REPORT

Remote Legal Assistance on the effective implementation of IMO conventions relating to oil pollution and liability and compensation

Liberia
2020

Global Initiative for Western, Central and Southern Africa

Consultant:

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* The views expressed in this report are those of the consultant and do not necessarily represent the views of IMO or IPIECA.

NOTE

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Executive summary

The remote review provided an opportunity for the consultant, together with the GI WACAF Project team, IMO officers, the IOPC Funds representatives and the Focal Points for the participating countries i.e. the Gambia, Liberia, Namibia and Nigeria, to remotely review the respective national legislation relating to oil pollution and liability and compensation. The review analyzed the gaps in the existing pieces of legislation and made recommendations towards the transposition of relevant IMO conventions into national legislation and their effective implementation. Oral feedback would subsequently take place with the National Focal Points to iron out areas of complexities and address outstanding issues before a finalization of the Report.

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Overview of the GI WACAF Project

Launched in 2006, the Global Initiative for West, Central and Southern Africa (GI WACAF) Project is a collaboration between the International Maritime Organization (IMO) and IPIECA, the global oil and gas industry association for advancing environmental and social performance, to enhance the capacity of partner countries to prepare for and respond to marine oil spills.

The mission is to strengthen the national system for preparedness and response in case of an oil spill in 22 West, Central and Southern African Countries in accordance with the provisions set out in the International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990 (OPRC 90).

To achieve its mission, the GI WACAF Project organizes and delivers workshops, seminars and exercises, that aim to communicate good practice in all aspect of spill preparedness and response, drawing on expertise and experience from within governments, industry and other organizations working in this specialized field. To prepare and implement these activities, the Project relies on the Project's network of dedicated government and industry focal points. Promoting cooperation amongst all relevant government agencies, oil industry business units and stakeholders both nationally, regionally and internationally is a major objective of the Project during these activities.

GI WACAF operates and delivers activities with contributions from both IMO and seven oil company members of IPIECA, namely BP, Chevron, ExxonMobil, Eni, Shell, Total and Woodside.

More information is available on the Project's website.

1. Introduction

This remote assistance assignment for the enhancement of the capacities of four partner countries, initially consisted of a sub-regional workshop on the ratification and effective implementation of IMO Conventions relating to pollution and liability and compensation which was to be held in Accra, Ghana from 27th to 30th April, 2020. Seven English-speaking countries of the region were invited. The workshop was expected to address various challenges faced with the ratification and effective implementation of key IMO conventions as noted by participants of the 8th GI WACAF Regional Conference held in October, 2019[1].

However, due to the COVID- 19 Pandemic, the workshop was postponed and a remote legal assistance was initiated to achieve some of the activity's objectives remotely with the voluntary countries pending the possible organization of a sub-regional workshop.

As a preparatory step, questionnaires were sent to the National Focal Points of the four countries and the responses provided together with additional information on some of the relevant national legislation formed the basis for an overview of the conventions and gap analysis of the existing policy and legislative framework and the national legislation giving effect to the IMO Conventions. The questionnaires and responses are attached herewith as **Annex I**.

1.1. Objectives

The objectives as stated in the Terms of Reference, is to:

(i) assist policy makers, legislative advisers and/or drafters, responsible for the effective implementation, and transposition of IMO conventions into their domestic legislation.

(ii) provide the policy makers, drafters and legislative advisers with a deeper understanding of the underlying principles and objectives of the conventions.

(iii) guide policy makers, legislative drafters/or advisers on the legislative mechanisms that should be applied when developing and updating national laws.

To provide an insight into the legal implications of the ratification and adoption of the Marine Pollution Instruments, in particular the International Convention on Oil Pollution Preparedness, Response and Cooperation 1990 (OPRC 1990), The International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (Bunkers 2001), The International Convention on Civil Liability for Oil Pollution Damage 1992 (CLC 1992), The International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND 1992), the Protocol of 2003 to the FUND 1992 Convention (Supplementary Fund Protocol), and the Convention on Limitation of Liability for Maritime Claims 1976, as amended by the Protocol of 1996 (LLMC 1996).

The Terms of Reference are attached herewith as **Annex II**.

[1] Full report available through the following link: https://www.giwacaf.net/en/our/activities/8th-gi-wacaf-regional-conference/report

1.2. Expected outcomes

(a) To provide the four (4) beneficiary countries with a written gap analysis based on the review of the relevant national legislation.

(b) To provide the designated National Focal Points of the four (4) countries with tailored and comprehensive written and oral feedback for the domestication of the relevant IMO conventions.

1.3. Facilitators

Legal Affairs and External Relations Division of IMO

Mr. Jan de Boer, Senior Legal Officer

Ms. Aicha Cherif, Legal Officer

Marine Environment Division

Sub-Division for Implementation

Ms. Colleen O'Hagan, OPRC and OPRC-HNS Technical Officer

Mr. Clement Chazot, Technical Officer

GI WACAF Team

Mr. Julien Favier, GI WACAF Project Manager

Ms. Emilie Canova, GI WACAF Project Coordinator,

International Oil Pollution Compensation Funds (IOPC Funds)

Mr. Thomas Liebert, Head, External Relations & Conference

Mr. Mark Homan, Claim Manager,

2. Activities

On the 8th June 2020, Ms. Emilie Canova organized a meeting on Microsoft Teams in which Thomas Liebert, Jan de Boer, Aicha Cherif, Julien Favier, Clement Chazot and Dr. Mbiah participated. The meeting highlighted the objectives of the remote legal assistance on the effective implementation of IMO Conventions relating to oil pollution and liability and compensation. It also spelt out the modalities for the successful accomplishment of the assigned tasks. It noted in particular the gaps in the existing national legislations that seek to implement the relevant IMO Conventions.

The discussions during the Microsoft Team meeting also pointed out the need to provide an overview of the relevant conventions and the pertinent and underlying principles that should reflect in national legislation to make for effective implementation. Based on the said meeting, Emilie Canova got in touch with the National Focal Points of the respective countries and provided further materials in relation to the gap analysis of the various national legislation.

On 11th June, 2020, Jan de Boer, Senior Legal Officer and Aicha Cherif, Legal officer of the Legal Affairs and External Relations Division of the IMO also had a Microsoft Teams meeting with the Consultant.

The meeting focused especially on the Bunkers Convention, the LLMC as amended and the limits of liability under the CLC and Fund Conventions. It noted the challenges that existed with some sections of the national legislations of some of the countries seeking to implement the provisions of the CLC and Fund Convention.

3. General observations

As indicated earlier, as part of the process of gathering information with respect to the current state of affairs of the respective countries, in relation to the relevant IMO conventions, questionnaires were sent to the respective countries. The Gambia responded with respect to The Gambia's acceptance of the relevant instruments, steps taken towards providing national legislation and the level of implementation.

Part 1 - Overview of the international instruments

1. International convention on oil pollution preparedness, response and cooperation 1990 (OPRC 1990)

Recognizing the serious threat posed to the marine environment by oil pollution incidents involving ships, offshore units, and oil handling facilities, IMO, in collaboration with other like-minded international organizations, worked to put together a convention on oil pollution preparedness, response and cooperation: the OPRC 1990.

1.1 Oil Pollution Emergency Plans

The Convention requires operators of offshore units, port authorities, terminals and oil handling facilities in contracting States to have an oil pollution emergency plan. It requires that when such plans are put in place, they should be harmonized with the national environmental pollution plans. In the same vein, ships are required to have on board an oil pollution emergency plan in line with the appropriate provisions of MARPOL.

1.2 Reporting Requirements

The Convention also requires ship masters and others in charge of ships, offshore units, sea ports and oil handling facilities, maritime inspection vessels or aircraft, and pilots of civil aircrafts to report any discharge or probable discharge of oil or the presence of oil.

Another very important provision is Article 5 which requires that as soon as the relevant authorities receive a report of pollution, an immediate assessment of its extent ought to be conducted. Once information is gathered based on the assessment, and if any action has been taken, same shall be communicated to other States with affected interests or States whose interests are likely to be affected by the pollution. It is also a requirement that this information be transmitted to the IMO or through the relevant regional organization, especially where the pollution damage is severe.

1.3 Designation of Competent Authorities

As a minimum requirement, the OPRC convention also requires under Article 6 that State Parties designate competent authorities for oil spill preparedness and response, receipt and transmission of oil spill reports, as well as those responsible for decision making. This is expected to be incorporated into an oil spill contingency plan. Article 6 is also important in view of the obligation it imposes on contracting States to have at all times a minimum level of oil spill combating equipment, as well as a training and drills programme with a communication plan for coordination and response.

1.4 International Cooperation

One of the cardinal features of the OPRC Convention is the opportunity it provides for countries through the application of their national legislation to cooperate with other member States with respect to technical support services, equipment in dealing with marine pollution incidents should they arise. Coupled with the above provision is also the encouragement given to States to exchange information on research and development and to encourage dialogue for the development of standards in combating pollution. The above provisions are also buttressed by provisions in the convention which call for provision of support, transfer of technology and the development of joint research and development programmes, all geared towards effectively dealing with marine pollution. The Convention also in the spirit of cooperation, encourages bilateral and multilateral arrangements between States for effective preparedness and response in dealing with marine pollution.

