fixed in SDR and were considered at the time to be very high, over time, they were eroded by inflation and needed revision.

4.2 Protocol of 1996

New limits were therefore adopted in 1996 through the Protocol to the 1976 Convention. Under the 1996 Protocol, the limit of liability for personal injury claims of ships up to 2,000 gross tonnes was set at 2 million SDR. Since the liability was tied to the ship's tonnage, maximum limits were set for larger ships:

- at 800 SDR for each tonne from 2,001 to 30,000 tonnes; and
- at 600 SDR for each tonne 30,001 to 70,000 tonnes.

For other claims, the limits for ships not exceeding 2000 gross tonnes was set at 1 million SDR.

For larger ships the following maximum amounts were set:

- At 400 SDR for each tonne from 2,001 to 30,000 tonnes;
- At 300 SDR for each tonne from 30,001 to 70,000 tonnes; and
- At 200 SDR for each tonne in excess of 70,000 tonnes.

It is important to note that Article 8 of the convention provided a vent for future increases in limits through the tacit amendment procedure with a provision for the effective date of the coming into force of such amendments after 36 months.

4.3 New Limits

Time again eroded the limits and thus in 2012 the tacit amendment procedure was invoked for new limits which took effect on 8th June 2015. The adjustment of the increase was up to 51 percent of the existing limits.

The new limits were set as follows:

- At 1,208 SDR for each tonne from 2,001 to 30,000;
- At 906 SDR for each tonne from 30,001 to 70,000 tonnes; and

- At 604 SDR for each tonne in excess of 70,000 tonnes.

It has to be noted that the limit for loss of life or personal injury on ships not exceeding 2000 gross tonnes is 3.02 million SDR.

The limits were also adjusted for other claims as follows:

- 1.51 million SDR for ships not exceeding 2000 gross tonnes
- For larger ships:
    - At 604 SDR for each tonne from 2,001 to 30,000 tonnes;
    - At 453 SDR for each tonne from 30,001 to 70,000 tonnes; and
    - At 302 SDR for each tonne in excess of 70,000 tonnes.

4.4 Claims Subject to Limitation

The claims that could be subject to limitation are clearly spelt out in the convention as follows:

(i) Claims in respect of loss of life or personal injury or loss of or damage to property.

(ii) Claims resulting from delay. Article 2 (1) (b) right to limit with respect to delay in carriage of goods by sea, passengers or luggage.

(iii) Claims for infringement of rights other than contractual rights occurring in direct connection with the operation of the ship or salvage operations. Article 2(1) (c) e.g. blocking the approach channels to the port, pure economic loss.

(iv) Claims for wreck & cargo removal and for removal of dangerous cargo for destruction.

(v) Claims in respect of measures taken in order to avert or minimize loss.

4.5 Claims Excepted from Limitation

The Convention also provides for claims which are exempted from limitation and these include:

(a) Salvage and General Average. This applies to direct claims by salvors

(b) Claims for oil Pollution Damage within the meaning of CLC

(c) Nuclear damage claims

(d) Claims by Servants of the shipowner or salvor

(e) Claims excluded by reservations (Article 18)

4.6 Conduct Barring Limitation

The Convention also provides for conduct that bars the invocation of limitation.

A person liable shall not be entitled to limitation of 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.

4.7 Limitation Fund

LLMC 1976 as amended provides that limitation of liability may be invoked even without the constitution of a Fund. But countries can provide in national legislation that limitation of liability actions brought in their courts to enforce a claim which is subject to limitation, shall be subject to the establishment of a limitation fund.

The specific rules of procedure are to be governed by the law of the State party in which the fund is constituted.

4.8 Bar to Other Actions

Once a fund is constituted, in accordance with the Convention, any claimant against the fund cannot exercise any right in respect of such claim against any other assets of a person by or on whose behalf the fund was constituted. Also, once a fund is constituted, an arrested ship may be released and this should be provided for appropriately in national legislation for practical purposes.

4.9 Note on LLMC

The IMO Legal Committee is annually provided with the status of conventions and other treaty instruments emanating from its work. The advice regarding the **Convention on Limitation of Liability for Maritime Claims, 1976** and the **Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims,** 1976 is the following:

Governments which intend to be Party to the LLMC as amended by the Protocol of 1996 are strongly encouraged to ratify the Protocol only, rather than the parent Convention and the Protocol, as the Protocol provides for significantly higher limitation amounts regarding maritime claims for loss of life or personal injury and for other claims than those in the Convention. Also, as between the Parties to the Protocol, article 9(1) of Protocol of 1996 provides that the Convention and the Protocol shall be read and interpreted as one single instrument. In addition, article 9(2) of Protocol of 1996 provides that "a State which is Party to this Protocol but not a Party to the Convention shall be bound by the provisions of the Convention as amended by this Protocol in relation to other States Parties hereto, but shall not be bound by the provisions of the Convention in relation to States Parties only to the Convention." Therefore, there is no risk that although being Party to the Protocol of 1996, the lower limitation amounts of the original Convention of 1976 are still applied in treaty relations to Parties to the Convention.

Furthermore, in addition to increasing the limitation amounts regarding compensation payable in the event of an incident, the Protocol also introduces a "tacit acceptance" procedure for updating these amounts such that, when necessary, amounts can be raised with a given date for entry into force after consideration and adoption by the Legal Committee, provided no objections are received from a specified number of Contracting States.

Part 2 – Assessment of Nigeria

1. List of pieces of legislation examined

- MERCHANT SHIPPING MARINE ENVIRONMENT REGULATIONS 2012
- Merchant Shipping (Liability and Compensation) Regulations, 2012.
- Merchant Shipping (Oil Pollution, Preparedness, Response and Cooperation Convention) Regulations 2012.
- Memorandum of Understanding between the Nigeria Maritime and Safety Administration (NIMASA) and the National Oil Spill Response and Detection Agency (NOSDRA), 2019.
- National oil spill detection and response agency (establishment) act 2006.

2. Gap analysis table

INTERNATIONAL INSTRUMENT	NATIONAL LEGISLATION	WEAKNESS/ GAP	RECOMMENDATION
CLC 1992	Merchant Shipping Act 2007 – Merchant Shipping Marine Environment Regulations 2012 – Part II – Liability	Regulation 3 limits pollution damage to damage only done in the territory of Nigeria. The provisions of Article II of the CLC 1992 are inadequately covered.	The liability for damage caused outside the ship should be made to cover the territory, territorial sea and the Exclusive Economic Zone. The same applies to Regulations (b) and (c) and for all consequential regulations dealing with the scope of application
	Regulation 5 (d) extends liability to any person in any country that is party to the CLC who suffers	This provision seems to extend Nigeria's legislation to State Parties outside the Nigerian Maritime Domain.	The provision may be appropriately deleted.

