Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea under Croatian Law

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The quantity and volume of hazardous and noxious substances transported by ships as cargo have been increasing markedly. The trend is anticipated to persist and even accelerate in the Adriatic Sea due to the expansion of port infrastructure. Concomitantly with this expansion, the probability of incidents involving these substances, which have the potential to cause significant damage, is also on the rise. At present, the Republic of Croatia lacks the specific legal framework that would provide a comprehensive legal basis for liability, prompt, and adequate compensation for damage to persons and property, liability for clean-up, and reinstatement measure costs, and economic losses resulting from the transportation of such substances by sea. The objective of this paper is to provide an overview of the provisions of Croatian law that regulate liability and compensation in the event of such an accident. The analysis demonstrates the deficiencies of fragmented approach. Moreover, the paper examines the stipulations of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea of 2010, and the prospective advantages of its ratification. These include double-tier liability, a special regime of limitation of liability, compulsory insurance of liability and the right to direct action. In consideration of Croatia's maritime and tourist-oriented economy, the authors highlight the country's substantial interest in not only the ratification of the 2010 HNS Convention and paving the way to its entry into force, but also in amendments to the Croatian Maritime Code in that respect.

KEY WORDS

~ Hazardous and noxious substances
~ HNS
~ Carriage by sea
~ Civil liability
~ Compensation for damage
~ 2010 HNS Convention
~ Limitation of liability
~ Compulsory insurance

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1. INTRODUCTORY NOTES

Due to the continuous development of the chemical industry, and an increase in raw material and energy consumption, the transportation of hazardous and noxious substances (hereinafter: HNS) by sea has been on the rise over the last decades.[1] Transported as bulk, liquid and solid cargoes on different types of vessels, their explosive and toxic properties make their transportation a high-risk activity that can cause accidents with serious consequences (human casualties, damage to property and environmental damage).

To ensure adequate compensation for damage caused by the carriage of HNS by sea, the International Maritime Organization (hereinafter: IMO) adopted the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea in 1996 (hereinafter: 1996 HNS Convention), and the Protocol to the HNS Convention in 2010 (hereinafter: 2010 HNS Protocol). Upon entry into force of the 2010 HNS Protocol, the 1996 HNS Convention and the 2010 Protocol shall, between the parties to the Protocol, be read and interpreted as a single instrument, called the 2010 HNS Convention.[2]

Despite intensive efforts of the International Oil Pollution Compensation Fund (hereinafter: IOPC Fund), in cooperation with the IMO and other relevant organizations and associations, and the impetus provided by the European Union[3], the 2010 HNS Convention has not received sufficient ratifications to enter into force.[4] As a result of these activities, eight states have become parties to the 2010 HNS Protocol on 1 July 2024 (Canada, Denmark, Norway, Turkey, South Africa, Estonia, France and Slovakia). In addition, the IMO Legal Committee received statements from Germany, the Philippines, Belgium and the Kingdom of the Netherlands declaring their commitment to ratify the Protocol within the next year.[5]

Given that five of the eight states which are parties to the Convention have the gross tonnage of more than 2 million units, one of the three conditions for entry into force of the 2010 HNS Protocol has been met.[6] The 2010 HNS Convention is expected to enter into force in 2027.

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[1] Review of the Maritime Transport 2023. Available at: https://unctad.org/publication/review-maritime-transport-2023, accessed on: 8 May 2024.

[2] See: Art. 2 and Art. 18 of the 2010 HNS Protocol. Consolidated text of the 1996 HNS Convention and the 2010 HNS Protocol was approved by the Legal Committee (LEG) on its 98th session, 4-8 April 2011 (LEG 98/11). Available at: https://www.hnsconvention.org/wp-content/uploads/2019/05/2010-HNS-Convention-English.pdf, accessed on: 10 May 2024.

[3] In May 2017, the Council adopted a Decision that authorized EU Member States to ratify the 2010 HNS Convention before May 2021 where possible. See: Council Decision (EU) 2017/769 of 25 April 2017 on the ratification and accession by Member States, in the interest of the European Union, to the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, with the exception of the aspects related to judicial cooperation in civil matters, Official Journal of the European Union, L 115/15, 4.5.2017. In addition, in 2020, EU ministers signed a declaration underlining the importance of ratifying a number of international maritime conventions, including the 2010 HNS Convention.

[4] Resolution 1 of the Conference requested the IOPC Fund Assembly to instruct the Director of the IOPC Funds to carry out the tasks necessary to set up the International Hazardous and Noxious Substances Fund (HNS Fund) and make preparations for the first session of the HNS Assembly. To this end, the IOPC Fund Secretariat has undertaken a number of administrative tasks in cooperation with the IMO and has regularly reported progress at sessions of the 1992 Fund Assembly (see document IOPC/OCT18/8/2). The IOPC Fund has developed special HNS website (www.hnsconvention.org), HNS finder (online database that allows users to search the list of all HNS as defined by the 2010 HNS Convention, verifies whether a substance qualifies as contributing cargo). In addition, IOPC Fund has been cooperating with a number of relevant organization, namely the IMO, Cedre, the International Chamber of Shipping, the International Group of P&I Associations (International Group) and ITOPF, to develop a draft HNS Convention Claims Manual.

[5] Available at: https://www.imo.org/en/MediaCentre/MeetingSummaries/Pages/Workshhop-on-the-2010-HNS-Convention.aspx, accessed on 22 July 2024.

[6] In accordance with Art. 46 of the 2010 HNS Protocol, the 2010 HNS Convention shall enter into force eighteen months after the date on which the following conditions are fulfilled: (a) at least twelve States, including four States each with not less than 2 million units of gross tonnage, have expressed their consent to be bound by it; and (b) the Secretary-General has received information in accordance with article 45, paragraphs 4 and 6, that those persons in such States who would be liable to contribute pursuant to article 18, paragraphs 1(a) and (c), of the Convention, as amended by this Protocol, have received during the preceding calendar year a total quantity of at least 40 million tons of cargo contributing to the general account.

Despite legal doctrine recommendations,[7] the competent authorities of the Republic of Croatia have not yet initiated the complex preparations required for Convention ratification, including the establishment of a reporting system on the recipients of goods and the quantity of goods subject to the payment of contributions to the Fund. The Republic of Croatia is therefore not expected to ratify the Convention in the coming years.

It is noteworthy that the maritime transportation of HNS substances has increased following the inauguration of the LNG terminal in Krk in 2021. Despite the reduction in the number of vessels over the past year due to decreasing liquid cargo transportation, the volumes are anticipated to increase again, particularly once the expansion of the LNG terminal's annual supply capacity from 2.9 to 6.1 billion cubic meters is complete.[8] The volume of containerized freight is increasing, and this trend will certainly continue following the intensive development of port infrastructure in the Port of Rijeka that will transform Rijeka into the center for container transportation in the Adriatic.

Given that the Republic of Croatia is a coastal state, with the tourism sector accounting for 19.6% of GDP in 2023,[9] the unquestionable increase in the risk of damage caused by the transportation of HNS substances necessitates a proactive approach on the part of the Croatian legislator. This should entail not only the ratification of the 2010 HNS Convention, but also amendments to the Croatian Maritime Code (hereinafter: MC)[10] on special liability and compensation regime for damage resulting from the transportation of dangerous and harmful substances.

Namely, civil liability and compensation for any damage caused by HNS substances carried on board ships are currently governed by several different rules on non-contractual liability contained in the MC, and the rules of tort law contained in the Civil Obligations Act (hereinafter: COA)[11], with the global limitations regime applying to the limitation of liability.

