



LEGAL COMMITTEE
94th session
Agenda item 11

LEG 94/11/2
19 September 2008
Original: ENGLISH

ANY OTHER BUSINESS

ENTRY INTO FORCE OF THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE, 2001 (Bunkers Convention)

Submitted by the International Chamber of Shipping (ICS) and
the International Group of P&I Associates (P&I Clubs)

SUMMARY

<i>Executive summary:</i>	The Legal Committee is invited to take note of the information contained in this document with regard to the implementation of the Bunkers Convention in order to facilitate implementation of the other IMO adopted liability instruments
<i>Strategic direction:</i>	2
<i>High-level action:</i>	2.1.1
<i>Planned output:</i>	Not applicable
<i>Action to be taken:</i>	Paragraph 13
<i>Related documents:</i>	LEG 94/11 and LEG 94/11/1

Background

1 The Bunkers Convention, in accordance with Article 14 of the Convention, will enter into force on 21 November 2008. As of 19 September 2008, 26 States have either ratified or acceded to the Convention. The International Chamber of Shipping (ICS) and the International Group of P&I Associates (P&I Clubs) welcome the entry into force of the Convention and encourage all States that have not yet done so, to ratify or accede to the Convention as soon as possible, in order to ensure global uniformity and widespread implementation of this important new regime.

2 IMO circular BUNKERS.1/Circ.9 dated 4 December 2007 informed States of the entry into force of the Convention following Sierra Leone's accession on 21 November 2007. The ninety-fourth session of the Legal Committee is the first meeting since this notification. In preparation for entry into force, a number of issues have arisen regarding implementation of the Convention, in particular with regard to certification of ships registered in non-Parties States.

For reasons of economy, this document is printed in a limited number. Delegates are kindly asked to bring their copies to meetings and not to request additional copies.

These issues were raised by the P&I Clubs in the IOPC Funds meetings in March and June 2008, since there was no meeting of the Legal Committee in the first half of this year. However, it was recognized at the time that matters relating to the Bunkers Convention should be considered by the Committee and the co-sponsors of this document believe that it is appropriate to bring the issues to the attention of States at this session to both facilitate entry into force of the Bunkers Convention and also the other liability regimes adopted by IMO which are yet to enter into force (2002 Athens Convention, 2007 Nairobi Wreck Removal Convention and the HNS Convention).

State certification

3 When a ship is registered in a State Party to the Bunkers Convention, a State certificate must be obtained from the appropriate authority of the State of the ship's registry. A ship registered in a State that is not party to the Convention will need to obtain a certificate from a State Party, if it is trading to or from a State Party. Until August this year, approximately three months prior to entry into force of the Convention, no State Party was prepared or able to issue certificates to vessels registered in non-Parties States unless calling at a port or terminal in the State.

4 The co-sponsors welcome the decisions subsequently taken by certain of the 26 State Parties, the United Kingdom, Liberia, Cyprus and the Cook Islands, to agree to issue certificates to such vessels (subject to criteria imposed by these States). If they had not agreed to do so, vessels flying the flags of States which have not yet ratified or acceded to the Convention could only operate subject to important geographical limitations. The co-sponsors understand that a small number of other States Parties are also in the process of taking similar decisions in the very near future, or have already done so. This is also welcomed, not least to ease the administrative burden on the above mentioned States Parties in issuing certificates to the majority of the world fleet, and it is hoped that this will ensure that ships over 1,000 GT are able to obtain the required certificates prior to 21 November.

5 It is, of course, preferable for owners to obtain their certificates prior to 21 November rather than wait until entry into a port of a State Party after this date, given the need to avoid delays in entry into port in the event of any hold up in the issue of the certificate. Until the above-mentioned States agreed to issue the certificates to such vessels, there was a serious risk that significant problems would arise upon the entry into force of the Convention in respect of vessels registered in non-Parties States given that, according to latest statistics, there are approximately 41,000 vessels trading in the world fleet that have a gross tonnage greater than 1,000. Many of these will, of course, require certificates from a State Party. Further, such a risk also existed if agreement from these States to issue the certificates had taken place any later than August this year given the considerable number of vessels that would have needed certificates in such a short period of time. As far as the co-sponsors are aware, the certification process appears to be running relatively smoothly and it is hoped that certificates can be issued in time and in the numbers required.