	pollution damage.		
		The exemption provided to the owner upon proof (Article (III) (3) that the pollution damage resulted wholly or partially from an act or omission of the person who suffered the damage or from the negligence of that person is omitted from the regulations	Article III (3) provides some protection to the owner which creates a needed balance in the convention and should thus be included in the Regulations
		Article III (5) provides a right of recourse of the owner against 3rd parties which is omitted. A number of provisions in the CLC 1992 have not been incorporated, partially incorporated or incorporated in a convoluted drafting style making it very difficult or impossible to comprehend	The owner's right of recourse action against third parties ought to be preserved and must thus be included in the Regulations In the 1992 CLC, provisions such as III(3), V(5), V(6), V(7), V(8), VII(2) Provisions in respect of Insurance Certificates are inadequately provided for. VII(5), VII(9), VII(10).
FUND 1992	Regulation 18 The Fund shall not be liable for pollution damage from war, hostilities or warship etc.	The provisions of Article 4 (2) (b) which provide exception to the Fund in cases where the claimant cannot prove that the damage resulted from an incident involving one or more ships is omitted.	The Fund 1992 and the CLC 1992 apply to sea- going ships and the claimant is thus expected to link the pollution damage to a ship and where that is not done, the Fund incurs no obligation. It is important to include this in the Regulations. Article 4(1) last sentence dealing with expenses

			reasonable incurred or sacrifices reasonably made by owner voluntarily … is omitted 9 (1) subrogation rights 9(2) recourse action, 10 (2) (b) dealing with "Associated person" is omitted.
OPRC 1990	The National legislation is the Merchant Sipping Act 2007 with its attendant Regulations the Merchant Shipping Marine Environment Regulations 2012	The Regulations make elaborate provisions to extrapolate the tenets of the convention into national law. Does not designate appropriate authorities or agencies as operational contact points, authorities to act on behalf of the State to request assistance or render assistance. No elaborate provisions or coordinated mechanisms for response to an oil pollution incident It does not provide for formalizing participation and contribution of members of a national pollution preparedness and response forum	The Regulations concentrate on the Lead Agency NIMASA but since it would have to work with other agencies towards a national oil pollution response, additional provisions ought to be incorporated in the Regulations to designate operational contact points, mechanisms for coordination of response to an oil pollution incident and the formalization of the participation and contribution of members of national pollution preparedness and response forum.
LLMC 1996	The Merchant Shipping Act 2007. Part XXV deals with Limitation of Liability for	Provisions that give effect to the Convention are inadequately captured in the Act	The domestic legislation could be improved by means of Regulations so that other details pertaining to the application of the Convention under national legislation could be included such as

	Maritime Claims		application to inland waterways, to ships less than 300 gt, fixing of limits under national legislation but not lower than the Convention limits, non applicability to drilling ships, provision of information to the depository. Direct provisions to empower the minister to pass Regulations giving effect to Convention.

3. Detailed analysis

3.1. Maritime policy and implementation of IMO conventions on marine pollution

It is important to note that a very basic and important question was posed in the questionnaire to Nigeria. An important starting point for honouring a country's international maritime obligations with respect to international legal instruments is its National Maritime Transport Policy. It is the starting point not only for the formulation of the policy but also for the appropriate legislative framework that gives backing to the policy and ensures its effective implementation and enforcement.

Before an examination of the various national legislation that seek to implement the relevant conventions, it would be appropriate and in line with the Terms of Reference, to examine the general maritime policy framework of Nigeria with respect to the implementation of IMO Conventions.

Nigeria has indicated that it has a maritime policy and regulatory framework which is under the Federal Ministry of Transport with the Nigeria Maritime Administration and Safety Agency (NIMASA) as the implementing Agency.

Nigeria is in the process of updating its maritime transport policy. There would be the need for Nigeria to have a comprehensive National Maritime Transport Policy which would then provide nourishment for a well - developed regime for the management of the marine environment including updating its laws on liability and compensation for oil pollution damage.

With respect to enforcement, Nigeria responds that the legal basis for enforcement of civil law claims related to marine pollution and other maritime claims are the Admiralty Jurisdiction Act 2007, the Nigerian Constitution, and the National Oil Spill Detection and Response Agency (NOSDRA) Act No.15

of 2006 which has regulations covering these conventions in the Merchant Shipping Marine Environment Regulations 2012.

The Admiralty Jurisdiction Act Provides in general terms the powers of the superior courts of the Federal Republic of Nigeria in admiralty matters.

It is important to note that in the case of Nigeria, it has another Agency for Oil Spill Detection and Response (NOSDRA) and looking at the mandate of NIMASA vis-a-vis NOSDRA, it may seem that the mandates do overlap on matters relating to issues of implementation of the OPRC 1990. In view of the role of NIMASA in implementing IMO Conventions, it is imperative that that the two agencies collaborate and coordinate their activities in respect of their roles and functions in order to achieve maximum efficiency. There is an MOU between NIMASA and NOSDRA which is working effectively. NOSDRA's responsibilities focus more on oil spill pollution detection and response even though NIMASA also has a role to play in that respect leading to overlaps in functions likely to make the responsibilities blurred and true harmonization would be required to make these agencies work effectively.

3.2. Ratification of the conventions and national legislations

In making these comments, I am not oblivious of the fact that the interpretation of international instruments, once they have been extrapolated into national law, is the preserve of adjudicating bodies of individual States. I only need to add that under the Vienna Convention on the Law of Treaties (Article 27), no municipal law may be relied upon as a justification for violating international law. Thus, even though a State is entitled to the interpretation of its national laws, they must not, for the purpose of uniformity depart from the underlying tenets of international instruments.

Nigeria is party to the CLC 1992, the Fund 1992, and has domesticated its provisions into national law by virtue of the Merchant Shipping Marine Environment Regulations 2012. It is however not a party to the Supplementary Fund 2003 whose ratification and implementation is optional. Nigeria has ratified the Bunkers Convention but is yet to extrapolate its provisions into the national legislation in an appropriate format. Nigeria has also ratified the Convention on Limitation of Maritime Claims 1976 but not the 1996 amendments even though provisions of the 1996 Protocol have been incorporated into national legislation by virtue of the Merchant Shipping Act 2007. The OPRC 1990 has been ratified and its provisions domesticated under the Merchant Shipping Marine Environment Regulations 2012. See below the Status of the conventions under consideration and the respective national legislations.

NIGERIA

CONVENTION	STATUS	NATIONAL LEGISLATION
MARPOL 73/78	RATIFIED Not all annexes in national legislation	1. Merchant Shipping Act 2007 2. Merchant Shipping Marine Environment Regulations 2012
CLC 1992 FUND 1992	RATIFIED RATIFIED	1. Merchant Shipping Act 2007

		2. Merchant Shipping Marine Environment Regulations 2012
SUPPLEMENTARY FUND 2003	NOT RATIFIED	NIL
OPRC 1990	RATIFIED	1. Merchant Shipping Act 2007 2. Merchant Shipping Marine Environment Regulations 2012 (i) Merchant Shipping (Oil Pollution Preparedness, Response and Cooperation Convention) Regulations 2012
BUNKERS 2001	RATIFIED	Provisions seem to have been incorporated into national legislation by virtue of the Merchant Shipping Act and the Merchant Shipping Marine Environment Regulations 2012.
LLMC 1996	NOT RATIFIED	Merchant Shipping Act 2007 (Part XXIII)

3.3. National law and gap analysis

Nigeria has transposed the CLC 1992, the FUND 1992 and the OPRC 1990 into national law by virtue of the Merchant Shipping Marine Environment Regulations 2012. The transposition of the CLC and Fund 1992 into the national legislation has taken account of some of the comments of the IOPC with respect to the Merchant Shipping (Civil Liability for Oil Pollution Damage and Compensation) Regulations 2010.

