The scope of the CLC 1992 and Bunker Pollution Convention 2001 – recent interpretation issues

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1. Introduction

The international liability and compensation regime for damage caused by oil pollution from ships is firmly established. The Civil Liability Convention 1992 (1) ("1992 CLC"), Fund Convention 1992 (2), Supplemental Fund Protocol 2003 (3), the Bunker Pollution Convention 2001 ("2001 Bunkers Convention") and the Wreck Removal Convention 2007 (4) have been widely ratified and successfully applied for many years. (5) However, that does not mean that the system's application is crystal clear. The regime's scope continues to give rise to questions. Three specific aspects have recently come up:

i) the demarcation line between the 1992 CLC and the 2001 Bunkers Convention (the "Bow Jubail"-footnote);

ii) the position of biofuel blends under the 1992 CLC and 2001 Bunkers Convention;

iii) the 1992 CLC's channelling provision and recourse against non-excluded parties.

These aspects are discussed below. They show that also well-established regimes require further interpretation to accommodate new legal and factual developments.

To begin with, a short background is given to the international liability and compensation system involving oil pollution.

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(1) International Convention on Civil Liability for Oil Pollution Damage, 1992.

(2) International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992.

(3) Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992.

(4) The Nairobi International Convention on the Removal of Wrecks, 2007.

(5) According to figures provided by the IOPC Funds, there are currently 123 States Parties to the 1992 CLC and 1992 Fund Convention, 23 States Parties to the 1992 CLC (and not the Funds Convention 1992) and 34 States Parties to the Supplementary Fund Protocol: https://iopcfunds.org/about-us/membership/ (accessed on 25 May 2026). The 2001 Bunkers Convention has been ratified by at least 90 States, and the Wreck Removal Convention has over 75 States Parties, both with broader global uptake continuing.

2. Liability and Compensation Regime for Oil Pollution

2.1. International Liability and Compensation Conventions

The groundwork for the liability and compensation regime regarding oil pollution incidents derives from the 1960's.(6) The liability and compensation structure that was originally developed for land-based nuclear incidents(7), also proved useful for maritime oil pollution incidents. In 1969, 2 years after the "Torrey Canyon" oil spill off the coast of the UK, the 1969 CLC was adopted. Two years later, the Fund Convention 1971, which provided additional financial cover, was agreed. The 1969 CLC and 1971 Fund Convention can be considered as the oil system's first building blocks.(8) The 1969 CLC and 1971 Fund were updated in 1992 with the CLC 1992 and the 1992 Fund Convention. The system was subsequently extended with the 2001 Bunkers Convention, a regime for bunker oil pollution for bunkers not covered by CLC, the Supplemental Fund Protocol 2003, which provides additional compensation on top of the 1992 Fund, and the 2007 Wreck Removal Convention, which deals with removal of wrecks in a wide sense.(9) In addition, two voluntary agreements were set up in 2006 (amended in 2017), STOPIA and TOPIA(10), to indemnify the 1992 Fund and 2003 Supplementary Fund, respectively, for compensation paid above the shipowner's limit of liability under the 1992 CLC, up to certain amounts.(11)

A separate convention was created for liability and compensation dealing with incidents involving hazardous and noxious substances carried as cargo (1996 and 2010 HNS Convention).

Schematically, the system can be set out as follows:

	Oil	**HNS (incl. alternative fuels)**
Cargo	1992 CLC + 1992 and 2003 Funds Convention(s) (and STOPIA and TOPIA)	2010 HNS Convention
Bunkers	1992 CLC, 2001 Bunkers Convention and 2007 Wreck Removal Convention	

(6) For a more extensive description of the system and its components, see: N. Gaskell and C. Forrest, *Marine pollution damage in Australia: Implementing the Bunker Oil Convention 2001 and the Supplementary Fund Protocol 2003*, The University of Queensland Law Journal, 2008, p. 103-165.

(7) The structure was applied in the 1960 Paris Convention on Third Party Liability in the Field of Nuclear Energy and in the 1963 Vienna Convention on Civil Liability for Nuclear Damage. The system was also included in the 1962 Brussels Convention on the Liability of Operators of Nuclear Ships, which Convention never entered into force.

(8) The process has been described in some detail in H. Mosmans, J. Kruit, F. Smeele, and A. Veenstra, *New Regimes Concerning Liability and Compensation for Incidents Involving Alternative Fuels in Shipping: Lessons Learned*, Climate Law, 2026, 313-341. As set out there, although the "Torrey Canyon"-incident is generally regarded as the regime's trigger, it in fact was only an (important) accelerating factor.

(9) In addition to sunken or stranded ships, the convention's definition of a wreck (art. 1(4)) includes any part of a sunken or stranded ship, including any object that is or has been on board such a ship, any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea, a ship that is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the ship or any property in danger are not already being taken.

(10) STOPIA is the Small Tanker Oil Pollution Indemnification Agreement, whereas TOPIA is the Tanker Oil Pollution Indemnification Agreement.

