

Implications of The United Nations Convention on the Law of the Sea for IMO

Anna Natova

2005 Nippon Fellow

Director of European Union, International affairs
and projects Directorate

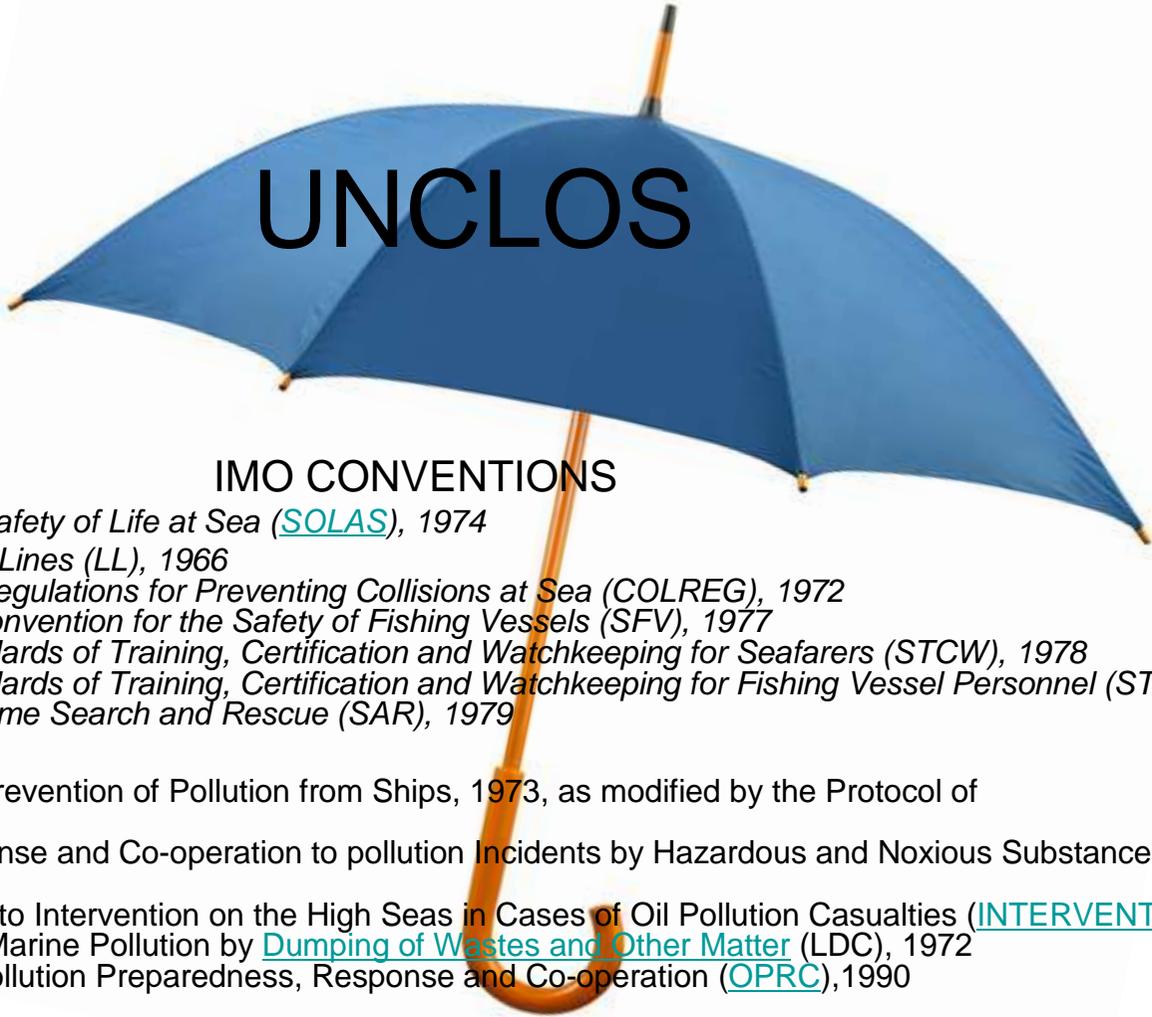
Bulgarian Maritime Administration

General Features of the Relationship between UNCLOS and IMO

Shipping regulations

- Historical background
- The global mandate of IMO
- IMO is a specialized UN agency established by the Convention on International Maritime Organization in 1948. Article 1 of the IMO Convention establishes the global scope of the safety and antipollution activities of IMO.
- 166 Member States of IMO
- Wide participation in IMO bodies meetings and IMO conferences for adopting new Conventions





