COMPULSORY LIABILITY INSURANCES AGAINST CLAIMS ARISING FROM THE OPERATION OF A VESSEL

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Summary: The aim of this article is to analyse the international Conventions and Spanish law requiring that owners of some vessels shall maintain compulsory liability insurance or other financial security to cover their liabilities for certain kinds of damage. It outlines that it is in the public interest that victims of certain risks are compensated (oil pollution, death of or injury to passengers, damage caused by hazardous and noxious substances, claims against the owner of pleasure boats, among a limited number of compulsory insurances). However, to date, it is unclear whether there will always be an insurer or guarantor of the responsible shipowner for any kinds of damage.

Introduction

To begin with, six international treaties adopted under the auspices of the International Maritime Organization ("IMO") provide that the owner of a ship registered in a Contracting State shall be required to maintain insurance or other financial security, such as the guarantee of a bank, to cover the risk of liability for certain kinds of damage. Each Contracting State shall issue a certificate attesting that insurance or other financial security is in force. However, only three of the six liability instruments involved came into force, particularly those related to oil pollution damage. On the one hand, the 1969 and 1992 Conventions on Civil Liability for Oil Pollution Damage ("1969 CLC" and "1992 CLC") cover the risk of oil pollution damage caused by tanker vessels which are carrying more than 2,000 tonnes of oil in bulk as cargo. On the other hand, the 2001 Convention on Civil Liability for Bunker Oil Pollution Damage ("Bunkers Convention") applies to the oil pollution damage caused by fuel oil from non-tanker vessels having a gross tonnage greater than 1,000.

Largely modelled on the 1992 CLC, there are three more IMO Conventions, not yet in force, which have the same insurance and certification requirements: the 2006 Convention on Liability and Compensation in connection with Carriage of Hazardous and Noxious Substances by Sea; the Prococol of 2002 to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974; and the 2007 Convention on the Removal of Wrecks. Therefore, it is often claimed that such a scheme seems to be taken for granted in the new IMO Conventions [1].

Furthermore, several international treaties in force provide that the operator of a nuclear installation shall maintain insurance or other financial security to cover the risk of liability for damage during the carriage of nuclear substances.

[1] E. Røsæg, "Compulsory maritime insurance" (2000) no. 258 *Scandinavian Institute of Maritime Law Yearbook 2000*, MarIus (http://www.jus.uio.no/nifs), p.13; J. Hare, "Compulsory Insurance – A look at the IMO Conventions", (2008) no. 2 issue 192 *Beacon* (http://www.skuld.com), p.1.

As far as national laws are concerned, they may also require the shipowner to maintain insurance or other financial security to cover certain risks. For example, the United States Oil Pollution Act 1990 ("OPA") provides that the responsible party for any vessel over 300 gross tons shall establish and maintain evidence of financial responsibility sufficient to meet the maximum amount of liability for oil pollution damage under this Act (sec. 1016). As regards Spain, the law requires the owner of pleasure or sport boats to carry insurance against liability in tort actions. In addition, operators carrying dangerous or polluntant cargo shall maintain insurance or other financial security to cover their environmental responsibility. Moreover, passengers on any public transport within the Spanish borders are covered by a compulsory insurance which must be purchased by the carrier.
Finally, it it of great importance to remember that liability insurances against claims arising from the operation of a vessel are very common in practice. They are voluntarily purchased by shipowners, shipping companies and others engaged in the shipping trade. First and foremost, should be mentioned the so-called "protection and indemnity insurance", which is generally offered to shipowners and shipping companies by the P&I clubs [2], specially those which are members of the International Group of P&I clubs [3]. By and large, each club provides cover against a wide range of third party liabilities, like personal injury to crew and passengers, cargo loss and damage, oil pollution, wreck removal, general average contributions, collision and contact liability and defence cover [4]. Some commercial insurers are ready to cover maritime claims as well, offering protection and indemnity cover for merchant ships and liability insurance for pleasure boats or fishing vessels.

Oil pollution damage caused by tanker vessels which are carrying more than 2,000 tonnes of oil in bulk as cargo

[2] OECD - Maritime Transport Committee of the Organisation for Economic Co-operation and Development, *The removal of insurance from substandard shipping*, June 2004 (www.oecd.org/dataoecd/58/15/32144381.pdf), pp.13,17; L. G. Cohen, "Claims arising under the Tovalop agreement are met by a vessel's P&I insurers", (1987) *Journal of Maritime Law and Commerce*, pp.526-527; J. M. Ruiz Soroa, *Manual de Derecho de accidentes de la navegación* (Escuela de Administración Marítima, 1992), p.285; P. Manca, *Commento alle Convenzioni internazionali marittime*, vol. 1 (Giuffrè Editore, 1974), p.284; E. Vincenzini, "Profili assicurativi della recente Convenzione internazionale sulla responsabilità civile per i danni da inquinamento da petrolio" (1993) no.IV *Il Diritto Marittimo*, p.980; A. Rest and R. Leinemann, "La catastrofe ambientale davanti all'Alaska (chi paga il conto per il flagello petrolifero dell'Exxon Valdez", (1990) no. 6 *Assicurazioni*, p.640 ; W. Pfenningstorf, "L'assicurazione dei rischi ambientali negli Stati Uniti: recenti sviluppi", (1982) no. 6 *Assicurazioni*, p.521.

[3] That is to say, "the International Group Agreement 2008" (the "IGA 2008"), as amended agreement dated 20 February 2008. Even though IGA limits competition between clubs [P. Bennett, "Mutual Risk: P&I Insurance clubs and maritime safety and environmental performance", (2001) no. 25 *Marine Policy*, pp.17-18], this agreement was originally exempted for a period of ten years by decision of the Commission of the European Communities on 16 December 1985 (Preamble, par. 11). In February 1995, the parties applied to the Commission's Directorate-General for Competition ("DGIV") to renew the exemption (Preamble, par. 12). IGA 2008 gives effect to amendments subsequently agreed with DGIV (The "IGA" 1999). See the text of IGA 2008 on the International Group website (http://www.igpandi.org).