From the objectives stated in the Merchant Shipping (Liability and Compensation) Regulations 2102, the legislation is titled Liability and Compensation Regulations with the omission of the word "civil" implying that it is meant to deal with all marine pollution liability and compensation issues. The objectives seek to cover within the wider remit, liability and compensation under the CLC and FUND regimes. It states in section 1 (a) that the legislation is "to give effect in Nigeria to the Civil Liability and the Fund Convention, which together creates a scheme of liability for oil polluters and compensation for victims of oil pollution" and in Section 1 (d) provides that the Regulations are to "set out detailed rules and operational guidelines to regulate liability for pollution damage caused by ships". The CLC and Fund regimes have peculiar characteristics and are not fashioned to deal with all forms of oil pollution.

In the light of these objectives amongst others, the Regulations are drafted to reflect not only the CLC and FUND regimes but also the Bunkers Convention.

Undoubtedly there has been some attempts to address some of the issues raised by the comments of the IOPC Funds Secretariat. Unfortunately, some of the drafting is convoluted and not aligned to the convention text. There are also some omissions in the national legislation and it therefore does not

wholly reflect the provisions of the Convention. Some of the gaps are included in the table of gap analysis for Nigeria. The three conventions, the CLC, Fund and the OPRC, find nourishment in the parent Act, the Merchant Shipping Act 2007. The Merchant shipping Act 2007, only mentions the conventions by way of reference and no provisions are provided in the Act. The implementation provisions are to be found in the Merchant Shipping Marine Environment Regulations 2012. It would have been useful to have appropriate text in the Act itself while the details of practical implementation are left to subsidiary legislation.

While Nigeria has ratified the LLMC 1976, it is yet to ratify the 1996 Protocol and to adopt the 2012 limits. The 1996 protocol has however been incorporated into national law by virtue of the Merchant Shipping Act 2007 by virtue of Part XXIII section 335 (f). The 2007 Act provides some text with respect to limitation of liability but does not cover the full scope of the Convention. See also additional Quick GAP analysis table in respect of the Conventions under consideration attached herewith as **Annex VI.** There is the need for harness the powers of the Minister to pass Regulations to give effect the provisions contained in the Merchant Shipping Act 2007.

Conclusions

Nigeria is a major maritime nation in West Africa and thus must be seen to honour its obligations with respect to the effective implementation and enforcement of IMO Conventions.

While it has ratified a good number of the IMO conventions under consideration, the transposition into national legislation has some short-comings that do not make for effective implementation. The Merchant Shipping Act which is the parent legislation giving effect to a number of the IMO Conventions only lists many of the conventions without providing basic texts which could then form the basis for subsidiary legislation. The CLC 1992, the Fund 1992 and the OPRC 1990 are only listed in the Merchant Shipping Act 2007 and the body of the text giving effect to these are to be found in the Merchant Shipping Marine Environment Regulations 2012. It would serve a useful purpose if the corpus of the national legislation giving effect to the international conventions are provided as basic text in the parent Act and powers granted to the Minister under the Act, for the passage of subsidiary legislation which would then provide finer details for the purposes of implementation and enforcement.

The Regulations as they are currently drafted have gaps which have been indicated in the gap analysis provided in this report. There would be the need to draft fresh national legislation that gives effect to the IMO instruments. For the effort of the IMO in this regard see TC activities legal matters attached herewith as **Annex VII**. The legislation could then make provision for Regulations which could be amended from time to time to reflect changing circumstances and to provide for offences and penalties as may be deemed appropriate.

Main recommendations

Nigeria should consider to:

1. review the existing legislation and ensure the legislative drafters/lawyers from the Administration of the Attorney General's Office have a clear understanding of the conventions considered in this report and work together with technical officers of the different administrations concerned for the effective implementation of these conventions in the national legislation;

2. adopt appropriate implementation legislation regarding the CLC 1992, Fund 1992 and Bunkers Convention to ensure the payment of adequate, prompt and effective compensation for damage caused by pollution resulting from the escape or discharge of persistent oils carried as cargo or bunker oil from ships in the territory, including the territorial sea, and EEZ, or equivalent 200 nm zone;

3. ratify the LLMC Protocol of 1996 and to adopt appropriate implementation accordingly in order to ensure enhanced compensation for bunker spills and to establish a simplified procedure for updating the limitation amounts;

4. consider its position regarding States that are party to the 1976 LLMC only to avoid the risk that although being Party to the LLMC Protocol of 1996, the lower limitation amounts of the original Convention of 1976 are still applied in treaty relations to Parties to the Convention.

Part 3 – Feedback meetings and Action plan

1st meeting summary

The remote review provided an opportunity for the consultant, together with the GI WACAF Project team, IMO officers, the IOPC Funds representatives and the Focal Points for Nigeria, to remotely review the respective national legislation relating to oil pollution and liability and compensation. The review analyzed the gaps in the existing pieces of legislation and made recommendations towards the transposition of relevant IMO conventions into national legislation and their effective implementation. A **virtual meeting** subsequently took place **on 23rd September 2020** with Nigerian authorities to provide oral feedback, iron out areas of complexities and address outstanding issues before a finalization of the Report.

Participants to the meeting:

Nigeria representatives	Review team
Idris Olubola Musa – NOSDRA John Elisha Lahu – NOSDRA Mohammed Suleman Gumsuri – NOSDRA William Bwala – NIMASA / Permanent representation to IMO Dr Felicia Mogo – NIMASA Catherine Nwuba – NIMASA Dr Oma Ofodile – NIMASA Siraj Usman – NIMASA Aderonke Adekeye – NIMASA, Head of Legal team Anthony Ani – NIMASA, Legal team Engr Francis Odukuye – NIMASA	Dr Emanuel Kofi Mbiah – GI WACAF consultant Jan de Boer – IMO Senior Legal Officer Mark Homan - IOPC Claim Manager Julien Favier - GI WACAF Project Manager Emilie Canova - GI WACAF Project Coordinator

The objectives of the meeting were to:

- Discuss the key findings of the study (gap analysis and recommendation) with the consultant and representatives of IMO and the IOPC Funds; and
- Draft a national action plan with concrete objectives and outcomes to implement the agreed recommendations.

Key takeaways of the meeting

Dr Kofi Mbiah first presented the key findings of the report, highlighting the areas in the legislations where there is room for improvement. Concerning transposition issues in general, he highlighted the importance for a dualist state, like Nigeria, to have first a **parent Act** incorporating the key elements of the Convention and then more specific implementation provisions by means of **regulations** that can be easily amended following the amendments to the Conventions.

Following this, a few comments were made by Nigerian representatives, including the following:

1. **Roles and responsibilities in oil spill preparedness and response (OPRC)**
   - A comment was made on the recommendation p.25 on the legislation implementing the OPRC convention. It was noted that the National Oil Spill Contingency Plan of Nigeria assigns roles and responsibilities. Dr Mbiah answered that, although Nigeria had an NOSCP, there should be a legal basis in the legislation regarding the roles and responsibilities.