(11) https://iopcfunds.org/about-us/legal-framework/stopia-and-topia/

It follows from the above overview that there is currently no system in place to deal with hazardous and noxious substances used on board vessels as bunkers. This gap, which includes non-hydrocarbon fuels like LNG, ammonia, methanol, hydrogen and biofuels, is currently considered by the International Maritime Organisation's (IMO) Legal Committee.(12)

2.2. Elements of the International Liability and Compensation System

The international liability and compensation system set out in the various conventions in essence comprises of the same structure.(13) Liability is strict and channelled to one or more parties.(14) The strictly liable party may be allowed to limit its liability. For its liability, the liable party is obliged to maintain insurance, which meets specific standards.(15) The injured party has a direct right of action against the liable party's underwriters. Additional compensation may be available by means of a Fund.(16)

2.3. Differences between 1992 CLC and 2001 Bunkers Convention

A first important difference between the 1992 CLC and the 2001 Bunkers Convention's substantive provisions is that the 1992 CLC channels liability to the registered shipowner.(17) The 2001 Bunkers Convention on the other hand extends the definition of shipowner to include the bareboat charterer, manager and operator of the ship. As such, the scope of strictly liable parties has been extended. However, the convention does not exclude recourse actions against inter alia crew members, pilots charterers and salvors. They are not (strictly) liable under the 2001 Bunkers Convention, but recourse is possible against these parties on other grounds.(18)

Another important difference is that the 1992 CLC contains specific limits to the shipowner's financial exposure based on the ship's tonnage.(19) The 2001 Bunkers Convention merely provides that the Convention does not affect the right of the shipowner and the person or persons providing insurance or other financial security to limit liability under any applicable national or international regime, including

(12) LEG 113/14. See also the Tokyo Document, issued by CMI, https://comitemaritime.org/work/iwg-on-decarbonisation/, and J. Kruit, *Aanvaring "Solong" en "Stena Immaculate" toont gat in internationale regelgeving*, TVR 2025-3, p. 70-72.

(13) The system has been described in detail elsewhere, including in some detail in C. de la Rue, C. Anderson and J. Hare, *Shipping and the Environment – Law and Practice*, Routledge, London 2022.

(14) Under the 1992 CLC and 2010 HNS, liability in principle is channelled to the registered shipowner (art. 1(3) 1992 CLC respectively art. 7 2010 HNS). The 2001 Bunkers Convention channels to the shipowner as well, but defines the shipowner as registered owner, bareboat charterer, manager and operator of the ship (art. 1(3) 2001 Bunkers Convention).

(15) Art. V cf. VII 1992 CLC; art. 6 cf. 7 2001 Bunkers Convention.

(16) 1992 Fund Convention; 2003 Supplemental Fund Convention; art. 13 2010 HNS.

(17) Art. III 1992 CLC.

(18) N. Gaskell and C. Forrest, *Marine pollution damage in Australia: Implementing the Bunker Oil Convention 2001 and the Supplementary Fund Protocol 2003*, The University of Queensland Law Journal, 2008, p. 140 and 165.

(19) Art. V 1992 CLC.

the 1996 LLMC.(20) As the 1996 LLMC allows States Parties to exclude limitation of liability for claims regarding wreck removal, which claims may including oil spill costs, shipowners' exposure for bunker pollution incidents may in some jurisdictions be unlimited.(21)

A third notable difference concerns the available compensation. For liability pursuant to the 1992 CLC, additional funding for victims may be available via the 1992 Fund and the 2003 Supplementary Fund. The Funds are paid by oil receivers. In case of liability under the 2001 Bunkers Convention, no additional fund is available. Moreover, in case of applicability of the 1996 LLMC, the amount of the limited liability needs to be shared with other parties that have suffered damage as a result of the incident.(22)

These differences have the direct result that the outcome can be quite different depending on whether the 1992 CLC plus Fund(s) or the 2001 Bunkers Convention plus 1996 LLMC (or national law) apply in a specific case.

3. The "Bow Jubail"-footnote

3.1. 1992 CLC or 2001 Bunkers Convention?

The 1992 CLC and the 2001 Bunkers Convention aim to be mutually exclusive. Art. 4(1) of the 2001 Bunkers Convention therefore expressly provides that: "This Convention shall not apply to pollution damage as defined in the Civil Liability Convention, whether or not compensation is payable in respect of it under that Convention." It follows that the first question in case of an oil pollution incident is whether the (1969 or 1992) CLC is applicable and hence, what the CLC's scope comprises.