UNCLOS

IMO CONVENTIONS

International Convention for the Safety of Life at Sea ([SOLAS](#)), 1974

International Convention on Load Lines (LL), 1966

Convention on the International Regulations for Preventing Collisions at Sea (COLREG), 1972

The Torremolinos International Convention for the Safety of Fishing Vessels (SFV), 1977

International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978

International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F), 1995

International Convention on Maritime Search and Rescue (SAR), 1979

International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978([MARPOL73/78](#))

Protocol on Preparedness, Response and Co-operation to pollution Incidents by Hazardous and Noxious Substances, 2000 ([HNS Protocol](#))

International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties ([INTERVENTION](#)), 1969

Convention on the Prevention of Marine Pollution by [Dumping of Wastes and Other Matter](#) (LDC), 1972

International Convention on Oil Pollution Preparedness, Response and Co-operation ([OPRC](#)), 1990

International Convention on [Civil Liability for Oil Pollution Damage](#) (CLC), 1969

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage ([FUND](#)), 1971

Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material ([NUCLEAR](#)), 1971

Convention on the Carriage of Hazardous and Noxious Substances by Sea ([HNS](#)), 1996

International Convention on Civil Liability for [Bunker Oil Pollution Damage](#), 2001

Convention on Facilitation of International Maritime Traffic ([FAL](#)), 1965

International Convention on Tonnage Measurement of Ships ([TONNAGE](#)), 1969

Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation ([SUA](#)), 1988

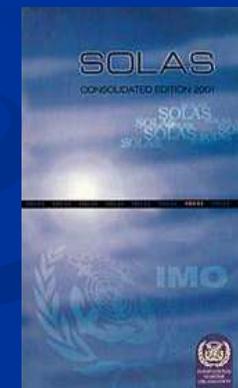
International Convention on Salvage ([SALVAGE](#)), 1989

The relationship between the standard setting into Law of the Sea Convention and the standard setting in Maritime Safety Conventions