   - NOSDRA mentioned that the **NOSDRA establishment Act of 2006** had not been reviewed by the remote legal assistance. However, in their view, sections 1(1), 5, 6, 7(a) -(e), 19(1)(g) and 19(2) are of particular interest to the issues under discussion. NOSDRA will therefore send the NOSDRA Act 2006 (that is currently under review) to Dr Mbiah for review. New findings will be taken into account and incorporated in the report. Another meeting to discuss the new findings will be set up, if necessary.

2. **Review of the legislations**
   - It was also mentioned that the legislations were currently under review. This review was triggered by the participation of Nigeria to an IMO audit. An inter-ministerial committee has been set up with the aim to review and update the legislations. The recommendations made in the report are therefore very timely and will be forwarded to the committee to be reviewed.
   - Following the IMSA audit, Nigeria is also working on a holistic Maritime Transport Policy.

3. **Supplementary Fund 2003 ratification**
   - NIMASA representant explained that Nigeria is not considering acceding to the Supplementary Fund 2003 yet, as the process of identifying the oil receivers under the Fund 92 provisions is still ongoing. As of today, the threshold of 1 million tonnes of contributing oil per year to access the Supplementary Fund 2003, appears not to be reached.
   - However, it was highlighted by the IOPC Funds representative that at least 1 million tonnes of contributing oil are deemed to have been received each year in each Member State, which means that a State can accede to the Supplementary Fund 2003 protocol even though less than 1 million tonnes of contributing oil is received, but then would have to provide for the difference.
   - In conclusion, it was highlighted that the ratification and implementation of the Supplementary Fund is optional, and that Nigeria could consider acceding it when it appears appropriate.

In the tables below, you will find the main actions to be undertaken by Nigeria for each recommendation, as agreed during the meeting.

Main recommendations and actions to undertake

Recommendations	Agreed actions
1. review the existing legislation and ensure the legislative drafters/lawyers from the Administration of the Attorney General's Office have a clear understanding of the conventions considered in this report and work together with technical officers of the different administrations concerned for the effective implementation of these conventions in the national legislation;	Most of the regulations are already under review. Comments made in the report will be forwarded to the inter-ministerial committee in charge of the review.
2. adopt appropriate implementation legislation regarding the CLC 1992, Fund 1992 and Bunkers Convention to ensure the payment of adequate, prompt and effective compensation for damage caused by pollution resulting from the escape or discharge of persistent oils carried as cargo or bunker oil from ships in the territory, including the territorial sea, and EEZ, or equivalent 200 nm zone;	Most of the regulations are already under review. Comments made in the report will be forwarded to the inter-ministerial committee in charge of the review.
3. ratify the LLMC Protocol of 1996 and to adopt appropriate implementation accordingly in order to ensure enhanced compensation for bunker spills and to establish a simplified procedure for updating the limitation amounts;	Make a recommendation to the Minister to start the process towards the ratification of the LLMC protocol of 1996.
4. consider its position regarding States that are party to the 1976 LLMC only to avoid the risk that although being Party to the LLMC Protocol of 1996, the lower limitation amounts of the original Convention of 1976 are still applied in treaty relations to Parties to the Convention.	Nigeria will consider **section 4.9 of the report** and make a decision on the denunciation of the 1976 LLMC accordingly.

Specific recommendations

The report, and especially the table below with specific recommendations, will be forwarded to the inter-ministerial committee working on the review of the legislations for them to undertake actions as they deem necessary.

INTERNATIONAL INSTRUMENT	NATIONAL LEGISLATION	WEAKNESS/ GAP	RECOMMENDATION	ACTION TO UNDERTAKE BY ORDER OF PRIORITY
CLC 1992	Merchant Shipping Act 2007 – Merchant Shipping Marine Environment Regulations 2012 – Part II – Liability	Regulation 3 limits pollution damage to damage only done in the territory of Nigeria. The provisions of Article II of the CLC 1992 are inadequately covered.	The liability for damage caused outside the ship should be made to cover the territory, territorial sea and the Exclusive Economic Zone. The same applies to Regulations (b) and (c) and for all consequential regulations dealing with the scope of application	Will be taken up in the review (refer comment here above)
	Regulation 5 (d) extends liability to any person in any country that is party to the CLC who suffers pollution damage.	This provision seems to extend Nigeria's legislation to State Parties outside the Nigerian Maritime Domain.	The provision may be appropriately deleted.	Id.
		The exemption provided to the owner upon proof (Article (III) (3) that the pollution damage resulted wholly or partially from	Article III (3) provides some protection to the owner which creates a needed balance in the	Id.

		an act or omission of the person who suffered the damage or from the negligence of that person is omitted from the regulations	convention and should thus be included in the Regulations	
		Article III (5) provides a right of recourse of the owner against 3rd parties which is omitted. A number of provisions in the CLC 1992 have not been incorporated, partially incorporated or incorporated in a convoluted drafting style making it very difficult or impossible to comprehend	The owner's right of recourse action against third parties ought to be preserved and must thus be included in the Regulations In the 1992 CLC, provisions such as III(3), V(5), V(6), V(7), V(8), VII(2) Provisions in respect of Insurance Certificates are inadequately provided for. VII(5), VII(9), VII(10).	Id.
FUND 1992	Regulation 18 The Fund shall not be liable for pollution damage from war, hostilities or warship etc.	The provisions of Article 4 (2) (b) which provide exception to the Fund in cases where the claimant cannot prove that the damage resulted from an incident involving one or more ships is omitted.	The Fund 1992 and the CLC 1992 apply to sea- going ships and the claimant is thus expected to link the pollution damage to a ship and where that is not done, the Fund incurs no obligation. It is important to include this in the Regulations.	Id.

			Article 4(1) last sentence dealing with expenses reasonable incurred or sacrifices reasonably made by owner voluntarily … is omitted 9 (1) subrogation rights 9(2) recourse action, 10 (2) (b) dealing with "Associated person" is omitted.	
OPRC 1990	The National legislation is the Merchant Sipping Act 2007 with its attendant Regulations the Merchant Shipping Marine Environment Regulations 2012	The Regulations make elaborate provisions to extrapolate the tenets of the convention into national law. Does not designate appropriate authorities or agencies as operational contact points, authorities to act on behalf of the State to request assistance or render assistance. No elaborate provisions or coordinated mechanisms for response to an oil pollution incident	The Regulations concentrate on the Lead Agency NIMASA but since it would have to work with other agencies towards a national oil pollution response, additional provisions ought to be incorporated in the Regulations to designate operational contact points, mechanisms for coordination of response to an oil pollution incident and the formalization of the participation and contribution of members of national pollution preparedness and response forum.	Id.

		It does not provide for formalizing participation and contribution of members of a national pollution preparedness and response forum		
LLMC 1996	The Merchant Shipping Act 2007. Part XXV deals with Limitation of Liability fir Maritime Claims	Provisions that give effect to the Convention are inadequately captured in the Act	The domestic legislation could be improved by means of Regulations so that other details pertaining to the application of the Convention under national legislation could be included such as application to inland waterways, to ships less than 300 gt, fixing of limits under national legislation but not lower than the Convention limits, non applicability to drilling ships, provision of information to the depository. Direct provisions to empower the minister to pass Regulations giving effect to Convention.	Id.

