

History of Key Conventions – IMO Conventions

28 February 2012

Patricia Charlebois

Abstract

We live today in a global society, supported by a global economy. Shipping plays a vital role in this, underpinning international commerce and providing the most effective delivery mechanism for the vast majority of world trade. Within this context, the International Maritime Organization, as the UN-specialized agency responsible for the safety and security of shipping and the protection of the marine environment from its adverse effects. This paper sets out the timeline and evolution of the international regulatory regime governing shipping and provides information on the landmark conventions that have, over time, served to first establish and then further strengthen and improve shipping's regulatory mechanisms, in particular as they pertain to pollution prevention and the protection of the marine environment from the adverse effects of shipping. It also provides information on the International Maritime Organization, as the internationally-recognized regulatory body through which this international regulatory framework was established and is managed, as dictated by its Member States.

This paper sets out the timeline and evolution of the international regulatory regime governing shipping and provides information on the landmark conventions that have, over time, served to first establish and then further strengthen and improve shipping's regulatory mechanisms, in particular as they pertain to pollution prevention and the protection of the marine environment from the adverse effects of shipping. It also provides information on the International Maritime Organization, as the internationally-recognized regulatory body through which this international regulatory framework was established and is managed, as dictated by its Member States.

Headquartered in London, United Kingdom, the International Maritime Organization is a specialized agency of the United Nations with 169 Member States and three Associate Members. The IMO's primary purpose is to develop and maintain a comprehensive regulatory framework for shipping and its remit today includes safety, environmental concerns, legal matters, technical co-operation, maritime security and the efficiency of shipping. The work of IMO is conducted through five committees and these are supported by a number of technical subcommittees.

It has always been recognized that the best way of improving safety at sea is by developing international regulations that are adopted and followed by all shipping nations and, from the mid-19th century onwards, a number of such treaties were adopted. Countries had proposed that a permanent international body should be established to promote maritime safety more effectively, but it was not until the establishment of the United Nations itself that these hopes were realized. In 1948 an international conference in Geneva adopted a convention formally establishing Inter-Governmental Maritime Consultative Organization, or IMCO, renamed the International Maritime Organization (IMO) in 1982. The IMO Convention entered into force in 1958 and the new Organization met for the first time the following year. IMO is the source of approximately 60 legal instruments that guide the regulatory development of its member states to improve safety at sea, facilitate trade among seafaring states and protect the marine environment.

History has dictated that large-scale incidents serve as significant drivers for change which, most often, translates quickly into new or amended regulation. If we go back to the beginning, looking back one hundred years exactly, we come to the incident that would change the face of modern shipping, the *Titanic* disaster. This is the incident that would kick start the development of the modern international regulatory regime as we know it today. It was in this context that the first and still the most important of all treaties dealing with maritime safety was born: The Convention for the Safety of Life at Sea (SOLAS). First adopted in 1914, this instrument has been updated and amended many times, to reflect the lessons learned and continuously changing face of international shipping.

The main objective of the SOLAS Convention is to specify minimum standards for the construction, equipment and operation of ships, compatible with their safety. Flag States are responsible for ensuring that ships under their flag comply with its requirements, and a number of certificates are prescribed in the Convention as proof that this has been done. Control provisions also allow Contracting Governments to inspect ships of other Contracting States if there are clear grounds for believing that the ship and its equipment do not substantially comply with the requirements of the Convention – this procedure is known as port State control. The current SOLAS Convention includes articles setting out general obligations, amendment procedures and so on, followed by an annex divided into 12 chapters, covering a wide range of topic areas, as follows:

- Chapter I - General Provisions
- Chapter II-1 - Construction - Subdivision and stability, machinery and electrical installations
- Chapter II-2 - Fire protection, fire detection and fire extinction
- Chapter III - Life-saving appliances and arrangements
- Chapter IV - Radiocommunications
- Chapter V - Safety of navigation
- Chapter VI - Carriage of Cargoes
- Chapter VII - Carriage of dangerous goods
- Chapter VIII - Nuclear ships
- Chapter IX - Management for the Safe Operation of Ships
- Chapter X - Safety measures for high-speed craft
- Chapter XI-1 - Special measures to enhance maritime safety
- Chapter XI-2 - Special measures to enhance maritime security
- Chapter XII - Additional safety measures for bulk carriers

Although safety has always been and remains IMO's most important responsibility and concern, a new problem began to emerge through the 1960s and that was the threat of pollution. The growth in the amount of oil being transported by sea and in the size of oil tankers was beginning to be an area of concern. In 1954 the first international treaty that aimed to protect the sea from pollution by oil tankers,

the International Convention for the Prevention of Pollution of the Sea by Oil, 1954 (OILPOL) was adopted, with IMO taking over responsibility for it in 1959. However, it was not until 1967, when the **Torrey Canyon** ran aground off the coast of the United Kingdom spilling 120,000 tonnes of oil, that the enormity and scale of the problem was fully understood, serving as yet another driver for change. Until then many people had believed that the seas were big enough to cope with any pollution caused by human activity.

Over the next few years IMO introduced a series of measures designed to prevent tanker accidents and to minimize their consequences. The Organization also tackled the environmental threat caused by routine operations such as the cleaning of oil cargo tanks and the disposal of engine room wastes – in tonnage terms a bigger menace than accidental pollution.

The most important of all these measures was the introduction of the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL), which was developed in the aftermath of the **Torrey Canyon** incident, and then substantially revised by a 1978 Protocol in direct response to **Amoco Cadiz** incident off the coast of Brittany, France that same year, prior to the entry into force of the 1973 Convention. This much amended instrument covers not only accidental and operational oil pollution but also pollution by chemicals, goods in packaged form, sewage, garbage and air pollution, which remains the flagship pollution prevention treaty amongst the array of IMO instruments.