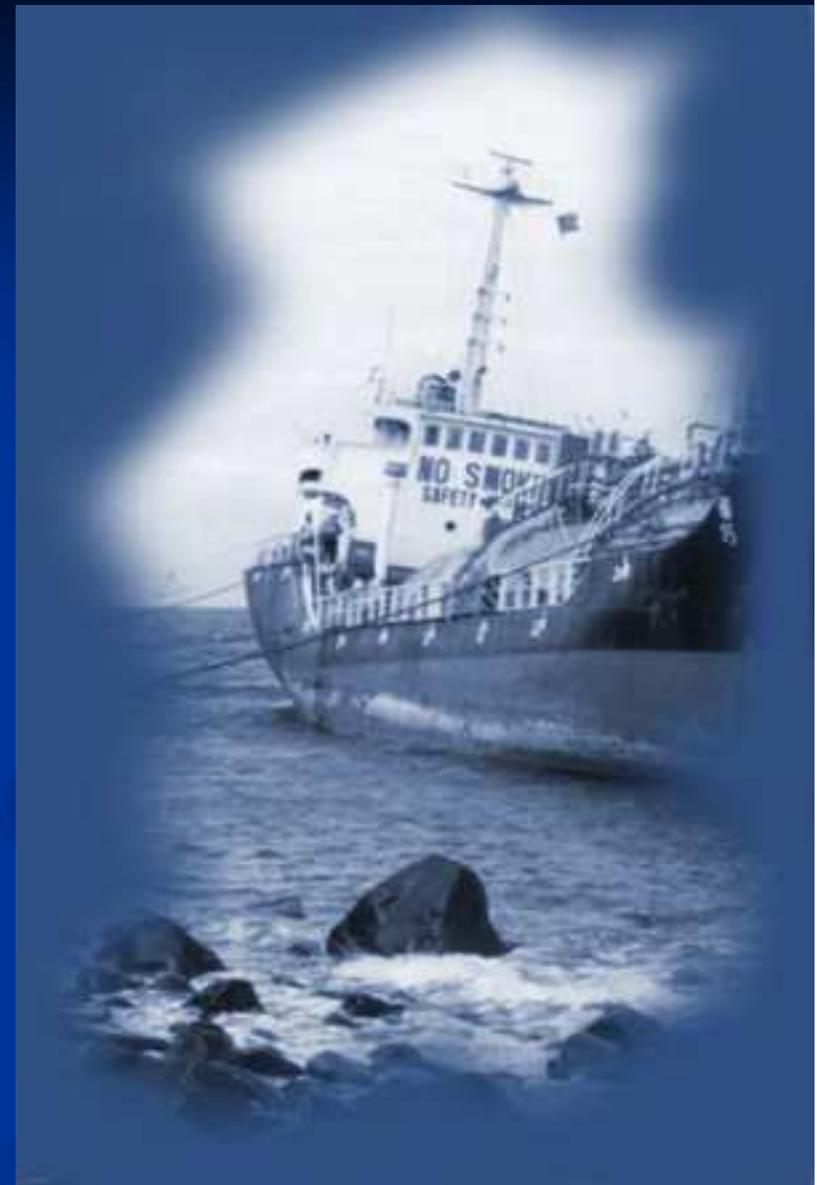
- This part of the study is focused on comparative analysis between the relevant provisions of the Law of the Sea Convention and provisions of some of the IMO Conventions relating to maritime safety
- Law of the Sea Convention frequently refers to the obligation to act in conformity with “generally accepted international regulations, procedures and practices for safety at sea”. Examples Art.39 (2), Art. 21 (2)
- According to Art.21(2) coastal States may issue laws and regulations relating to innocent passage in the territorial sea, however, such laws and regulations shall not apply to the design, construction, manning or equipment of foreign ships unless they are giving effect to “generally accepted international rules and standards...”.



- The generally accepted international rules and/or standards in this paragraph are basically contained in the SOLAS and LOAD LINES Conventions.
- SOLAS-(159 states as at 28 February 2009) Convention regulates minimum standards for the construction, equipment and operation of ships. Applicable to cargo ships ≥ 500 GT and passenger ships on international voyages; referring to subjects such as subdivision and stability, machinery and electrical installations, fire protection, detection and extinction, life-saving appliances and arrangements and radio communication.
- LOAD LINES 1966 determines the minimum freeboard to which a ship may be loaded, including the freeboard of tankers, taking into account the potential hazards present in different climate zones and seasons.



- Under the Law of the Sea Convention ships exercising their right of innocent passage through territorial sea or their right of transit passage through straits must observe generally accepted international regulations relating to the prevention of collisions at sea” / Articles 21(4) and 39 (2) LOSC /
- COLREG contains such regulations for the prevention of collisions at sea and they apply to the high sea, territorial sea and straits used for international navigation
- Regulations concerning sea lanes, traffic separation schemes as referred to in Articles 22 (1) and (2), 41 (1) and (2), 53 LOSC are found in SOLAS and COLREG