Review of the NOSDRA Act 2006

Introduction

This is a short report by the Consultant following the virtual meeting between the GI WACAF Project Team, IMO officers, the IOPC Funds representatives, the Consultant and the Focal Points for Nigeria which took place on the 23rd of September 2020.

This report arises out of a comment made by a representative of NOSDRA indicating that the report of the Consultant on the Remote Legal Assistance did not review the NOSDRA Act as one of the marine pollution instruments of the national legislation of Nigeria. The comment referred particularly to sections 1 (1), 5, 6, 7 (a) –(e), 19 (1) (g) and 19 (2) of the NOSDRA Act of 2006.

The Consultant was requested to provide a brief review of the NOSDRA Act with reference to the Sections referred to.

The national oil spill detection and response agency (establishment) act 2006 (the NOSDRA Act 2006)

The Act deals with Oil Spill and Compensation Regime in Nigeria and covers up to 200 NM from the coastline from which the breadth of the Territorial Sea is measured.

The NOSDRA ACT is expected to provide regulation, guidelines, standards and rates for assessment of claims.

The provisions indicate that the procedure laid out by the Act was adopted based on the International Oil Pollution and Compensation Funds (IOPC Funds) Claims Manual and modified as appropriate to suit the peculiarities of Nigeria's maritime domain.

At the onset, it needs to be stressed that an Explanatory Memorandum provides at the end of the final provisions of the Act as follows:

"This Act establishes the National Oil Spill Detection and Response Agency as the Co-ordinating and monitoring body on the implementation of the Federal Government Policies on National Oil Spill Contingency Plan"

It is therefore clear that the gravamen of the remit of NOSDRA is the implementation of the National Oil Spill Contingency Plan in collaboration with other agencies. But the NOSDRA Act cannot be read in isolation as it has to be read together with the Act setting up the Nigerian Maritime Administration and Safety Agency (NIMASA).

Relevant sections

Section 1 (1)

The NOSDRA was set up with responsibility for preparedness, detection and response to all oil spillages in Nigeria

SECTION 5

Deals with the objectives of the Agency.

Provides amongst others that; it is to coordinate and implement the National Oil Spill Contingency Plan for Nigeria.

In particular, it is expected to

- Establish an operational organization that ensures safe, timely, effective and appropriate response to major or disastrous oil pollution
- Identify high risk areas for protection and clean-up.
- Establish a mechanism to monitor and assist direct response and the mobilization of resources for protection and clean-up.
- Cooperate with the International Maritime Organization (IMO) and other regional and international organizations on the promotion and exchange of results of research and development response and clean-up. Etc.

SECTION 6

Shall be responsible for the surveillance and ensure compliance with all existing environmental legislation and the detection of oil spills in the petroleum sector.

Coordinate the implementation of the plan. (National Oil Spill Contingency Plan)

SECTION 7 (a- e)

This section deals with oil spill response in Nigeria

SECTION 19

This section provides that in collaboration with other agencies, NOSDRA may co-opt, undertake and supervise all the provisions in the second schedule.

Section 19 (1) (g)

Gives power to the Agency to assess any damage caused by oil spillage.

Section 19 sub-section 2 provides that the Agency shall act as the Lead Agency for all matters relating to oil spill response management and liaise with other agencies for the implementation of the plan.

Conclusions of the review

A general review of the NOSDRA Act of 2006 vis -a vis the Nigeria Maritime Administration and Safety Agency (NIMASA) Act 2007, provides a clear indication of the mandates of the respective agencies. It is clear that the NIMASA Act focuses on the role of the Agency with respect to Nigeria's obligations as an IMO Member State. It can be garnered from the provisions of the NOSDRA Act that in a bid to ensure a practical implementation of the provisions of the OPRC Convention, a need was found to provide a dedicated implementing Agency and NOSDRA was set up for that purpose.

There are however provisions in the Establishment Acts of the respective agencies which provide them with implementation and monitoring roles thus leading to overlaps in the practical implementation of the national legislations.

These overlaps have been identified and provisions aimed towards the harmonization and collaboration of the two agencies in the implementation of the national legislation, has been incorporated in a Memorandum of Understanding (MOU) on Marine Oil Spill Management between NIMASA and NOSDRA dated the 24th of April 2019.

In my candid opinion, the Memorandum of Understanding, even though laudable and commendable is not far-reaching enough to address the overlapping roles. The MOU cannot assume the status of a legislation and remains an aid to the parties for the purposes of interpretation. If indeed, the national legislation on Marine Pollution in Nigeria is under review before a "Review Committee", it is humbly suggested that consideration be given to the respective pieces of legislation for the necessary amendments to be effected to provide for a seamless and practical implementation of the domestic legislation.

2nd meeting summary

As agreed during the first meeting, a second meeting took place on November 10th, 2020 to discuss the outcomes of the review of the NOSDRA Act 2006.

Nigeria representatives	Review team
John Elisha Lahu – NOSDRA Catherine George-Oshioreame – NOSDRA, Legal Team Cyrus Nkangwung – NOSDRA Catherine Nwuba – NIMASA Aderonke Adekeye – NIMASA, Head of Legal team Anthony Inyang Ani – NIMASA, Legal team	Dr Emanuel Kofi Mbiah – GI WACAF consultant Jan de Boer – IMO Senior Legal Officer Mark Homan - IOPC Claim Manager Julien Favier - GI WACAF Project Manager Emilie Canova – IMO Technical officer, MED Chloé Gondo – GI WACAF Project Coordinator

Dr Mbiah briefly presented the above conclusions, highlighting the fact that advantage could be taken from the currently undergoing review of Nigeria's legislation to amend it in order to tackle the current identified overlaps between the mandates of NIMASA and NOSDRA. A suggested possibility could be to have a clear division of responsibilities with the OPRC Convention falling under the remit of NOSDRA and the liability and compensation conventions under the remit of NIMASA.

These ideas were discussed by representants from NOSDRA and NIMASA and as a first step, it was decided to make the implementation of the MoU between NIMASA and NOSDRA effective. To that end it was suggested that regular (quarterly) meetings between NIMASA and NOSDRA should be established as stated in the MoU.

ANNEX I - QUESTIONNAIRES AND RESPONSES

Questionnaire to Participants

Full Name	1. NATIONAL OIL SPILL DETECTION AND RESPONSE AGENCY (NOSDRA) i. MR. IDRIS OLUBOLA MUSA ii. MR. MOHAMMED SULEMAN GUMSURI (NOSDRA SPONSORED) 2. NIGERIA MARITIME ADMINISTRATION AND SAFETY AGENCY (NIMASA): i. MRS. CATHERINE NWUBA ii. DR. MRS. OMA OFODILE (NIMASA SPONSOR) iii. BARR.(MRS.) OBY OBIGBOR
Country	NIGERIA
Your current position	1. i. DIRECTOR GENERAL/CHIEF EXECUTIVE OFFICER, NOSDRA. ii. PRINCIPAL ENVIRONMENTAL SCIENTIST, OIL FIELD ASSESSMENT DEPARTMENT. 2. i. ASSISTANT DIRECTOR MARINE ENVIRONMENT MANAGEMENT (ADMEM, RESPONSE AND LABORATORY; DESK OFFICER, GIWACAF MATTERS; iii. ADMEM, LIABILITY AND COMPENSATION; iv. ASSISTANT DIRECTOR, LEGAL.