[4] See http://www.igpandi.org

Origins and history of the compulsory insurance for tanker vessels

The environmental disaster following the wreck of the tanker "Torrey Canyon" off the Southwest coast of England in 1967 prompted the States to look for systems of ensuring that compensation was available to persons who suffer damage by pollution resulting from the escape or discharge of oil from large tanker vessels [5]. The idea was not to modify the international conventions then in force, but to pass new rules to overcome future problems successfully [6]. On the one hand, it was of great importance to continue limiting the shipowner's liability, but in an amount considerably in excess of that to which he would have entitled to limit under the treaties then in force [7]. On the other hand, the new treaty might create a compulsory insurance or other financial security to be taken out by owners of large tanker vessels. If so, the new regime would bring into law the voluntary practice followed by owners of tanker vessels of maintaining insurance against claims arising from oil pollution damage, which was already offered by P&I clubs [8].

Nevertheless, the preparatory works of the 1969 CLC prove that the question of whether or not the system of compulsory insurance could be put into practice gave rise to much discussion. This occurred in both the Legal Committee of the IMO (formerly, the Intergovernmental Maritime Consultive Organizacion, IMCO) [9] and in the Committee Maritime International ("CMI"), that also co-operated with the IMO in the enquiry about the wreck of the "Torrey Canyon" [10]. However, the draft convention prepared by the IMO's Legal Commitee included not only the creation of a compulsory insurance for oil tanker owners, but also an additional requirement: each flag State should issue a certificate attesting that insurance or guarantee was in force. The IMO based this proposition on the fact that, according to the Brussels Convention about liability of the owners of nuclear vessels, 1962, vessels transporting nuclear substances should carry on board this type of certificate. However, this Convention never entered into force [11].

Following deliberations in the IMO's Legal Committee, a diplomatic Conference met in Brussels from 10 to 29 November 1969 and adopted the Convention relating the Intervention on High Seas in cases of Oil Pollution

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[5] J. A. Weiss, "Maritime disasters through the ages" (2001) no. 2 April vol. 32 *Journal of Maritime Law and Commerce*, pp.233-234; E. Cowan, *Oil and Water. The Torrey Canyon Disaster* (J. B. Lippincott Company, 1968).

[6] F. du Pontavice, *La pollution des mers par les hydrocarbures (A propos de l'affaire du <Torrey Canyon>)* (Librairie Générale de Droit et de Jurisprudence, 1968), p.115.

[7] D. W. Abecassis, *The law and practice relating to oil pollution from ships* (Butterworths, 1978), p.172.

[8] P. Manca, n.2 above, p.285; E. Vincenzini, n. 2 above, p.980.

[9] D. W. Abecassis, n.7 above, p.172.

[10] C. Legendre, "Convention internationale sur la responsabilité civile pour les domages dus a la pollution par les hydrocarbures", (1970) October no. 262 *Le Droit Maritime Français*, pp.580-584; "Le Conference de Tokyo du Comité Maritim Internationale" (1969) August no. 248 *Le Droit Maritime Français*, pp.453-456; L. Zhu, *Compulsory insurance and compensation for bunker oil pollution damage*, Springer, Berlin-Heidelberg-New York, 2007, p. 51.

[11] International Atomic Energy Agency, *The 1997 Vienna Convention on Civil Liability for Nuclear Damage and the 1997 Convention on Supplementary Compensation for Nuclear Damage – Explanatory notes* (IAEA 2007), p.6.

(known as "Intervention") and the Convention on Civil Liability for Oil Pollution Damage As far as the 1969 CLC is concerned, it took seven years to enter into force, which occurred on 7 March 1976.
Generally speaking, the 1969 CLC: 1) Establishes the strict liability of the owner of the oil tanker which causes pollution damage in the territory of a Contracting State (article III); 2) Entitles him to limit his liability to an aggregate amount linked to the tonnage of the ship (article V.1). The exception that removes the limits of liability is the personal deliberate misconduct of the owner of the ship (article V.2); 3) Provides that owners of ships registered in a Contracting State and carrying more than 2,000 tons of oil in bulk as cargo shall maintain insurance or other financial security to cover their liability under the Convention (article VII.1); 4) Entrusts the Contracting States with the task of determining the conditions of issue and validity of the State certificate attesting that insurance or other financial security is in force for each ship (article VII.6); 5) Gives claimants a right to be compensated directly by the insurer or other person providing financial security for the owner's liability for pollution damage (article VII.8).
The 1969 CLC does not establish that the issuing or certifying State assumes responsibility for the insolvency of the insurer or guarantor. This treaty does not even provide the criteria necessary for proving the solvency of the insurer or guarantor of the tanker vessel's owner.
Subsequent IMO conventions requiring compulsory insurance and recognizing direct action are modelled on the article VII of the 1969 CLC, as it was partly amended by the Protocol of 1992 [12].

The 1992 International Convention on Civil Liability for Oil Pollution Damage (1969 CLC as amended by the Protocol of 1992)

Two versions of the CLC have been in force simultaneously since 30 May 1996: the original 1969 CLC, and that Convention as amended by the Protocol of 1992, which is known as the 1992 CLC [13]. In recent years, a great majority of the States have ratified the Protocol of 1992 and more than 125 are parties to the 1992 CLC. However, approximately 14 countries are still parties to the 1969 CLC.
This means that if the pollution damage takes place in a State Party to the 1969 CLC, the maximum limits of liability of the shipowner and his insurer or guarantor are lower than when the accident occurs in a State Party to the 1992 CLC. Thus the maximum amount of compensation potentially available from the insurer/guarantor of the shipowner under the 1992 CLC shall not in any event exceed by US$ 131 million [14], while the higuest amount would be about US$ 20.4 million under the 1969 CLC [15].

[12] L. Zhu, "Can the Bunkers Convention ensure adequate compensation for pollution victims?", (2009) April nº 40 *Journal of Maritime Law and Commerce*, p.204; E. Røsæg, n.1 above, p.13 outlines that "*it is notable that even if these clauses seem inadequate and ambiguous, the IMO's Legal Committee insists on modelling new conventions closely on these clauses*".
[13] Legal Committee of IMO, Circ.1, 27 April 1998, about "CLC Insurance Certificates".
[14] The Special Drawing Right (SDR) as defined by the International Monetary Fund is used to calculate the limits of liability and the amount shall be converted into national currency (article V.9.a 1992 CLC). The quantity abovementioned is based on a rate of exchange of 1 SDR=US$1,46 (15 June 2010, International Monetary Fund).
[15] N.14, above.