Given the observed increase in maritime transport and the fact that the Republic of Croatia is not expected to ratify the HNS Convention in the near future, it seems beneficial to present an overview of the full range of provisions that would apply in the event of an incident resulting in damage caused by HNS substances carried as cargo. Furthermore, this paper will point out the benefits of the adoption of the 2010 HNS Convention and the harmonization of the MC with its solutions. It could help the legislator understand the necessity and advantages of introducing a special liability regime.

2. LIABILITY AND COMPENSATION FOR DAMAGE IN CONNECTION WITH THE CARRIAGE OF HAZARDOUS AND NOXIOUS SUBSTANCES - CROATIAN LEGAL FRAMEWORK

A maritime accident involving a ship carrying HNS can cause a wide range of damage, including damage to people on board and outside the ship (at sea and on land), damage to property (in addition to the damage to the ship carrying HNS and its cargo, damage may also be caused to other ships and their cargo, to ports, cargo in the port, etc.) and damage to the marine environment. The issue of liability and compensation for damage to the ship itself and its cargo is beyond the scope of this paper.

[7] Pospišil Miler, M. and Pospišil, M., Novine protokola iz 2010. godine HNS konvenciji iz 1996. godine i izgledi za stupanje na snagu, Zbornik radova Pravnog fakulteta u Splitu, 49, 3/2012, p. 530.
[8] In May 2024, the European Commission approved, under EU State aid rules, a €25 million Croatian state aid measure to support the expansion of the liquefied natural gas (LNG) terminal on the island of Krk. Available at: https://ec.europa.eu/commission/presscorner/detail/en/mex_24_2463, accessed on 22 July 2024.
[9] Available at: https://www.hnb.hr/-/prihodi-od-turizma-u-2023-veci-za-11-4-posto, accessed on 22 July 2024.
[10] Maritime Code, Official Gazette of the Republic of Croatia, No. 181/2004, 76/2007, 146/2008, 61/2011, 56/2013, 26/2015, 17/2019.
[11] Civil Obligations Act, Official Gazette of the Republic of Croatia, No. 35/2005, 41/2008, 125/2011, 78/2015, 29/2018, 126/2021, 114/2022, 156/2022.

The MC, as *lex specialis*, regulates non-contractual liability for the death of and personal injury to persons at sea (Art. 810 of the MC),[12] damage to property (Art. 811 of the MC), and marine pollution (Art. 812-823.f of the MC).[13] Liability for marine pollution consists of three liability regimes, one general and two special: liability for pollution by oil carried as cargo (Art. 813-823 of the MC) and liability for pollution by bunker oil (Art. 823.a-823.f of the MC). Two special regimes are modelled on the provisions of special international systems of civil liability for marine pollution from ships applicable to the Republic of Croatia.[14]

In the event that marine pollution does not fall within the scope of application of the aforementioned systems, it is dealt with in accordance with the liability regime set out in Art. 812 and 812.a of the MC, which regulates liability for pollution by various other pollutants. In listing the types of pollutants covered by the provisions contained in Art. 812 and 812.a, the MC includes HNS. However, the Code does not contain a definition or a list of the HNS, nor does it refer to the list of such substances contained in any of the relevant international instruments.[15] Different cargo types are listed individually in special regulations because devising a general definition has proven to be quite problematic.[16] In the absence of a specific list of HNS substances, it is up to the judge to decide whether the above provision applies on a case-to-case basis.[17] This could be significant in instances where no damage has occurred, yet the claimant is seeking compensation for the costs of preventive measures.

The liability and compensation for damage caused by the death of or personal injury to persons on land are governed by the general rules of civil law contained in the COA.

2.1. Scope of Application

2.1.1. Territorial Scope of Application

In terms of the territorial scope of application, the provisions on non-contractual liability for marine pollution and damage to property apply to all damage occurring in the coastal area of the Republic of Croatia (internal sea waters and territorial sea), as well as in the area of the Exclusive Economic Zone of the Republic of

[12] The liability and compensation for damage caused by the death of or bodily injury to persons on land is governed by the general rules of civil law contained in the COA.
[13] In addition to the aforementioned non-contractual liability regimes, the MC also contains provisions on the liability for damage caused by ship collision, which are set forth in a separate chapter of the Code (Arts 748-759), and provisions on liability for nuclear damage.
[14] The Republic of Croatia has adopted the special international regime of civil liability for oil pollution damage, regulating liability and compensation for damage caused by oil spills from tankers – Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1996 and the Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (hereinafter: 1992 CLC/Fund regime), both instruments published in the Official Gazette of the Republic of Croatia – International Treaties, No. 2/97. This regime entered into force for Croatia on 12 January 1999. The Republic of Croatia has also ratified the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, Official Gazette of the Republic of Croatia – International Treaties, No. 12/05, which entered into force on 17 May 2006. In addition, the Republic of Croatia became a party to the International Convention on Civil Liability for Bunker Oil Pollution Damage (hereinafter: the Bunker Convention), which covers damage caused by bunker oil spills from ships other than tankers, Official Gazette of the Republic of Croatia - International Treaties, No. 9/06. It entered into force for Croatia on 21 November 2008.
[15] Unlike the MC, the 2010 HNS Convention refers to the lists of dangerous and harmful substances contained in a number of other conventions: MARPOL, Appendix I of Annex I, MARPOL, Appendix II of Annex II, International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, 1983, International Maritime Dangerous Goods Code, as amended, International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, 1983, as amended, Code of safe Practice for Solid Bulk Cargoes, as amended. For the reasons and advantages of such a determination of scope of application see: Jacobsson, Måns, The HNS Convention and Its 2010 Protocol, in: Pollution at Sea, Editors: Soyer, B and Tettenborn, A., 1st Edition, Informa Law from Routledge, pp. 26-27.
[16] Filipović, V., Izvanugovorna odgovornost za štete kod prijevoza opasnog i štetnog tereta morem, Uporedno pomorsko pravo i pomorska kupoprodaja, No. 100, Zagreb, 1983, pp. 88-89.
[17] Rulebook on the handling of dangerous substances, conditions and methods of transportation in maritime transport, loading and unloading of dangerous substances, bulk and other cargo in ports, and the method of preventing the spread of spilled oils in ports, Official Gazette of the Republic of Croatia, No. 51/2005, 127/2010, 34/2013, 56/2013, 88/2013, 79/2015, 53/2016, 41/2017, 23/2020, 128/2020, could be of interest.

Croatia.[18] These provisions also apply to measures, wherever taken, to prevent or minimize such damage. On the other hand, the legislation concerning non-contractual liability for the death and personal injury of individuals at sea is applicable solely within the internal sea waters and the territorial sea of the Republic of Croatia.

In case of the application of the 2010 HNS Convention, the scope of application would be broader with respect to damage, with the exception of damage from environmental pollution (property damage, loss of life and personal injury). Namely, it would apply to damage caused outside the territory of any state, including the territorial sea, if such damage is caused by HNS carried on board a ship registered in a member state or, in the case of an unregistered ship, on board a ship entitled to fly the flag of a member state.[19]

2.1.2. Scope of Application - Definition of the Ship

According to the general rule of the MC contained in Art. 2, provisions on ships also apply to other maritime facilities (not only to vessels, but also to floating units and fixed offshore facilities), with the exception of warships, unless otherwise stipulated in the Code itself. However, the MC contains specific provisions pertaining to the non-contractual liability of shipowners and ship operators (Part VIII, Chapter IV), which define the scope of application in terms of the objects covered by those provisions, simultaneously broadening and narrowing the "classical" scope of application. Art. 809/1 of the Code expressly states that the provisions on non-contractual liability apply to all vessels, irrespective of size and purpose, as well as to seaplanes on the water. Floating objects and fixed offshore facilities are excluded, but, on the other hand, provisions on liability for the death of and personal injury to persons at sea, liability for damage to property and general provisions on liability for pollution damage apply to warships (Art. 809/2 of the MC).