National legislation could also be guided by provisions in the Convention that designate the IMO to perform functions and activities related to information services, education and training, technical services and technical assistance.

It is also important to mention that annexed to the Convention is a guidance on the reimbursement of the costs of assistance in accordance with the provisions of the International Oil Pollution Compensation Funds. The critical elements to note for the purpose of the transposition of the OPRC 1990 into national legislation is attached herewith as Annex V.

2. The international convention on civil liability for oil pollution damage 1992 (CLC 1992) and the international convention on the establishment of an international fund for compensation for oil pollution damage 1992 (Fund 1992)

2.1. International regime for ship source pollution

The international legal regime for the regulation of liability and compensation with respect to ship source pollution is governed essentially by three regimes, taking into account that the 2007 Nairobi Wreck Removal Convention may also apply, namely:

(i) **Tanker oil spills** – CLC 1992, Fund 1992 and the Supplementary Fund Protocol 2003.

(ii) **Bunker Oil Spills** – Bunkers 2001

(iii) **Damage caused by Hazardous and Noxious Substances** – International Convention on Liability and Compensation for Damage in Connection With the Carriage of Hazardous and Noxious Substances by Sea 2010 (HNS Convention).

For a country to cover issues of liability and compensation for pollution damage it needs to ratify or accede to all of these conventions. There are many IMO Member States who are parties to the CLC 1992 and the Fund 1992.

2.2. Salient features of the CLC 1992

The impetus for the development of the civil liability convention of 1969 was driven by the *Torey Canyon* disaster of 1967. The current international compensation regime for oil pollution damage is based on the CLC 1992, the 1992 Fund Convention and the Supplementary Fund Protocol of 2003.

The current international regime in its scope of application, **applies to pollution damage caused by spills of persistent oil from tankers in the territory (including the territorial sea) or the Exclusive Economic Zone (EEZ)** or equivalent area of a State party to the respective treaty instrument.

Under the CLC 1992, all liability is channeled to the registered shipowner with strict liability for pollution damage caused by the escape or discharge of persistent oil from the ship of the owner. By implication, the owner is therefore liable without proof of fault. i.e. the liability of the shipowner is not fault based.

The owner would however be exempt from liability under certain specific circumstances. The owner would have to prove that:

(i) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character or

(ii) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party, or

(iii) the damage was wholly caused by the negligence or the wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids, in the exercise of that function.

The Convention defines pollution damage as “loss or damage caused by contamination”. In the case of environmental damage (other than loss of profit from impairment of the environment) compensation is restricted to costs actually incurred or to be incurred for reasonable measures to reinstate the contaminated environment.

Generally speaking, an oil pollution incident can give rise to claims for five types of pollution damage:

(i) Property damage

(ii) Cost of clean-up operations at sea and on shore

(iii) Economic losses by fishers or those engaged in mariculture

(iv) Economic losses in the tourism sector

(v) Costs of reinstatement of the environment.

It is important to stress especially for the sake of national legislation, that under the convention, pollution damage includes measures, wherever taken to prevent or minimize pollution damage on the territory, territorial sea, or EEZ or as mentioned earlier, when dealing with the issue of scope of application, the equivalent area of a State party to the convention.

In addition, and especially, as some of these matters are subject to practical application, it is important to state that where preventive measures are undertaken which are deemed to be reasonable, the expenses are recoverable even where there is no spill of oil provided it can be established that there was a grave and imminent threat of pollution damage.

2.2.1 Limitation of Liability

The shipowner is normally entitled to limitation of liability in an amount determined by the tonnage of the ship for any one incident. It is also important to note that the unit of account for the limitation of liability is the Special Drawing Rights (SDR) of the International Monetary Fund. Adequate provision is made in the Merchant Shipping Marine Environment Regulations 2012 reflecting the application of the Special Drawing Rights.

Limitation Amounts

The shipowner is normally entitled to limit his liability to an amount determined by the size of the ship, as set out in the following table.

SHIPS TONNAGE	**CLC LIMIT**
Ship not exceeding 5000 units of gross tonnage	4510 000 SDR
Ship between 5000 and 140000 units of gross tonnage	4510 000 SDR plus 631 SDR for each additional unit of tonnage
Ship 140000 units of gross tonnage or over	89 770 000 SDR

2.2.2 Compulsory Insurance

For ships carrying more than 2,000 tonnes of oil as cargo in bulk, the shipowner is obliged to maintain insurance to cover the shipowner's liability under the convention. One very important aspect of the CLC 1992 is the right of the claimant to direct action against the insurer. The Convention deals with laden oil tankers, and to bunker spills from unladen oil tankers having residues of persistent oil from a previous voyage on board following the carriage of oil in bulk as cargo. Tankers are required to carry on board a certificate of proof of insurance coverage and requisite provisions ought to be included in national legislation not only for ships flying the flag of State parties to the Convention but also to non-parties to the CLC 1992 Convention.

2.2.3 Channelling of Liability

As mentioned earlier, due to the channeling of liability to the registered owner, the 1992 CLC prohibits claims against the servants or agents of the owner, the members of the crew, the pilot, the charterer (including a bareboat charterer), manager or operator of the ship, or any person carrying out salvage operations or taking preventive measures, unless the pollution damage resulted from the personal act or omission of the person concerned, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

For ships not registered in a State party, the Competent Authority of any State Party may issue the insurance certificate or inspect the certificate in standard form (known as the Blue Card) issued by the insurer as evidence of cover.

2.2.4 Scope of Application

It is also important to state that the CLC 1992 applies to any sea-going vessel and any seaborne craft of any type whatsoever constructed or adopted for the carriage of oil in bulk as cargo. The convention in principle applies to barges if they are sea-going and this must be noted for the purposes of national legislation. It is also important to note that the Convention defines oil as "any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil whether carried on board a ship as cargo or in the bunkers of such a ship". In effect the convention does not cover gasoline, light diesel oil, kerosene, palm oil, whale oil, olive oil, biofuels.

2.2.5 Jurisdiction

Courts of the State Party to that Convention in whose territory, territorial sea or EEZ or equivalent area the damage occurred can assume jurisdiction in actions against the owner for compensation for oil pollution damage. National legislation should thus make provision to ensure that State Courts are clothed with the requisite jurisdiction to handle such matters.

2.3. Salient features of the 1992 Fund Convention

The 1992 Fund Convention is supplementary to the 1992 CLC and establishes a regime for compensating victims when compensation under the 1992 CLC is unavailable or inadequate. The Fund pays compensation in situations where:

(i) the damage (claims) exceeds the limit of the ship owner's liability under the 1992 CLC; or

(ii) the owner is exempt from liability under the CLC; or

(iii) the owner is financially incapable of meeting the claims obligations under the CLC and there is insufficient insurance cover for all the claims.

States are required to be parties to the 1992 CLC in order to become parties to the 1992 Fund Convention.

2.3.1 Contribution oil (cargo)

The 1992 Fund is financed by contributions levied on any person who has received in one calendar year more than 150,000 tons of crude oil and or heavy fuel oil (contribution oil) in a Member State of the Fund. Again, requisite provisions ought to be made in national legislation to take account of this. It is also important to note that the 1992 Fund would not pay compensation where:

(a) the damage occurred in a State which was not a member of the 1992 Fund; or

(b) the pollution damage resulted from an act of war or was caused by a spill from a warship; or

(c) the claimant cannot prove that the damage resulted from an incident involving one or more ships as defined (i.e. a sea-going vessel or seaborne craft of any type howsoever constructed or adopted for the carriage of oil in bulk as cargo).

2.3.2 Limits of Compensation

The maximum compensation payable by the 1992 Fund is 203 million SDR for incidents occurring on or after 1st November 2003, irrespective of the size of the ship. For incidents which occurred before the 1st November 2003, the maximum amount payable is 135 million SDR. These maximum amounts include the sums actually paid by the shipowner by virtue of the provisions of the 1992 CLC.

2.3.3 Jurisdiction

Courts of the State Party to that Convention in whose territory, territorial sea or EEZ or equivalent area the damage occurred can assume jurisdiction in actions for compensation under the 1992 Fund.

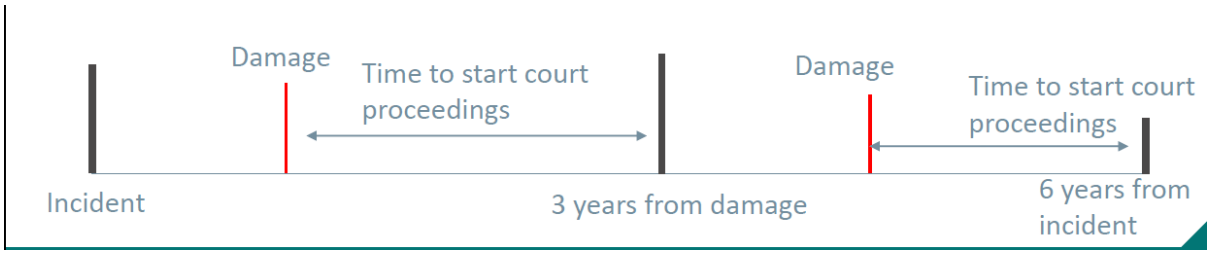
2.3.4 The Supplementary Fund Protocol

The supplementary Fund Protocol was adopted in 2003 and entered into force in 2005 and thus brought into being the Oil Pollution Compensation Supplementary Fund, 2003 (Supplementary Fund).