Nevertheless, the maximum amount of compensation to be paid by insurers or guarantors of the liable shipowner depends on the gross tonnage of the ship that caused the oil pollution damage. Consequently, the highest compensation can be substantially inferior to the abovementioned amounts. What is more, it appears that there is no linear relationship between spill cost and size of tanker [16]. So if pollution damage comes from a small tanker the limits of liability under the 1992 CLC would fail to comply with the aim of ensuring "that adequate compensation is available to persons who suffer damage" (preamble) [17].

What is clear is that the limits of liability of the 1992 CLC are not high enough to compensate victims in the event of major oil spills ("Exxon Valdez", "Erika", "Nakhodka", "Prestige", etc.) [18]. This was foreseen by some States that, after the wreck of the "Torrey Canyon", signed under the auspices of the IMO the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage ("1971 Fund Convention"). Its goal was to ensure that additional compensation was available to victims who did not obtain full compensation under the 1969 CLC. The 1971 Fund was financed by contributions levied on companies in 1971 Fund Convention countries that received crude oil and heavy fuel oil after sea transport. The Fund Convention was partly amended by a Protocol of 1992,

[16] See International Tankers Owners Pollution Federation Limited ("ITOPF") (http://www.itopf.com). This organization was in charge of administering the "Tankers Owners Voluntary Agreement concerning Liability for Oil Pollution" ("TOVALOP") agreed on 7 January 1969. After the wreck of the "Torrey Canyon", the great majority of the owners and bareboat charterers of large oil tankers agreed TOVALOP to pay indemnities to the States affected by an accident of oil maritime pollution (para VI). ITOPF was in charge of verifying that signatories keep their financial capacity (para II, letter b and c). TOVALOP did not create a fund between the owners and bareboat charterers of oil tankers. This was a difference with the "Contract Regarding a Supplement to Tanker Liability of Oil Pollution" (CRISTAL), a fund constituted by the oil companies (S. Bloodworth, "Death of high seas: the demise of Tovalop and Cristal" (1998), 132 *Florida State University Journal of Land Use & Environmental Law*, p.1 (www.law.fsu.edu/journals/landuse/Vol132/Bloo.htm). When the owner or the bareboat charterer entered an oil tanker into a P&I Club, a portion of his call was destinated, except in case of his express oposition, to be registered in TOVALOP and to become member of ITOPF. This company issued the so-called "TOVALOP certificate", which was not a certificate of financial security (I. C. White, "The voluntary oil spill compensation agreements – Tovalop and Cristal", *Liability for damage to the marine environment*, edited by C. De la Rue (Lloyd's of London Press Ltd, 1993), p. 61), but it was often used by port authorities as a precedent condition to authorize the loading and unloading operations (see Circular 1/1997, 10 January 1997, of "The American Club", on www.american-club.com/circulars/cir1-97.htm). F. Berlingieri, "Iniziative publiche e private per assicurare l'integrale risarcimento dei danni causati da inquinamento da idrocarburi", (1971) *Il Diritto Marittimo*, 291-300, reproduces the original text in English. Before its termination in 1997, it was modified in several occasions. Nowadays, ITOPF offers a broad range of technical services to its members and associates, their pollution insurers an other groups around the world concerned with marine spills.

[17] ITOPF, n.16 above. For example, both the "Nakhodka" (more than US$ 200 million for costs) and "Erika" (more than US$ 300 million) were relatively small tankers, but spilled heavy fuel oil, which is highly persistent and came ashore along long lenghts of coastline

[18] ITOPF, n.16 above. The most expensive oil spill from ships in history is the "Exxon Valdez", whose total costs have been estimated at as much as US$ 7 billion. The Spanish Government assessed damages caused by the "Prestige" in Spain in euros 938 millions (*El País*, edition of 9 April 2008).

and the amended convention is known as the "1992 Fund Convention" [19]. To date, the 1992 Fund shall not in any event exceed by US$ 439 million [20], *including the sum actually paid by the shipowner or his insurer under the 1992 CLC* (article 4 1992 Fund Convention).
Nevertheless, a small number of States have ratified the 2003 Supplementary Fund Protocol 2003 to the 1992 Fund Convention. In force since 2005, this Protocol guarantees a maximum indemnity for any event of oil pollution from tanker vessels by US$ 1.1 billion [21]. In other words, claimants of these countries are more likely to obtain adequate compensation in the event of a catastrophic oil spill, because oil receivers situated in these Contracting States are ready to make additional contributions to a Supplementary Fund.

Assureds and additional assureds

Under the 1992 CLC, the owner of a ship means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, owner shall mean such company (article I.3).
The 1992 CLC lays down the principle of "channelling" [22], by which claims for pollution damage must be made exclusively against the owner of the ship (article III.4), although nothing shall perjudice any right of recourse of the owner against third parties (article III.5). Bareboat charterers, managers, operators and any other person in control of the insured ship are under no obligation to maintain insurance to cover their liability for oil pollution damage under the 1992 CLC. Notwithstanding, they could be named as additional assureds in the policy of the shipowner and/or hold their own insurance policy (i.e., the P&I insurance for charterers).

Insurers or guarantors. Preponderance of the clubs who are members of the International Group of P&I Clubs

A *solvent insurer or guarantor* shall promise to pay the sums fixed by applying the limits of liability prescribed in the 1992 CLC, irrespective of the shipowner's solvency [23].
The 1992 CLC does not specify one only source of insurance or guarantee, and do not even identify the type of insurance required, given that this may come into conflict with competition law [24]. Thus it can be seen that the 1992 CLC

[19] The 1971 Fund Convention finally ceased to be in force in 2002. See G. Little and J. Hamilton, "Compensation for catastrophic oil spills: a transatlantic comparison" (1997) *Lloyds Maritime and Commercial Law Quarterly*, p.405.
[20] N.14 above.
[21] N.14 above.
[22] E. Røsæg, n.1 above, p.12.
[23] J. Hare, n.1 above, p.1; E. Røsæg, n.1 above, p.1. In general, see M. Stolfi, "Le assicurazioni obbligatorie di responsabilità civile" (1969) 6 *Assicurazioni*, p.541; E. Pavelek, "Seguros obligatorios y obligación de asegurarse", (2001) no. 106, *Revista Española de Seguros*, p.241-241.
[24] P. Bennett, n.3 above, p.19.

does not prevent commercial insurers or guarantors from covering shipowner's liability for pollution damage caused by oil tankers [25].