The MC defines a vessel as a maritime object intended for navigation at sea. A vessel may be a ship, warship, submarine, yacht or boat (Art. 5/1/27 of the MC). Due to the formulation of the provision contained in Art. 809/1 of the MC - "all vessels, irrespective of their size and purpose", it seems indisputable that the aforementioned provisions apply not only to objects intended for navigation at sea, but also to all vessels in the technical sense of the term, i.e. all vessels engaging in any form of activity at sea, not only navigation.[20] Such an interpretation would suggest that all the listed forms of non-contractual liability could apply to ship LNG Croatia that is used as a terminal for the reception and storage of LNG in LNG Krk, despite its primary purpose as the reception, storage and gasification unit for the aforementioned substances, not used for navigation.[21]

The definition of a ship found in Art. 1/1 of the 2010 HNS Convention is quite similar – "Ship means any seagoing vessel and seaborne craft, of any type whatsoever". However, the scope of application of the Convention's provisions is narrower due to its definition of hazardous and noxious substances as any substances, materials and articles carried on board a ship as cargo (Art. 1/5 of the 2010 HNS Convention).[22] In light of the fact that HNS substances on board LNG Croatia are not carried as cargo, and given that the vessel

[18] Even though Art. 809.a of the MC-a does not prescribe such extended application for the provisions on general damage from pollution (contained in Art. 812 and 812.a of the MC), a historical, logical and systematic interpretation of Art. 809.a of the MC leads to this conclusion. Croatia declared Exclusive Economic Zone (EEZ) on 5 February 2021 (Official Gazette of the Republic of Croatia, No. 10/2021). The MC still uses the term Ecological and Fisheries Protection Zone (ZERP) that was declared in 2003.
[19] Art. 3/1/c of the 2010 HNS Convention.
[20] For example, to ships under construction as well. For more on the scope of application of the Maritime Code's private law provisions with regard to vessels and maritime facilities see Tuhtan Grgić, Iva, Polje primjene imovinskopravnih odredbi Pomorskog zakonika s obzirom na objekte, Proceedings book of the 3rd International Scientific Conference on Maritime Law – ISCML, Split 2021, pp. 333-379, especially pp. 364-367.
[21] Interestingly, LNG Croatia is registered in the Croatian Registry of Maritime Objects as a special purpose ship (not as a floating object). Available at: https://eplovilo.pomorstvo.hr/#/uvidUPodatkeUpisnika Plovila, accessed on: 26 July 2024. For more on the legal status of the LNG terminal see: Nišćević, I., Plutajući terminal za ukapljeni prirodni plin na otoku Krku – Pravni aspekti zaštite morskog okoliša s naglaskom na međunarodno pravo, Zbornik Pravnog fakulteta u Zagrebu, 70(1), 2020, p.140.
[22] 2010 HNS Convention does not apply in case damage is caused by LNG used as fuel. See: Jingjing X., Testa, D., Proshanto K. M., The Use of LNG as a Marine Fuel: Civil Liability Considerations from an International Perspective, Journal of Environmental Law, 2017, 29, pp.129–153.

is not engaged in the transportation of such substances, it is of significant importance to consider this when establishing a new liability framework for damage resulting from the emission of HNS substances in Croatian national law. In particular, specific provisions should be formulated to address the issues of liability, compensation, the limitation of liability, and the compulsory insurance of vessels used as reception and storage units.

2.2. Legal Basis of Liability

As explained above, in the absence of a special liability regime, individual claims for the compensation for damage caused by the carriage of HNS are assessed based on several non-contractual liability regimes of MC and COA, containing different solutions in respect of legal basis of liability for damage.

In terms of the legal basis of liability, the MC establishes strict liability for all but one of the aforementioned non-contractual liabilities. The principle of fault-based liability is prescribed solely in the context of liability for death or personal injury to individuals at sea, occurring within an area that has been designated for navigation purposes, including ports, approaches to ports, and routes that are typically used for maritime transportation. In such instances, the burden of proving that the ship concerned caused a particular death or injury falls upon the claimant.[23] In all other cases of personal injury at sea, the MC imposes strict liability. The number of exonerations, however, depends on the area in which the accident occurred.[24]

The current legal framework regarding liability for the death or bodily injury of persons on board is dependent upon the status of such persons, specifically on whether they are crew members or passengers. Both of these regimes are contractual liability. The liability for injuries sustained by crew members at work or in connection with work on board is governed by Art. 145 of the MC. This provision establishes fault-based liability as the default rule and strict liability as an exception, with the latter applying to damage caused by dangerous objects or dangerous activities, as well as to damage suffered by a crew member due to the lack of safe working conditions, in line with the provisions contained in the COA (Arts 1063-1067 of the COA). The aforementioned provisions lack specificity with regard to the precise delineation of what constitutes danger or an activity that may be regarded as dangerous, and are amenable to flexible interpretation by the courts. The lack of specificity in these provisions allows for judicial discretion in determining the dangerousness of an object or an activity on a case-to-case basis, depending on the specific circumstances of the damage concerned.[25] According to Croatian jurisprudence, although a ship is not considered to be a dangerous object, under certain circumstances, it may be considered as such, and certain activities performed on board a ship may be considered dangerous too, depending on the circumstances in which they are performed.[26] Courts would likely consider a ship carrying HNS a dangerous object due to the hazardous properties of HNS, which are potentially dangerous to the environment. The same is true of the activity of transporting these substances on board a ship, which could be considered dangerous.[27]

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[23] Art. 810/1/3 of the MC.

[24] See Art. 810/1-4 of the MC. On liability for the death of and personal injury to persons at sea: Primorac, Željka: Odgovornost vlasnika broda i brodara za štetu nastalu kupačima i drugim osobama u moru na području kupališta, Zbornik radova "In memoriam prof. dr. sc. Vjekoslav Šmid" Aktualnosti prava mora i prava turizma, Rab 2010-2012, 1-3 (2012), pp. 313-330; Primorac, Željka: Zaštita kupača i drugih osoba u moru prema odredbama hrvatskih zakonskih i podzakonskih propisa i propisa pomorskog prava, Zbornik radova Veleučilišta u Šibeniku, 5 (2011), 3-4; pp. 21-38.

[25] Bukovac Puvača, M., "Sive zone" izvanugovorne odgovornosti – područja moguće primjene pravila o odgovornosti na temelju krivnje i objektivne odgovornosti za štetu, Zbornik pravnog fakulteta Sveučilišta u Rijeci, Vol. 30, No. 1, 2007, pp. 221-243.

[26] For a review of case law on vessel dangerousness see: Skorupan Wolf, Vesna, Obilježja opasne stvari [prikaz presude], Poredbeno pomorsko pravo = Comparative Maritime Law, god. 44 (2005.), No. 159, pp. 197-207; Skorupan Wolff, Vesna: Gliser je u odnosu na ronioca opasna stvar: [prikaz presude], Poredbeno pomorsko pravo = Comparative Maritime Law, 59, No. 174, 2020, pp. 183–186, Skorupan Wolff, V., Plovilo na vezu nije opasna stvar: [prikaz presude], Poredbeno pomorsko pravo = Comparative Maritime Law, 62(177), 2023, pp. 259-269.

[27] In the context of liability for environmental damage, the transportation of dangerous goods by sea in accordance with maritime regulations is regarded as a potentially dangerous activity. See: Annex III, (7) Regulation on liability for environmental damage – Official

The legal framework regulating the liability of maritime carriers for the death or personal injury of passengers in Croatia is an amalgam of international, national, and European legal sources.[28] This framework offers a range of solutions with respect to the legal basis for liability for damage, varying from a fault-based liability model with the burden of proof on the claimant to a strict liability model. The applicability of these regimes is dependent on the context of the incident, specifically whether it occurred during international or domestic carriage and whether the damage is a direct consequence of the shipping incident.[29] The aforementioned provisions on the liability for damage to passengers would remain applicable in the event of entry into force of the 2010 HNS Convention, given that claims arising from contracts for the carriage of passengers are expressly excluded from its scope of application (Art. 4/1 of the 2010 HNS Convention).