6 However, it should be pointed out that the certificates which are now being issued are for the period up to the end of the current P&I policy year on 20 February 2009 and will therefore need to be replaced with fresh certificates in the three months after the Convention comes into force. Renewal terms are agreed at varying times in the run-up to the start of the new P&I policy year but, for a variety of reasons, not least because of their complex nature, in many cases are only agreed shortly before the start of the policy year. However, Clubs can issue Blue Cards in electronic form without delay. Moreover, there are a relatively small number of States Parties which are able to issue certificates, and as many as 41,000 certificates will need to be issued in a very short space of time. It may be the case, therefore, that some shipowners will be unable to obtain their certificates prior to, or on, 20 February 2009 given the administrative burden on

States Parties at this time. However, it is the understanding of the co-sponsors that States Parties are prepared to issue certificates to vessels registered in non-Parties States if they are in possession of a valid Blue Card issued by a Club in the International Group and are due to enter a port or terminal in that State. This might entail vessels physically obtaining the certificate whilst at the port or terminal. This should ease any concerns that shipowners may have arising from the above situation. The co-sponsors should therefore be grateful to know whether there are any States Parties that will not be prepared to issue a certificate to a vessel registered in a non-Party State when calling at one of their ports or terminals after the entry into force of the Convention.

7 Clearly, it is preferable to avoid these risks in the future with regard to the implementation of the other IMO liability regimes yet to enter into force. Accordingly, the co-sponsors encourage all States Parties to co-operate in facilitating the smooth implementation of the regimes to which they have subscribed in order that they will function as intended from the outset.

8 It is important that both States and industry take on board these potential risks in order to ensure that prospective States Parties to both the Bunkers Convention and the other IMO liability regimes have the procedures in place to issue certificates to vessels registered in their States and in non-Parties States well in advance of the entry into force of those regimes, particularly since the certification requirements in the Wreck Removal and HNS Conventions, for example, apply to a greater number of vessels.

Electronic certificates

9 There is a growing practice among Clubs in the International Group to issue CLC certificates of financial responsibility (so called "Blue Cards") to shipowner – entered members in electronic format, and this practice is continuing with regard to the issue of Blue Cards under the Bunkers Convention. Clearly, the majority of CLC States Parties are comfortable with this practice for the purposes of CLC. A copy of a standard form Bunkers Blue Card is contained in annex 1 to this document for information.

10 However, only a minority of States Parties to the Bunkers Convention have agreed to accept Bunkers Convention Blue Cards issued in electronic format only. In order to reduce the administrative burden on both States, shipowners and International Group Clubs, the co-sponsors believe that it would be preferable for States to accept Blue Cards issued by the P&I Clubs in electronic format. Acceptance of electronic Blue Cards should also reduce the time period required to process applications from shipowners for State certificates, which could be a significant issue for States around the P&I Clubs' renewal date (20 February) given that the vast majority of shipowners will need new certificates on this date each year and may only be in a position to apply for them in a relatively short time period prior to 20 February.

11 In the event that issuing authorities, or port authorities, are concerned with regard to the verification of the cover provided to a vessel in possession of a Blue Card, all P&I Clubs have developed a web-based facility that will allow port authorities, governments and other interested parties to search their databases to ascertain whether a vessel is entered or not in a particular P&I Club. The data underlying these search facilities is updated at least once every 24 hours (i.e. as and when changes occur) and does therefore provide an up to date list of all entered vessels. These ship search facilities are accessible on each of the 13 individual P&I Clubs' websites, a list of links to which can be found on the website of the International Group (www.igpandi.org). It is also worth noting that such electronic Blue Cards are issued in a read only format, and that this will also be the case for electronic Bunkers Blue Cards. The P&I Clubs are also looking at further methods of providing more modern communications with regard to the

issue of Blue Cards and the interaction with the issuing authorities in States parties. The ICS notes that if non-P&I insurers/guarantors have developed similar systems these should be acceptable as well.