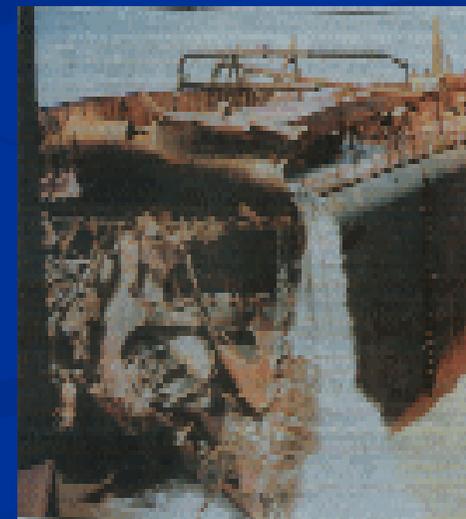


- In the case of sea lanes IMO's relevant provisions are contained in SOLAS regulation V/8, amended in 1995. SOLAS regulation V/8(j) (V/10 in the text as amended by MSC in 2000) states that "all adopted ships' routing systems and actions taken to enforce compliance with those systems shall be consistent with international law, including the relevant provisions of the 1982 United Nations Convention on the Law of the Sea"
- Provisions on traffic separation schemes (TSS) are contained in COLREG, rules 1(d) and 10. These provisions define, respectively, the competence



The relationship between Environmental Provisions of the Law of the Sea Convention and IMO Marine pollution Conventions

- This part of the study analyses the provisions of Part XII of the Law of the Sea Convention /Art.192-237/ in connection with some of the provisions of MARPOL, OPRC Convention and London Convention 1972 and its 1996 Protocol
- Expression “competent international organization” appears frequently in Part XII, /Art. 211,217,218,220 and 223/. LOSC does not create any new technical or pollution rules for shipping, but simply refers to standards which have been agreed within the International Maritime Organization



LOSC and MARPOL

- Art. 211 (1) LOSC lays down a general obligation for States, acting through the competent international organization (IMO) or general diplomatic conference, to establish international rules and standards regarding vessel-sourced pollution, and to re-examine them from time to time as necessary.
- Adopted 1973; exclusively regulate antipollution measures unrelated whether the polluting substances in the sea are the result of ship accidents or from operational discharges from vessels; detailed pollution standards are set in VI Annexes; definition of “harmful substances”/Art. 2 (2) and (3) - entirely compatible with the definition of “pollution of the marine environment” included in Art.1 (4) LOSC



LOSC and OPRC Convention

- Art.198 formulates the duty of a State, which becomes aware of existing or imminent pollution likely to cause damage, to immediately notify other States, which it deems likely to be affected by such damage and as well as competent international organizations.
- The requirement of Art.199 for states to co-operate in contingency planning and emergency response has been addressed primarily by the 1990 OPRC Convention
- OPRC provides a global framework for international co-operation in combating major oil pollution incidents or threats of marine pollution
- In accordance with article 5(1)(c) and 3, Parties are required to inform all States concerned and IMO in cases of major oil pollution incidents.



- Art.199 provides that the affected States shall co-operate with the competent international organizations, to the extent possible, in eliminating the effects of pollution and preventing or minimizing the damage. States are further required jointly to develop and promote contingency plans for responding to marine pollution incidents.



- Art.7 OPRC further develops the main principles of international co-operation in pollution response. In accordance with applicable international agreements, each Party shall take the necessary legal or administrative measures to facilitate the arrival and utilization in and departure from its territory of ships, aircraft and other modes of transport engaged in responding to an oil pollution incident or transporting personnel, cargoes, materials and equipment required to deal with such an incident.

LOSC and London Convention

- Art.1(5) definition of “dumping”
- Art.210 (5) dumping within the territorial sea and the EEZ or onto the continental shelf shall not be carried out without the express prior approval of the coastal State.
- 1972 London Convention consists the antipollution measures at a global level
- The provisions apply to all sea areas other than internal waters. The 1996 Protocol extends the application of the Convention to the sea-bed and subsoil
- The Convention consists specific regulations establishing the conditions which coastal States should follow in the granting of permits for dumping in their jurisdictional waters

- Art.216(1) contains the obligation of the coastal State to enforce laws and regulations adopted in accordance with the Convention and applicable rules and standards established through the competent international organization for the prevention, reduction and control of pollution of the marine environment by dumping.