The issue of liability for the death of or personal injury to persons on land or on board of another ship is assessed in accordance with the provisions of general civil law.[30] The COA provides for presumed fault-based liability as a rule (Art. 1045/1 of the COA)[31] and strict liability as an exception for damage caused by dangerous objects and dangerous activities. The presumed fault rule means that the owner or operator of the ship is held liable for damage caused to third parties by the ship owned or operated by him, unless he proves that he acted with due care. Where damage results from objects or activities that represent a major source of danger to the environment, liability exists regardless of the fault (Art. 1045/3 of the COA). Liability for damage caused by dangerous objects and dangerous activities is governed by the provisions of Arts 1063-1067 of the COA. As previously stated in the context of liability for damage to crew members, the determination of the dangerousness of an object (a ship) or an activity (carriage of HNS substances by sea) is subject to interpretation by the court. In accordance with Article 1067/1 and 2 of the COA, there are three potential grounds for exoneration: force majeure, the exclusive action of the injured party and the exclusive action of a third party. In the event that the injured party has partially contributed to the occurrence of the damage, the owner or operator of the ship are partially exempt from liability, while the partial contribution of a third party to the occurrence of the damage results in joint and several liability of the owner of the dangerous object and such third party.

With respect to the issue of liability for damage to property, Art. 811 of the MC establishes strict liability of the ship owner and operator, with the possibility of exemption from liability in the event that the damage can be attributed to the fault of a port managing company or authority, or the condition of the coast, breakwaters, equipment and facilities. This implies that they are also liable for damage resulting from force majeure.

Pursuant to Art. 812/1 of the MC, strict liability is also applied in the case of liability for marine pollution caused by the spillage or discharge of various polluting substances from the vessel, with the possibility of exemption from liability in cases where the damage (a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character, or (b) was wholly caused by an act or omission of a third party, done with intent to cause damage, or (c) was wholly caused by the negligence or other wrongful act of any government or other authority responsible for the maintenance of

Gazette of the Republic of Croatia, No. 31/2017. The carriage of dangerous goods by sea is also listed as a hazardous activity for the purposes of assessing environmental damage under general environmental legislation.

[28] The Republic of Croatia ratified the Athens Convention on the Carriage of Passengers and Their Luggage by Sea, 2002, Official Gazette of the Republic of Croatia - International Treaties, no. 2/2013, 9/2013. At EU level, this subject matter is regulated by the Regulation (EC) 392/2009 on the Liability of Carriers of Passengers by Sea in the Event of Accidents, OJ L 131, 28.5.2009, and at the national level by Art. 613-615 of the MC.

[29] For more on the topic, see: Pospišil-Miler, M., Novi sustav odgovornosti za smrt i tjelesne ozljede putnika u pomorskom prijevozu, Pravni fakultet Sveučilišta u Rijeci, Rijeka, 2014.

[30] In the event that injured individuals on another vessel are passengers, there is also contractual liability on the part of the carrier. Similarly, in the case of injured seafarers, there is contractual liability on the part of the operator or the shipowner in their capacity as employers.

[31] Art. 1054/1 of the COA states: Whoever causes damage to another is obliged to compensate for it, unless he can prove that the damage was caused without his fault.

lights or other navigational aids in the exercise of that function. In addition, the responsible person may be wholly or partially exonerated if he proves the wrongful conduct of the injured party.[32]

If the 2010 HNS Convention comes into force, the legal basis of liability for all of the aforementioned damage (except to passengers) will be the same. Given that the transport of HNS substances represents a heightened risk to people, property and the environment, the application of liability based on causation, i.e. strict liability is justified. The Convention establishes four grounds for the exoneration of liability. No liability shall attach to the owner if he proves that: (a) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or (b) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or (c) the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function; or (d) the failure of the shipper or any other person to furnish information concerning the hazardous and noxious nature of the substances shipped either (i) has caused the damage, wholly or partly; or (ii) has led the owner not to obtain insurance in accordance with Article 12; provided that neither the owner nor its servants or agents knew or ought reasonably to have known of the hazardous and noxious nature of the substances shipped.[33]

2.3. Liable Persons

Depending on the liability regime, the MC provides for the liability of different persons.

In accordance with Article 385 of the MC, ship operator is responsible for obligations pertaining to its navigation and usage, unless otherwise stipulated by the MC. In the context of Croatian maritime law, the term "ship operator" is a specific term that denotes a physical or legal person who is the possessor of a ship and the “holder of a shipping undertaking”, as defined in Article 5/1/32 of the MC. In this respect, a distinction must be made between the notion of the shipowner as the holder of property rights in a ship and the notion of the ship operator as the person carrying out a maritime activity. The liability of the ship operator arises from the use of the ship, whereas the liability of the shipowner arises solely by virtue of his proprietary interest in the ship. Since the ship operator is in the possession of the ship and performs the maritime activity, he is responsible for its performance and liable for any claims arising from the use of the ship. The process of proving the ship operator's status vis-à-vis a potential claimant is facilitated by the legal presumption that the ship operator is the person registered in the shipping register as the owner of the ship until proven otherwise (Art 5/1/32 of the MC). However, this is a rebuttable presumption.

It is common in maritime law for different liability regimes (contractual and non-contractual) to provide for a wider range of liable parties. For all forms of non-contractual liability (with the exception of liability for pollution of the sea by oil carried as cargo) the MC provides for the liability of the shipowner and the ship operator. In addition, depending on whether the case involves injury to persons at sea, damage to property or marine pollution, the MC also prescribes other liable parties. In the case of liability for the death of or personal injury to swimmers and other persons at sea under Art. 810/1 of the MC, the person in charge of the ship at the time of the accident is also liable. Furthermore, in the event of an unlawful seizure of the vessel, the owner and the shipowner are not held liable; however, liability is attributed to the individual in charge of the vessel at the time of the incident and the person who unlawfully seized the vessel (Art. 810/5 of the MC).

In the event of damage to crew members, the number of potentially liable parties is considerably larger. In accordance with Art. 145/4 of the MC, joint and several liability is imposed on the shipowner, ship operator, manager, company and employer with regard to claims brought by crew members. Furthermore, crew members

[32] Art. 812/2 of the MC.
[33] Art. 7/2 of the 2010 HNS Convention.

are entitled to bring direct action against the insurer for liability in the event of death, personal injury or health impairment (see infra 2.6.).

With respect to liability for damage resulting in the death of or personal injury to persons on land or on board another ship, where the general rule of the COA applies, the liable person is the person who caused the damage (fault-based liability). Where the provisions on the liability for damage caused by dangerous objects or dangerous activities apply, i.e. in the event of strict liability (and they would probably apply), according to Art. 1064 of the COA, the liable person is the owner of the dangerous object, or the person engaged in the dangerous activity. If the dangerous object is entrusted by the owner to another person (ship operator) for his use or a person who is otherwise obliged to supervise the object and is not an employee of the owner (a company), such person is liable under Art. 1066 of the COA. In the event of unlawful repossession of a dangerous object from its owner, the liability is borne by the person who has repossessed the dangerous object (Art. 1065 of the COA).