Resolutions adopted by the 2001 Bunkers Convention diplomatic conference (see annex 2)

12 The co-sponsors refer to the three resolutions approved by the diplomatic conference in 2001 and would suggest that States follow the recommendations contained in each when implementing the Convention, in particular the recommendations to implement the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976, and consideration of the need to introduce legal provision for protection for persons taking measures to prevent or minimize the effects of bunker oil pollution, although the co-sponsors would note that implementation of the 1976 LLMC Convention or the 1996 LLMC Protocol is not a prerequisite for implementation and ratification of the Bunkers Convention.

Action requested of the Legal Committee

13 The Legal Committee is requested to take note of the information contained in this document.

ANNEX 1

NOT TRANSFERABLE

No.....

To: [Address of issuing State party]

**CERTIFICATE FURNISHED AS EVIDENCE OF INSURANCE PURSUANT TO
ARTICLE 7 OF THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR
BUNKER OIL POLLUTION DAMAGE, 2001**

Name of Ship:

Distinctive Number or Letters:

Port of Registry:

Name and full address of the principal place of business of the Registered Owner:

IMO Number:

THIS IS TO CERTIFY that there is in force in respect of the above-named ship while in the above ownership a policy of insurance satisfying the requirements of Article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001.

Period of Insurance: from Noon GMT 20 February 2009 to Noon GMT 20 February 2010

Provided always that the insurer may cancel this Certificate by giving three months written notice to the above Authority whereupon the liability of the insurer hereunder shall cease as from the date of expiry of the said period of notice but only as regards incidents arising thereafter.

Date:

This certificate has been issued for and on behalf of the insurer:

By
Managers of the above Association

ANNEX 2

INTERNATIONAL MARITIME ORGANIZATION



IMO

E

INTERNATIONAL CONFERENCE ON
LIABILITY AND COMPENSATION FOR
BUNKER OIL POLLUTION DAMAGE, 2001

LEG/CONF.12/18
27 March 2001
Original: ENGLISH

Agenda item 8

**ADOPTION OF THE FINAL ACT AND ANY INSTRUMENTS, RECOMMENDATIONS
AND RESOLUTIONS RESULTING FROM THE WORK OF THE CONFERENCE**

CONFERENCE RESOLUTIONS

Texts approved by the Conference

RESOLUTION ON LIMITATION OF LIABILITY

THE CONFERENCE,

HAVING ADOPTED the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (hereinafter “the Convention”),

NOTING THAT article 6 of the Convention preserves the right of the shipowner to limit its liability under any applicable national or international regime,

REAFFIRMING that clear rights to limitation of liability are desirable, to enable the shipowner to take out effective insurance cover at reasonable cost,

BELIEVING that limitation amounts must be sufficiently high to permit the payment of full compensation for eligible claims in normal circumstances,

1. URGES all States that have not yet done so, to ratify, or accede to the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976;
2. ENCOURAGES States Parties to the Convention on Limitation of Liability for Maritime Claims, 1976 to denounce that Convention with effect from the entry into force of the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976 for those States Parties, or after a limited period of time;
3. ALSO ENCOURAGES States Parties to the International Convention for Unification of Certain Rules relating to the Limitation of Liability of Owners of Sea-Going Vessels, 1924 and the International Convention relating to Limitation of Liability of Owners of Sea-Going Ships, 1957 to denounce those Conventions with effect from the entry into force of the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976 for those States Parties;
4. RECOMMENDS that States, when implementing the Convention in their national law, make clear which limitation of liability regime is applicable according to article 6 of the Convention.