However, according to the Organisation for Economic Co-operation and Development, in 2004, "*about 82% by number but nearly 90% by tonnage of the world's ocean-going fleet were entered with one of the clubs from around the world which are members of the International Group of P&I Clubs. For the purposes of the market share calculations above, ships of under 2,000 gross tons are excluded. If this figure of 2,000 gross tons is increased, thus excluding from the calculation more of the smaller ships, the Group's percentage of the world fleet rises further. Its percentage of tankers over 2,000 tons would be significantly higher than for other types of ship, perhaps as large as 97% of the world fleet*" [26]. P. Bennett calculated in 2001 that "*10% of ocean going tonnage is not insured with such a club. This is probably 50% of ships, given that those outside ot the International Group tend to be smaller*" [27].

Even though the P&I club remains as a mutual association, nowadays members purchase an insurance with a registered company rather than with fellow partners or members [28]. It is said that the reasons for the preponderance of the clubs are the tradition and their expertise in this particular business, which comprises a wide list of correspondents worldwide to deal with claimants and enough experience to know usual risks and amount of indemnities [29].

Another point worth mentioning here is that clubs who are parties to the International Group, are also parties to or have the benefit of a Pooling Agreement (the "Pool") for the purpose of dividing and sharing amongst the parties certain layers of liabilities arising out of the protection and indemnity risks which they respectively insure (preamble, para. 6). Nowadays, members show a financial strength as follows [30]: 1) Each individual club retains all claims up to US$ 8 million; 2) Clubs reinsure each other for all qualifying claims in excess of US$8 million, which are shared between them up to US$ 50 million. The Group Clubs also reinsure part of their risks through a captive insurance company, Hydra Insurance Co Ltd. Hydra is a segregated accounts company incorporated under the laws of Bermuda in which each club is an account owner; 3) The International Group arranges a market reinsurance contract to provide reinsurance for claims which exceed US$50 million up to an amount of US$2.05 billion any one claim and US$1 billion for oil pollution claims. It is often claimed that Lloyd's of London is the main source of reinsurance [31].

Consequently, the rules of clubs which are members of the International Group can consistently cover *"all claims arising in respect of an actual or threatened*

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[25] P. Bennett, "Environmental governance and private actors: enrolling insurers in international maritime regulation", (2000) no. 19 *Political Geography*, p.891.

[26] OECD, n.2 above, p.19.

[27] P. Bennett, n.3 above, p.19.

[28] S. J. Hazelwood, *P&I Practices Law and Practice*, third edition (Lloyd's London Press, 2000), 11-13.

[29] L. Zhu, n.12 above, p.212.

[30] International Group of P&I Clubs, n.3 above, OCDE, n.2, pp.19-21; E. Røsæg, n.1 above, pp.4-9.

[31] J. A. Garick, "Crisis in the oil industry. Certificates of Financial Responsibility and the Oil Pollution Act of 1990", (1993) July *Marine Policy*, p.286 and N. J. Colton, "The underwriting of oil pollution risks", in *Liability for damage to the marine environment*, n.16 above, p.151. See http://www.lloyds.com/

escape or discharge of oil, including claims by charterers co-assured under the owner's entry. The club will not be liable to make any payment in respect of that amount by which any such claim exceeds US$ 1 billion for any one event" [32]. P&I cover offered by commercial underwriters would be subject to much lower limits [33].

State certificate attesting that insurance or other financial security is in force

It is the duty of each Contracting State to ensure, under its national legislation, that insurance or other financial security in the sums fixed by applying the limits of liability prescribed in article V.1 is in force to cover the shipowner's liability for pollution damage under this Convention (article VII.1 1992 CLC). A certificate attesting that insurance or other financial security is in force shall be issued to each ship after the appropiate authority of a Contracting State has determined that requirements of paragraph 1 have been complied with (article VII.2). A Contracting State may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the certificate is not financially capable of meeting the obligations imposed by the 1992 CLC (article VII.7).
This State certificate was a requirement included in the 1969 CLC to enable each State to control vessels registered in its ship's registry, to determine the conditions of issue and validity of the insurance or other financial security and that it is good enough for their mutual recognition by other States Parties [34]. The Protocol of 1992 adds that States Parties may also issue certificates to ships registered in non-party States and these must be recognized by other State Parties [35]. For example, the Spanish Resolution of 3 November 2008, by the Directorate-General for the merchant marine [36], provides that the 1992 CLC certificate will be issued to: a) Spanish vessels carrying more than 2,000 tons of oil in bulk as cargo; and b) "*Vessels carrying more than 2,000 tons of oil in bulk and not registered in a State party, if they intend to arrive at or leave a Spanish port or an offshore facility in the Spanish territorial sea*" (article 2.4).
National procedures for requesting and obtaining the 1992 CLC certificate seem to follow a common pattern [37]. The owner of the ship, the bareboat charterer, the owner's manager(s) or any other person specifically authorized by the owner, must complete a form and generally pay a fee. The applicant shall accompany the form with evidence that insurance or other financial guarantee is in force. This evidence is usually in the form of a "Blue card"

[32] For example, see rules 2010-2011 of Skuld, appendix 5, rule 2; P&I rules 2010-2011 of The London, rule 11.3; rules 2010-2011 of The American, rule 1, section 4.33.
[33] OECD, n.2 above, p.20; G. Gauci, *Oil Pollution at Sea* (Wiley, 1997), p.205.
[34] F. Berlingieri, "Il sistema internazionale di risarcimento dei danni causati da inquinamento da idrocarburi" (1992) no. I *Il Diritto Marittimo*, pp.17-18; Legal Committee of IMO, n.13 above.
[35] The Legal Committee of IMO, n.13 above, says that "*the 1992 Protocol simply put long-standing State practice on a clear legal footing*". For example, under Spanish law, vessels not registered in a Contracting State could be accepted in Spanish ports of a Contracting State by showing a certificate issued or certified by another State Party to the 1969 CLC (Ministerial Order 31 December 1977, *Boletín Oficial del Estado*, no. 12, 14 January 1978).
[36] *Boletín Oficial del Estado*, no. 278, 18 November 2008.
[37] For example, see the websites of "The Marine Safety Directorate - Transport Canada" and "The Australian Maritime Safety Authority".