Please insert name of country	**Status of ratification**	**Legislation implementing the convention into national law**	**Status of implementation**	**Comments**
CLC 69				
CLC 92	**ratification**	Merchant Shipping Act, 2007 Merchant Shipping (liability and Compensation) Regulations 2012	80% Effective Implementation	

Fund 92	**ratification**	Merchant Shipping Act, 2007 Merchant Shipping (liability and Compensation) Regulations 2012	50% Effective Implementation	Draft Standard operating procedure (SOP) has been finalised and is being reviewed by the National IOPC Fund Secretariat.
Sup. Fund	**NOT Ratification**	NIL	Not signatory	The Country is yet to meet the requirement for Membership.
Bunker	**ratification**	**MEM REGULATIONS**	60% Effective Implementation	
LLMC 76	**Ratification**	Merchant Shipping Act, 2007		
LLMC 96	**NOT Ratification**	NIL	NIL	Undergoing Ratification process presently.

Maritime policy and regulatory framework	Is there a national maritime policy or strategy? What is the lead agency responsible for it? Which is the national authority responsible for maritime civil law matters and for issuing insurance certificates?	a) YES b) Federal Ministry of Transportation with Nigerian Maritime Administration and Safety Agency (NIMASA) being the implementing Agency c) Federal High Court d) NIMASA issues insurance certificates e) While the P&I Clubs issues the insurance Cover (Blue Card) to the vessel	
Ratification of civil liability conventions	What are the main challenges/bottlenecks on the way towards ratification?	Lack of coordination	
		Lack of priority	

		Lack of legal expertise	
		Lack of technical expertise	
		Lack of financial resources	
Implementation of IMO conventions	What is the procedure of implementation of IMO safety, marine pollution and liability and compensation conventions into domestic law?	a) Ratification of the Convention b) Domestication into national law c) Development of Regulations and/or Guidelines and implementation Strategies d) Stakeholders sensitization workshop and Issuance of marine notice e) Compliance monitoring and Enforcement	
	If your country is not Party to any/some of the IMO civil liability conventions, does the existing legislation provide a prevention or liability and compensation regime for oil pollution and bunker pollution?	Nigeria is party to all Civil Liability Conventions except supplementary Fund which requirement for Membership is yet to be met. The National Oil Spill Detection and Response Agency (NOSDRA) also serves as the focal Agency mandated to implement the National Oil Spill Contingency Plan (NOSCP), as well as managing all other oil pollution-related issues, including damage assessments and compensation; both onshore and offshore up to areas 200 nautical miles of the Nigerian maritime environment.	
Implementation of IMO convention • **1992 IOPC Fund Convention** • **Supplementary Fund Protocol**	Does the implementing legislation identify the national authority in charge of the submission of oil reports?	YES. This works closely with reporting guidance provided by NOSDRA who are the lead Agency for oil spill related matters. An MoU to that effect is being implemented effectively. Note from NIMASA: Nigeria has a National Standing Committee on the Fund implementation that is chaired by Federal	

		Ministry of Transportation and its Secretariat is NIMASA. Furthermore, note that the National Authority in charge of submission of contributory oil report to IOPC Fund Secretariat is NIMASA and the reporting procedure/guidance is based on the format given by IOPC Fund Secretariat and not NOSDRA please. The earlier questionaire submitted by NIMASA highlights this fact.
	Does the implementing legislation create an obligation and a mechanism under national law for the entities receiving contributing oil to submit oil reports and pay contribution?	Yes
	Is there a mechanism under the implementing legislation to allow for increased limits of liability to be enacted under national law?	NO
	Does the implementing legislation allow for the IOPC Fund to intervene in legal proceedings as per article 7(4)?	YES
	What are the time-bar provisions for the CLC/Fund conventions in the implementing legislation?	THREE TO SIX YEARS
Enforcement of IMO conventions	What is the legal basis for the enforcement of civil law claims related to	The legal basis for the enforcement of Civil Law Claims related to Marine Pollution and other Maritime Claims are the Admiralty Jurisdiction Act 1991, the

	marine pollution and other maritime claims?	Merchant Shipping Act 2007 and the NIMASA Act 2007 and Constitution of the Federal Republic of Nigeria 1999 as amended The National Oil Spill Detection and Response Agency Establishment Act No 15, 2006.

Note from NOSDRA:

The grey area marked in green falls within the mandates of both NIMASA and NOSDRA.

Recall that, there are mobile maritime tankers which are covered by the IOPC Fund as well as Floating, Production, Storage and Off-take (FPSO) which also have the tendency to spill oil and Nigeria had that experience of over 40Kbbls in 2011.

ANNEX II - TERMS OF REFERENCE FOR THE CONSULTANT

Remote legal assistance on the effective implementation of IMO conventions relating to oil pollution and liability and compensation

Introduction

1 In light of the current Coronavirus pandemic and in the interest of the health and safety of the participants, experts and host-country, it was decided to postpone until further notice the sub-regional workshop described below. However GI WACAF remains committed to supporting the countries invited to this workshop, with particular focus on the four (4) countries that agreed to engage with a remote review of the text of their relevant national legislation followed by an online debriefing on the outcome of the legislation review for each country.

2 The initial activity consisted of a sub-regional workshop on the ratification and effective implementation of IMO conventions relating to oil pollution and liability and compensation to be held in Accra, Ghana, from 27 to 30 April 2020. This workshop was organized in response to several requests for assistance made by partner countries during the 8th GI WACAF Regional Conference in October 2019, to address the various challenges faced with the ratification and effective implementation of these key IMO conventions.

3 This remote activity is carried out within the framework of the Global Initiative for West, Central and Southern Africa (GI WACAF), a partnership between IMO and IPIECA, with the principle aim of enhancing the capacity of GI WACAF countries to prepare for and respond to marine oil spills.

Objectives

4 The overall objective of the activity remains the same, which is to assist policy makers, legislative advisers and/or drafters, responsible for the effective implementation, and transposition of IMO conventions into their domestic legislation in understanding the objectives, principles and legal implications of specific IMO instruments (i.e. OPRC 1990, CLC and FUND 1992as well as the Bunkers Convention and the 1996 LLMC Protocol), and to guide them on the legislative mechanisms that should be applied when developing and updating national laws.

5 The main expected outcomes of the remote assistance are:

a. To provide the four (4) beneficiary countries with a written gap analysis undertaken at national level, based on the review of the relevant sections of national legislation of these four (4) countries; and

b. To provide the designated National Focal Points of the aforementioned countries with tailored and comprehensive written and oral feedback, thus helping them in the domestication of the above-mentioned IMO Conventions.