The Supplementary Fund is purposed to provide additional compensation beyond the amount available under the 1992 Fund Convention in 1992 Fund Member States which are also parties to the Protocol. The total amount available for each incident is 750 million SDR including the amounts payable under the 1992 Conventions (i.e. the CLC and Fund Conventions). Membership of the Supplementary Fund is optional and any State which is a member of the 1992 Fund may join the Supplementary Fund. The Gambia is not a party to the Supplementary Fund.

2.3.5 Time bar

Rights to compensation under the 1992 CLC, the 1992 Fund Convention and the Supplementary Fund Protocol shall be extinguished unless action is brought within 3 years from the date when the damage occurred. However, in no case shall an action be brought after 6 years from the date of the incident which caused the damage. This is to take account of latent pollution damage. It should be noted that notification to the Fund of an action against the shipowner does not interrupt the six years period.



For the proper and equitable functioning of the liability and compensation regimes for oil pollution damage, it is crucial that the conventions are applied and implemented uniformly in all States so that claimants would be given equal treatment with regards to compensation enjoyed by all State parties. This is why it is important that national legislation reflects accurately the tenets of the instruments.

In this regard, it is also essential that State parties set a comparable time of three years from the date of damage being incurred, for filing claims at any limitation court established, in order to ensure that claimants are given full opportunity to file claims and receive any compensation they may be due.

3. The international convention on civil liability for bunker oil pollution damage 2001 (the Bunkers convention)

3.1 Salient Features of the Bunkers Convention

After the adoption of the Civil Liability and Fund Conventions, it became clear that there was still an "orphan" in the liability and compensation regime that had not been attended to. The CLC regime dealt with oil tankers and not other ships whose bunkers had the capacity to pollute. The Bunkers Convention, even though modeled on the Civil Liability Convention for oil pollution damage is a free-standing instrument covering pollution damage from ships' bunker oil only.

The Convention was adopted to ensure that adequate, prompt and effective compensation is available to persons who suffer damage caused by spills of oil when carried as fuel in ships' bunkers. The Convention applies to damage caused on the territory, including the territorial sea, and in the Exclusive Economic Zones of States Parties to the Convention.

The main features of the Bunkers Convention include the strict liability of the shipowner including the registered owner, the bareboat charterer, manager and operator of the ship. Under the Convention, the shipowner is entitled to limitation of liability but must obtain compulsory insurance and the Convention also provides for direct action against the insurer.

Even though the Bunkers Convention is modelled along the lines of the CLC 1992, there are marked differences between the two regimes which ought to be taken note of, especially in the elaboration of national legislation. The definition of oil (bunker oil) is different from the definition of oil under the CLC. Under the Bunkers Convention, the bunker oil of a ship includes "any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of the ship, and any residues of such oil".

For national legislation therefore, it must be noted that an acceptance of the CLC regime cannot be a substitute for the adoption of the provisions of the Bunkers Convention and separate legislation ought to be enacted to give vent to the Bunkers Convention.

The definition of bunker oil under the Bunkers Convention, even though broad, still requires proof of intention of use for a distinction to be made between fuel and cargo oil.

Apart from the definition of bunker oil, other definitions are of significant importance and they must be made to reflect appropriately in national legislation.

The shipowner is defined to include the registered owner, bareboat charterer, manager and operator of the ship. It is therefore important to bear in mind that there is no civil liability responder immunity; so while the registered owner, bareboat charterer, manager, operator of the ship may be covered by the immunity of the shipowner, others that are associated with the operations of the ship such as the crew and salvors may be left exposed to claims especially where the national law imposes strict liability in all circumstances. The same may apply to State Authorities where they respond to an oil spill.

It is however important to note that the Conference which adopted the Bunkers Convention also adopted Resolution 3 on Protection for persons taking measures to prevent or minimize the effects of oil pollution, attached to the Final Act of the Bunkers Convention. By virtue of the Resolution, State Parties are permitted to legislate at the national level for such immunity to persons taking measures to prevent or minimize the effects of bunker oil pollution damage. The legislative drafter should thus take cognizance of this and include appropriate provisions of immunity to encourage measures to prevent or minimize bunker pollution damage. Pollution from warships or ships on Government non-commercial service unless a State Party decides otherwise, are excluded from the application of the Convention. It needs to be noted that where State owned ships are used for commercial purposes they then come under the purview of the Convention and the jurisdiction provisions become applicable.

3.1.1 Limitation of Liability

The Convention permits the shipowner or any other person providing insurance or other financial security the right to limitation of liability. It is however worthy of note that unlike the 1992 CLC, the Convention permits such limitation under any applicable national or international regime such as the Convention on Limitation of Liability for Maritime Claims 1976, as amended. In this regard, and for the purposes of national legislation, it is important to note that attached to the Final Act of the Conference that adopted the Bunkers Convention is Resolution 1 on Limitation of Liability which urges all States to ratify or accede to the 1996 Protocol to the LLMC 76. The purpose is to create flexibility for the increase of the Fund available for all claims, including bunker pollution claims.

3.1.2 Compulsory Insurance

The threshold for maintenance of insurance by the registered owner is ships with a gross tonnage of 1,000 and above. The insurance is expected to cover the liability in an amount equal to the limits of liability under the applicable national or international regime but not exceeding an amount calculated in accordance with the Convention on limitation of liability for Maritime Claims 1976 as amended. It is thus clear that the Bunkers Convention sets no limits of its own and national legislation may thus set the limits in accordance with the LLMC 76, as amended.

Article 7(1) of the Bunkers Convention dealing with compulsory insurance or financial security states the following:

> 'The registered owner of a ship having a gross tonnage greater than 1000 registered in a State Party shall be required to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover the liability of the registered owner for pollution damage in an amount equal to the limits of liability under the applicable national or international limitation regime, but in all cases, not exceeding an amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.'

In effect, in drafting national legislation on the Bunkers Convention, it would be important to align the Bunker Pollution Damage Limitation Amount (which in this case does not include claims in respect of death or personal injury except if these are caused by contamination) to the amounts provided under the LLMC 76, as amended. Indeed, this is important in view of the fact that if higher limits should be provided under national law there would be no insurance cover for any higher limits which go beyond the LLMC 76, as amended.

In drafting national legislation, provisions with respect to liability and compensation on oil spills cannot be made generic to cover both the 1992 CLC and the Bunkers Convention. The CLC 1992 sets the compulsory insurance requirement to a ship carrying a minimum of 2,000 tonnes of oil as cargo while the bunkers convention sets the compulsory insurance limits of ships of 1,000 gross tonnes and above regardless of the type of ship.

The national legislation may also make provisions to exclude vessels on domestic voyages from the compulsory insurance requirement provided for in Article 7 (15). As pointed out earlier, personal injury and death is not covered under the Convention if not caused by contamination.

3.1.3 Jurisdiction

It is also worth noting that national courts which assume jurisdiction under the Convention may be called upon in special circumstances to interpret an incident that creates a "grave and imminent threat of causing such damage". Requisite provisions would thus have to be incorporated in national legislation on Bunker Pollution damage to take account of compensation for pro-active mobilization of equipment and support services.

3.1.4 Time Limits

The time limits of three and six years are as under the 1992 CLC and 1992 Fund Convention and same may be incorporated into national legislation. In drafting national legislation on Bunkers, where the country is already party to the 1992 CLC and the 1992 Fund Convention, it should be noted that under Article 4 (1) relating to exclusions, the Bunkers Convention does not apply to pollution damage as defined in the CLC 1992, whether or not compensation is payable under that Convention. The Bunkers Convention is a stand-alone instrument and not an alternative or additional scheme to the 1992 CLC or the 1992 Fund Convention.

The Bunkers Convention is established to fill a gap in the liability and compensation regimes of oil pollution damage. In effect therefore, where pollution damage is caused by tankers, one can only look to the 1992 CLC and the 1992 Fund Convention or the 2003 Supplementary Fund as the case may be, for compensation.

A presentation by Jan de Boer which covers all the essential elements of the Bunkers Convention and which will be useful for the national Focal Points is attached herewith as **Annex III**. See also the Guidance on the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (Bunkers Convention) as **Annex IV**.