The 1992 CLC's scope includes loss or damage caused outside the ship by contamination resulting from the escape or discharge of persistent hydrocarbon mineral oil from the ship in the territory, including the territorial sea, as well as the Exclusive Economic Zone of a Contracting State.(23) Oil in the meaning of the 1992 CLC includes 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.(24) The 1992 CLC's definition of ship, however, severely limits the convention's substantive scope. Only sea-going vessels constructed or adapted for the carriage of oil in bulk as cargo qualify as ships within the meaning of the 1992 CLC. Non-tankers and non-oil bulk and ore carriers (OBO's) are thus excluded from 1992 CLC's scope. Moreover, OBO's only fall within the convention's scope when they are not only capable of carrying oil, but they are in

(20) Art. 6 2001 Bunkers Convention.

(21) The Netherlands have made use of the exclusion of art. 18 LLMC. See in more detail A. VAN HAL, *Titel 8.6.6 BW. Wrakopruiming en de theoretisch versterkte verhaals-positie van de Staat tegenover "onschuldige", "verdwenen" en "beperkende" scheepseigenaren*, TVR 2020-4, pp. 97-103.

(22) Art. 2 cf 6 1996 LLMC.

(23) Art. 2 cf. art. 1(6) 1992 CLC.

(24) Art. 1(5) 1992 CLC.

fact carrying oil in bulk as cargo or have carried oil on a preceding voyage, unless it is proved that the vessel has no residues of such carriage of oil in bulk aboard.(25)

The demarcation line between the 1992 CLC and the 2001 Bunkers Convention at first sight thus seems rather clear: oil, including residues, on board as cargo results in applicability of the CLC 1992; otherwise the 2001 Bunkers Convention applies. However, as always, the proof of the pudding is in the eating. The consequences of the allision of the "Bow Jubail" in the Rotterdam Port showed that it is not easy to establish whether a vessel was free of residues in the meaning of the 1992 CLC.

3.2. The "Bow Jubail" litigation

On 23 June 2018, the seagoing OBO "Bow Jubail" collided with the LBC jetty in Rotterdam. As a result of the incident, the ship lost over 217 tons of fuel oil from its bunker tanks. The spilled oil not only polluted the harbour itself, but also property of other parties in the Rotterdam port. In fact, over 150 parties held the shipowners of the "Bow Jubail" liable for damage suffered. The shipowner argued that the 2001 Bunkers Convention applied, and sought to limit its liability on the basis of the 1996 LLMC in the Netherlands.(26) As the total amount of claims substantially exceeded the 1996 LLMC limits, the claimants had a financial interest that the CLC 1992 plus Fund Conventions would be applicable.(27)

The OBO "Bow Jubail" at the time of the incident was not carrying oil in bulk. It had carried persistent oil on her preceding voyage. The question to be answered was whether residues in the meaning of the 1992 CLC were still on board. Prior to the incident, the vessel had undertaken a MARPOL(28) pre-wash and discharged the slops into a waste reception facility, which was recorded and signed for in the vessel's oil record book. The Court of Rotterdam and the Court of Appeal of The Hague concluded that the 1992 CLC applied, and hence that the shipowners were not entitled to limit liability pursuant to the 1996 LLMC.(29)

In its decision, the Court of Appeal noted that the 1992 CLC did not contain a definition of residues and that there was no internationally accepted standard pro-

(25) Art. 1(1) 1992 CLC.

(26) The Netherlands was and still is a party to the 1992 CLC, the 1992 Fund Convention, and the Supplementary Fund Protocol 2003.

(27) As summarized by the Dutch Supreme Court in para. 2.5, in translation: "The proceedings in the main action focus on the question of whether the Bunker Convention or the 1992 Liability Convention applies to NCC's request to limit its liability. If the Bunker Convention applies, NCC's liability is limited to just over €17 million. If the 1992 Liability Convention applies, that liability is limited to approximately €22 million and the Fund will finance any additional compensation."

(28) MARPOL is the International Convention for the Prevention of Pollution from Ships.

(29) Court of Rotterdam 9 November 2018, ECLI:NL:RBROT:2018:9174 respectively Court of Appeal of The Hague 27 October 2020, ECLI:NL:GHDHA:2020:2055. In the Netherlands, jurisdiction to deal with maritime cases is channelled to the Rotterdam Court in first instance (art. 642a Dutch Code of Civil Procedure) and hence the Court of Appeal of The Hague in appeal. See on the "Bow Jubail"-litigation also J. KRUIT, *Limitation for Oil Pollution: CLC + IOPC Funds of Bunker Convention + LLMC?*, ETL, 2021, p. 71-74; J.A. KRUIT, *Het arrest van het hof Den Haag in "Bow Jubail"; CLC of Bunkerverdrag? Bewijsvergaring en bewijsstandaard revisited*, TVR 2021-1, p. 6-9.