Tasks and activities

6 The Consultant will, in collaboration with IMO legal officers, representatives of the IOPC Funds, the GI WACAF Project team and officials designated by the national authorities, undertake the completion of the following tasks:

.1 a home-based review of each of the national legal systems of the four beneficiary countries and of each of the relevant pieces of legislation relating to oil spill pollution, preparedness, response and liability and compensation, provided by the national authorities of these countries, including compilation and review of the responses to the questionnaires already sent out and based on the preliminary work undertaken by IMO legal officers;

.2 a gap analysis of relevant policies and legislative framework in each of the four beneficiary countries in terms of national maritime legislation, with a particular focus on the mechanism for the effective implementation of IMO conventions and specifically the OPRC 1990, CLC and FUND 1992, the Bunkers Convention and the 1996 LLMC Protocol;

.3 a comprehensive report detailing the results of the review and of the gap analysis; and

.4 the preparation and delivery of written and oral tailored feedback, provided in report form to, and followed up by a virtual meeting with, the respective national Focal points in each country, which will also include recommendations on the drafting of national maritime legislation in order for the four beneficiary countries to meet their current and future obligations for the effective implementation of the conventions mentioned above.

Timeframe

7 The objective is to complete the consultancy mission and send the final report by the **26th of July.**

Reporting

8 The consultant will provide the final consolidated activity report, detailing findings, descriptions of the outputs delivered, conclusions and recommendations **as applicable**, based on the report template shared by the GI WACAF team.

9 IMO should be provided with an electronic copy of the report using software compatible with Microsoft Office. The report should be submitted **to Ms Emilie Canova, GI WACAF Project Coordinator**, with copy to Mr Julien Favier, GI WACAF Project Manager, no later than one month following the completion of the consultancy services**.**

ANNEX III - INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION (BUNKERS 2001)

Overview

- Adoption: 23 March 2001
- Entry into force: 21 November 2008
- 95 Contracting States representing 92.99% of world tonnage
- Objective: "To ensure that adequate, prompt, and effective compensation is available to persons who suffer damage caused by spills of oil, when carried as fuel in ships' bunkers"
- Last significant gap in the international regime for compensating victims of oil spills from ships
- Application: Applies to damage caused on the territory, including the territorial sea, and in the EEZ of States Parties.

Principles

- Strict liability of ship owners and some others
- Limitation of liability
- Compulsory insurance
- Certificates
- Direct action against insurer

Definitions – Article 1

- **Ship** (Article 1.1): Any seagoing vessel and seaborne craft, of any type whatsoever.
  - Broad definition covering a large number of floating objects as well as traditional ships.
  - However, the Convention will not apply unless the vessel in question is carrying "bunker oil".

- **Shipowner** (Art. 1.3): the owner, including the registered owner, bareboat charterer, manager and operator of the ship.
- **Bunker oil** (Art. 1.5): hydrocarbon mineral oil, including lubricating oil used for the operation or propulsion of the ship, and any residues of such oil.

- Broad definition, but the proof of intention of use would be required in order to make distinction between fuel and cargo oil.

- Pollution damage (Art. 1.9): loss or damage … by contamination resulting for the escape or discharge of bunker oil".

  Compensation for impairment of the environment "other than loss of profit from such impairment" is limited to the cost of reasonable measures of reinstatement.
- Accords with the definition of pollution damage in CLC.

Scope of application – Article 2

- to **pollution damage** caused:
    - in the territory, including the territorial sea, of a state party, and
    - in the exclusive economic zone of a state party;
- to preventive measures, wherever taken, to prevent or minimize such damage
- **Preventive measures** (Article. 1.7): Any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage.

Liability of the shipowner (Article 3)

- Strict liability: no requirement for fault for the liability to arise: the shipowner at the time of the incident (which includes the range of persons listed in the definition) is liable (Art. 3.1)
- Joint and several liability (Art. 3.2).
- Defences to the shipowner: limited exemptions as in CLC (Art. 3.3).
- The shipowner may also be excused from liability where it is shown that the person who suffered the damage caused or contributed to it (Art. 3.4).
- Immunity from other suit (Art. 3.5).
- However, shipowner's right of recourse (Art. 3.6)

Exclusions – Article 4

- Pollution damage covered by the CLC.
- Pollution from warships or ships on Government noncommercial service unless a State Party decides otherwise. On the other hand where State owned vessels are used for commercial purposes the Convention applies including the jurisdiction provisions of Article 9.

Limitation of liability – Article 6

- The shipowner and the person providing insurance or other financial security have the **right to limit liability** under any applicable national or international regime, such as the **convention on limitation of liability for maritime claims**, 1976, as amended.
    - The Convention is accompanied by a Conference Resolution on

      Limitation of Liability which urges all States to ratify or accede to the 1996 Protocol to the LLMC 1976 thus increasing the fund available for all claims – including bunker pollution claims.

Compulsory insurance and direct action against the insurer

- Which ships must be insured? Article 7.1
    - Ships greater than 1,000 gross tonnage
- Who must be insured?
    - The **registered owner** of a ship having a gross tonnage greater than 1000 registered in a state party is required to maintain insurance (or other financial security)
- Level of insurance cover?
    - to cover the liability for pollution damage in an amount equal to the limits of liability under the applicable national or international limitation regime,
    - but not exceeding an amount calculated in accordance with the convention on limitation of liability for maritime claims, 1976, as amended.

Insurance certificates – Article 7

Evidence of insurance:

- A certificate attesting that insurance is in force shall be issued to **each ship** after the **appropriate authority** of a State Party **determines** that the requirements of the convention have been complied with
- With respect to a ship registered in a State party such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry
- With respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party
- A State Party may authorise another institution or organisation to issue the certificates
- The Convention provides for the model form
- Certificates must be in either English, French or Spanish or, if in another language, must be translated into one of the three specified languages.
- The certificate has to be carried on board at all and a copy shall be deposited with the authorities
- The State of the ship's registry shall determine the conditions of issue and validity of the certificate
- Information on the financial situation of providers of insurance may be obtained from other States

- Certificates issued or certified under the authority of a State party shall be accepted by other states parties
- The Article also provides for the holding of certificates in electronic format.

Direct action – Article7.10

- Any claim for compensation for pollution damage may be brought **directly against the insurer**
- The defendant may invoke the defences which the shipowner would have been entitled to invoke, including limitation

Consequences if no insurance is in place – Article 7.11-7.12

- A State party **shall not permit** a ship under its flag to operate at any time, unless a certificate has been issued
- Each State party shall ensure, under its national law, that insurance or other security is in force in respect of any ship having a gross tonnage greater than 1000, wherever registered, entering or leaving a port in its territory, or arriving at or leaving an offshore facility in its territorial sea

Time limits and jurisdiction - Article 8 and 9

- The action should be brought **within three years from the date when the damage occurred**
- In no case shall an action be brought more than **six years** from the date of the incident which caused the damage
- Claimants may pursue claims before the courts of the State or States in which the pollution has occurred or where measures to prevent or minimise pollution have taken place. Where security for claims has been posted by the shipowner, insurer, or other person providing security action may be brought where that security has been provided.

Bunkers Convention v. Civil Liability Convention

- Bunker has a different definition of "oil"
- There is no second tier "Fund"
- Claims are not channelled on to the "registered owner"
- No limits of its own, but links to limits set out by the LLMC 1976/96 (new limits entered into force in June 2015)
- Compulsory insurance requirement set at over 1,000 gt regardless of the type of ship

Implementation of Bunker Convention

- Issuance of Bunkers certificates
- Assembly Resolution on the issuing of insurance certificates for bareboat chartered ships recommending that all States parties should recognize that certificates for ships under bareboat charter should be issued by the flag State, if that State is party to the Convention (A.1028 (26)).
- Assembly Resolution on the issue of bunkers certificates to ships that are also required to hold a CLC certificate recommending to States to require ships flying their flag or entering or leaving their ports to hold a certificate as prescribed by the Bunkers Convention, even when the ship concerned also holds a certificate issued under the CLC (A.1055(27)).