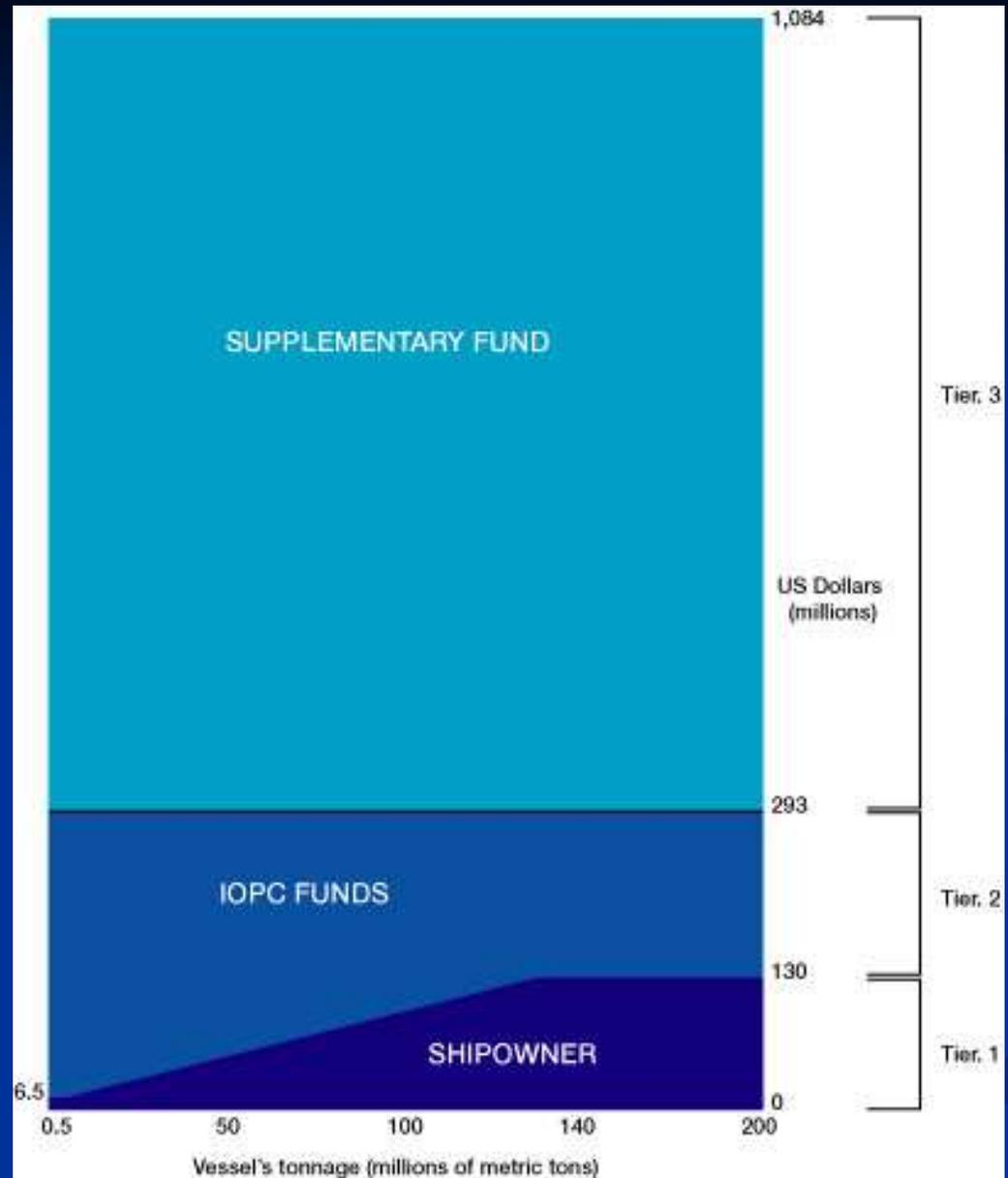


- Annex I - a list of substances the dumping of which is entirely forbidden
- Annex II - a list of substances the dumping of which requires a prior special permit from the coastal State. The dumping of all other substances not listed in either Annex I or II requires a prior general permit.
- 1996 Protocol revised the system and established a general prohibition for dumping of all wastes and other matter, except for those belonging to one of the seven categories listed in Annex 1 to the Protocol