4. Convention on limitation of liability for maritime claims 1976 as amended by the 1996 protocol

4.1 Salient Features of the Convention

"I agree that there is not much justice in this rule, but limitation of liability is not a matter of justice. It is a rule of public policy which has its origins in history and its justification in convenience"

Per Lord Denning in his so-called final word in the case of the *Bramley Moore.*

Limitation of liability is thus a legal concept with historical origins, which places a limit on the financial exposure of the shipowner regardless of the actual claim for which he is to be liable. In its origins, it was based upon the concept of abandonment and indeed that was the basis for the development of the International Convention for the Unification of Certain Rules Relating to the Limitation of Liability of Owners of Sea going vessels 1924 bringing into being the concept of global limitation after the Titanic incident in 1912. Thus, the limitation amount was tied to the value of the ship after the casualty.

4.1.1 Limitation According to Tonnage of Ship

The International Convention relating to the Limitation of Liability of Owners of Seagoing Ships 1957 introduced the concept of limitation according to the tonnage of the ship and which has since been followed by the Convention on Limitation of Liability for Maritime Claims 1976 and its subsequent amendments.

The 1976 Convention, sets the maximum financial liability for ship owners and salvors in respect of all claims arising out of a maritime incident which involves property damage and injury and loss of life.

Persons entitled to limit liability is interpreted in Article 1 to include owner, charterer, manager and operator of a sea-going ship. It also includes salvors, any person for whose act or neglect or default the shipowner or salvor is responsible and insurers of liability to the same extent as the assured. National legislation would be required to set this out clearly.

4.1.2 Increased Limits

The 1976 Convention increased substantially the limits of liability set by the 1957 Convention and as a *quid pro quo* for the increase, it provided for a practically unbreakable system of limiting liability. Limitation of liability could only be broken by proving that that loss was occasioned by the personal act or omission of the shipowner, committed with the intent to cause such a loss, or recklessly and with knowledge that such loss would probable result.

In setting the maximum limits, the Convention distinguished between claims for personal injury and death, and other claims.

Even though the limits were fixed in SDR and were considered at the time to be very high, over time, they were eroded by inflation and needed revision.

4.2 Protocol of 1996

New limits were therefore adopted in 1996 through the Protocol to the 1976 Convention. Under the 1996 Protocol, the limit of liability for personal injury claims of ships up to 2,000 gross tonnes was set at 2 million SDR. Since the liability was tied to the ship's tonnage, maximum limits were set for larger ships:

- at 800 SDR for each tonne from 2,001 to 30,000 tonnes; and
- at 600 SDR for each tonne 30,001 to 70,000 tonnes.

For other claims, the limits for ships not exceeding 2000 gross tonnes was set at 1 million SDR.

For larger ships the following maximum amounts were set:

- At 400 SDR for each tonne from 2,001 to 30,000 tonnes;
- At 300 SDR for each tonne from 30,001 to 70,000 tonnes; and
- At 200 SDR for each tonne in excess of 70,000 tonnes.

It is important to note that Article 8 of the convention provided a vent for future increases in limits through the tacit amendment procedure with a provision for the effective date of the coming into force of such amendments after 36 months.

4.3 New Limits

Time again eroded the limits and thus in 2012 the tacit amendment procedure was invoked for new limits which took effect on 8th June 2015. The adjustment of the increase was up to 51 percent of the existing limits.

The new limits were set as follows:

- At 1,208 SDR for each tonne from 2,001 to 30,000;
- At 906 SDR for each tonne from 30,001 to 70,000 tonnes; and
- At 604 SDR for each tonne in excess of 70,000 tonnes.

It has to be noted that the limit for loss of life or personal injury on ships not exceeding 2000 gross tonnes is 3.02 million SDR.

The limits were also adjusted for other claims as follows:

- 1.51 million SDR for ships not exceeding 2000 gross tonnes
- For larger ships:
    - At 604 SDR for each tonne from 2,001 to 30,000 tonnes;
    - At 453 SDR for each tonne from 30,001 to 70,000 tonnes; and
    - At 302 SDR for each tonne in excess of 70,000 tonnes.

4.4 Claims Subject to Limitation

The claims that could be subject to limitation are clearly spelt out in the convention as follows:

(i) Claims in respect of loss of life or personal injury or loss of or damage to property.

(ii) Claims resulting from delay. Article 2 (1) (b) right to limit with respect to delay in carriage of goods by sea, passengers or luggage.

(iii) Claims for infringement of rights other than contractual rights occurring in direct connection with the operation of the ship or salvage operations. Article 2(1) (c) e.g. blocking the approach channels to the port, pure economic loss.

(iv) Claims for wreck & cargo removal and for removal of dangerous cargo for destruction.

(v) Claims in respect of measures taken in order to avert or minimize loss.

4.5 Claims Excepted from Limitation

The Convention also provides for claims which are exempted from limitation and these include:

(a) Salvage and General Average. This applies to direct claims by salvors
(b) Claims for oil Pollution Damage within the meaning of CLC
(c) Nuclear damage claims
(d) Claims by Servants of the shipowner or salvor
(e) Claims excluded by reservations (Article 18)

4.6 Conduct Barring Limitation

The Convention also provides for conduct that bars the invocation of limitation.

A person liable shall not be entitled to limitation of liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss or recklessly and with knowledge that such loss would probably result.

4.7 Limitation Fund

LLMC 1976 as amended provides that limitation of liability may be invoked even without the constitution of a Fund. But countries can provide in national legislation that limitation of liability actions brought in their courts to enforce a claim which is subject to limitation, shall be subject to the establishment of a limitation fund.

The specific rules of procedure are to be governed by the law of the State party in which the fund is constituted.

4.8 Bar to Other Actions

Once a fund is constituted, in accordance with the Convention, any claimant against the fund cannot exercise any right in respect of such claim against any other assets of a person by or on whose behalf the fund was constituted. Also, once a fund is constituted, an arrested ship may be released and this should be provided for appropriately in national legislation for practical purposes.

4.9 Note on LLMC

The IMO Legal Committee is annually provided with the status of conventions and other treaty instruments emanating from its work. The advice regarding the **Convention on Limitation of Liability for Maritime Claims, 1976** and the **Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims,** 1976 is the following:

Governments which intend to be Party to the LLMC as amended by the Protocol of 1996 are strongly encouraged to ratify the Protocol only, rather than the parent Convention and the Protocol, as the Protocol provides for significantly higher limitation amounts regarding maritime claims for loss of life or

personal injury and for other claims than those in the Convention. Also, as between the Parties to the Protocol, article 9(1) of Protocol of 1996 provides that the Convention and the Protocol shall be read and interpreted as one single instrument. In addition, article 9(2) of Protocol of 1996 provides that "a State which is Party to this Protocol but not a Party to the Convention shall be bound by the provisions of the Convention as amended by this Protocol in relation to other States Parties hereto, but shall not be bound by the provisions of the Convention in relation to States Parties only to the Convention." Therefore, there is no risk that although being Party to the Protocol of 1996, the lower limitation amounts of the original Convention of 1976 are still applied in treaty relations to Parties to the Convention.

Furthermore, in addition to increasing the limitation amounts regarding compensation payable in the event of an incident, the Protocol also introduces a "tacit acceptance" procedure for updating these amounts such that, when necessary, amounts can be raised with a given date for entry into force after consideration and adoption by the Legal Committee, provided no objections are received from a specified number of Contracting States.

Part 2 – Assessment of Liberia

1. List of pieces of legislation examined

- Environmental Protection and Management Law 2002
- Liberia Maritime Authority Act 2010
- Marine Notice – INT.001 Rev. 04/18
- An Act to Amend and Restate the New Petroleum Law of Liberia 2002 thereby establishing the New Petroleum (Exploration and Production) Reform law of Liberia 2014.

2. Gap analysis table

INTERNATIONAL INSTRUMENT	NATIONAL LEGISLATION	WEAKNESS	RECOMMENDATION
CLC 1992 FUND 1992 OPRC 1990 BUNKERS CONVENTION 2001 LLMC	NIL NIL NIL NIL NIL	The use of Marine Notices as a way of implementing the Conventions does not lead to effective implementation and enforcement.	Steps should be taken by Liberia to ensure that the relevant IMO Conventions are transposed into national law for effective implementation and enforcement.

3. Detailed analysis

3.1. Maritime policy and implementation of IMO conventions on marine pollution

It is important to note that a very basic and important question was posed in the questionnaire to each country. An important starting point for honouring a country's international maritime obligations with respect to international legal instruments is its National Maritime Transport Policy. It is the starting point not only for the formulation of the policy but also for the appropriate legislative framework that gives backing to the policy and ensures its effective implementation and enforcement.

Before an examination of the various national legislation that seek to implement the relevant conventions, it would be appropriate and in line with the Terms of Reference, to examine the general maritime policy framework of Liberia with respect to the implementation of IMO Conventions.

The response provided by Liberia does not indicate a clear appreciation of the question and hence does not address the question of the existence of a National Maritime Transport Policy even though it makes mention of a National Maritime Strategy.

Liberia is in the process of drafting a National Maritime Transport Policy. There was no opportunity to review the draft document. It is imperative that being the starting point, IMO should review the situation and encourage Liberia to formulate a National Maritime Transport Policy which would underpin the overall development of the maritime sector and guide the adoption, extrapolation, implementation and enforcement of national legislation giving effect to IMO conventions.