- Verification of insurers
  - Problem faced by Administrations when issuing certificates under the Bunkers Convention to assess the solvency of some of the insurers or guarantors.
  - Guidelines for accepting insurance companies, financial security providers and the international group of protection and indemnity associations (P & I Clubs) (CL 3145 of 2011 replaced by CL 3464 of 2014)

- Domestic legislation to provide a prevention and compensation regime for bunker pollution
  - Ensure that owners of ships of 1,000 gross tonnes or more:
    - registered owners are required to have insurance to cover their liability (with accompanying offences); and
    - certificates should be carried on board ships to verify that insurance exists (with accompanying offences);

- Administrative details concerning issuing and checking of certificates by the Administration
- Ensure that courts have jurisdiction to hear claims and there is a clear guidance on where claims for compensation may be taken;
- Recognise the final judgments from courts in other State parties in respect of convention claims;

ANNEX IV - GUIDANCE ON THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE 2001 (BUNKERS 2001).

1. Introduction

The International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (Bunkers Convention-BC) entered into force on 21 November 2008.

The Convention was adopted to ensure that adequate, prompt, and effective compensation is available to persons who suffer damage caused by spills of oil, when carried as fuel in ships' bunkers.

The Convention applies to damage caused on the territory, including the territorial sea, and in exclusive economic zones of States party of the Convention.

"Pollution damage" means:

(a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of bunker oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and

(b) the costs of preventive measures and further loss or damage caused by preventive measures.

The convention is modeled on the International Convention on Civil Liability for Oil Pollution Damage, 1969. As with that convention, a key requirement in the bunkers convention is the need for **the registered owner** of a vessel to maintain compulsory insurance cover.

Another key provision is the requirement for direct action - this would allow a claim for compensation for pollution damage to be brought directly against an insurer. The Convention requires ships over 1,000 gross tonnage to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover the liability of the registered owner for pollution damage.

1. Application

Flag State party to the Convention:

Generally, the Evidence of Insurance (known as "Blue Cards") will be issued by the P&I Clubs. Further, member States will issue the statutory government certificates based on their national legislation. Note: “Blue Cards” are non-mandatory supplementary documents only.

Flag State not party to the Convention:

Vessels of ship owners registered in a State which is not party to the Convention should obtain a State issued certificate from a state party to the Convention. Ideally, if calling at a port or terminal in a state party, the certificate could be obtained from the issuing authority of that particular state. Alternatively, in the event that this is not possible, a state issued certificate may be obtained from any other State party to the Convention. This may also be the case, when a ship sails under the conditions of a bare-boat charter registration and the certificate of insurance has been issued by the authority of the underlying register and not by the flag state.

For on overview of States party to the Convention refer to www.imo.org (Conventions-Status of Conventions by Countries) or the PSCO Manual – Table of ratification of IMO Conventions.

2. Control Requirements for Port State Control

Port State Control inspections should be carried out observing the following principles:

1. Port States party to the Bunker Convention shall ensure, that any ship, wherever registered, having a gross tonnage greater than 1000 entering or leaving a port of its territory, or arriving at or leaving an off-shore facility in its territorial sea is carrying a certificate according to the Bunker Convention,
2. Bunker oil Certificates issued by the competent authorities must be duly signed by a certifying official. “Blue-cards”, issued by P & I Clubs are not sufficient,
3. Certificates of Insurance, duly issued by an authority of a State Party to the Bunker Convention shall also be recognized.

4. Action taken

The absence of a valid Bunker Certificate must be rectified before departure and the PSCO should consider a detention.

ANNEX V - TRANSPOSITION OF THE OPRC CONVENTION INTO NATIONAL LEGISLATION

Key aspects of the OPRC whose transposition into national legislation should be checked:

- **Article 3 -** Requirements for oil pollution emergency plans for ships, offshore units, sea ports and oil-handling facilities aligned to the national system
- **Article 4 -** Reporting procedures for discharges or probable discharges of oil irrespective of the source
- **Article 6:**
  - **a) (i) -** Designation of the competent national authority or authorities with responsibility for oil pollution preparedness and response
  - **a) (ii) -** Designation of the national operational contact point or points, which shall be responsible for the receipt and transmission of oil pollution reports as referred to in article 4
  - **a) (iii) -** Designation of an authority which is entitled to act on behalf of the State to request assistance or to decide to render the assistance requested
  - **b) –** Establishment of a national contingency plan for preparedness and response
  - **2) a) -** Establishment and operation of spill response capabilities as may be required to meet the existing risk.
  - **2) b) -** requirements for mandatory training and exercising of contingency plans and response operations for those likely to be involved with the preparedness and response to an oil spill
  - **2) d) -** mechanism or arrangement to co-ordinate the response to an oil pollution incident
- **Article 7 –** mechanism to facilitate offers and requests of international Co-operation and assistance during a spill incident.

Further considerations which can be checked also:

- legislation and regulations to create a national pollution response framework and obligation to protect the marine environment from harmful substances;
- legislation that places liability for incidents from offshore units, including response costs and compensation, squarely on the operator;
- legislation specifying penalties e.g. for failure to report;

- legislation to ensure that operators are liable and able to meet potential compensation claims;
- legislation defining the frequency of update of the national contingency plan;
- legislation formalizing participation and contribution of members of a national pollution preparedness and response forum;
- etc.…

ANNEX VI- ADDITIONAL QUICK GAP ANALYSIS TABLE

NIGERIA

CLC 69	CLC 92	Fund 92	Sup. Fund	Bunkers	LLMC 76	LLMC 96
DENOUNCED	Ratified and Domesticated S.335(1)(e) MERCHANT SHIPPING ACT 2007; Merchant Shipping (liability and Compensation) Regulations 2012. 80% Effective Implementation Floating, Production, Storage and Off-take (FPSO) an issue!	Ratified and Domesticated S.335 (1)(g) MERCHANT SHIPPING ACT 2007; Merchant Shipping (liability and Compensation) Regulations 2012 50% Effective Implementation	Not Ratified	Ratified and Domesticated S.335 (1)(i) MERCHANT SHIPPING ACT 2007; Merchant Shipping (liability and Compensation) Regulations 2012 60% Effective Implementation	Ratified and Domesticated S.335 (1)(F) and S.351 MERCHANT SHIPPING ACT 2007	NOT Ratified Undergoing Ratification process presently.

ANNEX VII - TC ACTIVITIES LEGAL MATTERS (Reviewing national legislation or drafting exercises)

Nigeria

- **Lagos, Nigeria** - Following a technical assistance request by the Government of the Federal Republic of Nigeria, IMO successfully fielded a maritime legislation expert to undertake a 10-day back-to-back activities on Expert support to a Ministerial Committee working on drafting of Domestication Legislation of IMO instruments; and a national workshop on the implementation of IMO Conventions into the Domestic Legislation and Ratification and Domestication of IMO Conventions and Protocols, held in Lagos, Nigeria, from 24 September to 5 October 2018.