Pursuant to Art. 811/1 of the MC, "the ship is liable" for damage to property. Given that under Croatian law ships do not have a legal personality of their own, there is an explanation in the following provision stating that "The liability of the ship as defined in paragraph 1 of this Article refers to the liability of the ship owner, i.e. ship operator." If the shipowner and ship operator are the same person, the stipulation is clear and unambiguous. However, if the shipowner is not the ship operator (as previously explained), it needs to be determined which person or entity is liable. This stipulation may be interpreted in two different ways if there is a distinction between the two roles. First, it could be argued that the liability should be borne by the operator, given that, in accordance with the general rule contained in Art. 385 of the MC, the operator is liable. It could be added that, in instances where there is no distinction between the two roles, the shipowner is, in effect, the ship operator. However, if this was the intention of the legislator, it would be sufficient to prescribe the liability of the ship operator. Alternatively, this provision could be interpreted as indicating that both the shipowner and the ship operator are liable. But, if that was the intention of the legislator, he should have used the conjunction "and". There is no case law in this respect.

By contrast, clear provision, prescribing liability of both the shipowner and the ship operator, is contained in the part of the MC regulating liability for the pollution of the marine environment by HNS and other pollutants (Art. 812 of the MC).

Please note that all aforementioned claims are additionally secured by maritime liens, as specified in Art. 241 of the MC. A maritime lien, as defined by Croatian legislation, confers upon the claimant the right to subject the ship concerned to judicial sale, irrespective of the identity of the ship owner, and to have the claim settled from the sale proceeds, prioritized over non-lien creditors.

In accordance with Art. 7/1 of the 2010 HNS Convention, the person liable for the damage caused by HNS in connection with their carriage by sea on board a ship is the owner at the time of an incident.[34] The owner is defined in the Art. 1/1/3 of the HNS Convention as 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 is registered as the ship's operator in that state, "owner" means such company. Furthermore, in line with Art. 12/8 of the 2010 HNS Convention, any claim for compensation for damage may be brought directly against the insurer or other person providing financial security for the owner's liability for damage. On the other hand, the 2010 HNS Convention provides protection for a wide range of persons against whom claims cannot be made (Art. 7/5 of the 2010 HNS Convention) unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and

[34] On channeling of liability see: Jacobsson, Måns, *op. cit*., pp. 36.

with knowledge that such damage would probably result.[35] Such channeling of liability to the shipowner is very similar to the one contained in the CLC Convention. In case such conduct is proven, claims can be brought against those persons under national law.

Moreover, in order to ensure that the victims receive full and adequate compensation, the Convention introduces a second tier of liability in the form of the HNS Fund. The principal objective of the HNS Fund is to provide compensation for damage in cases where the protection afforded by the shipowner and insurer is inadequate or unavailable for any reason set forth in Art. 14 of the 2010 HNS Convention.

The channeling of liability, in conjunction with *actio directa* against the insurer in the first tier of liability (see infra 2.6.), and the establishment of the HNS Fund for the second tier of liability, significantly strengthen the legal position of those who have sustained damage caused by HNS in connection with its carriage by sea on board a ship.

2.4. Types of Damage Covered

It is beyond dispute that a maritime accident involving a ship carrying HNS has the potential to cause a wide range of damage, including harm to individuals on board and outside the ship, damage to property, and damage to the marine environment. The special liability regimes set forth in the MC which apply in the event of such an accident typically do not define the term "damage." The only exception is the general regime of liability for marine pollution, which explicitly specifies the types of damage for which compensation can be sought.

Art. 812/3 of the MC defines pollution damage as any loss or damage caused outside the ship by contamination resulting from the escape or discharge of polluting substances from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment is limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken. Additionally, the costs of preventive measures and further loss or damage caused by preventive measures are regarded as damage as well. This stipulation is based on the definition of damage contained in the CLC and Bunker conventions. It allows for compensation for property damage, consequential loss, pure economic loss, but limits the scope of environmental damage, excluding the compensation for environmental damage *per se*.[36]

However, it has to be emphasized that the MC contains another provision, Art. 49.g, on damage to marine environment, consisting of pecuniary damage and environmental damage. According to Art. 49.g/5 of the MC, environmental damage is a distinct category of damage that results in the destruction of the environment, nature and the landscape. The criteria for determining environmental damage are as follows: preservation and originality of nature, degree of legal protection, beauty of the landscape, possibility of restitution, and abundance of flora and fauna, among other factors. If nature is not fully intact, compensation for environmental damage is still provided in an appropriate manner. With respect to the identification of the liable

[35] No compensation claim can be made against the following persons:
(a) the servants or agents of the shipowner or members of the crew;
(b) the pilot or any other person who, without being a member of the crew, performs services for the ship;
(c) any charterer (including a bareboat charterer), manager or operator of the ship;
(d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
(e) any person taking preventive measures; and
(f) all servants or agents of persons mentioned under (c), (d) and (e).

[36] The IOPC Fund has developed manuals and guidelines to help pollution victims present claims. See: Guidelines for Presenting Claims for Environmental Damage, 2018 Edition. Available at: https:// iopcfunds.org/wp-content/uploads/2018/12/IOPC_Environmental_Guidelines_ENGLISH_2018_WEB_01.pdf, accessed on: 24 July 2024. On the compensation for environmental damage see: Ćorić, Dorotea, Tuhtan Grgić, Iva, Stanković, Gordan, Naknada ekološke štete u slučaju onečišćenja mora s brodova - hrvatski pravni okvir, Poredbeno pomorsko pravo = Comparative Maritime Law, 2022, vol. 61, No. 176, pp. 95-133.

person, Art. 49.g/3 of the MC is an affirmation of the "polluter pays" principle, establishing that a person who has caused damage to marine environment compensates such damage. Those ambiguous and insufficiently detailed provisions have the potential to result in the inappropriate implementation of Art. 812 of the MC.[37]

With regard to the matter of compensation to crew members, it is worthy of note that Art. 145/1 of the MC stipulates that compensation is payable not only in the event of the death or personal injury of a crew member, but also in the event of impairment to their health.

With respect to indemnification for damage under other liability regimes, the subsidiary application of provisions contained in COA, as lex generalis, serves as the basis for determining the admissibility of claims. The term "damage" is defined in Art. 1046 of the COA as a loss of a person's assets (pure economic loss), a halting of assets increase (loss of profit) and violation of personality rights (non-pecuniary damage).

The 2010 HNS Convention establishes a comprehensive framework for the compensation of damage resulting from HNS carried on board ships. Under Art. 1/6 of the Convention damage means: (a) loss of life or personal injury on board or outside the ship carrying hazardous and noxious substances caused by those substances; (b) loss of or damage to property outside the ship carrying hazardous and noxious substances caused by those substances; (c) loss or damage by contamination of the environment caused by hazardous and noxious substances, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable reinstatement measures actually undertaken or to be undertaken; and (d) the costs of preventive measures and further loss or damage caused by preventive measures.[38]

The scope of damage covered by the HNS Convention is nearly identical to that covered when different liability regimes set forth in the MC are applied. The discrepancy pertains to the scope of coverage for damage sustained by crew members, as the 2010 HNS Convention does not cover impaired health. Nevertheless, this would not place crew members in a more disadvantaged legal position, as a protective provision is contained in Art. 4/2 of the 2010 HNS Convention. It stipulates that the Convention does not apply to the extent that its provisions are incompatible with those of applicable regulations on workers' compensation or social security schemes.

Finally, the above definition of damage is broader than those set forth in the CLC and Bunker Convention (and respective national regimes) in that it includes damage to property and damage resulting from loss of life or personal injury. Indeed, this stipulation is supplementary to those regulating indemnification for marine pollution by oil, as it applies to damage to property and persons, even in case of damage caused by oil spills. With respect to damage to the marine environment, the definition remains consistent, and the Guidelines and the practice of the IOPC Fund are expected to be implemented in accordance with the established standards.[39]

In the event the 2010 HNS Convention enters into force (at the international level and in the Republic of Croatia) and the MC is harmonized with its provisions, a unified regime for all damage would be established. Similarly, with respect to other liability frameworks, the subsidiary application of provisions set forth in the COA, as *lex generalis*, would serve as grounds for determining the admissibility of claims.