cedure to determine whether residues in the meaning of the CLC 1992 were still on board. Applying the interpretation method set out in the Vienna Convention on the Law of Treaties (VCLT), the Court of Appeal defined a residue as "what remains after the discharge of a cargo of persistent oil transported in bulk".(30) The Court of Appeal also held that this included residues left behind in cargo tanks, but also those still present in the washing water (slops) of the vessel, as long as the this amounted to a sufficiently substantial quantity. It considered the MARPOL provisions to which the shipowners had referred, the 1992 CLC's aim, i.e. compensation of victims, as well as previous publications of the International Oil Pollution Compensation Funds (IOPC Funds (31)). The Court of Appeal held that shipowners had not discharged their burden of proof and had failed to sufficiently prove that the vessel did not contain residues of persistent oil at the time of the incident. It emphasized in this respect that the shipowners had not allowed cargo interested parties to make proper investigations on board.(32) The Court of Appeal also acknowledged that an international procedure to determine whether residues were still on board did not exist and included the suggestion that the same was created:

> "Above it has been found that there is no generally accepted standard procedure for determining when a ship, which can serve both as an oil tanker under the CLC Convention (1992) and as a non-CLC Convention (1992) chemical tanker under the Bunker Convention 2001, ceases to be a CLC Convention (1992) ship. It appears desirable that the parties involved in the Oil Fund consider the design of such a standard procedure, which can then be followed with a view to invoking the exception provision of art. 1.1 CLC Convention (1992)."(33)

The shipowners filed an appeal against the Court of Appeal of The Hague's decision with the Dutch Supreme Court. In the proceedings before the Supreme Court, the IOPC Funds asked to join the proceedings as a third party, so its views on the interpretation of the 1992 CLC's scope could be heard and taken into account.(34) These views, however, did not lead to the outcome preferred by the IOPC Funds as the Supreme Court dismissed the appeal.(35) When assessing the complaints raised against the Court of Appeal's decision, the Supreme Court did not deem it necessary to address questions that are relevant to the unity or development of the law. It therefore did not give a reasoned decision.

3.3. The "Bow Jubail" footnote

In the meantime, the IOPC Funds have followed up on the Court of Appeal of The Hague's suggestion that a standard procedure to determine whether residues remained on board following an incident should be created. It has indeed developed guidance on a standard procedure to determine when a ship ceases to be a "ship" under the 1992 CLC. Following discussions with industry representatives and Member States, the following test was agreed to determine whether a vessel still has residues on board in the meaning of the CLC's definition of a ship:

> "For the purposes of the 1992 CLC, "residues" are the remnants of a persistent oil cargo of a quantity that represents a material pollution risk. Tank cleaning conducted in accordance with Annex I, chapter 4 of MARPOL 73/78 will remove residues, and any corresponding material pollution risk. Where a vessel undergoes cleaning and flushing of its cargo tanks, slop tanks, residual oil tanks and all associated pumps and pipelines in accordance with Annex I, chapter 4 of MARPOL 73/78, and any oil, tank washing and/or oily mixture have been discharged or transferred off the vessel, the completed Oil Record Book countersigned by the master, as required under MARPOL, will be prima facie evidence that the vessel is free of residues."(36)

It follows that whereas the Court of Appeal of The Hague looks at quantity of residues ("sufficiently substantial"), the IOPC Funds focusses on whether the residues cause a material pollution risk. Applying the IOPC's criterion, residues in the slops are unlikely to qualify as residues in the meaning of the 1992 CLC, as long as a proper notification is made in the Oil Record Book countersigned by the master. According to the IOPC Funds, this would serve as a strong indication for a court to accept this as *prima facie* evidence that the vessel is free of residues and therefore does not meet the definition of a "ship" in the meaning of the 1992 CLC.(37) The wording for the guidance has been included in the IOPC Funds' publication, *Guidance for Member States – Consideration of the definition of "ship"*, as a footnote under section 3, paragraphs 3.1(2) and 3.1(4). The guidance is therefore referred to as "the Bow Jubail footnote".

3.4. Comments

The IOPC Funds' Bow Jubail footnote provides a clarification on how it should in the IOPC Funds' view be determined whether a ship falls within the 1992 CLC's definition of a ship. The question is which weight will be given to the IOPC's guidance.

In its decision in which it allowed the IOPC Funds to join the litigation before the Supreme Court, the Dutch Supreme Court confirmed the Court of Appeal's consideration that the interpretation of the 1992 CLC and Funds Conventions has to take place on the basis of the interpretation rules set out in art. 31-33 of the VCLT.(38) Pursuant to the VCLT's interpretation rules, conventions need to be

(30) Court of Appeal of The Hague 27 October 2020, ECLI:NL:GHDHA:2020:205, para. 6.4-6.6.

(31) The IOPC Funds provide financial compensation for oil pollution damage that occurs in Member States, resulting from spills of persistent oil from tankers: https://iopcfunds.org/about-us/ (accessed on 25 May 2026).

(32) Court of Appeal of The Hague 27 October 2020, ECLI:NL:GHDHA:2020:205, para. 7.

(33) Court of Appeal of The Hague 27 October 2020, ECLI:NL:GHDHA:2020:205, para. 11.

(34) Dutch Supreme Court 24 december 2021, ECLI:NL:HR:2021:1967, *NJ* 2023/360 m.nt. A. VAN MIERLO ("Bow Jubail").