issued by the P&I club according to its rules and that accurately reflects the ownership details, characteristics of the ship and terms of the insurance [38]. In Spain, according to the original wording of the Royal Decree 1892/2004 [39], when the 1992 CLC certificate is based on an insurance, the insurer can be a Spanish underwriter, an entity sited in the European Economic Area or an European subsidiary of an underwriter domiciled in a third country, provided that this insurer is authorised to operate in the branch of liability of maritime, fluvial and lake vehicles. So the previous wording of the Royal Decree did not mention the possibility of contracting with a P&I club. Nonetheless, it was modified by the Royal Decree 1795/2008 [40] and, to date, the Spanish Law outlines the validity of the P&I insurance in order to obtain the 1992 CLC certificate in Spain "*only if"* the insurer is a member of the International Group of P&I clubs (article 4, par. 1). It adds that, if so, the application form shall be accompanied by the abovementioned "blue card" (article 1.3.b.). Most importantly, "*no 1992 CLC certificate will be issued if insurance comes from a different insurer"* (article 4, par. 2). When the 1992 CLC certificate is based on a financial security, this must be issued by duly authorized entities, according to the applicable law (article 5).

It must be taken into consideration that P&I insurance must be renewed up to 20 February each year [41], so such procedure must be repeated, which means a continuous administrative burden for States, clubs and tanker vessels' owners [42].

The 1992 CLC certificate issued or certified by the appropiate authority of a Contracting State shall be in the form of the model annexed to the Convention with the following particulars: a) name of ship, distinctive number or letters, port of registration and, only for Bunkers certificate, the IMO ship identification number; b) name and principal place of business of owner; c) type and duration of security; d) name and principal place of business of insurer(s) and/or guarantor(s); e) period of validity of certificate which shall not be longer than the period of validity of the insurance or other security, which is why the annual renewal of certificates is necessary; f) name of the Government of the Contracting State which issues or certifies and signature and title of issuing or certifying official. Certificates shall be in the official language or languages of the issuing State. If the language used is neither English nor French, the text shall include a traslation into one of these languages (article VII.3).

The certificate shall be carried on board the ship and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a Contracting State, with the authorities of the State issuing or certifying the certificate (article VII.4).

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[38] For example, see rules 2010-2011 of Skuld, rule 30.4.1; P&I rules 2010-2011 of The London, rule 17: "*the club shall issue a certificate in compliance with article VII of the 1969 or 1992 CLC or any amendments thereof*".

[39] *Boletín Oficial del Estado*, no. 226, 18 September 2004.

[40] *Boletín Oficial del Estado*, no. 278, 18 November 2008.

[41] For example, see rules 2010-2011 of Skuld, rule 1.14; P&I rules 2010-2011 of The London, rule 6.3; rules 2010-2011 of The American, rule 1, section 4.8.

[42] J. Hare, n.1 above, p.1

The State certificate could be seen as a "ticket to trade" in the territory of the Contracting States to the 1992 CLC [43]. On the one hand, each Contracting State shall not permit a ship under its flag to which this Convention applies to trade unless the 1992 CLC certificate has been issued (article VII.10). On the other hand, each Contracting State shall ensure, under its national legislation, that insurance or other security to the extent specified in the article VII.1 is is force in respect of any ship, wherever registered, entering or leaving a port of its territory, or arriving at or leaving an off-shore terminal in its territorial sea, if the ship actually carries more than 2,000 tons of oil bulk as cargo (article VII.11). Spanish law reproduces this provision and, in addition, establishes that the Harbour Master can require the presentation of a 1992 CLC certificate when asking for clearance to enter or leave a port and also can start an administrative procedure to impose a sanction, order the immobilization of the vessel and take every measure to avoid oil pollution (article 1.4 Royal Decree 1892/2004)

The direct action against insurers or guarantors and defences available

Sensitive to the requirement of the *accessibility of the compensation* [44], the 1992 CLC provides that any claim for compensation may be brought directly against the insurer or other person providing financial security for the tanker owner's liability for pollution damage (article VII.8).

First of all, the so-called "direct action" introduces a legal exception to the rule of privity of contract and to the tradicional "pay to be paid" rule by which the P&I club do not pay the indemnity to the assured owner until effective payment has been made to the injured third party [45]. In fact, some P&I rules expressly provide that "*the club will discharge on behalf of the assured liabilities, costs, and expenses arising under a demand made pursuant to the issue by the association on behalf of the assured of a certificate in compliance with 1969 or 1992 CLC*" [46]. Thus, the club becomes a guarantor by issuing "Blue cards" [47].

Secondly, the 1992 CLC makes an exception to the principle by which the third party's rights are no better than insured's [48]. As a defendant, the insurer or guarantor has a limited number of defences available in case of direct action, whatever the policy of insurance says [49]: 1) He may, even if the owner is not entitled to limit his liability, avail himself of the limits; 2) He may further avail himself of the defences (other than the bankrupcy or winding up of the owner) which the owner would have been entitled to invoke; 3) He may avail himself

[43] M. Remond-Gouilloud, "Insurance, liability and compensation", (1990), May *Marine Policy*, p.240; P. Bennett, n.25, pp.883,886; E. Røsæg, n.1 above, p.3; L. Zhu, n.12 above, p.210.
[44] E. Rosaeg, n.1 above, p. 2
[45] E. Sierra Noguero, "Third parties' rights against insurers under Spanish Law", (2004) November *The Journal of Business Law*, pp.715,719, and noted bibliography.
[46] For example, see P&I rules 2010-2011 of The London, rule 16.
[47] J. Hare, n.1 above, p.1, says that the State "*certificate confirms that the P&I club named in it accepts claimants can sue the club directly*".
[48] For more information about this principle, see J. Birds, *Birds' Modern Insurance Law*, 8th edition (Sweet&Maxwell, 2010), 20.1.3.
[49] J. Hare, n.1 above, p.1.

of the defence that the pollution damage resulted from the wilful misconduct of the owner himself, which is one rarely used policy defence [50].
However, the defendant shall not avail himself of any other defence which he might have been entitled to invoke in proceedings brought by the owner against him (i.e., on the ground that the owner is is breach of his term of cover because, for example, of non payment of premiums or that the vessel is out of class). The defendant shall in any event have the right to require the owner to be joined in the proceedings (article VII.8).
Finally, any sums provided by insurance or by other financial security shall be available exclusively for the satisfaction of claims (article VII.9).