2.5. Limitation of liability

[37] Ibid. pp. 122-126.
[38] Jacobsson, Måns, *op. cit*., pp. 29-34.
[39] For more on the compensation for damage to marine environment under the HNS Convention, see: Reinhard H. Ganten, HNS and Oil Pollution: Developments in the Field of Compensation for Damage to the Marine Environment, Environmental Policy and Law, 27(4), 1999, pp. 310-314.

In maritime law the principle of limited liability for damage is accepted as a standard with few exceptions. All the aforementioned forms of non-contractual liability that could apply in case of damage to persons, property and marine environment caused by HNS transported as cargo on board ships, are subject to the limitation of liability for maritime claims.[40] Conversely, the liability for damage resulting from the death of or personal injury to a crew member, which is a contractual liability, is not subject to limitation (Art. 390/2 of the MC). It should be noted that oil carried as cargo is also an HNS substance, but a special regime of liability and limitation of liability applies to oil pollution damage caused by such cargo (Art. 816 of the MC) pursuant to CLC provisions. The special limitation fund thus established will be used only to settle admissible claims arising from oil pollution carried as cargo. Compensation for damage caused by the same incident to persons and property other than the ship would be subject to the general limitation of liability.

When assessing the eligibility of the use of the limitation of liability and determining the amount of the limited liability fund, attention should be paid to the fact that the general limitation of shipowners' liability for maritime claims in the Republic of Croatia is subject to the provisions of the MC, as well as the international conventions currently in force in the Republic of Croatia - the Convention on Limitation of Liability for Maritime Claims (hereinafter: LLMC 1976) and the 1996 Protocol to the LLMC 1976 (hereinafter: LLMC 76/96), as amended by IMO Resolution LEG.5 (99) 2012, which increased the limits of liability through the tacit acceptance procedure.[41] Provisions of the MC have been harmonized with the LLMC 76/96 as amended by the IMO Resolution.

The objective of establishing a fund is to limit the shipowner's liability to a maximum amount, irrespective of the actual value of damage, while simultaneously allocating a specified amount of money for the settlement of creditors' claims. Once a limited liability fund has been established, creditors with claims for which the shipowner has limited liability are precluded from receiving compensation from other assets of the shipowner. The limitation of liability is calculated based on the tonnage of the ship, irrespective of the applicable instrument. However, the amount of the limitation varies significantly depending on the applicable source.[42]

With respect to the potential extent of damage that could result from HNS carried on board ship, the prescribed maximum amount of liability is highly likely to prove inadequate to address such damage in the event of a more serious incident, particularly where the applicable source is LLMC 76,[43] which prescribes notably low compensation for damage.

The 2010 HNS Convention establishes a special regime of limitation of liability in Art. 9. As with the aforementioned conventions, the amount of limitation is contingent upon the tonnage of the vessel and, in addition, on whether HNS is transported in bulk or in a packaged form. In both scenarios, the amounts of limitation are considerably higher than those prescribed by the general limitation of liability systems.[44] It is crucial

[40] See Art. 388/1 of the MC.
[41] The Republic of Croatia has adopted the LLMC 1976, Official Gazette of the Republic of Croatia, – International Contracts, no. 2/1992, as well as 1996 Protocol, Official Gazette of the Republic of Croatia – International Contracts, no.12/2005.
[42] In the event of the application of the LLMC 76/96 (as amended by the Resolution), the liability limits for claims for the loss of life or personal injury for a ship with a tonnage of up to 2.000 are 3,02 million Units of Account or 4 million U.S. dollars. With respect to any other claims, the limitation is 1,51 million Units of Account or 2 million U.S. dollars. For the ship of the same tonnage, in case of application of the LLMC 76, the liability limits for claims for the loss of life or personal injury are 1,083 million Units of Account or 1,436 million U.S. dollars. With respect to any other claims, the limitation is 417,500 Units of Account or 555,475 U.S. dollars.
[43] The 1996 LLMC Protocol contains a provision that regulates the relationships between states that are parties to LLMC 76 and the 1996 LLMC Protocol, ensuring the abrogation of the earlier and the application of the later convention. Although that provision narrows the possibility of application of the LLMC 76 on limitation of liability, it does not exclude it. In order to avoid its application, the Republic of Croatia should denounce the LLMC 76 Convention. See: Marin, Jasenko, Treba li Republika Hrvatska pristupiti Protokolu iz 1996. o izmjeni Konvencije o ograničenju odgovornosti za pomorske tražbine, iz 1976., Zbornik Pravnog fakulteta u Zagrebu, vol. 53, br. 1, 2003, pp. 75-94. Ćorić, Dorotea, Opće ograničenje odgovornosti brodara: prešutnim prihvatom povišeni iznosi ograničenja i njihova primjena u Republici Hrvatskoj, Poredbeno pomorsko pravo = Comparative Maritime Law, 59, No. 174, 2020, pp. 32-33.
[44] In the event of damage caused by bulk HNS, the liability limit is 10 million units of account, equivalent to 13.26 million U.S. dollars, for a ship with a tonnage of up to 2,000 units. In case of damage caused by a ship of the same tonnage but by packaged HNS, the liability limit is 11.5 million units of account, or 15.245 million U.S. dollars.

to bear in mind that all claims arising from the carriage of HNS substances are subject to the general limitation of liability, which can be invoked in instances where the flag state is not a party to the 2010 HNS Convention (Art. 42 of the 2010 HNS Convention).

The LLMC 76/96 affords state parties the option to exclude claims for damage, within the meaning of the HNS, from the umbrella of the general limitation system.[45] The instrument of accession of the Republic of Croatia was accompanied by a reservation to this effect.[46] Nevertheless, the LLMC 76 does not provide such an option. Consequently, in cases where the liable person can invoke limitation of liability under this instrument, the amount in question is likely to be insufficient. It is thus imperative that the Republic of Croatia denounces LLMC 76. Should the Croatian legislator decide to ratify the 2010 HNS Convention and align the MC with its provisions, it would be prudent for the relevant amendments to be made to Art. 389 of the MC, in order to exclude the claims for damage falling within the scope of this regime from the application of the general limitation system set out in the MC.

Furthermore, the fund constituted for the compensation of claims in connection with HNS carried on board is reserved only for such damage. For example, general limitation could be invoked in the event of pollution damage caused by bunker oil spillage.

As opposed to the general regime of limitation of liability, there is no separate fund for claims relating to death or personal injury, but those claims have priority over other claims, save to the extent that the aggregate of such claims exceeds two-thirds of the total amount of the fund (Art. 11 of the 2010 HNS Convention).

2.6. Compulsory insurance of liability

One of the methods of placing injured parties in a more advantageous position is to stipulate that specific liability is subject to compulsory insurance, whereby a direct claim may be filed against the insurer.[47] Under the Croatian MC, the right to direct action has to be explicitly prescribed.[48] Such an explicit provision exists in case of liability for the death of and personal injury of seamen and, in accordance with international conventions, for sea pollution caused by oil transported as cargo (CLC Convention) and oil used in the bunker (Bunker Convention).[49] Finally, the mandatory insurance of liability accompanied with the right to direct action is prescribed for costs associated with locating, marking and removing wrecks (in line with the Nairobi International Convention on the Removal of Wrecks, 2007).[50] In the case of other forms of non-contractual liability, which includes all previously analyzed cases of liability in connection with the transportation of HNS substances, the MC, unfortunately, does not prescribe the compulsory insurance of liability that would be accompanied by the right to direct action against the insurer. The lack of such compulsory insurance of liability not only provides less protection for the injured party, but can also have a negative effect on transportation quality. It is widely acknowledged that insurance of liability has a significant impact on the quality of transport services, and therefore on damage prevention. This is due to the fact that the validity of insurance of liability is usually conditioned upon compliance with the standards and requirements that have been established for the specific insured activity.