On the issue of enforcement of IMO conventions and the legal basis for the enforcement of such legislation relating to the marine environment, Liberia cites the Liberia Maritime Authority Act 2010, Environmental Protection and Management Law 2002, and Marine Notices.

The Liberia Maritime Authority Act 2010 establishes the Liberia Maritime Authority as a body corporate and makes provision for its functions and powers.

Principally, it is sets out to discharge Liberia's obligations and responsibilities with respect to the United Nations Convention on the law of the Sea (UNCLOS) and other maritime related international instruments. It also empowers the Authority to regulate, control and administer all regulatory matters related to standards of merchant shipping. Furthermore, it is expected to develop, coordinate and implement the National Maritime Strategy.

It is clear that the Liberia Maritime Authority Act provides powers and functions of a general nature to enable the Liberia Maritime Authority fulfil its international maritime obligations. While it provides the legal framework for the enforcement of the civil law related to marine pollution and other claims, the existing legal regime (national legislation) is not comprehensive enough to deal with the pertinent issues with respect to marine pollution including issues of liability and compensation as well as preparedness and response.

There would be the need to review the laws in relation to liability and compensation for oil pollution damage and bring them in conformity with recent developments and changes to the respective international instruments.

3.2. Ratification of the conventions and national legislations

In making these comments, I am not oblivious of the fact that the interpretation of international instruments, once they have been extrapolated into national law, is the preserve of adjudicating bodies of individual States. I only need to add that under the Vienna Convention on the Law of Treaties (Article 27), no municipal law may be relied upon as a justification for violating international law. Thus, even though a State is entitled to the interpretation of its national laws, they must not for the purpose of uniformity depart from the underlying tenets of international instruments.

Apart from the Supplementary Fund 2003, whose ratification and implementation is optional, Liberia has ratified the CLC 1992, the Fund 1992, the Bunkers 2001 and the LLMC 1976 as amended by the 1996 Protocol. Liberia is also party to the OPRC. Liberia has enacted an Environmental Protection and Management Law 2002. The Environmental Protection Management Law does not contain the transposition of any of the conventions under consideration. Furthermore, the Act to Amend and Restate the New Petroleum Law of Liberia 2002 thereby establishing the New Petroleum (Exploration and Production) Reform Law of Liberia 2014, deals mainly with exploration and exploitation of the hydrocarbon resources of Liberia. Even though it has some provisions relating to the protection of the marine environment, they are limited in scope and do not address the issues of response, liability and compensation under consideration. There is thus no national law with respect to the IMO instruments for the purposes of a gap analysis (see Table below).

LIBERIA

CONVENTION	**STATUS**	**NATIONAL LEGISLATION**
MARPOL 73/78	RATIFIED	National legislation giving effect to MARPOL and its annexes is in place.
CLC 1992 FUND 1992	RATIFIED RATIFIED	No national legislation No national legislation
SUPPLEMENTARY FUND 2003	NOT RATIFIED	No national legislation
OPRC 1990	RATIFIED	No national legislation
BUNKERS 2001	RATIFIED	No National legislation

3.3. National law and gap analysis

Liberia has passed the Environmental Protection and Management Law 2002. The legislation is currently in force. The Law is general in character and deals with Environmental Impact Assessment, Environment Quality Standards, as well as Pollution Control and Licensing amongst others. Even though it deals with pollution, the provisions do not seek to transpose or enforce any of the IMO international instruments under consideration.

Liberia uses the medium of Marine Notices issued by the Liberia Maritime Authority as a means of information to Owners, Operators and Agents in ensuring adherence to international instruments. Marine Notice titled; INT. 001 Rev. 04/18 is an example of such a Notice and is titled:

> "TO ALL SHIPOWNERS, OPERATORS, MASTERS AND OFFICERS OF MERCHANT SHIPS, AGENTS AND RECOGNIZED ORGANIZATIONS
>
> SUBJECT: International Maritime Conventions, Protocols and Amendments to Which Liberia is a Party
>
> Reference: (RLM – 108) 2.35 (3)
>
> PURPOSE:
>
> In accordance with the publication requirements of Liberian Maritime Regulation 2.35 (3), this Marine Notice provides a list of the International Maritime Conventions, Protocols and other international instruments to which the Republic of Liberia is a Party.
>
> APPLICABILITY:
>
> It is the responsibility of Owners and Masters to ensure that their vessels are in compliance with the applicable requirements of these International Conventions and Agreements"

After this introduction, a number of international instruments including IMO Conventions and those under consideration are listed for the purpose of adherence.

This practice has operated for many years and thus, even though Liberia has ratified or acceded to a number of IMO instruments, no national legislation has been developed to give effect to these conventions and ensure their effective implementation and enforcement. The document titled: "TC Activities legal matters (reviewing national legislation or drafting exercises) is here instructive as it indicates Liberia's requests for support in drafting its national legislations. The document is attached herewith as **Annex VI.**

Liberia is a dualist country. Thus the approach utilised in the implementation of IMO instruments has several shortcomings as it does not extrapolate the conventions into national law and does not provide for enforcement mechanisms such as offences and penalties. This is especially so as the IMO instruments are technical in nature and are not self- executing.

It is imperative that Liberia brings its national legislation implementing IMO instruments to date and puts itself in readiness for the IMO Mandatory Audit Scheme (IMSAS).

Conclusions

Liberia is a major flag State and consequently must be seen to exhibit adherence to the international conventions to which it is a party. The current approach by which Marine Notices are issued to Owners, Agents, Recognized bodies etc., does not bode well for the effective implementation of IMO instruments. As indicated earlier, the IMO instruments are technical in nature. They are not self-executing and would require the transposition of the international instruments into national legislation for their effective implementation and enforcement.

It is however pertinent to note that Liberia has ratified all the international instruments under consideration with the exception of the Supplementary Fund Protocol2003. There is no national legislation giving effect to these, thus creating a lacunae in its legal regime dealing with marine pollution response and issues of liability and compensation with respect to oil pollution damage. See also additional Quick GAP analysis table in respect of the Conventions under consideration attached herewith as **Annex VII.**

Liberia has made requests to the IMO for assistance in the drafting of its national legislations that seek to implement various IMO conventions to which it is a party and due consideration need to be given to this request. There would also be the need to build the capacity of staff of the Liberian Maritime Authority to ensure an effective implementation and enforcement of the national legislation once they are put in place.

Main recommendations

Liberia should consider to:

1. review the existing legislation and ensure the legislative drafters/lawyers from the Administration of the Attorney General's Office have a clear understanding of the conventions considered in this report and work together with technical officers of the different administrations concerned for the effective implementation of these conventions in the national legislation;

2. adopt appropriate implementation legislation regarding the OPRC 1990, as well as appropriate legislation regarding CLC 1992, Fund 1992, Bunkers Convention, and LLMC Protocol of 1996 to ensure the payment of adequate, prompt and effective compensation for damage caused by pollution resulting from the escape or discharge of persistent oils carried as cargo or bunker oil from ships in the territory, including the territorial sea, and EEZ, or equivalent 200 nm zone;

3. consider its position regarding States that are party to the 1976 LLMC only to avoid the risk that although being Party to the LLMC Protocol of 1996, the lower limitation amounts of the original Convention of 1976 are still applied in treaty relations to Parties to the Convention.

Part 3 – Feedback meeting and action plan

Meeting summary

The remote review provided an opportunity for the consultant, together with the GI WACAF Project team, IMO officers, the IOPC Funds representatives and the Focal Points for Nigeria, to remotely review the respective national legislation relating to oil pollution and liability and compensation. The review analyzed the gaps in the existing pieces of legislation and made recommendations towards the transposition of relevant IMO conventions into national legislation and their effective implementation. A **virtual meeting** subsequently took place **on 24th September 2020** with Liberian authorities to provide oral feedback, iron out areas of complexities and address outstanding issues before a finalization of the Report.

Participants to the meeting:

Liberia representatives	Review team
Charles A. Gono, Deputy Commissioner, Liberian Maritime Authority Daniel Tarr. Director Marine Environmental Protection, Liberia Maritime Authority Anthony T. Twe, Ship registry	Dr Emanuel Kofi Mbiah – GI WACAF consultant Aicha Cherif – IMO Legal Officer Thomas Liebert - IOPC Head, External Relations & Conference Julien Favier - GI WACAF Project Manager Emilie Canova - GI WACAF Project Coordinator

The objectives of the meeting were to:

- Discuss the key findings of the study (gap analysis and recommendation) with the consultant and representatives of IMO and the IOPC Funds; and
- Draft a national action plan with concrete objectives and outcomes to implement the agreed recommendations.

Key takeaways of the meeting

Dr Kofi Mbiah first presented the key findings of the report, recommending that Liberia, as a flag, port and coastal State, should have in place:

1. A comprehensive national Maritime Transport Policy;
2. The implementing legislations of the conventions listed in the report.

Concerning transposition issues and implementing legislation in general, he highlighted the importance for a dualist state, like Liberia, to have first a **parent Act / a law** incorporating the key

elements of the Convention and then more specific implementation provisions by means of **regulations** that can be easily amended following the amendments to the Conventions.