The Relevant Articles of Law of the Sea Convention regulating liability for Pollution Damage and the Provisions of the Liability Conventions of IMO

- This part of the research examines the legal regime of the responsibility and liability for pollution damage in the Law of the Sea Convention and its relationship with the rules providing by the Liability Conventions of IMO
- Art.235 LOSC incorporates corresponding provisions on “Responsibility and Liability” which are drafted in very general terms and simply provide a framework. These provisions considered in connection with the conventions adopted by IMO prior to, and after the adoption of LOSC in the field of liability and compensation for damage related to the carriage of oil and other hazardous and noxious substances by sea.

- The CLC 69 and 71 Fund Convention applied to damage occurring in the territorial sea of States Parties. The Protocols of 1992, which entirely superseded the original parent treaties, extend the scope to cover damage occurring in the EEZ. CLC Conventions covers those who suffer oil pollution damage resulting from maritime casualties involving oil-carrying ships. The Convention places the liability for such damage on the owner of the ship from which the polluting oil escaped or was discharged
- The Fund Convention and the HNS Convention regulate the constitution and functioning of international funds in charge of providing compensation additional to that paid by the shipowner whenever this compensation proves to be insufficient. These international funds also pay compensation in some cases where the compensation to be paid by the shipowner is not available.
- 1992 Protocols-supersede the above Conventions and increase the limits of compensation. The Protocols extend the scope to cover damage occurring in the EEZ.



- 1996 HNS Convention regulates the strict liability of the shipowner and the obligation to contract compulsory third party liability insurance to cover for limits of compensation for damage caused by accidental spills of hazardous and noxious substances other than heavy crude oil and bunker fuel oil carried as cargo. HNS Convention has a geographical scope of application similar to 1992 CLC Convention and Fund Convention
- International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 which establishes a liability and compensation regime for spills of oil carried as fuel in ships' bunkers.

IMO Conventions intended to encourage and facilitate maritime transport and the relevant provisions of the Law of the sea Convention

- The scope of this part of the research is focused on the specific articles of the LOSC which refer to facilitation of the maritime transport and their relationship with the legal regime incorporated in several IMO Conventions
- 1965 Convention on Facilitation of International Maritime traffic -reduces and simplifies government formalities, documentary requirements and procedures connected with the arrival, stay and departure of ships engaged in international voyages
- 1969 Convention on Tonnage Measurement of Ships establishes the unified system of tonnage measurement.
- 1989 Convention on Salvage



- 1988 Convention for the Suppression of Unlawful Acts against the Safety of Navigation- ensures that appropriate action is taken against persons committing unlawful acts against ships. These include the seizure of ships by force; acts of violence against persons on board ships; and the placing of devices on board a ship which are likely to destroy or damage it. The convention obliges Contracting Governments either to extradite or prosecute alleged offenders.
- 2005 Protocols - adopted by the Diplomatic Conference on the Revision of the SUA Treaties held from 10 to 14 October 2005. Amended Article 3 includes new offences - the seizure of ships by force; acts of violence against persons on board ships; and the placing of devices on board a ship which are likely to destroy or damage it; adds a new Article 3bis and new art.8 bis concerning boarding a ship when the requesting Party has reasonable grounds to suspect that the ship or a person on board the ship is, has been, or is about to be involved in, the commission of an offence under the Convention.

Conclusion

- The Law of the Sea Convention is a legal and political confirmation to the regulatory regimes developed by IMO.
- The Law of the Sea Convention provides clear endorsement for several important aspects of the work undertaken by IMO in the development of the law of the sea

THANK YOU