The **Torrey Canyon** incident also provided a major stimulus to the establishment of a regime providing compensation to those who had suffered financially as a result of oil pollution. As a result, two treaties were adopted, in 1969 and 1971, which enabled victims of oil pollution to obtain compensation much more simply and quickly than had ever been possible before. The original Conventions were the 1969 International Convention on Civil Liability for Oil Pollution Damage ('1969 CLC') and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage ('1971 Fund Convention'). Both treaties were amended in 1992, and again in 2000, to increase the limits of compensation payable to victims of pollution.

In October 2000, in the wake of the **Erika** accident off the coast of France, the limits of both the 1992 CLC and 1992 Fund Convention were further increased. A further important development occurred in May 2003 following the **Prestige** incident in Spain, with the adoption of a new Protocol creating the International Supplementary Fund for Compensation for Oil Pollution Damage ('Supplementary Fund'). This new 'third tier' Fund, which was closely modelled on the 1992 Fund, was designed to address the concerns of those States which considered that even the enhanced 1992 CLC and Fund limits were still insufficient to meet in full all valid claims arising from a major tanker accident. The Supplementary Fund substantially increased the limits of compensation available to Parties to 1,151.5 million US dollars.

As MARPOL came into being, with its subsequent amendments, and as the international compensation regime was established and matured, there was still little attention to the role, responsibilities and cooperation needs in preparing for and responding to incidents of major pollution. The 1989 **Exxon Valdez** that occurred in Alaska would change all that. Within one year of its occurrence, Governments came together and the International Convention on Oil Pollution, Preparedness, Response and Co-operation (OPRC) was adopted in November 1990. This Convention provides an international framework for co-operation and mutual assistance in preparing for, and responding to, major oil pollution incidents and requires States to plan and prepare by developing national emergency response structures in their respective countries, and by maintaining adequate capacity and resources to address oil pollution emergencies.

Specifically, OPRC 90 includes requirements for oil pollution emergency plans for ships, offshore units, sea ports and oil handling facilities operating in State waters, and procedures for reporting oil pollution incidents when these occur. The Convention also requires the establishment of national emergency system, including the development of a national contingency plan and the designation of a competent national authority and a national operational contact point(s). Possibly the most important aspect of the OPRC 90 Convention is the international co-operation dimension, which enables a Party to request international assistance from other

State Parties. Through the provisions concerning regional arrangements, States are urged to develop bilateral and multilateral agreements for preparedness and response to augment national capacity in the event of major pollution incidents.

Although oil spills remain the largest threat due to the volumes transported, the risk of incidents involving chemicals or 'hazardous and noxious substances (HNS)' increased steadily with the increasing volume of chemicals transported by sea. These substances also often represent a higher degree of hazard than petroleum products, not only to the marine environment, but also to human health. Acknowledging the growing threat from the carriage of HNS by sea, in 2000 IMO adopted the Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000 (OPRC-HNS Protocol), which applies to hazardous and noxious substances other than oil, i.e. chemical substances, and follows the principles of the OPRC Convention. The OPRC-HNS Protocol which entered into force in 2007 follows the principles and provides the same basic framework for co-operation and mutual assistance as provided by the OPRC Convention.

During this same general timeframe the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention), which extended the compensation and liability framework to chemical substances, was adopted in May 1996. The Convention aims to ensure adequate, prompt and effective compensation for damage to persons and property, costs of clean-up and reinstatement measures and economic losses caused by the maritime transport of hazardous and noxious substances (HNS), but has yet to enter into force.

In 2010, to overcome this difficulty and some of the other issues thought to be acting as barriers to ratification of the HNS Convention, a draft Protocol was developed to address the practical problems that had prevented States from ratifying the Convention. In spite of the new measures introduced to facilitate and promote the ratification of the HNS Convention, it has yet to meet its entry into force conditions.

The liability and compensation regime was extended once more through the introduction of the International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunkers Convention), that for the first time, following its entry into force in 2008, provides compensation from spills of bunker fuel from vessels other than tankers carrying persistent oils (as represented by the CLC and Funds Conventions).

More recently, as a result of two recent platform incidents, the organization in an entirely new direction has been investigated a new dialogue within IMO's Legal Committee that takes *vis-à-vis* oil spills arising from offshore exploration/exploitation activities. The Montara platform incident that occurred in the Timor Sea, off the northern coast of Western Australia in August 2009 and the subsequent Macondo blowout and oil spill that took place in the Gulf of Mexico off southeast coast of United States and which continued over a period of four months from April to July 2010, garnered the world's attention and raised significant concerns with regard to the systems in place to prevent and respond effectively to major pollution incidents emanating from offshore exploration activities.

These incidents have resulted in a proposal submitted by Indonesia in the aftermath of the Montara incident to IMO's Legal Committee for the establishment of an international instrument on liability and compensation for marine environmental damage resulting from offshore oil exploration activities. While discussions are still at a very preliminary stage, there is general support, in principle, for such an instrument. However, the format, structure and content of such a framework is still to be determined and is likely to take years before any such regime is likely to be adopted. It has also raised important questions about IMO's role and responsibilities *vis-à-vis* oil spills arising from offshore exploration/exploitation activities.

Recognizing the long and evolutionary path of shipping's primary regulatory entity, the IMO and the Conventions that have been established under its auspices and for which it continues to be responsible have, over time, contributed to the increased safety and security of international shipping, the establishment of a level playing field for international trade, and the effective protection of the marine environment from the adverse effects of shipping.

Major incidents have, historically, served as major drivers for change and this is likely to continue. However, IMO's record and its Conventions are not only a function of the lessons learned from incidents but through proactively addressing emerging issues such as the reduction of Greenhouse gases, ship recycling, effective ballast water management, amongst others.