Aicha Cherif emphasised that point, explaining that IMO conventions once ratified are not self-executing and that it is upon the State to domesticate them, in accordance with their own legislative process and drafting techniques. In particular, the national legislation (act or regulations) should address the following points (among others): the authority habilitated to issue certificates, the sanctions to be taken in case of violation of the conventions, the limits of liability. The sanctions are often put in the primary legislation. Technical details could be in the secondary legislation. Not implementing higher limits of liability in the legislation could have consequences for the coastal State. Therefore, it is imperative that the legal drafters work hand in hand with technical officers from various administrations, who have the technical knowledge of the conventions.

Following this, a few comments were made by Liberian representatives, including the following:

1. **Obstacles identified**

The Liberian representatives highlighted some obstacles to the effective implementation of IMO conventions in national legislation:

- The lack of training among maritime lawyers and technical personnel regarding drafting of national maritime legislation;
- The insufficiency of legal and technical capabilities regarding transposition-related matters.

Therefore, the need to train legal drafters was emphasized.

2. **National Maritime Transport Policy**

Cllr Gono explained that Liberia had undertaken the drafting of a national Maritime Transport Policy or Strategy, and that an inter-ministerial committee / task force had been set up for this purpose.

3. **Report**

It was highlighted that the report constitutes a valuable tool to help the relevant administrations and the inter-ministerial committee / task force to have a comprehensive understanding of the Conventions when drafting the implementing legislation. **The report will be forwarded to the inter-ministerial committee working on the review of the legislations for them to undertake actions as they deem necessary.**

In the tables below, you will find the main actions to be undertaken by Liberia for each recommendation, as agreed during the meeting.

Main recommendations and actions to undertake

RECOMMENDATIONS	ACTIONS TO BE UNDERTAKEN BY ORDER OF PRIORITY	TIMELINE, COMMENTS AND STATUS OF COMPLETION
Review the existing legislation and ensure the legislative drafters/lawyers from the Administration or the Attorney General's Office have a clear understanding of the conventions considered in this report and work together with technical officers of the different administrations concerned for the effective implementation of these conventions in the national legislation;	To consolidate the ongoing efforts of the relevant governments agencies towards the development of the Maritime Transport Policy as a basis of legislative action for the development of national legislation to give effect to IMO instruments	
Adopt appropriate implementation legislation regarding the OPRC 1990, as well as appropriate legislation regarding CLC 1992, Fund 1992, Bunkers Convention, and LLMC Protocol of 1996 to ensure the payment of adequate, prompt and effective compensation for damage caused by pollution resulting from the escape or discharge of persistent oils carried as cargo or bunker oil from ships in the territory, including the territorial sea, and EEZ, or equivalent 200 nm zone;	1. Catalogue the IMLI graduates who are working in Liberia to target the ones who could be involved in the process to developing implementing regulations to give effect to relevant IMO conventions. 2. Use the existing national task force (already created to draft the Maritime Transport Policy) to draft the national legislation to implement these conventions, and make sure that a wide range of stakeholders from the Ministry of Justice, the administrations involved in the implementation of these conventions as well as	1. October 2020. Completed. 2. Inclusion of IMLI graduates in the national task force completed.

	IMLI graduates or other graduates are included to utilize the available expertise.	
	3. Request assistance from IMO to provide training and technical assistance to the country to develop implementing legislation.	3. Mid-November 2020.
	4. Organise a meeting with the IMLI graduates.	4. First week of November 2020.
	5. Develop the new ToR of the task force for the development of implementing legislation	5. Will use existing task force ToR.
	6. Initiate the process (meetings, etc.) for the development of implementing legislation (law and regulations) of the conventions under review	6. Whilst this was done in March 2020, another meeting/working session will be held in the last week of November 2020 as IMLI graduates are now included
	7. Develop the first draft of the implementing legislation for submission to all stakeholders	7. Considering the inclusion of IMLI graduates, this will be done in the last week of November 2020
	8. Review the first draft considering inputs and comments from all stakeholders	8. –
	9. Develop the final draft of the implementing regulations	9. Mid-January 2021
	10. Validation workshop for the final draft of the implementing regulations	10. Mid-February 2021

	11. Submit to the office of the LiMA commissioner for onward transmission to the office of the President. 12. The office of the President forwards the validated copy to the national legislature for enactment purposes	11. End of February 2021 12. March 2021
Consider its position regarding States that are party to the 1976 LLMC only to avoid the risk that although being Party to the LLMC Protocol of 1996, the lower limitation amounts of the original Convention of 1976 are still applied in treaty relations to Parties to the Convention.	Liberia will consider **section 4.9 of the report** and consult the relevant stakeholders to determine Liberia's position.	Liberia acceded to LLMC 96 in 2008 hence LLMC Protocol is being incorporated in the current revised maritime law.

ANNEX I - QUESTIONNAIRES AND RESPONSES

Questionnaire to Participants

Full Name	DANIEL TARR
Country	LIBERIA
Your current position	DIRECTOR MARINE ENVIRONMENTAL PROTECTION, LIBERIA MARITIME AUTHORITY

Please insert name of country	**Status of ratification**	**Legislation implementing the convention into national law**	**Status of implementation**	**Comments**
CLC 69	ratified	**Environmental Protection and Management Law of Liberia, Liberia Maritime Authority 2010 Act,** Self-executing, Marine Notices	**Being Implemented**	**A comprehensive and holistic marine pollution law needs to be developed and enacted**
CLC 92	ratified	**Environmental Protection and Management Law of Liberia, Liberia Maritime Authority 2010 Act,** Self-executing, Marine Notices	**Being Implemented**	**A comprehensive and holistic marine pollution law needs to be developed and enacted**
Fund 92	ratified	**Environmental Protection and Management Law of Liberia, Liberia Maritime Authority 2010 Act,** Self-executing, Marine Notices	**Being Implemented**	**A comprehensive and holistic marine pollution law needs to be developed and enacted**
Sup. Fund	nil	Nil	nil	**A comprehensive and holistic marine pollution law needs to be developed and enacted**

Bunker	ratified	**Environmental Protection and Management Law of Liberia, Liberia Maritime Authority 2010 Act,** Self-executing, Marine Notices	**Being Implemented**	**A comprehensive and holistic marine pollution law needs to be developed and enacted**
LLMC 76	ratified	**Environmental Protection and Management Law of Liberia, Liberia Maritime Authority 2010 Act,** Self-executing, Marine Notices	**Being Implemented**	**A comprehensive and holistic marine pollution law needs to be developed and enacted**
LLMC 96	ratified	**Environmental Protection and Management Law of Liberia, Liberia Maritime Authority 2010 Act,** Self-executing, Marine Notices	**Being Implemented**	**A comprehensive and holistic marine pollution law needs to be developed and enacted**

Maritime policy and regulatory framework	Is there a national maritime policy or strategy? What is the lead agency responsible for it? Which is the national authority responsible for maritime civil law matters and for issuing insurance certificates?	Yes, Liberia Maritime Authority. Initially a maritime civil law matter goes to the office of the Deputy Commissioner for hearing and then to the Commissioner if parties are still have issues. Finally to the criminal court for hearing depending on the nature of the case. The international registry only deals with insurance companies that are Blue Card holders. Locally, the Liberia Maritime Authority encourages all clients to deal with Insurance companies that are licensed by the Central Bank of Liberia.	
Ratification of civil liability conventions	What are the main challenges/bottlenecks on the way towards ratification?	Lack of coordination	✓
		Lack of priority	✓
		Lack of legal expertise	✓

		Lack of technical expertise	✓
		Lack of financial resources	✓
Implementation of IMO conventions	What is the procedure of implementation of IMO safety, marine pollution and liability and compensation conventions into domestic law?	Once Liberia ratifies or accedes to a Convention, the national legislature accepts it, sends it to the Ministry of Foreign Affairs for printing into handbills and that convention thereafter automatically becomes part of the Laws of Liberia. Sections of the Conventions that needs domestication for some obvious reasons are then domesticated accordingly by the National Legislature.	
	If your country is not Party to any/some of the IMO civil liability conventions, does the existing legislation provide a prevention or liability and compensation regime for oil pollution and bunker pollution?		
Implementation of IMO convention • **1992 IOPC Fund Convention** • **Supplementary Fund Protocol**	Does the implementing legislation identify the national authority in charge of the submission of oil reports?	Yes, the Liberia Petroleum Refining Company is tasked with that responsibility	
	Does the implementing legislation create an obligation and a mechanism under national law for the entities receiving contributing oil to submit oil reports and pay contribution?	nil	
	Is there a mechanism under the implementing legislation to allow for increased limits of liability to be enacted under national law?	nil	
	Does the implementing legislation allow for the IOPC Fund to intervene in legal proceedings as per article 7(4)?	nil	

	What are the time-bar provisions for the CLC/Fund conventions in the implementing legislation?	nil
Enforcement of IMO conventions	What is the legal basis for the enforcement of civil law claims related to marine pollution and other maritime claims?	**Environmental Protection and Management Law of Liberia, Liberia Maritime Authority Act 2010**

ANNEX II - TERMS OF REFERENCE FOR THE CONSULTANT

Remote legal assistance on the effective implementation of IMO conventions relating to oil pollution and liability and compensation

Introduction

1 In light of the current Coronavirus pandemic and in the interest of the health and safety of the participants, experts and host-country, it was decided to postpone until further notice the sub-regional workshop described below. However GI WACAF remains committed to supporting the countries invited to this workshop, with particular focus on the four (4) countries that agreed to engage with a remote review of the text of their relevant national legislation followed by an online debriefing on the outcome of the legislation review for each country.