For reasons of economy, this document is printed in a limited number. Delegates are kindly asked to bring their copies to meetings and not to request additional copies.

RESOLUTION ON PROMOTION OF TECHNICAL CO-OPERATION

THE CONFERENCE,

HAVING ADOPTED the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (hereinafter “the Convention”),

BEING AWARE that the comprehensive protection of the marine environment requires, *inter alia*, broad international co-operation to prevent, reduce and control marine pollution damage caused by ships, as well as the adoption of global measures to provide adequate, prompt and effective compensation for such damage,

RECOGNIZING that the provision and use of bunker oil is important for the operation or propulsion of ships, as the principal means of transportation of international trade, and is therefore widespread throughout the world,

RECOGNIZING ALSO that pollution damage caused by bunker oil may produce significant economic and environmental impact in all States, but especially in developing States that do not yet have adequate expertise, facilities and resources to prevent, reduce and control such pollution, and that such impact may, as a consequence, adversely affect the process of sustainable development in those States,

RECOGNIZING FURTHER that States Parties to the Convention will be called upon to make arrangements for the provision of adequate, prompt and effective compensation for pollution damage caused by bunker oil and to assume full responsibility for such arrangements,

BEING CONVINCED that the promotion of technical co-operation will expedite the implementation of the Convention by States, especially developing States,

NOTING WITH APPRECIATION that, through the adoption of resolution A.901(21), the Assembly of the International Maritime Organization (IMO):

- (a) affirmed that IMO’s work in developing global maritime standards and in providing technical co-operation for their effective implementation and enforcement, can and does, contribute to sustainable development; and
- (b) decided that IMO’s mission statement, in relation to technical co-operation, is to help developing countries improve their ability to comply with international rules and standards relating to maritime safety and the prevention and control of marine pollution, giving priority to technical assistance programmes that focus on human resource development, particularly through training and institutional capacity-building.

1. URGES all IMO Member States, in co-operation with IMO, other interested States, competent international or regional organizations and industry programmes, to promote and provide directly, or through IMO, support to States that request technical assistance for:

- (a) the assessment of the implications of ratifying, accepting, approving, or acceding to and complying with the Convention;
- (b) the development of national legislation to give effect to the Convention; and

- (c) the introduction of other measures for, and the training of personnel charged with, the effective implementation and enforcement of the Convention.

2. ALSO URGES all States to initiate action in connection with the above-mentioned technical measures without awaiting the entry into force of the Convention.

**RESOLUTION ON PROTECTION FOR PERSONS TAKING MEASURES TO
PREVENT OR MINIMIZE THE EFFECTS OF OIL POLLUTION**

THE CONFERENCE,

HAVING ADOPTED the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (hereinafter “the Convention”),

NOTING that the Convention provides for the shipowner to be strictly liable for bunker oil pollution damage,

NOTING FURTHER that the Convention does not require States Parties to make provision in their implementing legislation excluding any person from liability,

RECOGNIZING that the International Convention on Civil Liability for Oil Pollution Damage, 1992 and the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, contain provisions on protection for persons taking measures to prevent or minimize the effects of oil pollution,

BELIEVING that it is desirable to avoid any disincentive that could prevent prompt and effective action to minimize the effects of oil pollution,

1. URGES States, when implementing the Convention, to consider the need to introduce legal provision for protection for persons taking measures to prevent or minimize the effects of bunker oil pollution;
2. RECOMMENDS that persons taking reasonable measures to prevent or minimize the effects of oil pollution be exempt from liability unless the liability in question resulted from their personal act or omission, committed with the intent to cause damage, or recklessly and with knowledge that such damage would probably result;
3. RECOMMENDS FURTHER that States consider the provisions of article 7, paragraphs 5(a), (b), (d), (e) and (f) of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, as a model for their legislation.