



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND

ASSEMBLY  
15th session  
Agenda item 24

FUND/A.15/21  
29 July 1992

Original: ENGLISH

## **CERTAIN QUESTIONS RELATING TO THE APPLICATION OF THE CIVIL LIABILITY CONVENTION AND THE FUND CONVENTION IN CASES OF BAREBOAT CHARTER**

Note by the Director

### **Introduction**

1 At its 66th session, held in March 1992, the Legal Committee of the International Maritime Organization (IMO) discussed whether in certain cases of bareboat charter the actual owner or the bareboat charterer should be considered as the registered owner for the purpose of the provisions of the Civil Liability Convention relating to the issue of insurance certificates. The discussion was based on a document submitted by the Comité Maritime International (CMI). Since this matter is of direct interest to the IOPC Fund, the Director deems it appropriate to inform the Assembly of the discussions held within IMO.

### **Relevant Provisions of the Civil Liability Convention**

2 Under Article VII.1 of the Civil Liability Convention, the owner of a ship registered in a Contracting State and carrying more than 2 000 tons of oil in bulk as cargo shall be required to maintain insurance or other financial security. A certificate attesting that insurance or other financial security is in force shall be issued to each ship. The certificate shall be issued or certified by the appropriate authority of the State of the ship's registry (Article VII.2). The State of registry shall determine the conditions of issue and validity of the certificate (Article VII.6).

3 In Article I.3 of the Civil Liability Convention, "owner" is defined as follows:

"Owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, 'owner' shall mean such company."

4 "State of the ship's registry" is defined in Article I.4 of the Civil Liability Convention which reads:

"'State of the ship's registry' means in relation to registered ships the State of registration of the ship, and in relation to unregistered ships the State whose flag the ship is flying."

#### **Position taken by the CMI**

5 In two documents submitted to the Legal Committee of IMO (IMO documents LEG 66/6 and LEG 66/6/1) the CMI discussed the question of the application of the Civil Liability Convention in cases of bareboat charter. The CMI pointed out that this issue was not addressed at the 1969 Diplomatic Conference which adopted the Civil Liability Convention, since the practice of bareboat charter was virtually unknown at that time. In the view of the CMI this problem should be solved on the basis of the purposes for which a ship under bareboat charter remained registered in the underlying register and those for which it was registered in the national register of the bareboat charterer's State.

6 The CMI maintained that since the ship acquired on a temporary basis the nationality of the bareboat charterer's State and flew the flag of that State, it must necessarily be subject to all regulations of the State of temporary registration as regards safety and all other public law requirements. The CMI expressed the opinion that the power to issue certificates under the Civil Liability Convention was conferred on the State of the ship's registry since that State exercised the control of the ships registered in its register and therefore made the trading of the ship conditional on such certificates being issued. The position of the CMI appears to be that, for the purpose of Article VII of the Civil Liability Convention, the State of the ship's registry should be the State in which the bareboat charterer is registered.

7 The discussions of the 66th session of the Legal Committee are summarised in paragraphs 142 – 151 of the report of that session, which are reproduced in the Annex to the present document.

#### **Director's Intervention in the Legal Committee**

8 During the discussions in the Legal Committee the Director, in his capacity as observer, stated that the question raised by the CMI was a very complex one. He drew the attention of the Legal Committee to the interrelationship between a number of provisions in the Civil Liability Convention, in particular Articles I.3, I.4, VII.2 and VII.10. In his view, the interpretation of the Convention on the point raised by the CMI had implications far beyond the Civil Liability Convention. He emphasised that it had a great impact on certain provisions in the Fund Convention, in particular Article 3.2 which dealt with the indemnification of the shipowner.

9 Article 3 of the Fund Convention reads:

"This Convention shall apply:

1. With regard to compensation according to Article 4, exclusively to pollution damage caused on the territory including the territorial sea of a Contracting State, and to preventive measures taken to prevent or minimize such damage;

2. With regard to indemnification of shipowners and their guarantors according to Article 5, exclusively in respect of pollution damage caused on the territory, including the territorial sea, of a State Party to the Liability Convention by a ship registered in or flying the flag of a Contracting State and in respect of preventive measures taken to prevent or minimize such damage."

10 The Director drew the attention of the Legal Committee to the fact that the shipowner's right of indemnification was dependent upon the ship being registered in or flying the flag of a Contracting State. For this reason, the right of indemnification would, in respect of ships under bareboat charter, depend in many cases on whether it was considered as being registered in one State or another. He was therefore of the opinion that this question merited further study before any decision could be taken.

**Decision by the Legal Committee**

11 The Legal Committee took the view that the question raised by the CMI merited further consideration and that it was necessary to proceed with caution in this complex issue. The Committee therefore requested the Secretary-General of IMO to invite the CMI to make a study on the actual practice in those States which allowed bareboat charter registration and to submit it to the Legal Committee for further consideration.