2 The initial activity consisted of a sub-regional workshop on the ratification and effective implementation of IMO conventions relating to oil pollution and liability and compensation to be held in Accra, Ghana, from 27 to 30 April 2020. This workshop was organized in response to several requests for assistance made by partner countries during the 8th GI WACAF Regional Conference in October 2019, to address the various challenges faced with the ratification and effective implementation of these key IMO conventions.

3 This remote activity is carried out within the framework of the Global Initiative for West, Central and Southern Africa (GI WACAF), a partnership between IMO and IPIECA, with the principle aim of enhancing the capacity of GI WACAF countries to prepare for and respond to marine oil spills.

Objectives

4 The overall objective of the activity remains the same, which is to assist policy makers, legislative advisers and/or drafters, responsible for the effective implementation, and transposition of IMO conventions into their domestic legislation in understanding the objectives, principles and legal implications of specific IMO instruments (i.e. OPRC 1990, CLC and FUND 1992as well as the Bunkers Convention and the 1996 LLMC Protocol), and to guide them on the legislative mechanisms that should be applied when developing and updating national laws.

5 The main expected outcomes of the remote assistance are:

a. To provide the four (4) beneficiary countries with a written gap analysis undertaken at national level, based on the review of the relevant sections of national legislation of these four (4) countries; and

b. To provide the designated National Focal Points of the aforementioned countries with tailored and comprehensive written and oral feedback, thus helping them in the domestication of the above-mentioned IMO Conventions.

Tasks and activities

6 The Consultant will, in collaboration with IMO legal officers, representatives of the IOPC Funds, the GI WACAF Project team and officials designated by the national authorities, undertake the completion of the following tasks:

.1 a home-based review of each of the national legal systems of the four beneficiary countries and of each of the relevant pieces of legislation relating to oil spill pollution, preparedness, response and liability and compensation, provided by the national authorities of these countries, including compilation and review of the responses to the questionnaires already sent out and based on the preliminary work undertaken by IMO legal officers;

.2 a gap analysis of relevant policies and legislative framework in each of the four beneficiary countries in terms of national maritime legislation, with a particular focus on the mechanism for the effective implementation of IMO conventions and specifically the OPRC 1990, CLC and FUND 1992, the Bunkers Convention and the 1996 LLMC Protocol;

.3 a comprehensive report detailing the results of the review and of the gap analysis; and

.4 the preparation and delivery of written and oral tailored feedback, provided in report form to, and followed up by a virtual meeting with, the respective national Focal points in each country, which will also include recommendations on the drafting of national maritime legislation in order for the four beneficiary countries to meet their current and future obligations for the effective implementation of the conventions mentioned above.

Timeframe

7 The objective is to complete the consultancy mission and send the final report by the **26th of July.**

Reporting

8 The consultant will provide the final consolidated activity report, detailing findings, descriptions of the outputs delivered, conclusions and recommendations **as applicable**, based on the report template shared by the GI WACAF team.

9 IMO should be provided with an electronic copy of the report using software compatible with Microsoft Office. The report should be submitted **to Ms Emilie Canova, GI WACAF Project Coordinator**, with copy to Mr Julien Favier, GI WACAF Project Manager, no later than one month following the completion of the consultancy services**.**

ANNEX III - INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION (BUNKERS 2001)

Overview

- Adoption: 23 March 2001
- Entry into force: 21 November 2008
- 95 Contracting States representing 92.99% of world tonnage
- Objective: "To ensure that adequate, prompt, and effective compensation is available to persons who suffer damage caused by spills of oil, when carried as fuel in ships' bunkers"
- Last significant gap in the international regime for compensating victims of oil spills from ships
- Application: Applies to damage caused on the territory, including the territorial sea, and in the EEZ of States Parties.

Principles

- Strict liability of ship owners and some others
- Limitation of liability
- Compulsory insurance
- Certificates
- Direct action against insurer

Definitions – Article 1

- **Ship** (Article 1.1): Any seagoing vessel and seaborne craft, of any type whatsoever.
  - Broad definition covering a large number of floating objects as well as traditional ships.
  - However, the Convention will not apply unless the vessel in question is carrying "bunker oil".

- **Shipowner** (Art. 1.3): the owner, including the registered owner, bareboat charterer, manager and operator of the ship.
- **Bunker oil** (Art. 1.5): hydrocarbon mineral oil, including lubricating oil used for the operation or propulsion of the ship, and any residues of such oil.

- Broad definition, but the proof of intention of use would be required in order to make distinction between fuel and cargo oil.

- Pollution damage (Art. 1.9): loss or damage … by contamination resulting for the escape or discharge of bunker oil".

  Compensation for impairment of the environment "other than loss of profit from such impairment" is limited to the cost of reasonable measures of reinstatement.
- Accords with the definition of pollution damage in CLC.

Scope of application – Article 2

- to **pollution damage** caused:
    - in the territory, including the territorial sea, of a state party, and
    - in the exclusive economic zone of a state party;
- to preventive measures, wherever taken, to prevent or minimize such damage
- **Preventive measures** (Article. 1.7): Any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage.

Liability of the shipowner (Article 3)

- Strict liability: no requirement for fault for the liability to arise: the shipowner at the time of the incident (which includes the range of persons listed in the definition) is liable (Art. 3.1)
- Joint and several liability (Art. 3.2).
- Defences to the shipowner: limited exemptions as in CLC (Art. 3.3).
- The shipowner may also be excused from liability where it is shown that the person who suffered the damage caused or contributed to it (Art. 3.4).
- Immunity from other suit (Art. 3.5).
- However, shipowner's right of recourse (Art. 3.6)

Exclusions – Article 4

- Pollution damage covered by the CLC.
- Pollution from warships or ships on Government noncommercial service unless a State Party decides otherwise. On the other hand where State owned vessels are used for commercial purposes the Convention applies including the jurisdiction provisions of Article 9.

Limitation of liability – Article 6

- The shipowner and the person providing insurance or other financial security have the **right to limit liability** under any applicable national or international regime, such as the **convention on limitation of liability for maritime claims**, 1976, as amended.
    - The Convention is accompanied by a Conference Resolution on

      Limitation of Liability which urges all States to ratify or accede to the 1996 Protocol to the LLMC 1976 thus increasing the fund available for all claims – including bunker pollution claims.

Compulsory insurance and direct action against the insurer

- Which ships must be insured? Article 7.1
  - Ships greater than 1,000 gross tonnage
- Who must be insured?
  - The **registered owner** of a ship having a gross tonnage greater than 1000 registered in a state party is required to maintain insurance (or other financial security)
- Level of insurance cover?
  - to cover the liability for pollution damage in an amount equal to the limits of liability under the applicable national or international limitation regime,
  - but not exceeding an amount calculated in accordance with the convention on limitation of liability for maritime claims, 1976, as amended.

Insurance certificates – Article 7

Evidence of insurance:

- A certificate attesting that insurance is in force shall be issued to **each ship** after the **appropriate authority** of a State Party **determines** that the requirements of the convention have been complied with
- With respect to a ship registered in a State party such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry
- With respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party
- A State Party may authorise another institution or organisation to issue the certificates
- The Convention provides for the model form
- Certificates must be in either English, French or Spanish or, if in another language, must be translated into one of the three specified languages.
- The certificate has to be carried on board at all and a copy shall be deposited with the authorities
- The State of the ship's registry shall determine the conditions of issue and validity of the certificate
- Information on the financial situation of providers of insurance may be obtained from other States

- Certificates issued or certified under the authority of a State party shall be accepted by other states parties
- The Article also provides for the holding of certificates in electronic format.

Direct action – Article7.10

- Any claim for compensation for pollution damage may be brought **directly against the insurer**
- The defendant may invoke the defences which the shipowner would have been entitled to invoke, including limitation

Consequences if no insurance is in place – Article 7.11-7.12

- A State party **shall not permit** a ship under its flag to operate at any time, unless a certificate has been issued
- Each State party shall ensure, under its national law, that insurance or other security is in force in respect of any ship having a gross tonnage greater than 1000, wherever registered, entering or leaving a port in its territory, or arriving at or leaving an offshore facility in its territorial sea

Time limits and jurisdiction - Article 8 and 9

- The action should be brought **within three years from the date when the damage occurred**
- In no case shall an action be brought more than **six years** from the date of the incident which caused the damage
- Claimants may pursue claims before the courts of the State or States in which the pollution has occurred or where measures to prevent or minimise pollution have taken place. Where security for claims has been posted by the shipowner, insurer, or other person providing security action may be brought where that security has been provided.