Oil pollution damage caused by fuel oil from non-tanker vessels having a gross tonnage greater than 1,000

The Bunkers Convention, in force since 21 November 2008, provides that the registered owner of a ship having a gross tonnage greater than 1,000 registered in a State Party shall be required to maintain insurance or other financial security to cover the liability of the registered owner for pollution damage resulting from the escape or discharge of bunker oil from the ship. This insurance or security must be in an amount equal to the limits of liability under the applicable national or international limitation regime, but in all cases, not exceeding the amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976, as amended (article 3 and 7). So the amount of indemnity to be paid by the liable shipowner or his insurer or guarantor depends on the tonnage of the ship which caused the oil pollution. For example, the highest indemnity for oil pollution caused by a ship having a gross tonnage of 100,000 will be about US$ 44 million [51].
The Bunkers Convention fills the gap left by the 1992 CLC in order to cover pollution damage caused by fuel oil from non-tankers that would not be compensated under the 1992 CLC [52]. The 1992 CLC is applicable to any escape of oil from "the bunkers of an tanker vessel". The Bunker Convention does not apply to pollution damage as defined in the 1992 CLC (article 4.1) [53].

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[50] J. Hare, n.1 above, p.1. Under the United States OPA, several exceptions remove its established limits of liability, including wishful misconduct, "*but also*" gross negligence, violation of law, failure or refusal to report the accident or to co-operate. By issuing certificates of financial responsibility, P&I club would legally be termed as "*guarantors*". See M. Remond-Gouilloud, "Marées noires: les Estats-Unis à l'assaut (L'Oil Pollution Act 1990)", (1991) no. 506 June, *Le Droit Maritime Français*, p.343; J. A. Garick, n.31 above, p.272. C. Kende, "The United States approach", *Liability for damage to the marine environment*, n.16, pp.142-143, outlines that "*P&I clubs were refusing to sign new certificates of financial responsibility (COFRS) in protest over the OPA provisions. A stalemate developed between the clubs and the US Coast Guard"*. To date, the standard P&I insurance of clubs "*do not cover*" liabilities, costs and expenses to which the OPA applies, "*unless*" the assured who has entered such a tank vessel declares quarterly in arrears whether or not the vessel has performed any voyage carrying oil as cargo to or from any port or place in the USA or within the exclusive economic zone and, if so, the number of voyages (for example, see rules 2010-2011 of Skuld, appendix 5, rules 1 and 2; P&I rules 2010-2011 of The London, rules 9 and 11). In fact, the special terms may include the requirement of a further premium (i.e. rules 2010-2011 of Skuld, appendix 5, rule 2).
[51] N.14 above.
[52] D. W. Abecassis, n. 7, p.173; J. Hare, n.1 above, p.1.
[53] ITOPF, n.16 above. L. Zhu, n.12 above, p.204; J. Hare, n.1 above, p.1.

In addition, the Bunkers Convention achieves a significant breakthrough in the system of compulsory insurance by extending it beyond the tanker sector [54]. It is true that a great majority of local vessels are below 1,000 gross tonnage and they are not required to maintain insurance or other financial security, though they can cause substantial damage [55]. However, in comparison with the 1992 CLC, a large proportion of vessels must comply with such a scheme under the Bunkers Convention [56].

Therefore, apart from the 1992 CLC certificate, shipowners shall carry on board the Bunkers Convention certificate. The Legal Committee of the IMO discussed the development of a single model compulsory insurance certificate to reduce administrative burdens, including for port State control-related inspections, but to date with only three treaties in force requiring insurance, it was concluded that it would not be practical or feasible [57].

Spain ratified this international instrument on 10 November 2003 [58]. The Royal Decree 1795/2008 of 3 November 2008 [59] executes it and the abovementioned Resolution of 3 November 2008 establishes a common procedure to obtain the 1992 CLC certificate and/or the Bunkers certificate. According to this Resolution, the Bunkers certificate will be issued to: a) Spanish vessels having a gross tonnage greater than 1,000; b) Vessels having a gross tonnage greater than 1,000 and not registered in a State Party, whose property or nautical management belongs to Spanish firms; c) Vessels having a gross tonnage greater than 1,000 and not registered in a State party, if they intend to arrive at or leave a Spanish port or an offshore facility in the Spanish territorial sea (article 2.3).

Bunkers Convention's novelties on compulsory insurance

Article 7 of the Bunkers Convention requiring compulsory insurance or other financial security and recognizing the direct action is modelled on article VII of the 1992 CLC, but also includes useful novelties.

To begin with, the Bunkers Convention admits expressly that a State Party may authorise either an institution or an organization recognized by it to issue this State certificate. In all cases, the State Party shall fully guarantee the completeness and accuracy of the certificate so issued and shall undertake to ensure the necessary arrangements to satisfy this obligation (article 7.3). For example, it would be practical if the organization recognized was a P&I club in order to save shipowners from following the abovementioned double procedure before the P&I Club (for obtaining the "Blue card") and then before the State Party (for obtaining the official certificate).

Moreover, the Bunkers convention adds the Spanish language as one of the possible required languages to be used by the State certificate, and that, where

[54] J. Hare, n.1 above, p.1.

[55] L. Zhu, n.12 above, pp.210-212; C. Wu, "Liability and Compensation for Bunker Pollution" (2002) vol. 33 no. 5 *Journal of Maritime Law & Commerce*, p.565; M. N. Tsimplis, "The Bunker Pollution Convention 2001: completing and harmonizing the liability regime for oil pollution from ships?" (2005) no. 1, *Lloyd's Maritime and Commercial Law Quarterly*, p.94.

[56] According to J. Hare, n.1 above, p.1: "*The number of ships which will require State Bunkers certificates in the run up to 20 February each year is well in excess of 30,000*".

[57] Legal Committee of IMO, 96th session, 5-9 October 2009.

[58] *Boletín Oficial del Estado*, no. 43, 19 February 2008.