[45] Art. 18/1 of the LLMC 76/96. See: Martínez Gutiérrez, A. N., Limitation of Liability in International Maritime Conventions, The relationship between global limitation conventions and particular liability regimes (IMLI Studies I International Maritime Law), Routledge, 2011., pp. 188-190.
[46] See: Status Book – Comprehensive information on the status of multilateral conventions and instruments. Available at: https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx, accessed on 2 August 2024.
[47] Pospišil, Marija, Protecting & Indemnity' (P&I) osiguranje i obvezno osiguranje prema međunarodnim pomorskim konvencijama. Vlastita naklada, Crikvenica, 2021.
[48] See: Art. 743/2 of the MC.
[49] Arts 820-821, Arts 823.e -823.f of the MC.
[50] Arts 840.p -840.r of the MC.

It should be noted that the 2013 MC was harmonized with Directive 2009/20/EC on the insurance of shipowners for maritime claims.[51] This Directive established the regulatory framework for certain aspects of the ship owners' obligation to contract insurance coverage for maritime claims. All ships having the gross tonnage exceeding 300 GT, that fly the flags of EU Member States or enter ports within those states, are required to carry a valid insurance certificate issued by an insurance provider. The certificate must confirm that adequate shipowner liability insurance is in place, covering shipowner liability for maritime claims subject to limitation under the LLMC 76/96 and up to the amount stipulated in that Convention.[52] In spite of having mandatory insurance, under Croatian law, there is no right to direct action against the insurer.

Art. 12 of the HNS Convention establishes an obligation on the part of the owner of a ship registered in a state party, and actually carrying hazardous and noxious substances, to maintain insurance or other financial security for damage under this Convention, such as the guarantee of a bank or similar financial institution, in the amount determined through the application of the limits of liability prescribed by the HNS Convention.[53] In a manner analogous to the CLC, the injured party is entitled to file a claim for compensation for damage directly against the insurer or other person providing financial security for the owner's liability for damage (Art. 12/8 of the HNS Convention).

The introduction of compulsory insurance of liability for damage caused by the transportation of HNS substances and the corresponding right of direct action would clearly have considerable benefits for both, transport safety and injured parties in the event of an incident.

3. CONCLUSION

The growing volumes of HNS substances transported by sea have increased the risks associated with such transportation. At present, there is no comprehensive legal framework in place that would ensure prompt and adequate compensation for damage caused by the transport of such substances by sea, either at the international level or in the Croatian national legal framework.

A critical review of Croatian legislation that would apply in the event of an incident caused by the carriage of hazardous and noxious substances by sea has revealed significant shortcomings with respect to the appropriateness of applicable provisions. As these provisions are a law of general application, it was to be expected that a range of solutions would emerge with respect to the specific areas of liability. In particular, it was anticipated that there would be different solutions with regard to the allocation of liability to different persons, the applicability of different legal grounds for liability, the inappropriate regulation of limitation of liability, and the different scope of application of those provisions. Conversely, an analogous analysis of the 2010 HNS Convention provisions identified several potential benefits for injured parties that would result from its ratification and entry into force.

The greatest level of inconsistency exists in the identification of the responsible person, with solutions varying from the ship operator, the shipowner, the navigator, the person engaged in a dangerous activity, the employer, or different combinations of these persons. Channeling liability to the shipowner, as prescribed by the 2010 HNS Convention, is a more straightforward approach for the injured party. The combination of the channeling of liability and the right to a direct action against the insurer and the right to compensation from the

[51] Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 on the insurance of shipowners for maritime claims, Official Journal of the European Union, L 131/128, 28.5.2009 and Art. 82 of the Act amending and supplementing the MC, Official Gazette of the Republic of Croatia, No. 56/2013.
[52] Arts 747.a – 747.d of the MC. For more on compulsory insurance for all maritime claims and implementation of Directive EU 2009/20/EC in Croatian legislation see: Padovan, A. V., Uloga pomorskog osiguranja u zaštiti morskog okoliša od onečišćenja s brodova, Jadranski zavod – HAZU, Zagreb, 2012, pp. 388-389.
[53] More broadly on compulsory insurance under the 2010 HNS Convention see: Jacobsson, Måns, *op. cit*., pp. 36-40.

HNS Fund in the second tier makes it evident that the ratification of the 2010 HNS Convention would be beneficial in terms of protecting the injured party.

The concept of liability channeling is inextricably linked with that of strict liability. While the majority of special liability regimes (though not all) that would apply under Croatian law stipulate strict liability (of various individuals), the exonerations prescribed differ. Given the inherent dangers associated with the transportation of hazardous and noxious substances, the implementation of strict liability is justifiable. The exonerations outlined in the 2010 HNS Convention are specifically tailored to address the concerns raised and appear to be an appropriate solution.

The inadequacy of existing legislation is particularly evident with regard to the limitation of liability. All claims would be subject to a global limitation of liability, with amounts significantly lower than those under the special system of the 2010 HNS Convention, justified precisely by the risk of large-scale damage. Moreover, the possibility of invoking the limitation of liability under LLMC 76 proved alarming, confirming the need to denounce this Convention, as affirmed by scholars.

Notwithstanding potential substantial damage caused by the transport of hazardous and noxious substances by sea, Croatian national legislation does not prescribe the compulsory insurance of liability and the corresponding right to direct action against the insurer. This is a significant shortcoming in the protection of the interests of the injured party. The 2010 HNS Convention, however, has introduced this mechanism. Its implementation would strengthen the position of the injured party, conferring upon them the right to compensation in a manner that is both expedient and equitable.

It is beyond dispute that both Croatian and international law are deficient in terms of establishing a comprehensive regime for the regulation of liability and compensation for damage caused by the transportation of hazardous and noxious substances by sea. This deficiency results in an inability to guarantee adequate, prompt and effective compensation for all damage caused. By ratifying the 2010 HNS Convention, the Republic of Croatia would be able to contribute to the establishment of such a comprehensive regime in the future. The opinion of the author is that this is the path that the Republic of Croatia should pursue and that the Republic of Croatia should take preparatory actions for Convention ratification by establishing a reporting system on the recipients of goods and the quantity of goods subject to the payment of Fund contributions.

In the event that the Croatian legislator elects not to ratify the 2010 HNS Convention (potentially due to the numerous requirements imposed upon states parties to the Convention, which are often perceived as burdensome), a number of potential improvements to the MC could be made. For example, a special liability and compensation regime could be established, based on the 2010 HNS Convention, whereby liability would be channeled to the shipowner, damage defined in a broad manner, strict liability introduced with the same exonerations as in the 2010 HNS Convention, and compulsory insurance coupled with *actio directa* against the insurer. Additionally, specific provisions should be formulated to address the matters of liability, compensation, the limitation of liability, and the compulsory insurance of vessels used as reception and storage units, loaded with but not carrying HNS substances.

REFERENCES

Books and Journals

Bukovac Puvača, M., 2007. “Sive zone“ izvanugovorne odgovornosti – područja moguće primjene pravila o odgovornosti na temelju krivnje i objektivne odgovornosti za štetu. Zbornik pravnog fakulteta Sveučilišta u Rijeci, 30(1). Available at: https://hrcak.srce.hr/file/80386.

Ćorić, D, 2020. Opće ograničenje odgovornosti brodara: prešutnim prihvatom povišeni iznosi ograničenja i njihova primjena u Republici Hrvatskoj. Poredbeno pomorsko pravo = Comparative Maritime Law, 59(174). Available at: https://doi.org/10.21857/ypn4oc17d9.