(35) Dutch Supreme Court 31 March 2023, ECLI:NL:HR:2023:489 ("Bow Jubail").

(36) Document IOPC/NOV25/11/2, para. 4.5.16. See also the guidance note submitted to the IMO Legal Committee: LEG 113/5/2.

(37) LEG 113/5/2, para. 14.

(38) Dutch Supreme Court 24 december 2021, ECLI:NL:HR:2021:1967, *NJ* 2023/360 m.nt. A. VAN MIERLO ("Bow Jubail") cf. Court of Appeal of The Hague 27 October 2020, ECLI:NL:GHDHA:2020:2055, para. 3.2.1. The Netherlands and Belgium are both so called monist systems. International law forms part of the domestic legal order without transformation. Self-executing treaties are directly applicable

interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of their object and purpose. Together with the context, inter alia any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions is to be considered.([39]) It is doubtful that the IOPC Funds' guidance can be considered to qualify as such agreement. In its decision in the "Bow Jubail", the The Hague Court of Appeal did refer to IOPC Funds' documents as authoritative views owing to the close relationship between the 1992 Fund Convention and the 1992 CLC, and their potential to contribute to a uniform interpretation and application of the 1992 CLC.([40]) However, IOPC Funds' interpretative notes are as outputs from an expert body not automatically "authentic" means of interpretation under art. 31(3) VCLT for the CLC (and even less for the Bunkers Convention). In principle, they become relevant (under art. 31(3)(a)-(b)) only insofar as they evidence a subsequent agreement or subsequent practice attributable to the Convention's States Parties.([41])

It follows from the IOPC Funds' guidance note that some CLC Member States have been allowed to review various suggested text versions.([42]) However, this does not constitute subsequent agreement on the treaty as mentioned in the VCLT.([43]) It does not have the same member state input and IMO Legal Committee involvement as, for example, a Unified Interpretation.([44])

If the IOPC's guidance will be widely adopted and referred to by States Parties, it may become the established practice in due course.([45]) Otherwise, the guidance

and hence national courts will thus have to interpret its provisions. It has been argued that in such "private matter", the VCLT interpretation method should not be applied. CHANG-FA LO, *Treaty Interpretation Under the Vienna Convention on the Law of Treaties*, Springer Nature Singapore, 2017, p. 137-149.

([39]) Under the VCLT, account should be taken in the interpretation of treaties of any subsequent agreement between the parties regarding the interpretation or application of the treaty or any subsequent practice in the application of the treaty which establishes the agreement of the States Parties regarding its interpretation (art. 31.3(b) and (c)).

([40]) Court of Appeal of The Hague 27 October 2020, ECLI:NL:GHDHA:2020:2055, para. 6.4. Also para. 11.

([41]) UN report, Draft Conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties, with commentaries, 2018, conclusion 13: https://legal.un.org/ilc/texts/instruments/english/commentaries/1_11_2018.pdf.
In a previous interpretation issue, the IOPC Funds were of the view that decisions taken by the Assembly and Executive Committee concerning the interpretation of the definitions of "pollution concerning the admissibility of various kinds of claims for compensation damage" and "preventive measures" could be considered as agreements in the meaning of art. 31(3) VCLT. FUND/EXC.35/2, dated 15 May 1993.

([42]) LEG 113/5/2, para. 9: "Following meetings with industry representatives, the Director considered it most equitable to allow Member States the opportunity to review several proposed versions of the wording at the November 2025 sessions of the IOPC Funds' governing bodies."

([43]) It is uncertain which Member States were present during the IOPC Funds' sessions in November 2025 when the drafts agreed with industry were presented and which parties officially approved.

([44]) The process of the Unified Interpretation of the 1996 LLMC limits has been described by the IMO: https://www.imo.org/en/ourwork/legal/pages/unified-interpretations.aspx (accessed on 28 May 2026). It has been questioned in legal literature whether this extensive process can indeed result in a binding rule.

([45]) It should be noted, however, that the question does not appear to have arisen in many cases so far, and that there does not appear to be a reason why such volume is likely to change. (C. DE LA RUE, C. ANDERSON and J. HARE, *Shipping and the Environment – Law and Practice*, Routledge, London 2022, p. 111). This makes it unlikely that such practice will be established.

note operates most securely as persuasive supplementary means under art. 32 VCLT, reflecting an institutionalised operational understanding of the compensation regime.