[59] N.40, above.

the State so decides, the official language of the State may be omitted (article 7.4).
Furthermore, a State Party may notify the Secretary-General of the IMO that ships are not required to carry on board or to produce the certificate, when entering or leaving ports or arriving at or leaving offshore facilities in its territory, provided that the State Party which issues the certificate required has notified the Secretary-General that it maintains records in a electronic format, accessible to all State Parties, attesting the existence of the certificate and enabling State Parties to discharge their obligations (article 7.13).
In addition, a State may, at the time of ratification, acceptance, approval of, or accession to this Convention, or at any time thereafter, declare that this article does not apply to ships operating exclusively within the territory of that State, including the territorial sea (article 7.15).
Finally, only the registered owner shall maintain insurance or other financial security, but the Bunkers Convention provides that the bareboat charterer, manager and operator of the ship are considered as "shipowners" and shall be directly liable for pollution damage (article 1.3 and 3.1) [60]

In tort actions against the owner of pleasure and spot boats

Although no international convention lays down a compulsory liability insurance for owners of pleasure and sport boats, this can be required by national laws. In practice, this kind of insurance is commonly provided by commercial insurers.
Given that Spain receives every year an important number of foreign pleasure boats and our national law requires a compulsory insurance, it may be interesting to know more about the Royal Decree 607/1999, 16 April 1999 [61].
This lays down the principle of compulsory insurance for pleasure boats to cover third party liability for damage caused by fault or neglect to any third person, ports or maritime facilities, as a consequence of collision or, in general, any fact derived from the use of these boats in the Spanish maritime waters (article 1). Its scope of application is every floating object to be used for pleasure or sport navigation propelled by a motor, and boats of more than six metres in length, even without a motor (article 2). To cover risks derived from taking part in boat races, trials, contests of every kind and their trainings, all Spanish boats must contract a specific insurance to cover the civil liability of the participants (article 3.1).
When it comes to foreign boats navigating within the Spanish territorial sea and internal waters with access to a port, they shall purchase liability insurance in Spain or prove the existence of a previous insurance with the same coverage and conditions as are required for Spanish boats (article 4).
The navigation of these boats without this insurance cover is regarded as a serious offence (article 5).
The compulsory insurance shall cover the death of and injuries to third persons, material damage affecting the property of third persons, economic losses suffered by third parties and damage caused to vessels by collision or without contact. Unless otherwise agreed, the insurer must pay the costs of trial and

[60] E. Røsæg, n.1 above, p.12, remarks that "*the Bunkers Convention means a substantial change with respect to the channelling idea of the CLC Conventions*". See n.22 above.
[61] *Boletín Oficial del Estado*, no. 103, 30 April 1999.

non-judicial costs regarding the insured's legal defence and the management of the accident (article 6). The Royal Decree 607/1991 adds some exclusions, like personal damage to the insured, persons being carried in exchange for a price and seafarers, apart from material damage to the insured boat (article 7).
The insurance of civil liability shall cover the compensation of personal damage up to 120.000 euros for each victim with the maximum limit of 240.000 euros for each accident, and material damage and economic losses up to about 96.000 euros (article 8).
The policy holder must be the shipping company or the shipowner of the boat, althought it can be taken out by any interested person (article 9).
The insurance for Spanish boats must be contracted with Spanish underwriters or entities sited on the European Economic Area and duly authorised to operate in Spain (article 10).
The underwriter must deliver to the policy holder a certificate that proves that insurance is in force and with all mentions required by law (articles 11 and 12).

Damage in connection with the Carriage of Nuclear Substances by Sea

The 1960 Convention on Third Party Liability in the Field of Nuclear Energy ("Paris Convention") and the 1963 Convention on Civil Liability for Nuclear Damage ("Vienna Convention"), both in force, state that the operator of a nuclear installation is generally liable for damage that is caused by a nuclear incident outside the installation and involving nuclear substances in the course of carriage therefrom. What is more, the operator shall be required to maintain insurance or other financial security covering his liability for nuclear damage. The operator liable in accordance with the Paris Convention shall provide the carrier with a certificate issued by or on behalf of the insurer or other financial guarantor furnishing the security required (article 4). These Conventions were linked by the Joint Protocol adopted in 1988 to bring together the geographical scope of the two. Thus it can be seen that both Conventions channel liability exclusively to the operator of the nuclear installations. His liability is absolute, i.e. the operator is held liable irrespective of fault, except for "acts of armed conflict, hostilities, civil war or insurrection". Therefore, no action can be brought by victims against the carrier for incidents that occur during the transport of radioactive material. This exception can be removed in case of wishful misconduct (article 2) [62].
To be more precise, the 1971 Convention on Liability and Compensation for Damage in connection with the Carriage of Nuclear Substances by Sea, which entered into force on 15 July 1971, provides that a person otherwise liable for damage caused in a nuclear incident shall be exonerated for liability if the operator of the nuclear installation is also liable for such damage [63]. Spain adhered to this Convention on 3 May 1974 [64] and the Law 25/1964, of Nuclear Energy, 29 abril [65], establishes that operators of any installation of radioactive

[62] R. A. F. Pedrozo, "Transport of nuclear Cargoes by Sea" (1997), vol. 28, no. 2 *Journal of Maritime Law and Commerce*, pp.232-233, says that, it the carrier is directly liable, it would be possible to the operator to claim in order to be reimbursed.
[63] See IMO (www.imo.org); E. Røsæg, n.1 above, p.1.
[64] *Boletín Oficial del Estado*, no. 199, 20 August 1975.
[65] *Boletín Oficial del Estado*, no. 107, 4 May 1964.

materials shall purchase a liability insurance or a financial security to cover their civil liability in case of nuclear accidents.

Damage in connection with the carriage of hazardous and noxious substances by sea

In accordance with Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage [66], the Spanish Law 26/2007, 23 October, of environmental liability [67] requires operators carrying by road, train, river, lake or sea, dangerous or pollutant cargo to maintain insurance or other financial security to cover their environmental liability under this law.

The Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 ("HNS Convention") is not in force. Even though the Council of the European Union, through Decision of 18 November 2002 [68] authorised the Member States, in the interest of Community, to ratify or accede to the HNS Convention, to date, no Country has finalised procedures for ratification of, or accession to, the HNS Convention.

The HNS Convention requires the owner of a ship registered in a State Party and actually carrying hazardous and noxious substances (i.e. chemicals) to maintain insurance or other financial guarantee up to US$ 146 million [69] (articles 9 and 12). In addition, the HNS Convention intends to establish a supplementary Fund to pay pollution damage up to US$ 365 million [70] (article 13). This fund would be financed by contributions levied on companies in HNS Convention countries that receive hazardous and noxious substances (articles 13-35). Therefore, only one treaty adapts the tried and tested two-tier system utilized in the 1992 CLC and 1992 Fund for determining liability and providing compensation [71]. This supplementary fund could probably be one of the reasons why the HNS Convention is not yet in force [72]. Another reason for explaining why the HNS Convention has not entered into force is the fact that a maritime catastrophe related to hazardous and noxious substances has not yet occurred [73].