12 The Secretary-General of IMO has made such a request to the CMI, and the CMI has undertaken to carry out the requested study.

**Action to be Taken by the Assembly**

13 The Assembly is invited to take note of the information contained in this document.

\* \* \*

**ANNEX****Extract from the Report of the Legal Committee  
on the Work of its Sixty-Sixth Session**

(IMO Document LEG 66/9, paragraphs 142–151)

**F CONSIDERATION OF THE APPLICATION OF THE 1969 CIVIL LIABILITY CONVENTION  
IN CASES OF BAREBOAT CHARTER (agenda item 6)**

142 The representative of the Comité Maritime International was invited to introduce document LEG 66/6/1. He explained that the problem highlighted in this document arose in a situation where a ship is registered in two registries. The purpose of article VII(2) of the Civil Liability Convention, 1969 (CLC) is to enable the Contracting State to make sure that the ships are properly insured. With regard to the International Convention for the Safety of Life at Sea, 1974 (SOLAS) the expression "country in which the ship is registered" can in a case of a bareboat charter registration only mean that of the temporary registration. Accordingly, it is the flag State that has the power and duty to issue certificates under SOLAS. The reason for this is that it is the State of registration that exercises control over the ships in its register. For the same reasons the "State of the ship's register" must also, for the purpose of article VII of the CLC, be the flag State.

143 He further explained that when the nationality of a ship is temporarily suspended and the ship is registered in the register of the bareboat charterer's State, the owner must surrender the original certificate of insurance and obtain a new one from the State where his ship is temporarily registered. In conclusion he submitted that there was no need to amend article VII(2) of the CLC since the problem is merely one of interpretation.

144 In commenting on this matter one delegation stated that it should be perceived in the light of the property rights of the owner. The owner, in seeking to protect these rights, keeps the ship registered in the underlying registry so that no matter to whom the ship is bareboat chartered his property rights would be protected. The rights and obligations in the relations between owner, bareboat charterer and different registers was a complex issue which had not yet been decided in an international context. This delegation therefore encouraged the CMI to study the current practice of States with regard to this matter and submit a document to the Committee for further deliberation.

145 Some other delegations whose legislation permits bareboat charter registration – including the right to fly the flag of the State of said registration – saw no problem in this regard. The jurisdiction of the ship is transferred to the flag State during the period of bareboat charter, with the exception of the jurisdiction with respect to the civil ownership, mortgages and related matters. The issuing of certificates required under the provisions of SOLAS and the CLC was therefore in the domain of the flag State while matters between the owner and the bareboat charterer were normally dealt with in their contractual arrangements and settled in a practical manner. This means that in many cases the bareboat charterer acts, when appropriate, on behalf of the owner because the charterer is subject to the jurisdiction of the actual flag State. These delegations endorsed the interpretation of article VII(2) of the CLC suggested by the CMI.

146 The Director of the IOPC Fund, in his capacity as observer, stated that the question raised by the CMI was a very complex one. He drew the attention of the Legal Committee to the interrelationship between a number of provisions in the Civil Liability Convention, in particular articles 1.3, 1.4, VII.2 and VII.10. In his view, the interpretation of the Convention on the point raised

by the CMI had implications far beyond the Civil Liability Convention. It had a great impact on certain provisions in the Fund Convention, in particular article 3.2 which dealt with the indemnification of the shipowner. The right of indemnification was dependent upon the ship being registered in or flying the flag of a Contracting State. For this reason, the right of indemnification would, in respect of ships under bareboat charter, depend in many cases on whether it was considered as being registered in one State or another. He was therefore of the opinion that this question merited further study before any decision could be taken.

147 One delegation commented that, in the case of a ship bareboat chartered in sequence to various States, it would be difficult to establish who is liable and therefore expressed doubts on this interpretation.

148 Another delegation was of the view that this was a matter of form and procedure, not of substance. It further stated that in questions regarding liens and mortgages the law of the underlying registry is exclusively applicable. This delegation suggested that the Committee should therefore come back to this item once a final text of the new convention on liens and mortgages had been adopted.

149 One delegation informed the Committee that it had no problem with the application of article VII(2) of the CLC since the introduction of a law which specified the certificates to be issued by the underlying registry.

150 Another delegation intimated that the Legal Committee was not in a position to take any action on this issue. It was not for the Legal Committee to interpret the provisions of a convention formulated even before the concept of bareboat charter was known. Moreover, the interpretation would serve no purpose since courts were under no obligation to accept a resolution adopted by an international body.

151 Having noted that no serious practical problem has arisen yet on this issue but may arise in the future, the Committee agreed that it merited further consideration. It was however necessary to proceed with caution in this complex issue. Before a decision was taken it was essential that more information was provided on the actual practice in those States which allowed bareboat charter registration. The Committee therefore requested the Secretary-General to invite the CMI to make such a study and to submit it to the Legal Committee for further consideration.

---