Moreover, in establishing a provision's correct interpretation under the VCLT, the case law of courts in contracting states also needs to be taken into account. In the decision of the The Hague Court of Appeal, a different interpretation of the definition of a ship in the meaning of the VCLT was taken. That approach was based on the Convention's aim of providing proper compensation of victims([46]) and – albeit indirectly – confirmed by the Dutch Supreme Court. That interpretation showed a broader consideration of relevant aspects, and is arguably more in line with the drafters' intention to arrange compensation and that ships not involved in oil trading should not be regarded as ships within the 1992 CLC.([47]) It should also be noted that the IOPC Funds' position is not always followed by national courts. In 1996, the Court of Appeal of Genoa did not apply the IOPC Funds' position as it did not adopt interpretations of the 1969 CLC that did not aim to ensure adequate compensation to the victims of oil pollution.([48])

The IOPC Funds' guidance creates a specific link with MARPOL. Also in view of its wide acceptance, this is not problematic as such. However, it should be remembered that the CLC and MARPOL address different policy areas, i.e. compensation versus prevention. Their member base is not completely the same either. Interpreting provisions of the international liability and compensation system making use of MARPOL provisions should therefore take place with some caution.

It should also be noted that the IOPC Funds add in the commentary to the footnote that the guidance on what qualifies as residue, i.e that a completed Oil Record Book countersigned by the master as part of the adopted procedure is a strong indication that no residues in the meaning of the CLC remain on board, "would shift the burden of proof to those challenging this assertion". The division of the burden of proof, however, is to be determined on the basis of (the private international law rules) of the lex fori.([49]) The answer to the question whether the burden of proof is shifted does not (merely) depend on the IOPC Funds' guidance, but on all circumstances, including cooperation provided during the fact finding operations, as shown by the decision of the Court of Appeal of The Hague decision. The question is also whether a mere statement by the master that protocol was followed qualifies as a sufficient presumption of evidence. It is unlikely to overrule the applicable

([46]) As set out in the 1992 CLC's preamble: "Conscious of the dangers of pollution posed by the worldwide maritime carriage of oil in bulk, Convinced of the need to ensure that adequate compensation is available to persons who suffer damage caused by pollution resulting from the escape or discharge of oil from ships."

([47]) See for the background of OBO 's inclusion in the CLC's definition of a ship also C. DE LA RUE, C. ANDERSON and J. HARE, *Shipping and the Environment – Law and Practice*, Routledge, London 2022, p. 110.

([48]) Court of Appeal of Genoa dated 30 March 1996, IOPC Funds/Commune di Varazze (https://www.cmlcmidatabase.org/international-oil-pollution-compensation-fund-v-comune-di-varazze).

([49]) F.e. art. 18 Rome I Regulation, art. 22 Rome II Regulation.

rules on the burden of proof, like the Dutch rule that when the evidence is within a party's sphere of influence, this party has to provide evidence.(50)

It follows that the IOPC Funds' interpretation of the definition of residues to determine whether a vessel qualifies as a CLC-ship is not the only possible interpretation of the CLC definition of a ship, whereas question marks can be placed from a procedural view as well. Should the question of whether a ship qualifies as CLC-ship come up again, it is not certain that it will be applied by courts indeed.(51)

4. The position of biofuel blends

The question of the 1992 CLC's and the 2001 Bunkers Convention's scope recently has also received attention as a result of factual developments in the context of maritime decarbonisation.

The energy transition in the shipping industry is in full swing. The order book for ships powered by alternative or hybrid propulsion systems is growing.(52) But whilst technology and practice are developing rapidly, the international liability and compensation regime is lagging behind. The gap in the international liability and compensation system for incidents involving alternative fuels was tabled in a paper by the Comité Maritime International (CMI) in 2024.(53) In the meantime, the IMO has put the subjects on its agenda.(54) However, it is expected that clarity will not be achieved soon. Experience learns that it takes a considerable time for a convention to be agreed and to enter into force.(55) This is particularly problematic for fuels that are already in widespread use, including biofuels and biofuel blends.

Biofuels are increasingly being added to fossil fuels as a relatively accessible transition fuel to meet CO_2 reduction targets.(56) In practice, blends containing up to approximately 30% biofuel (B30) are already frequently being used as bunker fuel in shipping.(57) It is precisely these blends that raise legal questions in the event of an incident. For how should they be classified under existing international

(50) Dutch Supreme Court 1 December 2000, ECLI:NL:HR:2000:AA8719 (Sigillo/TTS).

(51) It should be noted that the IOPC Funds' guidance is in line with (English) legal literature, including C. DE LA RUE, C. ANDERSON and J. HARE, *Shipping and the Environment – Law and Practice*, Routledge, London 2022, p. 115.

(52) Inter alia Lloyd's Register insight, *Alternative-fuelled ship orders remain significant in 2025*, 7 January 2026.

(53) J. KRUIT, H. MOSMANS, N. GASKELL, N. HENDERSON and H. ZOGRAFAKIS, *Liability and compensation regimes for incidents on board vessels involving the carriage or consumption of alternative fuels*, 2024: https://comitemaritime.org/wp-content/uploads/2024/07/Gothenburg-discussion-paper-Green-Fuels-1.pdf

(54) LEG 112 and 113.

(55) Incidents have proved to be catalysts for international action (MOSMANS et al, p. 339). However, as set out by MOSMANS et al: *Proactive preparation is far preferable to reactive regulation.* MOSMANS et al., p. 341.