Bunkers Convention v. Civil Liability Convention

- Bunker has a different definition of "oil"
- There is no second tier "Fund"
- Claims are not channelled on to the "registered owner"
- No limits of its own, but links to limits set out by the LLMC 1976/96 (new limits entered into force in June 2015)
- Compulsory insurance requirement set at over 1,000 gt regardless of the type of ship

Implementation of Bunker Convention

- Issuance of Bunkers certificates
- Assembly Resolution on the issuing of insurance certificates for bareboat chartered ships recommending that all States parties should recognize that certificates for ships under bareboat charter should be issued by the flag State, if that State is party to the Convention (A.1028 (26)).
- Assembly Resolution on the issue of bunkers certificates to ships that are also required to hold a CLC certificate recommending to States to require ships flying their flag or entering or leaving their ports to hold a certificate as prescribed by the Bunkers Convention, even when the ship concerned also holds a certificate issued under the CLC (A.1055(27)).

- Verification of insurers
  - Problem faced by Administrations when issuing certificates under the Bunkers Convention to assess the solvency of some of the insurers or guarantors.
  - Guidelines for accepting insurance companies, financial security providers and the international group of protection and indemnity associations (P & I Clubs) (CL 3145 of 2011 replaced by CL 3464 of 2014)

- Domestic legislation to provide a prevention and compensation regime for bunker pollution
  - Ensure that owners of ships of 1,000 gross tonnes or more:
    - registered owners are required to have insurance to cover their liability (with accompanying offences); and

    - certificates should be carried on board ships to verify that insurance exists (with accompanying offences);
- Administrative details concerning issuing and checking of certificates by the Administration
- Ensure that courts have jurisdiction to hear claims and there is a clear guidance on where claims for compensation may be taken;
- Recognise the final judgments from courts in other State parties in respect of convention claims;

ANNEX IV - GUIDANCE ON THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE 2001 (BUNKERS 2001).

1. Introduction

The International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (Bunkers Convention-BC) entered into force on 21 November 2008.

The Convention was adopted to ensure that adequate, prompt, and effective compensation is available to persons who suffer damage caused by spills of oil, when carried as fuel in ships' bunkers.

The Convention applies to damage caused on the territory, including the territorial sea, and in exclusive economic zones of States party of the Convention.

"Pollution damage" means:

(a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of bunker oil 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 shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and

(b) the costs of preventive measures and further loss or damage caused by preventive measures.

The convention is modeled on the International Convention on Civil Liability for Oil Pollution Damage, 1969. As with that convention, a key requirement in the bunkers convention is the need for **the registered owner** of a vessel to maintain compulsory insurance cover.

Another key provision is the requirement for direct action - this would allow a claim for compensation for pollution damage to be brought directly against an insurer. The Convention requires ships over 1,000 gross tonnage to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover the liability of the registered owner for pollution damage.

1. Application

Flag State party to the Convention:

Generally, the Evidence of Insurance (known as "Blue Cards") will be issued by the P&I Clubs. Further, member States will issue the statutory government certificates based on their national legislation. Note: “Blue Cards” are non-mandatory supplementary documents only.

Flag State not party to the Convention:

Vessels of ship owners registered in a State which is not party to the Convention should obtain a State issued certificate from a state party to the Convention. Ideally, if calling at a port or terminal in a state party, the certificate could be obtained from the issuing authority of that particular state. Alternatively, in the event that this is not possible, a state issued certificate may be obtained from any other State party to the Convention. This may also be the case, when a ship sails under the conditions of a bare-boat charter registration and the certificate of insurance has been issued by the authority of the underlying register and not by the flag state.

For on overview of States party to the Convention refer to www.imo.org (Conventions-Status of Conventions by Countries) or the PSCO Manual – Table of ratification of IMO Conventions.

2. Control Requirements for Port State Control

Port State Control inspections should be carried out observing the following principles:

1. Port States party to the Bunker Convention shall ensure, that any ship, wherever registered, having a gross tonnage greater than 1000 entering or leaving a port of its territory, or arriving at or leaving an off-shore facility in its territorial sea is carrying a certificate according to the Bunker Convention,
2. Bunker oil Certificates issued by the competent authorities must be duly signed by a certifying official. “Blue-cards”, issued by P & I Clubs are not sufficient,
3. Certificates of Insurance, duly issued by an authority of a State Party to the Bunker Convention shall also be recognized.

4. Action taken

The absence of a valid Bunker Certificate must be rectified before departure and the PSCO should consider a detention.

ANNEX V - TRANSPOSITION OF THE OPRC CONVENTION INTO NATIONAL LEGISLATION

Key aspects of the OPRC whose transposition into national legislation should be checked:

- **Article 3 -** Requirements for oil pollution emergency plans for ships, offshore units, sea ports and oil-handling facilities aligned to the national system
- **Article 4 -** Reporting procedures for discharges or probable discharges of oil irrespective of the source
- **Article 6:**
  - **a) (i) -** Designation of the competent national authority or authorities with responsibility for oil pollution preparedness and response
  - **a) (ii) -** Designation of the national operational contact point or points, which shall be responsible for the receipt and transmission of oil pollution reports as referred to in article 4
  - **a) (iii) -** Designation of an authority which is entitled to act on behalf of the State to request assistance or to decide to render the assistance requested
  - **b) –** Establishment of a national contingency plan for preparedness and response
  - **2) a) -** Establishment and operation of spill response capabilities as may be required to meet the existing risk.
  - **2) b) -** requirements for mandatory training and exercising of contingency plans and response operations for those likely to be involved with the preparedness and response to an oil spill
  - **2) d) -** mechanism or arrangement to co-ordinate the response to an oil pollution incident
- **Article 7 –** mechanism to facilitate offers and requests of international Co-operation and assistance during a spill incident.

Further considerations which can be checked also:

- legislation and regulations to create a national pollution response framework and obligation to protect the marine environment from harmful substances;
- legislation that places liability for incidents from offshore units, including response costs and compensation, squarely on the operator;
- legislation specifying penalties e.g. for failure to report;

- legislation to ensure that operators are liable and able to meet potential compensation claims;
- legislation defining the frequency of update of the national contingency plan;
- legislation formalizing participation and contribution of members of a national pollution preparedness and response forum;
- etc.…

ANNEX VI- ADDITIONAL QUICK GAP ANALYSIS TABLE

LIBERIA

CLC 69	CLC 92	Fund 92	Sup. Fund	Bunkers	LLMC 76	LLMC 96
DENOUNCED Environmental Protection and Management Law of Liberia, Liberia Maritime Authority 2010 Act, Self-executing, Marine Notices Being Implemented?	RATIFIED Environmental Protection and Management Law of Liberia, Liberia Maritime Authority 2010 Act, Self-executing, Marine Notices Being Implemented (A comprehensive and holistic marine pollution law needs to be developed and enacted)	RATIFIED Environmental Protection and Management Law of Liberia, Liberia Maritime Authority 2010 Act, Self-executing, Marine Notices Being Implemented (A comprehensive and holistic marine pollution law needs to be developed and enacted)	NOT RATIFIED (A comprehensive and holistic marine pollution law needs to be developed and enacted?)	RATIFIED Environmental Protection and Management Law of Liberia, Liberia Maritime Authority 2010 Act, Self-executing, Marine Notices Being Implemented (A comprehensive and holistic marine pollution law needs to be developed and enacted)	RATIFIED Environmental Protection and Management Law of Liberia, Liberia Maritime Authority 2010 Act, Self-executing, Marine Notices Being Implemented (A comprehensive and holistic marine pollution law needs to be developed and enacted)	RATIFIED Environmental Protection and Management Law of Liberia, Liberia Maritime Authority 2010 Act, Self-executing, Marine Notices Being Implemented (A comprehensive and holistic marine pollution law needs to be developed and enacted)

ANNEX VII - TC ACTIVITIES LEGAL MATTERS (Reviewing national legislation or drafting exercises)

Liberia

- **Monrovia, Liberia -** Under the EU/ACP/IMO Project, IMO successfully fielded a two-man technical advisory missions to Liberia to assess the functioning of the maritime administration and assist in the review of the maritime legislation from 9 to 13 November 2015. These technical advisory missions involved three-day needs assessment audit for the maritime administration and two-day stakeholders' seminar to discuss the findings of the audit in order to upgrade the Liberia Administration and further prepared the country for the mandatory IMO audit scheme scheduled for 2016.

- One participant from the Liberia Maritime Authority attended the Workshop on general principles of drafting national legislation to implement IMO conventions held at IMO Headquarters in London from 18 to 22 September 2017. This participant was recruited as Assistant Consultant in an activity on maritime legislation in an other country in 2017.

- **Monrovia, Liberia:** IMO fielded a technical assistance mission to Liberia, to undertake a 32-day Field and Home-based Consultancy to assist in the review of the Liberian Maritime Code of Laws of 1956, as amended which incorporates; SOLAS, MARPOL, STCW, LOADLINE, COLREG, TONNAGE as amended from 30 May to 08 August 2019.