Ćorić, D., Tuhtan Grgić, Iva and Stanković, Gordan, 2022. Naknada ekološke štete u slučaju onečišćenja mora s brodova - hrvatski pravni okvir. Poredbeno pomorsko pravo = Comparative Maritime Law, 61(176). Available at: https://doi.org/10.21857/moxpjh16gm.

Filipović, V., 1983. Izvanugovorna odgovornost za štete kod prijevoza opasnog i štetnog tereta morem. Uporedno pomorsko pravo i pomorska kupoprodaja, 100.

Jacobsson, Måns, 2012. The HNS Convention and Its 2010 Protocol, in: Pollution at Sea, Editors: Soyer, B and Tettenborn, A., 1st Edition, Informa Law from Routledge.

Jingjing, X., Testa, D., Proshanto K. M., 2017. The Use of LNG as a Marine Fuel: Civil Liability Considerations from an International Perspective. Journal of Environmental Law, 29. Available at: https://doi.org/10.1093/jel/eqx001.

Marin, J., 2003. Treba li Republika Hrvatska pristupiti Protokolu iz 1996. o izmjeni Konvencije o ograničenju odgovornosti za pomorske tražbine, iz 1976. Zbornik Pravnog fakulteta u Zagrebu, 53(1).

Martínez Gutiérrez, A. N., 2011. Limitation of Liability in International Maritime Conventions, The relationship between global limitation conventions and particular liability regimes (IMLI Studies I International Maritime Law), 1st Edition, Routledge.

Nišević, I., 2020. Plutajući terminal za ukapljeni prirodni plin na otoku Krku – Pravni aspekti zaštite morskog okoliša s naglaskom na međunarodno pravo. Zbornik Pravnog fakulteta u Zagrebu, 70(1). Available at: https://doi.org/10.3935/zpfz.70.1.05.

Padovan, A. V., 2012. Uloga pomorskog osiguranja u zaštiti morskog okoliša od onečišćenja s brodova, 1st Edition, Zagreb, Jadranski zavod – HAZU.

Pospišil Miler, M. and Pospišil, M., 2012. Novine protokola iz 2010. godine HNS konvenciji iz 1996. godine i izgledi za stupanje na snagu. Zbornik radova Pravnog fakulteta u Splitu, 49(3). Available at: https://hrcak.srce.hr/86830.

Pospišil, M., 2021. Protecting & Indemnity' (P&I) osiguranje i obvezno osiguranje prema međunarodnim pomorskim konvencijama. Vlastita naklada, Crikvenica.

Pospišil-Miler, M., 2014. Novi sustav odgovornosti za smrt i tjelesne ozljede putnika u pomorskom prijevozu, 1st Edition, Rijeka, Pravni fakultet Sveučilišta u Rijeci.

Primorac, Ž., 2010-2012. Odgovornost vlasnika broda i brodara za štetu nastalu kupačima i drugim osobama u moru na području kupališta. Zbornik radova “In memoriam prof. dr. sc. Vjekoslav Šmid” Aktualnosti prava mora i prava turizma, 1-3.

Primorac, Ž., 2011. Zaštita kupača i drugih osoba u moru prema odredbama hrvatskih zakonskih i podzakonskih propisa i propisa pomorskog prava. Zbornik radova Veleučilišta u Šibeniku, 5(3-4).

Reinhard H. Ganten, 1999. HNS and Oil Pollution: Developments in the Field of Compensation for Damage to the Marine Environment. Environmental Policy and Law, 27(4).

Skorupan Wolf, V., 2005. Obilježja opasne stvari [prikaz presude]. Poredbeno pomorsko pravo = Comparative Maritime Law, 44(159).

Skorupan Wolff, V., 2020. Gliser je u odnosu na ronioca opasna stvar: [prikaz presude]. Poredbeno pomorsko pravo = Comparative Maritime Law, 59(174). Available at: https://hrcak.srce.hr/file/363469.

Skorupan Wolff, V., 2023. Plovilo na vezu nije opasna stvar: [prikaz presude]. Poredbeno pomorsko pravo = Comparative Maritime Law, 62(177). Available at: https://hrcak.srce.hr/file/451103.

Tuhtan Grgić, I., 2021. Polje primjene imovinskopravnih odredbi Pomorskog zakonika s obzirom na objekte. Proceedings book of the 3rd International scientific conference on maritime law – ISCML, Split.

Internet

Consolidated text of the 1996 HNS Convention and the 2010 HNS Protocol. Available at: https://www.hnsconvention.org/wp-content/uploads/2019/05/2010-HNS-Convention-English.pdf

Croatian Registry of the Maritime Objects. Available at: https://eplovilo.pomorstvo.hr/#/uvidUPodatke

Daily News 06/05/2024. Available at: https://ec.europa.eu/commission/presscorner/detail/en/mex_24_2463

Guidelines for Presenting Claims for Environmental Damage, 2018 Edition. Available at: https://iopcfunds.org/wp-content/uploads/2018/12/IOPC_Environmental_Guidelines_ENGLISH_2018_WEB_01.pdf

Prihodi od turizma u 2023. veći za 11,4%. Available at: https://www.hnb.hr/-/prihodi-od-turizma-u-2023-veci-za-11-4-posto

Review of the Maritime Transport 2023. Available at: https://unctad.org/publication/review-maritime-transport-2023

Status Book – Comprehensive information on the status of multilateral conventions and instruments. Available at: https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx

Workshop on the 2010 Hazardous and Noxious Substances Convention. Available at: https://www.imo.org/en/MediaCentre/MeetingSummaries/Pages/Workshop-on-the-2010-HNS-Convention.aspx

Legal Sources

1996 Protocol to the Convention on Limitation of Liability for Maritime Claims, Official Gazette of the Republic of Croatia – International Contracts, no.12/2005.

Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002, Official Gazette of the Republic of Croatia - International Treaties, no. 2/2013, 9/2013.

Civil Obligations Act, Official Gazette of the Republic of Croatia, no. 35/2005, 41/2008, 125/2011, 78/2015, 29/2018, 126/2021, 114/2022, 156/2022.

Convention on Limitation of Liability for Maritime Claims, Official Gazette of the Republic of Croatia – International Contracts, no. 2/1992.

Council Decision (EU) 2017/769 of 25 April 2017 on the ratification and accession by Member States, in the interest of the European Union, to the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, with the exception of the aspects related to judicial cooperation in civil matters, Official Journal of the European Union, L 115/15, 4.5.2017.

Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 on the insurance of shipowners for maritime claims, Official Journal of the European Union, L 131/128, 28.5.2009.

IMO Resolution LEG.5 (99) 2012.

International Convention on Civil Liability for Bunker Oil Pollution Damage, Official Gazette of the Republic of Croatia - International Treaties, No. 9/06.

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, Official Gazette of the Republic of Croatia – International Treaties, No. 12/05.

Maritime Code, Official Gazette of the Republic of Croatia, no. 181/2004, 76/2007, 146/2008, 61/2011, 56/2013, 26/2015, 17/2019.

Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1996, Official Gazette of the Republic of Croatia – International Treaties, No. 2/97.

Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, Official Gazette of the Republic of Croatia – International Treaties, No. 2/97.

Regulation (EC) 392/2009 on the liability of carriers of passengers by sea in the event of accidents, OJ L 131, 28.5.2009.

Regulation on liability for environmental damage – Official Gazette of the Republic of Croatia, No. 31/2017.

Rulebook on the handling of dangerous substances, conditions and methods of transportation in maritime transport, loading and unloading of dangerous substances, bulk and other cargo in ports, and the method of preventing the spread of spilled oils in ports, Official Gazette of the Republic of Croatia, no. 51/2005, 127/2010, 34/2013, 56/2013, 88/2013, 79/2015, 53/2016, 41/2017, 23/2020, 128/2020.