

LEGAL COMMITTEE
..... SESSION

PROVISION OF FINANCIAL SECURITY – BAREBOAT CHARTERED VESSELS
Submitted by the Comité Maritime International (CMI)

SUMMARY

Executive Summary:	This document contains the result of further research carried out by the CMI into the what would happen if the definition of “registered owner” were extended to include bareboat charterers in a range of maritime liability conventions.
Action to be taken:	Paragraph 7.
Related documents:	LEG89/6, LEG90/.

Bareboat Chartered Vessels

1. Document LEG 89/6 dealt with the situation where a Convention obliges the registered owner to take out insurance. In the paper it was suggested that the Legal Committee might wish to consider proposing a “Common Understanding” to be backed by a resolution of the IMO Assembly which would extend the definition of “owner” or “registered owner” to embrace a bareboat charterer on the basis that where a ship is bareboat chartered it is the charterer who operates the ship, accepts the responsibilities which go with that and would buy the liability insurance. The CMI paper further suggested that an alternative way of proceeding would be to amend the definition of “owner” or “registered owner”, in the Conventions in which compulsory insurance is a requirement, so as to embrace bareboat charterers.
2. A number of delegates at the meeting suggested that including bareboat charterers in the definition of owner or registered owner might create unforeseen problems under other Conventions. The CMI was urged to consider this and to prepare a further paper.
3. Problems might arise in the following Conventions:
 - **HNS Convention:** extending the definition of “owner” (Article 1.3) to include a bareboat charterer would undermine the channelling effect of Chapter II – Liability if, wherever there was a reference to liability of the owner, it was to be interpreted as a reference, in the alternative, to the bareboat charterer. This would, also, be inconsistent with the clear exclusion of the bareboat charterer from those against whom a claim for compensation for damage could be made under the Convention (Article 7(3)(c)).
 - **Wreck Removal Convention (draft):** under Articles 10 and 11 the obligation to remove the wreck and to bear the cost of locating, marking

and removing it is placed on the registered owner only. Additionally, notices issued by “affected states” are to be served on the registered owner. If those obligations were to be shared with the bareboat charterer, this might possibly give rise to complications and confusion. Confusion could also arise if the obligation to insure (Article 13) applied to both the registered owner and the bareboat charterer.

- **CLC ‘92 Convention (and FUND ‘92):** extending the definition of “Owner” (Article 1(3)) to include a bareboat charterer would give rise to a situation similar to the one described in respect of the HNS Convention. Under both Conventions liability for pollution damage is channelled exclusively, to the Owner who is also required to maintain insurance/security.

4. Under the **International Convention on Civil Liability for Bunker Oil Pollution Damage 2001** Article 1(3) includes a definition of “shipowner” that extends to the bareboat charterer.

In Article 1(4) there is a definition of “registered owner”, but this is not extended to include bareboat charterers. Under Article 3(1) the “shipowner” is made liable for bunker pollution damage. Thus, by reason of the definition in 1(3), the Claimant may sue, inter alia, the bareboat charterer. However, under Article 7 the obligation to maintain insurance or other financial security is placed upon the registered owner, and a certificate is required to be issued to the ship. Since this Convention does not follow the “channelling” principle, it is submitted that the combined effect of the definition at Article 1(3) and the provisions on liability at Article 3 and on the maintenance of insurance/security at Article 7 could allow the interpretation that a bareboat charterer may be liable under the Convention but it is only the registered owner who is obliged to maintain insurance/security.

5. It follows from the three examples, under 3 above, that amending the definition of “registered owner” to embrace bareboat charterers would not be advisable as it might create problems in the Conventions where there is “channelling of liability”. Extending the definition of “registered owner” to include a bareboat charterer could lead to confusion as to who had the obligation to maintain insurance/security.
6. There also appears to be a potential problem where (as in the Bunker Convention) there is no channelling of liability to the registered owner. There is no obvious drafting solution to this. In practice, however, port states will simply need to satisfy themselves that there is in existence on board the ship a document evidencing the existence of insurance/security to meet claims. If such insurance/security exists there will be a direct cause of action against the insurer or provider of security which will render academic the question which of the persons coming within the definition of owner is legally liable for the incident giving rise to the claim.
7. The CMI suggests that no attempt to re-define “registered owner” should be made.