(56) Q. XIONG, Y. DUAN, D. LIANG, T. LI, H. LUO, R. CHEN, *Biofuels and Their Blends – A Review of the Effect of Low Carbon Fuels on Engine Performance*, Sustainability 2024, 16, 10300. https://doi.org/10.3390/su162310300.

(57) https://www.dnv.com/expert-story/maritime-impact/maximizing-the-potential-of-biofuels-in-shipping/

liability regimes? Do they fall within the definition of "oil" of the 1992 CLC and/or 2001 Bunkers Convention? These questions are central to the recent paper by CMI, "Suitability of IMO liability and compensation regimes with respect to alternative fuels – Biofuels and biofuel blends and the international liability and compensation regime".(58)

The CMI paper analyses in detail how biofuels and biofuel blends, which in shipping are predominantly biodiesels, relate to the 1992 CLC and the 2001 Bunkers Convention. Both conventions apply to "*hydrocarbon mineral oil*", with the CLC also requiring that the fuel be "*persistent*".(59) For pure biofuels (B100), the conclusion is clear: they contain no mineral oil and therefore fall outside the scope of these conventions. For biofuel blends, however, the situation is more nuanced. On the one hand, these blends do indeed contain mineral oil; on the other hand, it remains unclear whether, and if so to what extent, they can still be classified as "*(persistent) hydrocarbon mineral oil*".

Other conventions do not provide a complete answer either. The 2010 HNS Convention would cover biofuels and biofuel blends as cargo, but has not yet entered into force (although this now appears likely to happen soon(60)) and, moreover, does not apply to bunkers. The 2007 Wreck Removal Convention may offer a solution in certain cases, but is limited to wreck situations and does not provide compensation for damage suffered by third parties.(61)

So far, there has been little research as to the consequences of biofuel (blends) spills.(62) A complicating element in this respect is that biofuels are mixtures and their actual composition is subject to changes.(63) The damage caused by the hydrocarbon and the biofuel components may be difficult to separate.

The CMI paper argues that there are sound arguments for bringing biofuel blends within the scope of the 1992 CLC and the 2001 Bunkers Convention, inter alia in view of the purpose and scope of these conventions, i.e. to ensure effective compensation in the event of pollution. At the same time, it is acknowledged that this interpretation is not without legal complications and that Member States and courts could reach divergent conclusions, whereas a uniform interpretation and applica-

(58) https://comitemaritime.org/work/iwg-on-decarbonisation/. The author is also one of the paper's authors.

(59) Art. 1(5) 1992 CLC respectively 2001 Bunkers Convention.

(60) In April 2026, the Belgium, the Netherlands, Germany and Sweden have jointly ratified the HNS 2010. The Convention is therefore expected to enter into force end of 2027.

(61) See the CMI paper on the Wreck Removal Convention: https://comitemaritime.org/work/iwg-on-decarbonisation/ (accessed on 25 May 2026).

(62) ITOPF, *Fate, Behaviour and Potential Damages & Liabilities Arising from a Spill of Biofuels into the Marine Environment – Report for the International Group of P&I Clubs Alternative Fuels Working Group*, May 2024, https://www.itopf.org/knowledge-resources/documents-guides/fate-behaviour-potential-damage-liabilities-arising-from-a-spill-of-biofuels-in-the-marine-environment/.

(63) Inter alia Q. XIONG, Y. DUAN, D. LIANG, T. LI, H. LUO, R. CHEN, *Biofuels and Their Blends – A Review of the Effect of Low Carbon Fuels on Engine Performance*, Sustainability 2024, 16, 10300. https://doi.org/10.3390/su162310300.

tion of the conventions is desirable. Against this backdrop, CMI has called for action at IMO level. The CMI paper outlines various possible solutions, including:

- a Unified Interpretation of the term "hydrocarbon mineral oil" in the CLC and the Bunker Convention, clarifying how biofuel blends relate to the CLC and the Bunker Convention;
- the development of a new convention or protocol on alternative fuels;
- interim guidance from the IMO Legal Committee to reduce legal uncertainty.

During the IMO Legal Committee meeting in April 2026 (LEG 113), a formal correspondence group was set up. The group's work includes making a suggestion for short term guidance on how to deal with incidents involving biofuel blends. Progress can hopefully be made during LEG 114. In the meantime, it is uncertain whether spills involving biofuel blends will be considered to fall within the 1992 CLC and/or 2001 Bunkers Convention, as the case may be.

5. Recourse against non-CLC excluded parties

5.1. Channelling under CLC

The scope of the CLC is not limited to the interpretation of the definitions of the terms "oil" and "ship" under the 1992 CLC and 2001 Bunkers Convention. As follows from a recent judgment of the Court of The Hague, the scope of the 1992 CLC's channelling provision may also be questioned.