Finally, vessels voluntarily entered in a P&I club of the International Group would have coverage, because the standard P&I insurance provides cover to

[66] *Official Journal of the European Union*, L 143/56, April 2004.
[67] *Boletín Oficial del Estado*, no. 225, 24 October 2007.
[68] *Official Journal of the European Communities*, L 337/55, 13 December 2002.
[69] N.14 above.
[70] N.14 above.
[71] G. Little, "The Hazardous and Noxious Substances Convention: a new horizon in the regulation of marine pollution" (1998) *Lloyd's Maritime and Commercial Law Quarterly*, p.566.
[72] R. Shaw, "Hazardous and noxious substances – is the end in sight? Proposed Protocol to the HNS Convention 1996" (2009) *Lloyd's Maritime and Commercial Law Quarterly*, pp.279-284, analyses several studies that have taken place to identify the reasons why States have been unable to ratify the HNS Convention and to provide solutions.
[73] F. L. Wiswall, "Hazardous waste, dumping convention and liability", *Liability for damage to the marine environment*, n.16 above, p.199.

the member's liability arising out of the actual or threatened escape or discharge of oil "*or other polluting substance*" [74].

Compensation for passengers by sea in the event of accidents

In Spain, the Royal Decree 1575/1989 of 22 December 1989 [75] lays down that passengers by any public transport within the Spanish borders be covered by a compulsory insurance purchased by the carrier.
When it comes to international carriage, the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage, 1974, introduces new article 4 bis. This provides that "*when passengers are carried on board a ship registered in a State Party that is licensed to carry more than twelve passenger, and this Convention applies, any carrier who actually performs the whole or a part of the carriage shall maintain insurance or other financial security to cover liability under this Convention to cover their liability in respect of the death of and personal injury to passengers*". The limit of the compulsory insurance or other financial security shall not be less than US$ 365.000 [76] per passenger on each distinct occasion (article 4.bis.1) [77].
The Protocol of 2002 has not yet entered into force. However, for the first time in an IMO Convention, a Regional Economic Integration Organization (constituted by sovereign States that have transferred competence over certain matters governed by this protocol) may sign up to the Protocol and shall have the rights and obligations of a State party. So, the Regulation (EC) n. 392/2009 of the European Parliament and of the Council of the 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents [78], provides that the provisions of liability and insurance of the Athens Convention are thereby incorporated by this Regulation and should apply in the Community from no later than 31 December 2012. It adds that the Regulation shall be binding in its entirety and directly applicable in all Member States". Thus it can be seen that even though the substantive rules established by the Protocol of 2002 fall under the national competence of Member States, which remain sovereign to decide whether or not the Protocol of 2002 should be ratified, it is also true that, having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof, the Council of the European Union "*may decide whether, to what extent and by what procedure appropriate provisions may be laid down for sea and air transport*".
Finally, the standard P&I insurance from P&I clubs which are members of the International Group covers the member's liabilities, costs and expenses arising in respect of passengers carried on board the insured vessel and in respect of or consequent upon injury, illness or death, hospital and medical expenses, loss of or damage to baggage belonging to such a passenger and costs of repatriation and maintenace ashore and funeral expenses resulting from injury, illness or death, among others. Cover is subject to limitations. Regarding clubs who are

[74] For example, rules 2010-2011 of Skuld, rule 14.1.1.
[75] *Boletín Oficial del Estado*, no. 311, 28 December 1989.
[76] N.14 above.
[77] M. Zubiri de Salinas, "La responsabilidad del transportista de personas en los Reglamentos comunitarios relativos al transporte aéreo, ferroviario y marítimo" (2010) no. 4, *Revista de Derecho del Transporte*, pp.91-92.
[78] *Official Journal of the European Union*, L 131/24, 28-5-2009)

members of the International Group, the aggregate liability under any one owner's entry shall not exceed in respect of liability to passengers US$ 2 billion any one event, and in respect of liability to passengers and crew US$ 3 billion any one event [79].

Conclusions

To sum up, it is often argued that there is a trend toward a more expansive application of compulsory liability insurances or other financial securities against claims arising from the operation of a vessel [80]. The aim would be to ensure that adequate compensation is available to persons who suffer damage and avoid potential risk that the uninsured or under insured vessels pose. In other words, it is in the public interest that victims of certain risks are compensated [81].

However, apart from the exceptions noted, maritime liability insurances are not compulsory for shipowners and shipping companies in general [82]. For example, by Resolution A.898(21), the IMO invited States only to "urge" shipowners to be properly insured. The 1976 Convention on Limitation of Liability for Maritime Claims, as amended by the 1996 Protocol, does not lay down a principle of compulsory liability insurance for maritime claims to be taken out by shipowners in general. In Spain, article 78 of the Law 27/1992, 24 November, of the ports of the State and the merchant marine, lays down the principle of compulsory insurances for Spanish shipping companies and foreign ships navigating in the Spanish exclusive economic zone, contiguous zone, territorial sea or internal waters. Nevertheless, to date, the Government has not brought into force the development regulation to comply with Law 27/1992.

Therefore, it goes without saying that it is in the public interest that damaged third parties shall be compensated, but it is unclear that whether there will always be an insurer or guarantor of the responsible party of any kinds of damage.

Finally, there remains to been seen the effect on the national laws of Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 [83], that requires insurance regarding maritime claims or other financial security to any ship of 300 gross tonnage or more, including foreign ships entering a port in the member State's jurisdiction. "<*Insurance*> *means insurance with or without deductibles, and comprises, for example, indemnity insurance of the type currently provided by members of the International Group of P&I Clubs, and other effective forms of insurance (including proved self insurance) and financial security offering similar conditions of cover*" (article 3.b). Member States shall bring into force the rules to comply with this Directive before 1 January 2012 (article 9).

[79] For example, for example, see rules 2010-2011 of Skuld, rule 8; P&I rules 2010-2011 of The London, rule 9.2.3; rules 2010-2011 of The American, section 2, rule 1.D

[80] M. N. Tsimplis, n.55, p.93.

[81] M. Stolfi, n.23 above, p. 541; E. Pavelek, n.23 above, p.242.

[82] G. Garick, n.31 above, p.205.

[83] *Official Journal of the European Union*, L 131/128, 28 May 2009.