The 1992 CLC channels liability to the registered shipowner. It provides that the shipowner in principle and in the absence of limited exceptions, including war risks, exceptional natural phenomenon and acts of terrorism,(64) shall be liable for pollution damage in the convention's scope.(65) It also prevents actions against the shipowner itself otherwise than in accordance with the Convention(66); the idea is that the 1992 CLC provides for an exclusive remedy. It therefore also expressly excludes claims against various indicated parties, including the servants or agents of the shipowner or the members of the crew, the pilot, any other person who performs services for the ship, charterers, operators and managers as well as salvors. Only when damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result, recourse may be taken against these parties after all.(67) It follows that the 1992 CLC does not exclude claims against other parties brought on other grounds. It also expressly allows recourse from the shipowner against liable parties (68)

(64) C. de la Rue, C. Anderson and J. Hare, *Shipping and the Environment – Law and Practice*, Routledge, London 2022, p. 139.
(65) Art. III cf. art. I(3) 1992 CLC.
(66) Art. III(4) 1992 CLC.
(67) Art. III(4) 1992 CLC.
(68) Art. III(5) 1992 CLC.

5.2. Decision Court of Appeal of The Hague

The background of the case brought before the (first instance) Court of The Hague concerns an oil spill in Peruvian waters. During the unloading of a shipment of crude oil from the mt. "Mare Doricum" in Peru on 15 January 2022, the underwater connection to the pipeline of the La Pampilla refinery leaked. Several parties claim to have suffered damage as a result. They have assigned their rights to the Environmental Claims Foundation (the "Foundation"). The Foundation has initiated proceedings on behalf of all those affected against the refinery, which is part of the Repsol Group, before the Court of The Hague. The Foundation is also bringing the claim for damages against, amongst others, Repsol S.A. and Repsol Peru B.V. The latter is based in the Netherlands and holds 99.2% of the shares in the refinery. The Foundation argues that the leak was caused by the crude oil being discharged too quickly via an outdated and defective installation. The damage is said to have been exacerbated by a lack of supervision and slow and incorrect action on the part of the refinery and its group companies, including Repsol Peru B.V.

To begin with, the Repsol Group contest that the Court of The Hague has jurisdiction to hear the claim against La Pampilla and Repsol S.A. Repsol Peru B.V. invokes the exclusive jurisdiction provision of the 1992 CLC, art. IX, which provides – in summary – that where an incident has caused pollution damage in the territory of a member state, actions for compensation may only be brought in the Court of the member state. In essence, it argues that proceedings should be brought in Peru against the shipowner rather than in the Netherlands against her.(69)

In its decision(70), the Court of The Hague holds that the 1992 CLC's jurisdiction provisions only relate to claims within the meaning of the Convention and not to claims based on other provisions against parties not excluded by the 1992 CLC. The court holds that the 1992 CLC does not preclude claims against parties not listed in the Convention either. According to the court, the 1992 CLC does not apply to the claim brought against the refinery and, therefore, the jurisdiction clause does not preclude recourse against Repsol Peru B.V.

5.3. Comment

Although it is generally accepted that the 1992 CLC's jurisdiction provision is limited to claims within the scope of the convention, it should be kept in mind that the scope, nevertheless, may be quite extensive. The channelling provision inter alia includes any person who performs services to the ship, as well as the servants of the shipowner or charterer.(71) As such, it may extend to a refinery or terminal,

(69) Under Dutch procedural law, the defence that a court lacks jurisdiction has to be brought before any substantive defences. It is therefore considered as a preliminary issue.
(70) Court of The Hague 21 May 2025, ECLI:NL:RBDHA:2025:8700.
(71) Servants of charterers an operators also fall within the exclusion of recourse provision of art. III-4 (c cf. f) 1992 CLC. However, servants of persons performing services for the ship are not included in the exclusion (art. III-4 sub f 1992 CLC).

when they act for the ship or her charterers, or they are in fact her charterers.(72) However, a claim against the parent company of the local refinery indeed seems to surpass the scope, at least when the terminal is not also the vessel's charterer or operator.

6. Conclusion

The above described examples show that even well-established regimes, like the 1992 CLC and the 2001 Bunkers Convention, will be tested in practice, and will need to relate to new developments, both in the legal field and from a technological nature.

On IMO LEG 113, Sweden, Germany, Belgium, and the Netherlands have jointly ratified the 2010 HNS Convention regulating liability and compensation for incidents involving hazardous and noxious substances. The Convention will likely enter into force in November 2027. At the same time, the IMO Legal Committee is developing an international liability and compensation regime for shipping incidents involving alternative fuels. These anticipated new additions to the international liability and compensation system will give important further guidance, but – no doubt – these will also raise new questions. Like technology, the law is also very much work in progress and cannot easily be separated from the actual circumstances in which it is applied.

(72) C. DE LA RUE, C. ANDERSON and J. HARE, *Shipping and the Environment – Law and Practice*, Routledge, London 2022, p. 141. See for a recent example of this situation: Court of Rotterdam 15 July 2024, ECLI:NL:RBROT:2024:9132.